



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

J. CHRISTOPHER BURCH, *et al.*,

Plaintiffs,

v.

TORY BURCH, *et al.*,

Defendants.

C.A. No. 7921-CS

TORY BURCH LLC,

Counterclaim Plaintiff,

v.

J. CHRISTOPHER BURCH, JCB
INVESTMENTS, LLC, C. WONDER LLC and
RIVER LIGHT VENTURE PARTNERS LLC,

Counterclaim Defendants.

**ANSWER OF
TORY BURCH LLC AND TORY BURCH**

Defendants Tory Burch LLC and Tory Burch, by their undersigned attorneys, answer as follows the allegations of the Verified Complaint (the "Complaint") filed by Plaintiffs J. Christopher Burch, JCB Investments, LLC, and C. Wonder LLC.

INTRODUCTION

The core allegations of the plaintiffs' Complaint are that Chris Burch's conduct is blameless; that Defendants' belief that Chris Burch's C. Wonder brand is competing unfairly with the Company is based on nothing more than irrational bias or blind loyalty

to Tory Burch; and that this irrational bias and blind loyalty are standing in the way of Chris Burch selling half of his interest in Tory Burch LLC in a “Project Amethyst” transaction. Those allegations are baseless.

Project Amethyst is dead, and Mr. Burch has only himself to blame for that fact. Project Amethyst did not die as a result of an imagined vendetta motivated by personal jealousy and pique. As detailed in the Company’s counterclaims, it died because Mr. Burch, a director of the Company who owed the Company contractual and fiduciary duties, created C. Wonder in clear violation of those duties. His actions have harmed the Company, and will continue to do so unless enjoined.

A majority of the Company’s Board of Directors has opposed a Project Amethyst transaction absent a settlement agreement that protects the Company’s legitimate interest in protecting its brand and assures that Mr. Burch does not take the hundreds of millions that he would receive from the deal and use the money to trade unfairly on the Tory Burch brand. The three principal Project Amethyst bidders’ legitimate interests are the same: they all made it a condition of their bid that Mr. Burch enter into a settlement agreement that protects the Company. In order to meet Mr. Burch’s price demand, the three principal Project Amethyst bidders also all would have required substantial modifications to the Company’s LLC Agreement, as a condition to investing. As a result, the two other major owners of the Company have the right to withhold consent and require a settlement agreement as a condition to proceeding to protect both the Company and their investment in it. The result is that Project Amethyst has no path to completion.

RESPONSIVE ALLEGATIONS

Defendants respond to the specific allegations of the Complaint as set forth below.

Except for those allegations expressly admitted herein, Defendants deny each and every allegation in the Complaint.

Paragraph No. 1:

This is an action to remedy Tory Burch's vicious campaign to deprive her ex-husband of the value of his co-equal interest in the extraordinarily successful fashion business they co-founded, Tory Burch LLC. Wielding her considerable power at the helm of a company that bears her name, Ms. Burch has systematically cut off Mr. Burch's ability to play any meaningful role in the affairs of a business he helped build and in which he remains a 28% shareholder. At the same time, she hijacked the bidding process through which Mr. Burch has been attempting to sell his stake in the Company, preventing him and other minority shareholders from obtaining fair value for their interests. In particular, Ms. Burch has manipulated third party bidders into requiring, as a pre-condition to any transaction, that Mr. Burch and C. Wonder (a new business venture launched by Mr. Burch one year ago that now operates ten stores and the e-commerce site CWonder.com) reach a one-sided and onerous settlement agreement with the Company with respect to trumped up trade dress infringement allegations the Company has made against C. Wonder. In effect, Ms. Burch is holding hostage Mr. Burch's ability to sell his shares in an effort to extract outrageous concessions from C. Wonder that are calculated to undermine Mr. Burch's express contractual right to operate a competing business. Ms. Burch's interference with third party bidders, both directly and through strategic leaks to the media, has tainted the sale process. Thoroughly dominated and controlled by Ms. Burch, a majority of the Company's Board of Directors have abdicated their fiduciary duties by blindly supporting Ms. Burch's improper personal agenda. Through her machinations, Tory Burch fashioned a corporate governance process that is perfectly imperfect.

Response to Paragraph No. 1:

Denied. Defendants specifically deny that sophisticated investors with hundreds of millions of dollars at stake, as well as the distinguished men and women who sit on the Company's Board, were dominated or controlled by Ms. Burch. Defendants aver that the Company's directors had a justifiable business reason for demanding that Mr. Burch and C. Wonder enter an appropriate settlement agreement. Without the protection of a

settlement agreement, it would not be in the best interests of the Company or its other investors to go forward with a transaction in which Mr. Burch would receive hundreds of millions of dollars to fund a business that was trading unfairly on the Tory Burch brand.

Paragraph No. 2:

Mr. Burch is an entrepreneur with more than 30 years of experience in the apparel industry. In 2003, Mr. Burch and his then-wife, Defendant Tory Burch, started the Company. Ms. Burch had no prior entrepreneurial or fashion design experience at the time of the Company's founding. Mr. Burch, on the other hand, brought extensive prior experience in the apparel industry to this tiny start-up brand, including (1) detailed knowledge of sourcing materials and manufacturers in Asia; and (2) the initial capital required to launch the business, through a combination of his own personal wealth and outside capital he raised. Through their combined efforts, the Company quickly became extraordinarily successful and, today, the Company's gross sales exceed \$700 million annually. In 2006, Mr. Burch and Ms. Burch filed for divorce, but remained co-owners of the Company and, until earlier this year, co-chairpersons of the Board of Directors. Today, Mr. Burch and Ms. Burch each own 28% of the shares of the Company. Unfortunately, Ms. Burch and the other Individual Defendants have taken a series of improper actions in breach of their contractual and fiduciary duties that have deprived Mr. Burch of his valuable rights as a shareholder and Board member.

Response to Paragraph No. 2:

Defendants admit that Tory Burch and J. Christopher Burch jointly founded the Company in 2003, that gross sales today exceed \$700 million annually, that Tory Burch filed for divorce in 2006, and that, until earlier this year, Mr. and Ms. Burch were co-chairpersons of the Board of Directors, while John S. Hamlin was the Presiding Director. Defendants deny the remaining allegations of Paragraph 2 of the Complaint.

Paragraph No. 3:

When Mr. Burch gave the Board notice of his intent to sell at least a portion of his stake in June 2011, the Company embraced the idea and both Ms. Burch and the next largest shareholder, Isla Coral (an affiliate of Tresalia Capital), indicated their interest in participating in such a transaction. The Board selected the investment bank to run the sale – Barclays Capital – and the Company took control of the sale process. Given the tremendous success of its business, the Company quickly attracted interest from a

number of leading private equity and strategic bidders at valuations the Company found attractive. But instead of proceeding with a sale that is clearly in the best interest of all shareholders, the Defendants have misused the sale process as a tool to gain leverage over Mr. Burch and his new business, C. Wonder.

Response to Paragraph No. 3:

Defendants admit that the Board selected Barclays Capital to assist in a process of identifying outside investors in the Company, that Isla Coral (through TB Ventures, Inc.) is the next largest shareholder after Mr. and Ms. Burch, that Ms. Burch and Isla Coral indicated potential interest in participating in a Project Amethyst transaction, and that the Company attracted initial interest from private equity and strategic bidders. Defendants deny the remaining allegations of Paragraph 3 of the Complaint.

Paragraph No. 4:

Mr. Burch was unquestionably within his rights to launch C. Wonder – an apparel, accessories and home decor business – even if it were considered a direct competitor of the Company. The Company’s LLC agreement expressly permits all Directors and Members, including Mr. Burch and his affiliates, to participate in business ventures that compete with the Company. Mr. Burch, who has spoken openly to the Board about his various entrepreneurial activities, fully disclosed his activities on behalf of C. Wonder and even shared logo, product and manufacturing cost information with the Company in advance of the launch.

Response to Paragraph No. 4:

Denied.

Paragraph No. 5:

Despite Mr. Burch’s clear contractual right to operate C. Wonder, it apparently infuriated Ms. Burch when it began to attract media attention. Upon information and belief, she communicated to another senior level executive in the fashion industry that she was “going to war” with Mr. Burch, that C. Wonder was imitating the Company’s look and style, and that she planned to kick him out of the business. As part of that war, Ms. Burch and the other Individual Defendants sought to deny Mr. Burch any ability to participate in the affairs of the Company, despite his position as a co-equal shareholder with Ms. Burch with the right to Board representation. They excluded Mr. Burch and his

representatives from Board meetings by improperly acting via “executive sessions,” such that all Directors other than Mr. Burch or his designee would deliberate and vote on significant matters. And, the Individual Defendants passed resolutions specifically targeting Mr. Burch that deny him access to the Company’s information, including most of the data room for the sale process, and muzzle his ability to communicate with Company employees or the media.

Response to Paragraph No. 5:

Defendants admit that after C. Wonder opened and the Company learned of the improper conduct and unlawful activities of J. Christopher Burch in misappropriating the Company’s confidential information and in otherwise competing unfairly with the Company, the Board of Directors took appropriate steps to protect the Company’s confidential information and discussed matters involving Mr. Burch and C. Wonder during executive sessions in which Mr. Burch was asked to and did remove himself from the discussion. Defendants deny the remaining allegations of Paragraph 5 of the Complaint.

Paragraph No. 6:

As another front in the war, Ms. Burch, with the assistance of her step-brother (Chief Legal Officer and Secretary to the Board Robert Isen) and other members of her management team, and with the support of blindly loyal Board members that together with Ms. Burch compromise a majority of the Board, concocted a bogus dispute surrounding C. Wonder. First, Defendants made baseless allegations that C. Wonder violated the Company’s purported trade dress, demanding that Mr. Burch make sweeping changes to C. Wonder’s store design and products. These trade dress allegations rely on such functional and commonplace style elements as “green carpets” and “brass buttons” that are neither owned by Tory Burch, LLC nor recognized by the consuming public as distinctively identifying Tory Burch, LLC. Second, Defendants advanced the insupportable claim that Mr. Burch used confidential Company information to help C. Wonder. In fact, Mr. Burch used basic information about the Company’s top ten selling items – which he legitimately and openly received as a significant shareholder with a Management Services Agreement – to aid not C. Wonder but *Tory Burch, LLC* in its business by suggesting ways for the Company to improve its margin on these products.

Response to Paragraph No. 6:

Denied.

Paragraph No. 7:

To pressure Mr. Burch into capitulating to her onerous demands with respect to C. Wonder's products and store design, Ms. Burch poisoned the sale process by leaking to the press and misrepresenting to bidders that C. Wonder was acting improperly and posed a serious threat to the Company. Ms. Burch, and others acting in concert with her, deliberately misportrayed the actions of C. Wonder and exaggerated the threat (if any) it posed, including by, upon information and belief, (1) leaking information about C. Wonder to the media to exacerbate the perception of a threat; and (2) manipulating the bidders into conditioning their bids on a requirement that C. Wonder and the Company reach a settlement agreement with respect to her fabricated intellectual property dispute. In reality, C. Wonder was *not* threatening the Company's business; to the contrary, the Company's sales were increasing during this same time period.

Response to Paragraph No. 7:

Denied.

Paragraph No. 8:

Despite the plainly meritless nature of the trade dress claims, Mr. Burch sought to appease Ms. Burch so that she would cease interfering with the sale process. He offered to make, and began making, considerable modifications to C. Wonder's store design and products that he was under no legal obligation to make. His eminently reasonable concessions were all in vain, however, as Ms. Burch and the Company's management continued to insist on an ever-changing laundry list of overreaching demands that doomed any settlement effort. Defendants, led by Ms. Burch, have taken the hard line position that they will terminate the sale process and block Mr. Burch from selling his interests unless he capitulates to outrageous settlement demands that eviscerate his right to operate another business.

Response to Paragraph No. 8:

Denied.

Paragraph No. 9:

Thoroughly dominated and controlled by Ms. Burch, a majority of the Board members have simply abdicated their fiduciary duties by blindly supporting Ms. Burch's

improper crusade against Mr. Burch. Left with no other choice, Plaintiffs have commenced this instant lawsuit to vindicate their rights.

Response to Paragraph No. 9:

Denied.

I. PARTIES

Paragraph No. 10:

Plaintiff J. Christopher Burch is an individual resident of Florida.

Response to Paragraph No. 10:

Admitted.

Paragraph No. 11:

Plaintiff C. Wonder is a Delaware limited liability company.

Response to Paragraph No. 11:

Defendants do not have knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph 11 of the Complaint and therefore deny it.

Paragraph No. 12:

Plaintiff JCB is a Delaware limited liability company. Mr. Burch has assigned his interest in the Company to JCB.

Response to Paragraph No. 12:

Defendants do not have knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12 of the Complaint and therefore deny them.

Paragraph No. 13:

Defendant Tory Burch, LLC is a Delaware limited liability company with its principal place of business at 11 West 19th Street, 7th Floor, New York, New York 10011.

Response to Paragraph No. 13:

Admitted, except to note that Tory Burch LLC does not have a comma between Burch and LLC.

Paragraph No. 14:

Defendant Tory Burch is an individual resident of New York. Ms. Burch was at all times relevant hereto a Director of Tory Burch, LLC, and “participate[d] materially in the management of” Tory Burch, LLC within the meaning of 6 *Del. C.* §18-109(a). She currently serves as the Chief Executive Officer of Tory Burch, LLC.

Response to Paragraph No. 14:

Defendants admit that Tory Burch is an individual residing in New York and that she serves as the Chief Executive Officer of Tory Burch LLC. The remaining allegations in Paragraph 14 assert legal arguments or conclusions to which no response is required.

Paragraph No. 15:

Defendant John S. Hamlin is an individual resident of Texas. Mr. Hamlin was at all times relevant hereto a Director of Tory Burch, LLC, and “participate[d] materially in the management of” Tory Burch, LLC within the meaning of 6 *Del. C.* §18-109(a).

Response to Paragraph No. 15:

Defendants admit that John Hamlin serves as the Presiding Director of Tory Burch LLC and respectfully refer the Court to Mr. Hamlin’s response to the allegations in Paragraph 15. The remaining allegations in Paragraph 15 assert legal arguments or conclusions to which no response is required.

Paragraph No. 16:

Defendant Glen Senk is an individual resident of Florida. Mr. Senk was at all times relevant hereto a director of Tory Burch, LLC, and “participate[d] materially in the management of” Tory Burch, LLC within the meaning of 6 *Del. C.* §18-109(a).

Response to Paragraph No. 16:

Defendants admit that Glen Senk serves as a director of Tory Burch LLC and respectfully refer the Court to Mr. Senk's response to the allegations in Paragraph 16. The remaining allegations in Paragraph 16 assert legal arguments or conclusions to which no response is required.

Paragraph No. 17:

Defendant Maria Asuncion Aramburuzabala Larregui is an individual resident of Mexico. Ms. Aramburuzabala Larregui was at all times relevant hereto a director of Tory Burch, LLC, and "participate[d] materially in the management of" Tory Burch, LLC within the meaning of 6 *Del. C.* §18-109(a). Ms. Aramburuzabala Larregui is one of two directors appointed to the Board by Defendant Isla Coral, S.A. de C.V.

Response to Paragraph No. 17:

Defendants admit that Maria Asuncion Aramburuzabala Larregui serves as a director of Tory Burch LLC and respectfully refer the Court to Ms. Larregui's response to the allegations in Paragraph 17. The remaining allegations in Paragraph 17 assert legal arguments or conclusions to which no response is required.

Paragraph No. 18:

Defendant Eduardo Holschneider is an individual resident of Colorado. Mr. Holschneider was at all times relevant hereto a director of Tory Burch, LLC, and "participate[d] materially in the management of" Tory Burch, LLC within the meaning of 6 *Del. C.* §18-109(a). Mr. Holschneider is one of two directors appointed to the Board by Defendant Isla Coral, S.A. de C.V.

Response to Paragraph No. 18:

Defendants admit that Eduardo Holschneider serves as a director of Tory Burch and respectfully refer the Court to Mr. Holschneider's response to the allegations in

Paragraph 18. The remaining allegations in Paragraph 18 assert legal arguments or conclusions to which no response is required.

Paragraph No. 19:

Defendant Ernesto Zepeda is an individual resident of Mexico. Mr. Zepeda has served as a proxy for Ms. Aramburuzabala Larregui as a director of Tory Burch, LLC, and “participate[d] materially in the management of” Tory Burch, LLC within the meaning of 6 *Del. C.* §18-109(a). Mr. Zepeda serves as the director of Tresalia Capital.

Response to Paragraph No. 19:

Defendants admit that Ernesto Zepeda has on occasion attended meetings of the Board of Directors of Tory Burch LLC as a proxy for Ms. Aramburuzabala Larregui. Defendants respectfully refer the Court to Mr. Zepeda’s response to the factual allegations in Paragraph 19. The remaining allegations in Paragraph 19 assert legal arguments or conclusions to which no response is required.

Paragraph No. 20:

Defendant Isla Coral, S.A. de C.V. is a Mexican corporation, and a subsidiary of Defendant Maria Asuncion Aramburuzabala Larregui’s private equity firm, Tresalia Capital. Isla Coral is controlled by Maria Asuncion Aramburuzabala Larregui. In 2009, Isla Coral, S.A. de C.V. purchased a substantial stake in Tory Burch LLC.

Response to Paragraph No. 20:

Defendants admit that Isla Coral, S.A. de C.V. is a Mexican corporation and that Isla Coral S.A. de C.V. invested in Tory Burch LLC in 2009. Defendants deny that Isla Coral, S.A. de C.V. is a subsidiary of Tresalia Capital. The remaining allegations in Paragraph 20 assert legal arguments or conclusions to which no response is required.

II. FACTS

The Business Ventures of Christopher Burch

Paragraph No. 21:

J. Christopher Burch is a life-long entrepreneur with investments in a variety of industries, including fashion, technology, media, and telecommunications.

Response to Paragraph No. 21:

Defendants do not have knowledge or information sufficient to form a belief as to the extent of investment and other activities of J. Christopher Burch and therefore deny the allegations of Paragraph 21 of the Complaint.

Paragraph No. 22:

In 1976, while still an undergraduate in college, Mr. Burch and his brother Robert Burch cofounded Mr. Burch's first company, Eagle's Eye, with an initial investment of \$2,000. Eagle's Eye designed, manufactured and sold women's, men's and children's apparel featuring bright colors, embroidered motifs, bold hardware, and whimsical patterns. The brand was upscale, preppy, colorful, fun and creative. Mr. Burch sourced a Chinese company to manufacture Eagle's Eye products, beginning his long relationship and experience with Chinese manufacturers. Over the next twenty years, through Mr. Burch's strategic leadership and hard work, the Eagle's Eye business experienced tremendous growth, achieving a national distribution level that included more than 50 retail stores. In 1998, Mr. Burch sold Eagle's Eye in a deal that valued the brand at more than \$60 million.

Response to Paragraph No. 22:

Defendants do not have knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 22 of the Complaint and therefore deny them.

Paragraph No. 23:

Following the sale of Eagle's Eye, Mr. Burch continued his entrepreneurial endeavors, investing in start-up entities such as Internet Capital Group; Aliph (manufacturer of Jawbone, a Bluetooth mobile phone headset); Powermat wireless charging stations; and Voss brand bottled water.

Response to Paragraph No. 23:

Defendants do not have knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 23 of the Complaint and therefore deny them.

Paragraph No. 24:

Today, Mr. Burch has more than 30 years of experience in the fashion and apparel industry. Throughout these three decades he has developed relationships with a unique and far-reaching network of factories and other important players in the industry. These relationships, as well as his knowledge of the business, make him an invaluable asset to any company in the fashion and apparel industry.

Response to Paragraph No. 24:

Denied.

The Founding of Tory Burch LLC and the Success of the Tory Burch Brand

Paragraph No. 25:

Christopher Burch and Tory Burch (née Tory Robinson) were married in 1996; they filed for divorce in 2006. Throughout their marriage, Mr. Burch actively pursued his many business ventures, both in and out of the apparel industry.

Response to Paragraph No. 25:

Defendants admit that J. Christopher Burch and Tory Burch (née Tory Robinson) married in 1996 and filed for divorce in 2006. Defendants do not have knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 25 of the Complaint and therefore deny them.

Paragraph No. 26:

In 2003, the couple founded Tory Burch LLC,¹ (“TB LLC” or the “Company”) from their living room. The goal was to create an apparel and accessories brand that provided consumers with luxury goods at accessible prices generally in the \$195 to \$895 range. Starting from a single store in downtown Manhattan, the Burches were wildly

¹ The entity Tory Burch LLC has also been known as Tory by TRB, LLC and River Light V, LLC.

successful in growing the Tory Burch brand. By late 2004, Tory Burch products were being sold at the department store Bergdorf Goodman. By 2006, Tory Burch branded apparel and shoes were being sold nationally in dozens of retail stores across the country. Sales in 2004 totaled approximately \$2 million; today, the Company's annual sales total approximately \$700 million and the Company operates a multi-channel business platform in more than 40 countries across four continents.

Response to Paragraph No. 26:

Defendants admit that Tory Burch and J. Christopher Burch started the Company in 2003; that Tory Burch started the business from a single store in downtown Manhattan; that by late 2004, Tory Burch products were being sold at the department store Bergdorf Goodman; that by 2006, Tory Burch branded apparel and shoes were being sold nationally in dozens of retail stores across the country; that sales in 2004 totaled approximately \$2 million; that today, the Company's annual sales total approaching \$800 million; and that the Company operates a multi-channel business platform in more than 40 countries across four continents. Defendants deny that J. Christopher Burch and Tory Burch shared a common goal or vision for the Company. Except as admitted, Defendants deny the remaining allegations of Paragraph 26.

Paragraph No. 27:

Prior to 2003, Ms. Burch had never operated any business and had never been employed as a clothing designer. Ms. Burch's prior experience in the fashion industry was limited to public relations and marketing work for fashion companies like Ralph Lauren and Vera Wang.

Response to Paragraph No. 27:

Defendants admit that Tory Burch was not employed as a clothing designer before 2003. Defendants deny the remaining allegations of Paragraph 27.

Paragraph No. 28:

Mr. Burch was deeply involved in the business from the start and his decades of experience successfully developing an apparel brand and his considerable experience as a venture capitalist were instrumental to the Company's success. Mr. Burch leveraged his significant contacts with suppliers and manufacturers in the apparel industry, which were essential to the Company's ability to make luxury products with a mid-market price point. In fact, the Company's first orders were so small that Mr. Burch had to beg and sometimes pay premiums to get factory space. Mr. Burch also played a critical role in developing the Company's brand image, establishing its supply chains, developing its sourcing networks, and collaborating in product design and aesthetic, which were all essential to the Company's success. While Ms. Burch was talented, she did not have the core business experience necessary to assemble a team of top executives. Mr. Burch interviewed many of the Company's initial employees, and located the Chief Executive Officer, designers, merchants, and other top executives. Mr. Burch also used his experience as a venture capitalist to raise an initial \$10 million from outside investors to start the Company, in addition to the \$2 million he initially invested by himself.

Response to Paragraph No. 28:

Denied.

Paragraph No. 29:

From the Company's inception, Mr. Burch provided expertise in corporate strategy, branding and marketing, sourcing and distribution, financing, acquisitions, and business combinations and strategic alternatives, and received consulting fees for that expertise. In 2008, in recognition of Mr. Burch's value-adding expertise, the Company and its Board of Directors formalized this arrangement and entered into a Management Services Agreement (the "MSA") with Mr. Burch through River Light Venture Partners LLC, a single-member Delaware limited liability company wholly owned and controlled by him. Pursuant to the MSA, Mr. Burch received significant compensation annually in exchange for providing consulting services to the Company, its management and its Board of Directors.

Response to Paragraph No. 29:

Defendants admit that the Company entered into the MSA with J. Christopher Burch through River Light Venture Partners LLC, that Mr. Burch provided consulting services to the Company pursuant to the MSA, and that the Company paid Mr. Burch millions of dollars under the MSA. Defendants refer to the MSA for the complete and

accurate contents thereof. To the extent not admitted, Defendants deny the remaining allegations of Paragraph 29 of the Complaint.

The 2009 Operating Agreement and Mr. Burch's Right to Compete

Paragraph No. 30:

Mr. Burch co-founded the Company with Ms. Burch with the goal of providing his capital, industry experience, and extensive network for the benefit of the Company. As a highly active and successful entrepreneur, in the fashion industry and in other industries, it was important to Mr. Burch that his involvement in the Company would not limit his business opportunities. In fact, the ability to develop and operate other ventures was so important to Mr. Burch that the Company's 2005 operating agreement contained an unambiguous provision confirming that Mr. Burch could pursue other business ventures – including those that might compete with the Company – while still acting as a Director, Co-Chairperson, and consultant for the Company.

Response to Paragraph No. 30:

Defendants respectfully refer the Court to the 2005 operating agreement for its complete and accurate contents. Defendants do not have knowledge or information sufficient to form a belief as to the truth of the allegations about Mr. Burch's subjective goals or beliefs and therefore deny them. To the extent not admitted, Defendants deny the remaining allegations of Paragraph 30 of the Complaint.

Paragraph No. 31:

On July 22, 2009, the Company entered into the Second Amended and Restated Limited Liability Company Agreement (the "Operating Agreement"), a copy of which is attached hereto as Exhibit A. Mr. Burch executed the Operating Agreement as the Organizer of the Company and as a Member of the Company.

Response to Paragraph No. 31:

Defendants admit that on July 22, 2009, the Company entered into the Operating Agreement, and they respectfully refer the Court to the Operating Agreement for its complete and accurate contents.

Paragraph No. 32:

The 2009 Operating Agreement contained the same broad, unequivocal provision that the 2005 operating agreement contained. That provision expressly allows all Members and Directors – including Mr. Burch – to engage in ventures that directly compete with the Company. Both Mr. Burch and the Defendants understood that Mr. Burch would provide expertise to the Company and be active in its development while also remaining free to pursue other business ventures, including those that might compete with the Company. Specifically, Section 3.10 of the Operating Agreement reads:

3.10 Other Business Ventures and Activities. Except as is otherwise required by applicable contract or Law, **each Director**, (including those Directors who are also officers of the Company), **and their respective Affiliates may engage, or acquire and retain an interest, in any other business ventures (including future ventures), transactions or other opportunities of any kind, nature or description (independently or with others), regardless of whether those ventures or other opportunities are competitive with the Company** and its subsidiaries or whether the operation of those ventures are transacted in the vicinity or market area in which the Company or any of its subsidiaries engage in business, without having any obligation to offer any interest in those ventures, transactions or other opportunities to the Company or any Member or Assignee. The fact that a Director (including Directors who are also officers of the Company) or Member takes advantage of any opportunity described in, and permitted under, the preceding sentence, either alone or with other Persons (including Entities in which that Director or Member has an interest), and does not offer that opportunity to the Company or the other Members, shall not cause that Director or Member to become liable to the Company or to the Members for any lost opportunity of the Company. **Neither the Company nor any of the other Members will have any right by virtue of this Agreement (or the relationships created hereby) in or to those ventures, transactions or other opportunities, or to the income or profits derived therefrom. The pursuit by a Director (including Directors who are also officers of the Company) of any ventures, transactions or other opportunities described in this Section 3.10 is not to be deemed wrongful or improper or in violation of this Agreement or any rights of the Company or Members under applicable Law due to the fact that they are competitive with the business of the Company or the Company's subsidiaries.**

(Emphasis added).

Response to Paragraph No. 32:

Defendants respectfully refer the Court to the 2005 operating agreement and the Operating Agreement for their complete and accurate contents. The allegations in Paragraph 32 assert legal arguments or conclusions to which no response is required; to the extent a response is required, the allegations of Paragraph 32 are denied. Defendants specifically deny that J. Christopher Burch has ever been permitted to compete unfairly or to misappropriate confidential information of the Company.

Paragraph No. 33:

Thus, from the inception of the company to the present, it has been clear that Mr. Burch is free to pursue other business ventures, even those that directly compete with the Company.

Response to Paragraph No. 33:

The allegations in Paragraph 33 assert legal arguments or conclusions to which no response is required; to the extent a response is required, the allegations of Paragraph 33 are denied. Defendants specifically deny that J. Christopher Burch has ever been permitted to compete unfairly or to misappropriate confidential information of the Company.

Paragraph No. 34:

As of the execution of the Operating Agreement, Tory and Christopher Burch each held approximately 28.3% of the shares of the Company. Mr. Burch had previously assigned his membership interest to JCB while still remaining an active Member of the Company. The remaining shares of the Company were held by Isla Coral, Access Private Equity LLC (“Access”), and other investors. Ms. Burch continued her active management role and remained the face of the Company, while Mr. Burch continued to provide strategic advice and expertise both as a Director and pursuant to the MSA. The Burches served together as co-chairpersons of the Board of the Directors.

Response to Paragraph No. 34:

Defendants admit that as of the execution of the Operating Agreement, Tory Burch and J. Christopher Burch (and/or their affiliates) each held equity interests in the Company, that the remaining interests were held by other investors, including those named, that Tory Burch continued her role as Chief Executive Officer and represented the face of the Company, that the Board elected Tory Burch and J. Christopher Burch as co-chairpersons of the Board, and that Mr. Burch provided services to the Company pursuant to the MSA. Defendants deny the remaining allegations in Paragraph 34 of the Complaint.

Paragraph No. 35:

Pursuant to the Operating Agreement, the Board of Directors was comprised as follows:

- i Two Directors to be designated by Tory Burch (currently those Directors are Tory Burch and Glen Senk);
- ii Two Directors to be designated by JCB, provided however that if Access owns more than five percent of the Company's shares JCB will designate one Director and Access will designate one Director (the JCB Director was Christopher Burch until August 2012, and is currently John Ross; the Access Director is currently Jorg Mohaupt);
- iii Two Directors to be appointed by Isla Coral (currently those Directors are Ernesto Zepeda (as proxy for Maria Ascuncion Aramburuzabala Larregui) and Eduardo Holschneider);
- iv One independent Director elected by a majority of the other Directors (currently that Director is John Hamlin).

Response to Paragraph No. 35:

Defendants admit that Tory Burch and Glen Senk are serving as the Tory Burch-designated directors; that Jorg Mohaupt is serving as the Access-designated Director, that

J. Christopher Burch served as the JCB designated Director until August 2012, at which time he was replaced by John Ross and that John Ross has now been replaced by Brian Glasser; that Maria Ascuncion Aramburuzabala Larregui and Eduardo Holschneider serve as the Isla Coral-designated directors; and that John Hamlin serves as the Presiding Director and is an independent director unanimously selected by the other directors, including Mr. Burch. Defendants also respectfully refer the Court to the Operating Agreement for its complete and accurate contents. To the extent not admitted, Defendants deny the remaining allegations of Paragraph 35.

Mr. Burch Launches C. Wonder

Paragraph No. 36:

In 2008, Mr. Burch established J. Christopher Capital (now known as Burch Creative Capital) for the purposes of managing his diverse investments and new projects in development. Not surprisingly, given his long history in the fashion industry, among Mr. Burch's most recent ventures are several fashion brands. Some of his new brands include Monika Chiang (a luxury women's accessories brand that reflects a refined rock-and-roll style); Electric Love Army (a denim based apparel and accessories brand geared toward urban young women); No. 9 Christopher (a high end home furnishings and apparel company); Poppin (a quirky and fun office products brand); Nine Cocoon (a housing company that develops hip modular homes); and Trademark (a new and exciting lifestyle and sportswear brand that will be managed by his daughters).

Response to Paragraph No. 36:

Defendants do not have knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 36 of the Complaint and therefore deny them.

Paragraph No. 37:

One such brand – C. Wonder – sells clothing, accessories and home decor – from shoes, apparel, glassware, decorative products, jewelry, and reading glasses to bicycles and motorized skateboards – at moderate prices. C. Wonder stores feature bold and colorful decor, with whimsical patterns and quirky props, and offer consumers a unique shopping experience that includes on-the-spot monogramming of nearly every C. Wonder

product, dressing rooms with touch screens that allow shoppers to select their own music and lighting, spontaneous dance parties led by employees, and the ability to check out with a salesperson anywhere in the store.

Response to Paragraph No. 37:

Defendants admit that C. Wonder sells shoes, clothing, jewelry and accessories at lower prices than the Company's and sells home goods at moderate prices, that C. Wonder stores feature bold and colorful décor, and that C. Wonder offers monogramming. Defendants deny that C. Wonder offers consumers a unique shopping experience as C. Wonder is a knockoff of the Tory Burch brand. Defendants do not have knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 37 of the Complaint and therefore deny them.

Paragraph No. 38:

C. Wonder's design elements – classic but also quirky, whimsical and fun, featuring bright colors and bold patterns – are derived from Mr. Burch's decades of experience in women's and men's fashion, including his early experience with Eagle's Eye. In fact, certain of C. Wonder's apparel items are reminiscent of Eagle's Eye designs, reinterpreted for today's market.

Response to Paragraph No. 38:

Denied.

Paragraph No. 39:

C. Wonder is not a direct competitor of the Tory Burch brand. In addition to its whimsical spirit, C. Wonder's products are sold at a dramatically lower price point (most items are priced between \$25 and \$195, compared to the general price range of \$195 to \$895 and up for Tory Burch goods) and it puts an emphasis on home decor and accessories, not just apparel. Yet even if C. Wonder were considered a direct competitor to the Company, Mr. Burch has the unequivocal contractual right to run a competing business pursuant to Section 3.10 of the Operating Agreement, cited above.

Response to Paragraph No. 39:

Defendants admit that C. Wonder's products are sold at lower price points than the Company's. Defendants deny the remaining allegations of Paragraph 39 of the Complaint.

Paragraph No. 40:

At the same time that Mr. Burch was developing and launching C. Wonder, he also remained a loyal, diligent and active Director of the Company, communicating with Ms. Burch and other members of management and assisting the Company in matters including: finding candidates for open management positions; locating potential new manufacturers in China; stopping the counterfeit production of the Company's products; successfully displaying Company merchandise in department stores; supervising supply chain issues by visiting warehouses and distribution centers; and managing the sale of excess inventory. In May 2011 Mr. Burch even offered Ms. Burch, the Company's President Brigitte Kleine, and the Company's Chief Legal Officer and Secretary to the Board Robert Isen the contact information for the manufacturer of bags that he had identified for C. Wonder in an effort to share helpful information that could benefit both companies.

Response to Paragraph No. 40:

Defendants admit that at the same time that Mr. Burch was developing C. Wonder, he was bound by the MSA and providing services to the Company, including attempting to locate potential new manufacturers in China. Defendants deny the remaining allegations of Paragraph 40 of the Complaint.

Paragraph No. 41:

Mr. Burch was honest and open with the Company and the Board of Directors about his new ventures. In February 2011, all Directors provided a disclosure of any actual or potential conflicts. Mr. Burch disclosed several new brands he was developing, including C. Wonder, Monika Chiang, No. 9 Christopher and Electric Love Army. In February 2011, he provided samples of C. Wonder products and videos regarding the brand to the Board, as well as to Ms. Kleine and Mr. Isen. After having an opportunity to view C. Wonder samples in March 2011, Mr. Isen commented to Mr. Burch that the product and pricing were "very compelling" and that they had a "great Logo."

Response to Paragraph No. 41:

Defendants deny that Mr. Burch was honest and open with the Company and the Board of Directors about his new ventures. Defendants admit that in February 2011, the Company asked all Directors to disclose actual or potential conflicts, and that Mr. Burch disclosed he was working on C. Wonder among other brands, including Monika Chiang, No. 9 Christopher and Electric Love Army. Except as admitted, Defendants deny the remaining allegations of Paragraph 41.

Paragraph No. 42:

In May 2011, Mr. Hamlin visited the C. Wonder offices and was personally given a tour of C. Wonder products and store design, as well as business overviews of the other brands being developed by Mr. Burch. Mr. Hamlin commented to Mr. Burch about his visit that he loved meeting cutting edge creative thinkers and thought the brands were exciting.

Response to Paragraph No. 42:

Denied. Defendants further refer the Court to Mr. Hamlin's response to the allegations in Paragraph 42.

Ms. Burch's and the Board's War Against Mr. Burch Begins

Paragraph No. 43:

On June 7, 2011, Mr. Burch provided notice that he intended to sell between 85% and 100% of JCB's holdings in the Company.

Response to Paragraph No. 43:

Defendants respectfully refer the Court to the notice for its contents. Defendants aver that, following this notice, Mr. Burch decided to sell a smaller portion of his equity due to the continued success of the Company.

Paragraph No. 44:

Ms. Burch and Tresalia Capital, among others, expressed a potential interest in exercising their tagalong rights. The Directors not only agreed to facilitate the sale, but decided that the Company should manage the sale process. Accordingly, the Company selected an investment bank to lead a strategic process to identify and negotiate with an appropriate investor regarding the sale of a minority stake that would be composed of a portion of Mr. Burch's shares as well as shares from other holders.

Response to Paragraph No. 44:

Defendants admit that Isla Coral, S.A. de C.V. expressed a potential interest in exercising its tagalong rights. Defendants deny that Tresalia Capital expressed a potential interest in exercising tagalong rights. Defendants admit that a majority of the Directors believed that the Company should manage the process involving the sale of a minority stake in the Company and that the Company selected an investment bank to lead that process. Defendants admit that the stake would include a portion of Mr. Burch's equity as well as equity from other holders.

Paragraph No. 45:

In approximately August 2011, Mr. Burch had an in-person meeting with Ms. Burch in Southampton, New York, where he described the C. Wonder brand in detail and showed her products and design elements of the brand on his iPad. Following the meeting, he sent her additional pictures and videos of C. Wonder stores that she had specifically requested to see, including on September 30, 2011 when Mr. Burch emailed Ms. Burch pictures of the as-yet-unopened C. Wonder store. Neither the Directors nor the management of the Company expressed concerns regarding the C. Wonder brand at that time.

Response to Paragraph No. 45:

Defendants admit that Tory Burch met J. Christopher Burch in Southampton, New York in August 2011. Defendants deny that Ms. Burch did not express concerns regarding C. Wonder at that time and aver that Ms. Burch objected to a few of the

homeware items that Mr. Burch showed her because they invoked the Tory Burch brand image. Defendants aver that Mr. Burch assured Ms. Burch that he would remove the items and that in breach of his promise, he failed to do so. Defendants further aver that Mr. Burch did not show Ms. Burch any C. Wonder apparel, footwear, jewelry or accessory items. To the extent not admitted, Defendants deny the remaining allegations in Paragraph 45 of the Complaint.

Paragraph No. 46:

Mr. Senk, much like Mr. Hamlin and Ms. Burch, was also supportive of C. Wonder. On October 9, 2011, less than 2 weeks before the grand opening of the first C. Wonder store, Mr. Senk emailed Mr. Burch to voice his support, saying that he “[I]oved the NYT’s add” regarding C. Wonder and wished Mr. Burch “good luck with the opening.”

Response to Paragraph No. 46:

Denied. Defendants refer to Mr. Senk’s response to the allegations in Paragraph 46. Defendants further aver that Mr. Burch did not provide Mr. Senk with a true and accurate representation of what the C. Wonder store would be.

Paragraph No. 47:

On October 11, 2011, the Company engaged Barclays Capital as financial advisor to assist in the process of locating an appropriate buyer. Mr. Burch and Ms. Burch signed the Barclays’ engagement letter as co-chairs of the Board on behalf of the Company. Barclays compiled a list of potential buyers and began soliciting bids in October 2011.

Response to Paragraph No. 47:

Defendants admit that the Company engaged Barclays Capital in October 2011, that J. Christopher Burch and Tory Burch, as co-chairpersons of the Board, signed the engagement letter and that, pursuant to its engagement letter, Barclays compiled a list of potential buyers and began soliciting bids for an investment in the Company.

Paragraph No. 48:

As part of the sale process, which was named “Project Amethyst,” Barclays prepared materials for prospective buyers to provide them with the information needed to analyze the investment opportunity. Those materials did not contain any mention of Mr. Burch’s other business ventures or C. Wonder, nor any competitive concern with respect to Mr. Burch. By this date, Mr. Burch’s C. Wonder and other brands had long been disclosed to Ms. Burch and fellow Board members and had already received significant press coverage.

Response to Paragraph No. 48:

Defendants admit that the sale process was named “Project Amethyst” and that Barclays did not discuss C. Wonder in the initial materials it prepared for prospective buyers. Defendants refer to the materials prepared by Barclays for their complete contents. To the extent not admitted, Defendants deny the remaining allegations of Paragraph 48 of the Complaint.

Paragraph No. 49:

Mr. Burch announced that C. Wonder’s first store in New York City would launch its Grand Opening on October 22, 2011, and that several other stores would quickly follow. Suddenly, just before the store was set to open and without any justification, Ms. Burch balked. Perhaps in reaction to the positive press garnered by C. Wonder, Ms. Burch and the other Defendants abruptly changed their position and unleashed an unfounded and vicious attack on C. Wonder and Mr. Burch. Mr. Burch learned that the Board had without warning decided to consider forming a special “conflict investigation committee” to investigate the purported conflict between Mr. Burch’s role as a Board member and owner of C. Wonder, and to assess whether Mr. Burch had breached the Operating Agreement or his fiduciary duties.

Response to Paragraph No. 49:

Defendants admit that when Tory Burch saw the first photos of the C. Wonder store that J. Christopher Burch released to the press as a “sneak peak” in advance of the store opening, she objected to the appearance of the C. Wonder store and its merchandise.

Except as admitted, Defendants deny the remaining allegations of Paragraph 49 of the Complaint.

Paragraph No. 50:

Mr. Burch made numerous attempts to address the Board's concerns. For example, on October 13, 2011, Mr. Burch sent an email to all Board members, including the Individual Defendants, explaining that each of his new brands – including C. Wonder – had an aesthetic unique and distinct from the Company's, and assuring the Board of his continued loyalty to the Company and that he had not and was not using any of the Company's confidential information to benefit his new brands. Mr. Burch reiterated these sentiments in an October 20, 2011 letter to the Directors, in which he also expressed concern that the Board was allowing itself to become distracted from critical issues arising from the Company's exponential growth, including the need to hire individuals to fill key management positions.

Response to Paragraph No. 50:

Defendants deny the allegations of Paragraph 50 of the Complaint and respectfully refer the Court to the October 13, 2011 email and the October 20, 2011 letter for their contents. Defendants further aver that Mr. Burch admitted on "CBS This Morning" that "the aesthetic [of C. Wonder] is the same" as the aesthetic of Tory Burch.

Paragraph No. 51:

On October 20, 2011, Jorg Mohaupt, the Director appointed by Access, informed members of the Board by email that he did not see the necessity for a conflicts investigation committee, that Mr. Burch's new ventures were a "non-issue," that Mr. Burch had been exceedingly open about his new brands, and that it was his opinion that other members of the Board were creating false allegations for the purpose of forcing Mr. Burch off the Board.

Response to Paragraph No. 51:

Defendants respectfully refer the Court to the October 20, 2011 email for its complete and accurate contents. Except as admitted, Defendants deny the allegations of Paragraph 51 of the Complaint.

Paragraph No. 52:

On October 28, 2011, Ms. Kleine sent Mr. Burch a letter on behalf of the Company asserting that C. Wonder's stores, products and packaging were similar to the Company's, causing consumer confusion as to C. Wonder's affiliation with Tory Burch. The letter requested a meeting to discuss "ways in which C. Wonder and Tory Burch can co-exist, including but not limited to your making certain changes to the C. Wonder doors, fixtures, furniture, key products, packaging and other materials."

Response to Paragraph No. 52:

Defendants respectfully refer the Court to the October 28, 2011 letter for its complete and accurate contents. Defendants admit that the letter asserted that C. Wonder's stores, products, and packaging were causing customer confusion. Defendants further state that within days after C. Wonder opened in October 2011, stories appeared in the fashion media making the point that Mr. Burch had opened a look-alike Tory Burch store stocked with knockoff Tory Burch merchandise. Defendants aver that, since then, the Company has repeatedly told Mr. Burch that he was engaged in unfair competition.

Paragraph No. 53:

In response, by letter dated November 10, 2011, Mr. Burch expressed his surprise at the Company's position, but, in a good faith effort to resolve any perceived conflict, Mr. Burch requested that the Company identify the specific items as to which it was alleging consumer confusion so that he could consider making the requested changes to C. Wonder. On November 29, 2011, the Company responded to Mr. Burch's November 10 letter with a laundry list of 29 separate changes it demanded to C. Wonder's products and stores, which included barring C. Wonder from (1) using such functional and/or commonplace store design elements as "patterned wallpaper," "brass trim on fixtures," "velvet drape curtains," and "clear acrylic elements"; and (2) from selling "tweed jacket(s)" and "cosmetic cases" bearing the C. Wonder trademark.

Response to Paragraph No. 53:

Defendants respectfully refer the Court to the November 10, 2011 and November 20, 2011, letters for their complete and accurate contents. Except as admitted, Defendants deny the allegations of Paragraph 53 of the Complaint.

Paragraph No. 54:

Despite these issues, Mr. Burch continued to fulfill his fiduciary duties to the Company. For example, he suggested to Board members in November 2011 that they consider using the same innovative technology that he had arranged for use in the C. Wonder stores.

Response to Paragraph No. 54:

Denied.

Paragraph No. 55:

On December 7, 2011, at a regularly scheduled Board meeting, Mr. Burch made a presentation to the Board through his counsel regarding C. Wonder, in which it was explained that in light of Mr. Burch's contractual right to compete and the fact that Mr. Burch had not violated the Company's intellectual property rights, he had acted properly and in accordance with his obligations to the Company. The presentation, with over 200 pages of photographs comparing the designs of Tory Burch to those of other brands, made a compelling case that the Company's designs which it claimed C. Wonder mimicked, in fact were not unique and distinctive, but commonplace among competing brands and in many cases substantially derivative of other designs in the marketplace that predated the Tory Burch version. As a result, they are not protectable as trade dress against C. Wonder.

Response to Paragraph No. 55:

Defendants admit that at a December 7, 2011 Board meeting, Mr. Burch's counsel made a presentation to the Board asserting Mr. Burch's position. Except as admitted, Defendants deny the allegations of Paragraph 55 of the Complaint.

Paragraph No. 56:

Also on December 7, 2011, the Board of Directors met in an “executive session” that improperly excluded Mr. Burch. The Operating Agreement provided no basis for Mr. Burch’s forced removal from the Board meeting. On the vote of five of the members of the Board – Tory Burch, Glen Senk, Ernesto Zepeda (as proxy for Maria Ascuncion Aramburuzabala Larregui), Eduardo Holschneider, and John Hamlin – the Board resolved to remove Mr. Burch from the Compensation Committee and to reconvene in sixty days to determine if Mr. Burch had been negotiating in “good faith” with the Company regarding its baseless trade dress allegations. The Board further threatened Mr. Burch by resolving that if after sixty days it had determined that Mr. Burch was not negotiating in “good faith,” it would discuss terminating the MSA and improperly stripping Mr. Burch of additional rights by forming an executive committee comprised of all members of the Board except Mr. Burch. Mr. Mohaupt voted against this resolution. The Board also resolved to (1) limit the confidential information provided to Mr. Burch “to only information routinely provided to all Board members,” and (2) forbid Mr. Burch from communicating with employees of the Company other than Ms. Burch and three other senior executives.

Response to Paragraph No. 56:

Defendants admit that the Board of Directors properly met in an “executive session” on December 7, 2011, and that Mr. Burch was excluded from that meeting. Defendants respectfully refer the Court to the minutes of the December 7, 2011 meeting for a record of the resolutions adopted at that meeting. Except as admitted, Defendants deny the allegations of Paragraph 56 of the Complaint.

Paragraph No. 57:

The Board’s removal of Mr. Burch was in direct contravention of Section 3.7(b) of the Operating Agreement, which provides that Mr. Burch shall be a member of the Compensation Committee so long as he is a Director and agrees to the appointment, both of which conditions were satisfied in December 2011:

(b) Compensation Committee.

(i) Establishment and Compensation. The Board of Directors shall establish a compensation committee The Compensation Committee shall consist of C. Burch, for so long as C. Burch is a Director and agrees to the appointment

(iii) Recusal by C. Burch and T. Burch. For so long as either C. Burch or T. Burch are members of the Compensation Committee, C. Burch and T. Burch shall recuse themselves from, and otherwise not participate in, any decisions or recommendations to be made by the Compensation Committee on matters concerning either of them.

Response to Paragraph No. 57:

The allegations in Paragraph 57 of the Complaint assert legal arguments or conclusions to which no response is required; to the extent a response is required, Defendants deny those allegations and aver that at the time that the Board took its actions, Mr. Burch was in material breach of his fiduciary and contractual obligations, as detailed in the Company's counterclaims.

Efforts to Destroy C. Wonder

Paragraph No. 58:

These improper Board actions and threats were just the start of what was to become a protracted and coordinated attack against Mr. Burch and C. Wonder. On December 19, 2011, TB Hong Kong LTD – an affiliate of the Company – sent a letter to suppliers and factories throughout China suggesting that there was consumer confusion between certain brands owned or controlled by Mr. Burch and the Tory Burch brand. The letter stated that Mr. Burch was not authorized to make sourcing decisions on behalf of Tory Burch and, in what amounted to a thinly veiled threat, demanded immediate confirmation from the receiving entity that it was not doing business with C. Wonder, Monika Chiang, Electric Love Army, or any other brand affiliated with Mr. Burch.

Response to Paragraph No. 58:

Defendants respectfully refer the Court to the December 19, 2011 letter for its complete and accurate contents. Except as admitted, Defendants deny the allegations of Paragraph 58 of the Complaint.

Paragraph No. 59:

These letters have had their intended effect of obstructing Mr. Burch's access to Chinese manufacturers. For example, when an individual working on behalf of Electric Love Army reached out to a Hong Kong-based manufacturer regarding a potential contract, representatives of the factory quickly responded that its pre-existing contract with the Company precluded it from transacting with a brand affiliated with Mr. Burch. The letter also prompted a vendor that was producing numerous hardware components for C. Wonder to end the business relationship. As a result, C. Wonder was required to expend significant resources to locate an alternative vendor.

Response to Paragraph No. 59:

Denied.

Paragraph No. 60:

At or around the same time, Tory Burch and/or other representatives of the Company approached certain retail space providers in effort to limit the location of C. Wonder stores. These Company operatives falsely asserted that legal arrangements either limited or precluded C. Wonder from leasing space within a certain proximity to the Company's stores. By way of example only, Company operatives falsely informed the leasing company of the Fashion Show Mall in Las Vegas that C. Wonder was legally precluded from locating its stores within a certain distance and radius of Company stores. There is no such legal preclusion in any contract; to the contrary, Section 3.10 of the Operating Agreement specifically states that Directors, members, and their affiliates may operate businesses in the same vicinity and market area as the Company.

Response to Paragraph No. 60:

Denied.

Paragraph No. 61:

Ms. Burch also personally contacted a senior member of a mall management company to "request" that C. Wonder stores be precluded from leasing space near Company stores because it would cause consumer confusion. The implication from these contacts was that C. Wonder was competing unfairly with the Company and therefore would not be a reputable tenant.

Response to Paragraph No. 61:

Denied.

Paragraph No. 62:

While Ms. Burch and her operatives continued their attack on Mr. Burch and C. Wonder, the sale process proceeded. As of December 20, 2011, eight investors had indicated interest. Upon information and belief, none of these investors communicated competitive concerns regarding C. Wonder or Mr. Burch. Barclays recommended that the Company proceed with the bidding process with the top four bidders.

Response to Paragraph No. 62:

Denied.

Paragraph No. 63:

In ongoing good faith efforts to address the purported conflict between C. Wonder and the Tory Burch brand so as to prevent a public dispute that could undermine the Company's success, Mr. Burch's attorney, Robert Sherman of Paul Hastings, met with the Company's intellectual property counsel, David Mayberry. Mr. Sherman reiterated that, although C. Wonder did not pose any trade dress issues with respect to the Company, C. Wonder had already undertaken numerous steps in a good faith effort to address the Company's concerns. Mr. Sherman reminded Mr. Mayberry that Mr. Burch had a long history of relationships with vendors in China, many of which pre-dated the Company and which were introduced by Mr. Burch to the Company.

Response to Paragraph No. 63:

The allegations in Paragraph 63 of the Complaint violate the agreement between the parties to keep their settlement discussions confidential, and as such, no response is required; to the extent that a response is required, Defendants deny that the allegations in Paragraph 63 fully and fairly describe what was discussed at this meeting and deny that J. Christopher Burch was acting in good faith.

Paragraph No. 64:

During this discussion, it came to light that the Company viewed the supposed conflict with C. Wonder as interfering with the sale process. Mr. Burch was surprised by this suggestion, as neither Barclays Capital, the Board, nor any potential investor had previously made it.

Response to Paragraph No. 64:

The allegations in Paragraph 64 of the Complaint violate the agreement between the parties to keep their settlement discussions confidential, and as such, no response is required; to the extent that a response is required, Defendants deny the allegations of Paragraph 64 of the Complaint.

Paragraph No. 65:

As part of her coercive tactics, Ms. Burch and other representatives of the Company have visited C. Wonder stores and interrogated C. Wonder employees in an effort to trick them into making statements that the Company might be able to use against Mr. Burch in the campaign to materially limit his ability to compete. On January 12, 2012, for example, Ms. Burch and two of her associates visited the C. Wonder store in Westchester, NY. Upon entering the store, one of Ms. Burch's associates asked a C. Wonder employee if the store was "Tory Burch's ex-husband's store," and then instructed her entourage to take pictures of the merchandise and layout of the store. On several other occasions, individuals have visited C. Wonder stores and interrogated employees with a series of loaded questions seemingly crafted by lawyers – including whether C. Wonder was a "diffusion brand of Tory Burch."

Response to Paragraph No. 65:

Denied.

Paragraph No. 66:

Meanwhile, Barclays Capital continued the sale process. In discussion materials dated January 17, 2012, Barclays informed the Board that the process was proceeding as planned. Barclays was working with the Company to create the management presentation that was to be presented to potential investors over the following months, and to populate the data room. Barclays made no mention of C. Wonder whatsoever. Nor did Barclays suggest that a single one of the potential investors had expressed any concern about C. Wonder or made any indication that investment interest was contingent upon C. Wonder and the Company reaching an agreement.

Response to Paragraph No. 66:

Defendants respectfully refer the Court to the January 17, 2012 discussion materials for their complete and accurate contents. Except as admitted, Defendants deny the remaining allegations of Paragraph 66 of the Complaint.

Paragraph No. 67:

Continuing their improper effort to block Mr. Burch's access to confidential Company information, on or around January 26, 2012, the Company denied Mr. Burch access to the data room that had been set up for the purpose of providing Company documents and information to potential bidders. Following a letter to the Board's counsel in which it was explained that the Company had no basis for restricting Mr. Burch's access to Company information, the Company permitted Mr. Burch limited access to the data room. The Company, however, continued to deny Mr. Burch access to the majority of the confidential and proprietary information in the data room – information which he was entitled to as a Director, co-founder, co-chairperson, and Member of the Company.

Response to Paragraph No. 67:

Defendants admit that in late January 2012, the Company limited access of J. Christopher Burch to the data room. Defendants deny that limiting Mr. Burch's access to the data room was improper; Defendants aver that such action was necessary to safeguard sensitive and confidential information of the Company against further misappropriation by Mr. Burch. Except as admitted, Defendants deny the remaining allegations of Paragraph 67 of the Complaint.

Paragraph No. 68:

On January 31, 2012, the Board, in an effort to further ostracize and alienate Mr. Burch, presented a Written Consent of the Board to implement an External Policy. The Board claimed that the new policy was necessary due to concerns about certain statements made to third parties by Mr. Burch in violation of Company policies, but the Board's letter did not specify any statements made by Mr. Burch and Mr. Burch had not violated any Company policies. While the Board attempted to couch the new policy as a "clarification" of the already existing confidentiality provision in the Operating

Agreement, in reality the policy was a blatant effort by the Board to create additional affirmative duties for Mr. Burch. For example, the new policy required that whenever a Director made a statement regarding “any other business venture” in which he or she was involved, the Director would also have to “take all necessary steps” to clarify that he or she was not making any statements on behalf of the Company. In other words, the policy preposterously required that every time Mr. Burch made a statement about any one of his numerous other brands – regardless of the context – he would also have to affirmatively state that he was not speaking on behalf of the Company. The Board had no right to implement such a policy under the Operating Agreement.

Response to Paragraph No. 68:

Defendants respectfully refer the Court to the January 31, 2012 Written Consent for its complete and accurate contents. Except as admitted, Defendants deny the remaining allegations of Paragraph 68 of the Complaint.

Paragraph No. 69:

As part of her efforts to strong-arm Mr. Burch into capitulating to her demands with respect to C. Wonder’s store design and products, upon information and belief, by no later than February 2012 Ms. Burch launched a smear campaign against Mr. Burch and C. Wonder, making disparaging comments regarding Mr. Burch to potential investors in the Company and to the press that threatened the value of Mr. Burch’s stake in a sale. These leaks to the press are not only another example of malicious and bad faith adverse actions, but they are also in violation of Section 11.24 of the Operating Agreement, which provides:

11.24 Confidential. Each Member shall at all times during the existence of the Company and thereafter use its best, good faith efforts to safeguard the secrecy and confidentiality of any confidential information regarding the Company Without limiting the generality of this Section 11.24, only the Company, as Approved by the Board of Directors, and no Member or Assignee, without the written consent of the Board of Directors, may issue a press release or make any other public or private disclosure regarding the Company”

Response to Paragraph No. 69:

Defendants respectfully refer the Court to the Operating Agreement for its contents. Except as admitted, Defendants deny the remaining allegations of Paragraph 69 of the Complaint.

Paragraph No. 70:

Specifically, upon information and belief, throughout the dispute Ms. Burch and/or individuals working at her instruction, directly or through an agent, leaked information to the press (including Women's Wear Daily and Page Six of the New York Post) suggesting that the Company perceived C. Wonder as infringing its trade dress and that, as a result, adverse action was being taken against Mr. Burch, including that he was being kicked off the Board and that Ms. Burch was considering filing a lawsuit against him.

Response to Paragraph No. 70:

Defendants admit that the Company responded to inquiries from the press prompted by statements made by Mr. Burch that the Company believed he was engaging in unfair competition. Except as admitted, Defendants deny the remaining allegations of Paragraph 70 of the Complaint.

Paragraph No. 71:

At a February 23, 2012 Board meeting, the Board once again held an "executive session" during which Mr. Burch was wrongfully excluded in violation of the Operating Agreement. The Board also took the extraordinary step of stripping Mr. Burch of his position as co-chairperson of the Board without justification. On February 24, 2012, the Board informed Mr. Burch that the MSA was terminated, effective March 25, 2012, thus depriving him of substantial compensation from the Company.

Response to Paragraph No. 71:

Defendants admit that the Board of Directors reconvened an executive session to discuss matters involving C. Wonder and asked Mr. Burch to leave the meeting due to his conflict. Defendants deny that the Board's actions were improper. Defendants admit that

the Board removed Mr. Burch from the office of co-chairperson of the Board but deny that that the Board's action was without justification. Defendants admit that Mr. Hamlin notified Mr. Burch that the Board deemed it in the best interest of the Company to terminate the MSA, but Defendants deny that that action was in any respect wrongful. Defendants deny the remaining allegations of Paragraph 71 of the Complaint.

Paragraph No. 72:

Just hours after the adjournment of the February 23, 2012 Board meeting, Mr. Burch's public relations assistant received an email from a Page Six reporter inquiring whether it was true that Mr. Burch would be stepping down from the Board. The reporter also sought comment on whether Mr. Burch had agreed at the Board meeting to make certain changes to the C. Wonder brand to "differentiate" it from the Company's brand. That evening, a post entitled "Burch v. Burch boils over" appeared on the New York Post's Page Six website, discussing in detail the Board meeting. Several days later, on March 1, 2012, a second post appeared on the Page Six website, indicating that a source had told reporters that Mr. Burch was no longer a co-chairperson of the Board and that Ms. Burch was considering litigation as a last resort.

Response to Paragraph No. 72:

Defendants respectfully refer the Court to both posts for their contents. Defendants deny the remaining allegations of Paragraph 72 of the Complaint.

Paragraph No. 73:

Upon information and belief, both the February 23rd and March 1st articles were the direct result of leaks to the press made by Ms. Burch and/or individuals working at her instruction. Both stories portrayed Mr. Burch and C. Wonder in a negative and false light, and were intended to give potential investors the false impression that C. Wonder was damaging the Company's brand and that, accordingly, a settlement with Mr. Burch was necessary to protect both the Company's and any potential investor's interests.

Response to Paragraph No. 73:

Denied.

Paragraph No. 74:

The leaks were quite damaging not merely because they portrayed Mr. Burch and C. Wonder in a negative and false light, but also because they hindered the sale process for Mr. Burch's interest in the Company.

Response to Paragraph No. 74:

Denied.

Paragraph No. 75:

Given the reputational harm to both Mr. Burch and the Company posed by the publication of confidential Company and Board information in violation of the Operating Agreement, Mr. Burch wrote to the Board emphasizing the importance of confidentiality and that such press leaks constituted grave breaches of Company policies. Rather than fully investigating these leaks, the Board simply issued a letter to all Board members emphasizing the importance of confidentiality.

Response to Paragraph No. 75:

Defendants admit that Mr. Burch wrote a letter to the Board, and respectfully refer the Court to the letter for its complete and accurate contents. Except as admitted, Defendants deny the remaining allegations of Paragraph 75 of the Complaint.

Defendants Hijack the Sale Process

Paragraph No. 76:

As a result of the barrage of negative and false information regarding C. Wonder that was being propagated by Ms. Burch and her minions, interested investors now, for the first time, emphasized the importance of C. Wonder and the Company reaching an agreement addressing trade dress and consumer confusion. For example, Bidder A submitted a term sheet on February 22, 2012, which valued the Company favorably and offered a significant bid for a portion of the Company's stock. The offer was expressly contingent upon Mr. Burch and the Company reaching a settlement of the trade dress dispute, including an agreement by Mr. Burch not to engage in direct competition with the Company, despite the fact that in a January meeting with the same Bidder A, no mention was made of any concern relating to C. Wonder. The offer acknowledged that if the products being sold by C. Wonder did not violate the Company's trade dress rights then the sale of such products would not constitute direct competition.

Response to Paragraph No. 76:

Defendants respectfully refer the Court to the bids for their contents. Defendants state that the transaction proposed by Bidder A on February 22, 2012 was also conditioned on substantial modifications to the LLC Agreement, which could not, as a practical matter, be made without the approval of Ms. Burch and Isla Coral in their capacity as members of the Company. Except as admitted, Defendants deny the remaining allegations of Paragraph 76 of the Complaint.

Paragraph No. 77:

Contemporaneously, for the very first time a Barclays presentation specifically discussed C. Wonder. Barclays' February 23, 2012 Project Amethyst update materials stated that resolution of the C. Wonder issue was necessary for the sale process to proceed further.

Response to Paragraph No. 77:

Defendants admit that in its update to the Board on February 23, 2012 regarding the status of Project Amethyst, Barclays reported that investors would require resolution of the C. Wonder dispute before investing in the Company. Defendants respectfully refer the Court to the Barclays presentation for its contents. Except as admitted, Defendants deny the remaining allegations of Paragraph 77 of the Complaint.

Paragraph No. 78:

Despite the campaign of disparate and malicious treatment against him and these surprising developments with regards to the sale process, Mr. Burch continued to attempt settlement with the Company in an effort to appease Ms. Burch's unfounded concerns. As detailed above, Mr. Burch made extraordinary good faith efforts in the face of oppressive and malicious action taken against him. Unfortunately, Mr. Burch was unable to obtain a reasonable and fair resolution of the purported conflict. Every concession that Mr. Burch made was met with still more unreasonable demands by Ms. Burch, which seemed designed to ensure the failure of any good faith settlement effort. On March 26, 2012, Mr. Burch ended the negotiations by sending the Company a letter indicating the

changes to product and design that C. Wonder was voluntarily willing to make, even though it was not required to do so. Mr. Burch had no choice but to send this letter because the Company's unwillingness to negotiate in good faith was causing C. Wonder to fall behind in its expansion strategy and contributed to additional costs and the late opening of three C. Wonder stores.

Response to Paragraph No. 78:

Defendants admit that Mr. Burch cut off negotiations with the Company on March 26, 2012. Except as admitted, Defendants deny the remaining allegations in Paragraph 78 of the Complaint.

Paragraph No. 79:

Although Mr. Burch's position has always been that the trumped-up allegations are without merit and that he has no obligation to make any changes to C. Wonder's products or stores, in the hopes of appeasing Ms. Burch so that she would cease blocking his sale efforts, Mr. Burch voluntarily has made numerous changes to C. Wonder's store design and products and offered to make even further changes, at significant cost to C. Wonder. These efforts were to no avail.

Response to Paragraph No. 79:

Defendants admit that C. Wonder made some changes to new stores that opened in Los Angeles, Atlanta and Columbus Circle in New York City (in September 2012), but not to existing stores. Except as admitted, Defendants deny the remaining allegations of Paragraph 79 of the Complaint.

Paragraph No. 80:

On April 4, 2012, the Board resolved in a 5-2 vote, with Mr. Burch and Peter Thoren (as proxy for Mr. Mohaupt) voting against, to create a special committee to investigate, evaluate, negotiate, and approve or not approve (1) strategic transactions involving the Company, including whether or not Mr. Burch would be allowed to sell his stake in the Company and (2) competitive sensitive matters facing the Company, including the Company's relationship with Mr. Burch and Mr. Burch's position as it relates to C. Wonder. Mr. Burch was excluded from committee membership. Mr. Burch objected to the creation of the special committee and his exclusion from it. Mr. Burch

also offered to meet with any bona fide investor in an effort to allay any purported concerns regarding C. Wonder.

Response to Paragraph No. 80:

Defendants admit that the Board of Directors met on April 4, 2012 and properly formed a special committee that did not include Mr. Burch. Defendants respectfully refer the Court to the minutes of the Board meeting for a record of the resolutions adopted at that meeting. Except as admitted, Defendants deny the remaining allegations of Paragraph 80 of the Complaint.

Paragraph No. 81:

On July 16, 2012, Bidder A took Mr. Burch up on his offer and met with Mr. Burch and one of his colleagues for several hours at Mr. Burch's offices. At that meeting, Bidder A explained that it was the Company – not the bidder – that was demanding a written settlement agreement between the Company and C. Wonder. All that Bidder A required for the transaction to proceed was for Mr. Burch and Ms. Burch to resolve their differences so that there was not an ongoing dispute.

Response to Paragraph No. 81:

Defendants do not have knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 81 of the Complaint and therefore deny them. Defendants specifically deny that Bidder A did not require a settlement agreement between the Company and C. Wonder.

Paragraph No. 82:

Following that meeting, Mr. Burch sent an email dated July 18, 2012 to the Board, relaying Bidder A's message that it did not require a written settlement.

Response to Paragraph No. 82:

Defendants admit that they received an email from Mr. Burch on July 18, 2012, and respectfully refer the Court to that email for its contents. Except as admitted, Defendants deny the remaining allegations of Paragraph 82 of the Complaint.

Paragraph No. 83:

Upon information and belief, Ms. Burch contacted representatives of Bidder A and berated them for not demanding a formal written settlement between C. Wonder and the Company. In order to stay in the good graces of Ms. Burch, which Bidder A presumably believed was required in order to advance as an approved bidder, Bidder A reversed its position in a letter to Mr. Burch dated August 1, 2012 and asserted that it would now require a formal written settlement in order to proceed.

Response to Paragraph No. 83:

Denied. Defendants further state that the final bidders in Project Amethyst required as a condition to any deal that Mr. Burch agree to a settlement agreement that protected the Company's brand. No final bidder expressed a willingness to enter into a transaction in which Mr. Burch would receive hundreds of millions of dollars to fund a business that was trading unfairly on the Tory Burch brand.

Defendants Strong-Arm Mr. Burch

Paragraph No. 84:

By letter dated July 30, 2012 (signed by the Individual Defendants), the Board responded to Mr. Burch's July 18 email, asserting that all of the bidders demanded a written settlement prior to investing in the Company. The Board also indicated their intention to formally terminate Project Amethyst at the upcoming Board meeting if Mr. Burch and the Company did not reach an "agreement" with respect to C. Wonder. In other words, the Individual Defendants finally made official what they had clearly been orchestrating for months: they would not allow Mr. Burch to sell his shares unless he gave up certain rights to compete that they had absolutely no right to demand. The strong arm tactics had an impact – faced with the prospect of having his valuable equity interest trapped in a company where his rights were being regularly violated, on August 3, 2012 Mr. Burch communicated to the Board that he would again enter settlement negotiations.

For the next several weeks – under the constant threat that the Individual Defendants would end the sale process – Mr. Burch attempted to negotiate with Ms. Burch and the Company to no avail. That threat was specifically reiterated shortly in advance of the September 12, 2012 board meeting. At the September 12 meeting itself, the Board voted in favor of a proposal to terminate Project Amethyst if Mr. Burch did not enter into a settlement agreement satisfactory to the Company by September 24, 2012. Mr. Ross and Mr. Mohaupt both indicated that they did not view a settlement agreement as a necessary condition for a Project Amethyst transaction to take place.

Response to Paragraph No. 84:

Defendants respectfully refer the Court to the July 30, 2012 letter for its complete and accurate contents. Defendants admit that at its September 12, 2012 meeting, the Board voted in favor of a proposal to terminate Project Amethyst if J. Christopher Burch did not enter into a settlement agreement satisfactory to the Company by September 24, 2012. Defendants aver, however, that at a meeting on September 25, 2012, the Board extended the deadline to allow the parties to continue to negotiate. Mr. Burch unilaterally terminated settlement discussions before the deadline had expired and commenced this lawsuit. Defendants further aver that Tory personally would have received a substantial personal benefit if Project Amethyst could have been completed. Nonetheless, acting in accordance with her fiduciary duties, Tory joined the majority of the other directors and insisted on a settlement with Mr. Burch because it was in the best interests of the Company and its investors to do so. Except as admitted, Defendants deny the remaining allegations of Paragraph 84 of the Complaint.

Paragraph No. 85:

On September 17, 2012, the parties agreed to engage in seven days of confidential meetings designed to serve as a full-court push to pursue settlement in advance of the Company's latest deadline for terminating the sale process. Mr. Burch's efforts proved unsuccessful because the constantly evolving concessions demanded by Tory Burch were

simply too outrageous and appeared designed to cripple C. Wonder's business. Because the parties signed a confidentiality agreement with regard to the settlement discussions requiring strict confidentiality for a seven day period, the concessions the Company attempted to extract from Mr. Burch could only have been driven by Tory Burch, and not by the bidders.

Response to Paragraph No. 85:

The allegations in Paragraph 85 of the Complaint violate the agreement between the parties to keep their settlement discussions confidential, and as such, no response is required; to the extent that a response is required, Defendants deny the allegations of Paragraph 85 of the Complaint.

Paragraph No. 86:

In advance of a board meeting on September 25, 2012, Mr. Burch's counsel wrote the Board to express that the Company's settlement demands were outrageous, insupportable, injurious to Mr. Burch, unnecessary to protect the Company's interests and unrelated to the sale process. Nevertheless, purely to lift the roadblock to a sale, Mr. Burch's counsel conveyed a proposed settlement agreement. The Board met and directed management to continue to negotiate with Mr. Burch. Despite weeks of fruitless negotiations, Mr. Burch agreed to again attempt negotiations. Rather than engage in good faith negotiations, the Company represented by Mr. Isen and counsel under the direction of Ms. Burch, merely foisted upon Mr. Burch's counsel a new set of onerous demands and a new even more far-reaching settlement agreement that would essentially give the Company veto power over the future direction of C. Wonder. By this point, it had become painfully clear that Ms. Burch and other Defendants were determined to act in bad faith in an effort to deprive Mr. Burch of his contractual rights to continue to operate C. Wonder as a successful business and to enjoy the full benefit of his considerable equity stake in the Company. In a final effort to resolve the dispute, Mr. Burch suggested the parties engage a neutral mediator to assist in negotiations. When the Company would not even commit to mediation, Mr. Burch reluctantly concluded he had no option but to abandon his futile settlement efforts and to file this lawsuit to enforce his rights.

Response to Paragraph No. 86:

The allegations in Paragraph 86 of the Complaint violate the agreement between the parties to keep their settlement discussions confidential, and as such, no response is

required; to the extent that a response is required, Defendants deny the allegations of Paragraph 86 of the Complaint.

Ms. Burch's Domination of the Board of Directors

Paragraph No. 87:

The Board's actions described above against Mr. Burch were and are being orchestrated by Tory Burch in an effort to deprive her ex-husband of the value of his equity interest in the Company through a sale. Whether Ms. Burch's motivation is a desire to prevent Mr. Burch from running a successful business, or out of personal pique or animus against her ex-husband, her actions are inappropriate. Ms. Burch has plainly made it her goal to wage her "war" against Mr. Burch and C. Wonder, no matter the illegality, cost, or harm caused to the Company.

Response to Paragraph No. 87:

Denied.

Paragraph No. 88:

Ms. Burch by her actions and by the sheer strength of her personality and domineering manner so completely dominates and controls the actions of Mr. Holschneider, Mr. Hamlin, Ms. Aramburuzabala Larregui (and her proxy, Mr. Zepeda), and Mr. Senk (together, the "Dominated Directors") as to destroy their independence.

Response to Paragraph No. 88:

Denied.

Paragraph No. 89:

Ms. Burch is the face of the Company and is inextricably linked to the success and identity of its brand. She has carefully cultivated this cult of personality by surrounding herself with a sycophantic management team, including her step-brother Mr. Isen as Chief Legal Officer.

Response to Paragraph No. 89:

Defendants admit that Tory Burch is inextricably linked to the success and identity of the Company's brand. Except as admitted, Defendants deny the remaining allegations of Paragraph 89 of the Complaint.

Paragraph No. 90:

Likewise, Ms. Burch has taken pains to secure a mindlessly loyal Board majority, who could be counted upon to support her. She has manipulated and misled each of the Dominated Directors, using her iconic role in the Company and the fact that she is the only Director in a management position to convince them that she is the only individual that they can trust to provide them with accurate information. In reality, not only has Ms. Burch provided false and misleading information, but she has actively worked to poison the Board against Mr. Burch. As a result, the Dominated Directors have stopped performing their own due diligence and have stopped thinking independently with regard to issues that involve Mr. Burch. Instead, they vote blindly with Ms. Burch in fear of invoking her rage with regard to her former husband.

Response to Paragraph No. 90:

Denied.

Paragraph No. 91:

The Dominated Directors utterly failed to consider or obtain information necessary to properly evaluate the validity of the purported trade dress claims against C. Wonder, instead robotically following Ms. Burch in conscious disregard of their duties. The Board (upon information and belief) has not obtained an opinion from independent counsel of infringement by C. Wonder and has not obtained reliable survey evidence showing any actual customer confusion. None of the Directors are attorneys – let alone intellectual property attorneys – familiar with the nuances of intellectual property law. And, to the extent that the Board relied on outside counsel that was retained by and directed by Mr. Isen, the advice cannot be viewed as independent. Mr. Isen is completely under the control of his step-sister, as evidenced by the fact that he originally told Mr. Burch that the C. Wonder brand was “compelling” and utilized a “great logo,” only to change his position when his step-sister began her crusade against Mr. Burch.

Response to Paragraph No. 91:

Denied.

Paragraph No. 92:

In addition, because Ms. Burch’s step-brother – Mr. Isen – acts as Secretary to the Board, he is the gatekeeper that calls and organizes Board meetings. Mr. Isen attends each Board meeting and plays an active role in presenting issues to the Dominated Directors, ensuring that Ms. Burch has a loyal cohort – a cohort that the Dominated Directors rely on in his role as the Chief Legal Officer to the Company – backing each of her recommendations regarding Mr. Burch.

Response to Paragraph No. 92:

Defendants admit that Mr. Isen acts as Secretary to the Board. Except as admitted, Defendants deny the remaining allegations of Paragraph 92 of the Complaint.

Paragraph No. 93:

Ms. Burch presides over Board meetings with an iron fist. At past Board meetings, any suggestion by Ms. Burch's fellow Directors that she should consider an alternative point of view or course of action was met with outright hostility and vitriol. A culture of "group think" and fear predominates at Board meetings. As a result of this domination, the Dominated Defendants are unable to make decisions involving Mr. Burch and C. Wonder in an objective manner.

Response to Paragraph No. 93:

Denied.

Paragraph No. 94:

By way of illustration, Mr. Senk and Ms. Burch have long been very close friends that socialize regularly. Upon information and belief, Mr. Senk's undivided support for Ms. Burch stems in part from considerations of prestige for being associated with the Company. In addition to his close friendship with Ms. Burch, the fact that she appointed him to his Directorship, and Ms. Burch's domineering personality, Mr. Senk is beholden to her and interested with respect to actions taken against Mr. Burch and C. Wonder.

Response to Paragraph No. 94:

Defendants admit that Mr. Senk and Tory Burch know each other socially. Except as admitted, Defendants deny the remaining allegations of Paragraph 94 of the Complaint.

Paragraph No. 95:

Mr. Hamlin is no more independent from Ms. Burch. In March 2011, Mr. Hamlin received a personal tour from Mr. Burch of C. Wonder's products and store design, after which Mr. Hamlin stated that the brand was exciting and reflected cutting-edge thinking. The fact that Mr. Hamlin recognized the innovativeness of the C. Wonder brand but then consistently voted in support of Ms. Burch's malicious crusade against C. Wonder demonstrates that Mr. Hamlin lacks the ability to vote in a manner consistent with his

own opinion and with the best interests of the Company. Having expressed his initial view that Mr. Burch's brand reflects cutting edge thinking – and not having obtained the view of independent legal counsel to the contrary – Mr. Hamlin has no good faith reason to object to C. Wonder. Yet, that is exactly what he has done, which clearly reveals his lack of ability to vote in a good faith, independent manner and his domination by Ms. Burch.

Response to Paragraph No. 95:

Denied.

Paragraph No. 96:

In addition, before being appointed Director of the Company's Board, Mr. Hamlin served together with Mr. Senk as board members for Bare Escentuals, Inc., where they were also on the three-person Compensation Committee. In fact, it was Mr. Senk that presented Mr. Hamlin as a potential Director for the Company, putting Mr. Hamlin in debt to Mr. Senk. Upon information and belief, the two individuals have a close working relationship that undermines their ability to act only in the best interests of the Company.

Response to Paragraph No. 96:

Defendants admit that Messrs. Hamlin and Senk served together as Board members for Bare Escentuals and that Mr. Senk presented Mr. Hamlin's credentials to other Board members. Except as admitted, Defendants deny the remaining allegations of Paragraph 96 of the Complaint.

Paragraph No. 97:

Like Mr. Hamlin and Mr. Senk, Ms. Aramburuzabala Larregui and Mr. Holschneider have shown themselves to be firmly under Ms. Burch's influence when it comes to matters involving her ex-husband as they have consistently voted in support of every measure taken against him without undertaking their own independent appraisal of the issues.

Response to Paragraph No. 97:

Denied.

Paragraph No. 98:

Mr. Burch is not the only Director that participates in another business in the fashion industry, yet he is the only Director that has been singled-out and wronged for exercising his contractual right to do so. For example, until January 2012, Board member Glenn Senk was the Chief Executive Officer of Urban Outfitters, Inc., which, through the brands Urban Outfitters, Anthropologie, Free People, BHLDN, and Terrain, sells women's and men's clothing and accessories, as well as furniture, house wares, and novelty items.² Urban Outfitters was listed by Barclays in presentation materials as one of the companies comparable to the Company. Mr. Senk is now the CEO of David Yurman, a high-end jewelry company that is a direct competitor for Tory Burch's jewelry business. Yet, no adverse actions have ever been taken by the Board against Mr. Senk; nor has his role on the Board been minimized in any way. He enjoys and has always enjoyed unbridled access to confidential and proprietary information and employees of the Company. Indeed, because Mr. Senk sits in one of Ms. Burch's seats and consistently votes with her, she has not expressed displeasure at his competitive endeavors and therefore the Board has respected Mr. Senk's right to compete guaranteed to him under the Operating Agreement.

Response to Paragraph No. 98:

With respect to the allegations concerning Mr. Senk's biographical information, Defendants respectfully refer the Court to Mr. Senk's response to the allegations in Paragraph 98; otherwise, denied.

III. CAUSES OF ACTION

**Count I – Declaratory Judgment
(All Plaintiffs Against All Defendants)**

Paragraph No. 99:

Paragraphs 1 to 98 are incorporated by reference as if fully restated herein.

² Upon information and belief, Ms. Burch's sister-in-law, Patty Isen, is also employed by Urban Outfitters, Inc. through Anthropologie, further cementing the web of financial dependency among these individuals.

Response to Paragraph No. 99:

Answering Paragraph 99, Defendants repeat and incorporate their answers to the paragraphs re-alleged herein.

Paragraph No. 100:

Pursuant to section 3.10 of the Operating Agreement, Mr. Burch has the right to “engage, or acquire and retain an interest” in any venture “regardless of whether those ventures or opportunities are competitive with the Company . . . or whether the operation of those ventures are transacted in the vicinity or market area in which the Company or any of its subsidiaries engage in business”

Response to Paragraph No. 100:

Defendants respectfully refer the Court to the Operating Agreement for its complete and accurate contents; otherwise, denied. Defendants specifically deny that J. Christopher Burch ever had the right to compete unfairly with the Company.

Paragraph No. 101:

Defendants have acted to constrain Plaintiffs’ ability to exercise their right to compete with the Company.

Response to Paragraph No. 101:

Denied.

Paragraph No. 102:

Declaratory relief is appropriate because an actual controversy exists between Plaintiffs and Defendants as to Plaintiffs’ right to compete with the Company.

Response to Paragraph No. 102:

Denied.

Paragraph No. 103:

Plaintiffs lack an adequate remedy at law.

Response to Paragraph No. 103:

Defendants deny that Plaintiffs are entitled to any remedy.

Paragraph No. 104:

Pursuant to 10 Del. C. § 6501 *et seq.*, Plaintiffs request a declaration that Defendants cannot act to restrain Plaintiffs' ability to pursue other business ventures, including but not limited to C. Wonder, and including business ventures that compete with the Company.

Response to Paragraph No. 104:

Paragraph 104 of the Complaint asserts legal arguments or conclusions to which no response is required.

Count II – Breach of Contract
(All Plaintiffs Against All Defendants)

Paragraph No. 105:

Paragraphs 1 to 104 are incorporated by reference as if fully restated herein.

Response to Paragraph No. 105:

Answering Paragraph 105, Defendants repeat and incorporate their answers to the paragraphs re-alleged herein.

Paragraph No. 106:

Plaintiffs Mr. Burch, JCB, and C. Wonder (as an affiliate as defined in the Operating Agreement) are parties to the Operating Agreement. Mr. Burch, JCB and C. Wonder have complied with their obligations under the Operating Agreement.

Response to Paragraph No. 106:

Defendants admit that J. Christopher Burch executed the Operating Agreement. Defendants deny the remaining allegations of Paragraph 106 of the Complaint.

Paragraph No. 107:

The Operating Agreement is a valid and enforceable contract representing a legitimate exchange of consideration, rights, and liabilities between Plaintiffs Mr. Burch, JCB, and C. Wonder (as an affiliate as defined in the Operating Agreement) and Defendants.

Response to Paragraph No. 107:

Defendants admit that the Operating Agreement is a valid and enforceable contract. Defendants deny the remaining allegations of Paragraph 107 of the Complaint.

Paragraph No. 108:

Defendants have materially breached the Operating Agreement by, *inter alia*,

- a) As described herein, Defendants have undertaken a pattern of unjustified adverse action against Mr. Burch in an effort to coerce Mr. Burch into relinquishing his rights to engage in competing business ventures under the Operating Agreement. Such action constitutes willful breach of, *inter alia*, sections 3.4(b), 3.4(c), and 3.10 of the Operating Agreement;
- b) Defendants have hijacked the Amethyst Sale process on the basis of Mr. Burch's refusal to relinquish his rights to engage in competing business ventures as guaranteed by section 3.10 of the Operating Agreement. The Defendants' action constitutes a bad faith and willful breach of the Operating Agreement;
- c) At the December 7, 2011 meeting of the Board, the Board removed Mr. Burch from the Compensation Committee. Section 3.7(b)(i) of the Operating Agreement states in relevant part: "The Compensation Committee shall consist of C. Burch, for so long as C. Burch is a Director and agrees to that appointment" At the time of this removal, Mr. Burch was a Director and agreed to his appointment to the Compensation Committee. The Defendants' removal of Mr. Burch from the Compensation Committee constitutes a bad faith and willful breach of the Operating Agreement;
- d) At the December 7, 2011 and February 23, 2012 Board meetings, Defendants held an "executive session" from which Mr. Burch was excluded. Such exclusion constitutes a bad faith and willful breach

of, *inter alia*, sections 3.4, 3.7(b)(iii), and 3.2(c)(i)(A) of the Operating Agreement;

- e) Defendants have willfully and in bad faith leaked or caused to be leaked to the press information related to the Company's internal dispute between Ms. Burch and Mr. Burch, in direct violation of the Operating Agreement;
- f) Defendants have limited Mr. Burch's access to records and information of the Company – including the limiting of his access to the data room maintained by Barclays Capital for the review of potential purchasers – to which he is entitled full access. Defendants' actions constitute a bad faith and willful breach of section 11.1 of the Operating Agreement;
- g) Defendants have willfully and in bad faith breached section 9.1(c) of the Operating Agreement by failing to offer Mr. Burch a fair price adjustment for his units that would compensate him for the relinquishment of valuable intellectual property rights and ability to compete that Defendants have demanded only of him in connection with Project Amethyst;
- h) The Company indicated or caused its employees to indicate to Barclays Capital, potential investors, factories, suppliers, and retail space providers that C. Wonder's stores, products and/or packaging are causing consumer confusion and/or infringing on the Company's trade dress. C. Wonder's stores, products and/or packing are not causing consumer confusion and/or infringing on the Company's trade dress. Upon information and belief, the Company has made these representations without first receiving a legal opinion from outside legal counsel. Such action constitutes gross negligence and willful misconduct in breach of section 3.4(c) of the Operating Agreement; and
- i) committing other acts that discovery shall reveal.

Response to Paragraph No. 108:

Denied.

Paragraph No. 109:

Plaintiffs have suffered irreparable harm from Defendants' breaches of the Operating Agreement and lack an adequate remedy at law.

Response to Paragraph No. 109:

Denied.

Paragraph No. 110:

Mr. Burch and JCB are entitled to appropriate injunctive and equitable relief preventing Defendants from interfering with or otherwise frustrating Plaintiffs' rights under the Operating Agreement, including but not limited to removal of Ms. Burch and the Dominated Directors from the Board and the appointment of new and additional Directors to the Board to protect the interests of Mr. Burch. In the alternative and/or as appropriate, Plaintiffs seek an award of damages.

Response to Paragraph No. 110:

Denied.

**Count III – Tortious Interference With A Business Relationship:
Project Amethyst Sale Process
(Mr. Burch and JCB Against All Defendants)**

Paragraph No. 111:

Paragraphs 1 to 110 are incorporated by reference as if fully restated herein.

Response to Paragraph No. 111:

Answering Paragraph 111, Defendants repeat and incorporate their answers to the paragraphs re-alleged herein.

Paragraph No. 112:

The Defendants were aware of Mr. Burch's and JCB's intention to sell the units to a bidder through the Project Amethyst sale process, as conveyed by Mr. Burch's June 7, 2011 letter.

Response to Paragraph No. 112:

Defendants admit that Mr. Burch notified the Company of his intention to sell certain of his units in the Company on or about June 7, 2011. Except as admitted, Defendants deny the remaining allegations of Paragraph 112 of the Complaint.

Paragraph No. 113:

The Company engaged Barclays Capital to lead a focused strategic process to identify and negotiate with potential buyers, and following an extensive bidding process, several such buyers submitted bids.

Response to Paragraph No. 113:

Admitted.

Paragraph No. 114:

Mr. Burch and JCB had a reasonable probability of engaging in a business relationship with one or more bidders through the consummation of a sale of shares to them.

Response to Paragraph No. 114:

Denied.

Paragraph No. 115:

Upon information and belief, in an effort to coerce Mr. Burch into relinquishing his right to compete guaranteed to him and all other Members under the Operating Agreement, the Defendants interfered with the sale process improperly and in bad faith to impede Mr. Burch's and JCB's ability to sell shares in the Company. Ms. Burch made misrepresentations to interested investors that Mr. Burch's C. Wonder stores and product were leading to consumer confusion and that he had improperly utilized the Company's confidential information. These false statements were made intentionally and maliciously to impede the sale process.

Response to Paragraph No. 115:

Denied.

Paragraph No. 116:

As a result of these misrepresentations, bidders made their interest in the purchase of Mr. Burch's and JCB's membership shares contingent on Mr. Burch and C. Wonder reaching a settlement agreement with the Company – an agreement which would effectively require Mr. Burch to relinquish his rights to compete as guaranteed by the Operating Agreement in addition to intellectual property rights.

Response to Paragraph No. 116:

Denied.

Paragraph No. 117:

Ms. Burch's improper and intentional conduct is without legal justification and was undertaken to injure Mr. Burch and JCB.

Response to Paragraph No. 117:

Denied.

Paragraph No. 118:

As a direct and proximate cause of Ms. Burch's malicious and tortious conduct, Mr. Burch and JCB have been unable to sell their stock in the Company.

Response to Paragraph No. 118:

Denied.

Paragraph No. 119:

Mr. Burch and JCB have suffered irreparable harm from Defendants' tortious conduct and lack an adequate remedy at law.

Response to Paragraph No. 119:

Denied.

Paragraph No. 120:

Plaintiffs are entitled to appropriate injunctive and equitable relief preventing Defendants from frustrating the purpose and the spirit of the Operating Agreement, including but not limited to removal of Ms. Burch and the Dominated Directors from the Board and the appointment of new and additional Directors to the Board to protect the interests of Mr. Burch. In the alternative and/or as appropriate, Plaintiffs seek an award of damages.

Response to Paragraph No. 120:

Denied.

**Count IV – Tortious Interference With A Business Relationship:
Suppliers and Retail Space
(Mr. Burch and C. Wonder Against Ms. Burch and the Company)**

Paragraph No. 121:

Paragraphs 1 to 120 are incorporated by reference as if fully restated herein.

Response to Paragraph No. 121:

Answering Paragraph 121, Defendants repeat and incorporate their answers to the paragraphs re-alleged herein.

Paragraph No. 122:

Mr. Burch and C. Wonder have business relations with various Chinese-based vendors and, through this day, is constantly in the process of securing additional relationships. Based on his contacts, experience, and reputation in China, Mr. Burch reasonably expected to be able to swiftly expand and maintain C. Wonder's network of vendors.

Response to Paragraph No. 122:

Defendants admit that Mr. Burch has business relations with various Chinese-based vendors. Except as admitted, Defendants deny the remaining allegations of Paragraph 122 of the Complaint.

Paragraph No. 123:

Similarly, C. Wonder has been in the process of rapidly expanding its retail locations. As a cutting edge brand, C. Wonder targets well-trafficked, up-scale and dynamic locations for its expansion. Mr. Burch and C. Wonder representatives have approached property management and leasing groups of properties that fit this description in an effort to secure leasing space.

Response to Paragraph No. 123:

Defendants deny that C. Wonder is a cutting edge brand. C. Wonder is a knock off brand. Defendants do not have knowledge or information sufficient to form a belief

as to the truth of the remaining allegations of Paragraph 123 of the Complaint and therefore deny those allegations.

Paragraph No. 124:

Through Mr. Burch's communications with Ms. Burch, the Company and otherwise, the Company and Ms. Burch were aware of Mr. Burch's Chinese-based suppliers and expansion plans.

Response to Paragraph No. 124:

Defendants admit that Mr. Burch has business relations with various Chinese-based suppliers. Except as admitted, Defendants deny the remaining allegations of Paragraph 124 of the Complaint.

Paragraph No. 125:

In a deliberate and calculated effort, Ms. Burch and/or Company representatives communicated or caused to be communicated false statements to lease providers and vendors that C. Wonder was causing consumer confusion with respect to the Company and that C. Wonder was legally precluded from locating within a certain proximity of Company stores. The Company also threatened adverse action should business be transacted with C. Wonder.

Response to Paragraph No. 125:

Denied.

Paragraph No. 126:

This improper and intentional conduct is without legal justification and was undertaken to injure Mr. Burch and C. Wonder.

Response to Paragraph No. 126:

Denied.

Paragraph No. 127:

As a direct result of the Ms. Burch and/or the Company's false and unlawful interferences with Mr. Burch's and C. Wonder's business relations, C. Wonder and Mr.

Burch have been forced to expend significant resources in securing alternative arrangements.

Response to Paragraph No. 127:

Denied.

Paragraph No. 128:

Mr. Burch and C. Wonder have suffered damages as a result of Ms. Burch's and the Company's tortious conduct.

Response to Paragraph No. 128:

Denied.

Count V – Breach of Fiduciary Duty
(Mr. Burch and JCB Against Individual Defendants and Isla Coral)

Paragraph No. 129:

Paragraphs 1 to 128 are incorporated by reference as if fully restated herein.

Response to Paragraph No. 129:

Answering Paragraph 129, Defendants repeat and incorporate their answers to the paragraphs re-alleged herein.

Paragraph No. 130:

The Individual Defendants, as managers of the Company, and Isla Coral, as part of the controlling block of shareholders in control of the Company, owe fiduciary duties of due care, loyalty, candor, and good faith and fair dealing to all members of the Company, including Mr. Burch and JCB under Delaware law.

Response to Paragraph No. 130:

The allegations of Paragraph 130 of the Complaint assert legal arguments or legal conclusions as to which no response is required.

Paragraph No. 131:

As described herein, the Individual Defendants have undertaken a pattern of unjustified adverse action against Mr. Burch in an effort to coerce Mr. Burch into relinquishing his rights to engage in competing business ventures under the Operating Agreement, including manipulating the Project Amethyst sale process in bad faith, terminating Mr. Burch's Management Services Agreement thereby depriving him of a substantial source of compensation for his services to the Company, removing Mr. Burch from the Company's Compensation Committee, excluding Mr. Burch from Board deliberations, leaking or causing to be leaked to the press confidential information in an effort to harm Mr. Burch, JCB and C. Wonder, failing to properly and fully investigate the press leaks, limiting Mr. Burch's access to records and information of the Company to which he is entitled full access, failing to obtain independent outside legal counsel on the alleged infringement issues posed by C. Wonder and/or to conduct the level of due diligence necessary to assess the validity of such allegations, blindly following the direction and whim of Ms. Burch, and misrepresenting or causing to be misrepresented to Barclays Capital, potential investors, factories, suppliers, and retail space providers that C. Wonder's stores, products and/or packaging are causing consumer confusion and/or infringing on the Company's trade dress.

Response to Paragraph No. 131:

Denied.

Paragraph No. 132:

These actions by the Individual Defendants and Isla Coral constitute willful and bad faith breaches of their fiduciary duties owed to Plaintiffs Mr. Burch and JCB.

Response to Paragraph No. 132:

Denied.

Paragraph No. 133:

There was no rational business reason for the Individual Defendants' and Isla Coral's above-described conduct.

Response to Paragraph No. 133:

Denied.

Paragraph No. 134:

Plaintiffs have suffered irreparable harm from the Individual Defendants' and Isla Coral's breach of fiduciary duties and lack an adequate remedy at law.

Response to Paragraph No. 134:

Denied.

Paragraph No. 135:

Plaintiffs are entitled to appropriate injunctive and equitable relief preventing Defendants from interfering with or otherwise frustrating Plaintiffs' rights under the Operating Agreement, including but not limited to removal of Ms. Burch and the Dominated Directors from the Board and the appointment of new and additional Directors to the Board to protect the interests of Mr. Burch. In the alternative and/or as appropriate, Mr. Burch and JCB seek an award of damages.

Response to Paragraph No. 135:

Denied.

**Count VI – Breach of the Implied Covenant of Good Faith and Fair Dealing
(All Plaintiffs Against All Defendants)**

Paragraph No. 136:

Paragraphs 1 to 135 are incorporated by reference as if fully restated herein.

Response to Paragraph No. 136:

Answering Paragraph 136, Defendants repeat and incorporate their answers to the paragraphs re-alleged herein.

Paragraph No. 137:

A valid contract exists between Plaintiffs Mr. Burch, JCB, and C. Wonder (as an affiliate of JCB and Mr. Burch) and Defendants in the form of the Operating Agreement. Implied in this contract, as in any contract under Delaware law, is the covenant of good faith and fair dealing.

Response to Paragraph No. 137:

Defendants admit that the Operating Agreement is a valid contract, and that J. Christopher Burch executed the Operating Agreement. The remaining allegations of Paragraph 137 of the Complaint assert legal arguments or legal conclusions as to which no response is required.

Paragraph No. 138:

Defendants breached the implied covenant of good faith and fair dealing by engaging in the conduct alleged in this Complaint, including, but not limited to, engaging in a pattern of unjustified adverse action against Mr. Burch in an effort to coerce Mr. Burch into relinquishing his rights to engage in competing business ventures under the Operating Agreement. Such improper action includes, by way of example only, excluding Mr. Burch from “executive sessions” at Board meetings, removing Mr. Burch from the Compensation Committee, preventing Mr. Burch from selling his interests absent him agreeing to a slew of unreasonable demands which would effectively preclude him from competing with the Company, barring Mr. Burch from access to information to which he was entitled, and terminating his Management Agreement with the Company thereby depriving him of the related salary.

Response to Paragraph No. 138:

Denied.

Paragraph No. 139:

The Defendants have effectively deprived Mr. Burch of his reasonable expectations in co-founding the Company and executing the Operating Agreement. The Defendants’ pattern of oppressive and willful misconduct against Mr. Burch are a clear departure from the standards of fair dealing and fair play upon which every Member who entrusts his or her money to a company is entitled to rely and constitute a violation of the implied covenant of good faith and fair dealing.

Response to Paragraph No. 139:

Denied.

Paragraph No. 140:

This conduct has frustrated the purpose and violated the spirit of the Operating Agreement, and Plaintiffs have suffered irreparable harm from Defendants' actions and lack an adequate remedy at law.

Response to Paragraph No. 140:

Denied.

Paragraph No. 141:

Plaintiffs are entitled to appropriate injunctive and equitable relief preventing Defendants from frustrating the purpose and the spirit of the Operating Agreement, including but not limited to removal of Ms. Burch and the Dominated Directors from the Board and the appointment of new and additional Directors to the Board to protect the interests of Mr. Burch. In the alternative and/or as appropriate, Plaintiffs seek an award of damages.

Response to Paragraph No. 141:

Denied.

AFFIRMATIVE DEFENSES TO THE COMPLAINT

Without assuming any burden of proof that it would not otherwise bear, Defendants Tory Burch LLC and Tory Burch assert the following additional defenses:

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

The claims against the directors of Tory Burch LLC are barred by the business judgment rule.

THIRD AFFIRMATIVE DEFENSE

The claims for monetary relief against the directors and members of Tory Burch LLC are barred by the exculpatory clause of the Operating Agreement.

FOURTH AFFIRMATIVE DEFENSE

The claims against the directors of Tory Burch LLC are barred because the directors were entitled to rely upon the advice and opinions of management.

FIFTH AFFIRMATIVE DEFENSE

The claims are barred by the doctrine of unclean hands. Among other things, Plaintiffs obtained access to the Company's confidential information under the pretense they were acting for the Company when they were in fact acting in pursuit of their own interests and to the Company's detriment. Plaintiffs also have engaged in unfair competition with the Company as set forth in the counterclaims of Tory Burch LLC. Plaintiff Chris Burch's misappropriation of the Company's confidential information and unfair competition not only violates his contractual obligations, it also offends basic notions of business ethics and fair dealing.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs are not entitled to the relief sought under the Operating Agreement because Chris Burch had previously committed a material breach of his own obligations under the Operating Agreement, and violated his fiduciary duties thereunder, as set forth in the counterclaims of Tory Burch LLC.

SEVENTH AFFIRMATIVE DEFENSE

The claims are barred under Section 3.10 of the Operating Agreement because the Management Services Agreement is an "applicable contract" under Section 3.10 that imposes obligations that plaintiffs have breached, as set forth in the Company's counterclaims.

EIGHTH AFFIRMATIVE DEFENSE

The claims for equitable relief are barred because plaintiffs lack standing to assert such claims under Section 11.8 of the Operating Agreement.

ADDITIONAL DEFENSES

In addition to the enumerated defenses identified above, Defendants reserve the right to raise any additional defenses that may become available or appropriate.

PRAYER FOR RELIEF

WHEREFORE, Tory Burch LLC and Tory Burch respectfully demand judgment as follows:

- (1) enter a judgment in favor of defendants and against plaintiffs on plaintiffs' claims, and dismiss plaintiffs' claims with prejudice;
- (2) enter a judgment in favor of Tory Burch LLC on its counterclaims and against counterclaim-defendants, and award Tory Burch LLC the relief specified in the counterclaims of Tory Burch LLC;
- (3) strike the allegations of paragraphs 63-64 and 85-86;
- (4) award defendants their costs and attorneys' fees; and
- (5) grant such other and further relief as is just and proper.

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November 5, 2012



CERTIFICATE OF SERVICE

The undersigned certifies that on November 5, 2012, she caused the foregoing ANSWER OF TORY BURCH LLC AND TORY BURCH to be served by LexisNexis File &

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