IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BRUCE RUSH, as a participant in and on behalf of the Segerdahl Corporation employee stock ownership plan, and on behalf of a class of all others who are similarly situated, Plaintiff, v. GREATBANC TRUST COMPANY; MARY LEE SCHNEIDER; RICHARD JOUTRAS; RODNEY GOLDSTEIN; PETER MASON; ROBERT CRONIN; and SEGERDAHL CORP. (d/b/a SG360), Defendants.	Case No.: 1:19-cv-00738 Judge Andrea R. Wood Magistrate Judge Susan E. Cox

DEFENDANTS' ANSWER TO PLAINTIFF'S FIRST AMENDED CLASS ACTION COMPLAINT AND STATEMENT OF AFFIRMATIVE DEFENSES

Defendants, GreatBanc Trust Company ("GreatBanc"), and Mary Lee Schneider and Richard Joutras (the "Executive Officer Defendants"), Rodney Goldstein, Peter Mason, and Robert Cronin (the "Outside Director Defendants") (collectively "Board Defendants"), and the Segerdahl Corp. d/b/a SG 360 ("Segerdahl"), (collectively "Defendants") hereby respond to Plaintiff's First Amended Class Action Complaint as follows:

PRELIMINARY STATEMENT AND OBJECTION TO JURY DEMAND

In the 40-plus year history of ESOPs under ERISA there has never been a case challenging the sale of a successful ESOP to an outside party like ICV Partners. This case illustrates why. Plaintiff Bruce Rush seeks to challenge the sale of Segerdahl to the outside party ICV Partners for $265,000,000 (the "ICV Sale") that locked in and paid an all-time high price for Segerdahl's stock. This locked in extraordinary gains in retirement wealth for Segerdahl's ESOP, including that

Segerdahl had recently tripled in value under the watch of Segerdahl's new independent Board. The Board Defendants' business judgment accomplished the ICV Sale despite that, in a highly cyclical industry, Segerdahl's sales had already started declining pre-sale as part of an industry downturn that accelerated post-sale.

Not surprisingly under these circumstances, Mr. Rush's 444 paragraph/87 page First Amended Class Action Complaint ("Amended Complaint"), filed after extensive document discovery that included 15 subpoenas to third parties, ignores the dispositive issues in this case, and does not create even plausible claims once the controlling legal standards are applied to his allegations. On the dispositive issue, under the controlling law, the Board Defendants' business judgment is due deference in how they shopped Segerdahl, as long as they were "careful rather than bold" when managing this highly risky, undiversified investment. *See, e.g., Armstrong v. LaSalle Bank Nat'l Ass'n*, 446 F.3d 728, 732-33 (7th Cir. 2006). The same applies to GreatBanc's decision as independent fiduciary whether to approve the ICV Sale. Mr. Rush's Amended Complaint ignores this standard, and fails to show that there are plausible claims here. Further, key allegations in Mr. Rush's Amended Complaint are contradicted by the documents Mr. Rush acquired in discovery

Instead, often by ignoring key documents, Mr. Rush attempts through his Amended Complaint to create factual disputes over immaterial issues. Critically, Mr. Rush now knows that Mr. Joutras (who as Segerdahl's CEO led it to its 8,000% plus increase in value over the Segerdahl ESOP's thirteen-year history) had no interest in the outside party, ICV Partners, that bought Segerdahl. Instead, Mr. Joutras owned 23% of the Segerdahl ESOP's stock and had over $34,000,000 riding on the price for which Segerdahl was sold. Without disclosing any of this, Mr. Rush continues to rest his Amended Complaint on allegations that Mr. Joutras worked with Mary

Lee Schneider (who herself had over $4,000,000 riding on the price for which Segerdahl was sold) to purposefully sell Segerdahl cheap, against Mr. Joutras' own substantial financial interests. These allegations are implausible and misleading.

As another key example, Mr. Rush now knows that Segerdahl sold at an all-time high in stock value after potential buyers considered the various issues he raises in his Amended Complaint, and despite that Segerdahl was facing declining sales and an industry decline pre-sale that have accelerated post-sale. To put this in context, Segerdahl's ESOP stock had twice before had substantial declines in value (over 30%) in the face of these industry declines. Yet again Mr. Rush was aware of and ignored all this in his Amended Complaint when he claims that the Board Defendants and GreatBanc should have re-shopped Segerdahl rather than accept the $265,000,000 final offer from ICV Partners that cashed out Segerdahl's stock at its all-time high in stock value.

Further, Mr. Rush's Amended Complaint repeatedly intertwines factual allegations with legal conclusions, and in many cases, he does not clearly direct those allegations and conclusions at particular Defendants. Throughout his Amended Complaint, Mr. Rush resorts extensively to argumentative prose, instead of concise, neutral allegations of fact that would permit simple, clear responses, and verbosely repeats the same factual allegations multiple times. To make their answer more concise, Defendants thus respond to the factual allegation with any needed details the first time Mr. Rush alleges it, and refer back to that answer when Mr. Rush repeats the allegation later in his Amended Complaint.

Faced with these (and other) pleading challenges inherent to the Amended Complaint, Defendants aver that their answer is intended to constitute a general denial of liability under any legal theory, as well as a general denial of any and all factual allegations giving rise to such liability. Any statement, conclusion, allegation, etc. set forth in the Amended Complaint, including

in its headings, is denied, except where explicitly admitted, and then, only insofar as it is consistent with Defendants' general denial of liability. Statements by Defendants that they aver or admit to something reflect that one or more of the Defendants has the knowledge or factual basis to make that statement, not that all Defendants have collectively the same knowledge on that matter. Any factual averment admitted herein is admitted only as to those specific facts and not as to any conclusions, arguments, characterizations, implications, or speculations that are contained in any averment or in the Amended Complaint as a whole.

Defendants also object to Mr. Rush's jury demand. ERISA fiduciary claims are equitable claims tried to the Court not a jury. *See, e.g., George v. Kraft Foods Global, Inc.*, 2008 U.S. Dist. LEXIS 22126 (N.D. Ill. March 20, 2018) (applying Supreme Court and Seventh Circuit precedent to detail why there is no jury trial under ERISA); *Daugherty v. Univ. of Chicago*, 2017 U.S. Dist. LEXIS 155948 at *26-27 (N.D. Ill. Sept. 22, 2017) (holding same).

With respect to the numbered allegations of the Amended Complaint, Defendants respectfully aver:

1. Plaintiff Bruce Rush, a participant in the Segerdahl Corporation Employee Stock Ownership Plan (the "ESOP"), brings this action in a representative capacity on behalf of the ESOP and as a class action on behalf of all other similarly situated participants in and beneficiaries of the ESOP. He brings this action under Sections 502(a)(2) and 502(a)(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. §§ 1132(a)(2) and 1132(a)(3), against Defendants GreatBanc Trust Company ("GreatBanc"), Mary Lee Schneider, Richard Joutras (together Schneider and Joutras are the "Segerdahl Fiduciary Defendants"), Rodney Goldstein, Peter Mason, Robert Cronin (together Schneider, Joutras, Goldstein, Mason and Cronin are the "Board of Directors Defendants"). Segerdahl Corp. ("Segerdahl"), was the sponsor of the

ESOP, and is a nominal defendant in this matter.

ANSWER: Defendants admit that this case is governed by ERISA and that jurisdiction is proper in this case as a result. Except as expressly admitted herein, Defendants deny the allegations of paragraph 1 of Plaintiff's Amended Complaint.

2. Segerdahl was established in 1956 and is headquartered in Wheeling, Illinois. Segerdahl is one of the largest and most successful printing companies in the United States.

ANSWER: Defendants admit that the Segerdahl Corp. was established in 1956 and is headquartered in Wheeling, Illinois. Except as expressly admitted herein, Defendants deny the allegations of paragraph 2 of Plaintiff's Amended Complaint.

3. In 2003, Segerdahl established the ESOP to help its employees save for retirement and enjoy an ownership interest in Segerdahl.

ANSWER: Defendants admit that Segerdahl established an Employee Stock Ownership Plan for its employees in 2003, but deny the remaining allegations of paragraph 3 of Plaintiff's Amended Complaint. Further answering, Defendants aver that this was a highly successful ESOP for the employees. During the ESOP's thirteen-year history, Segerdahl's stock price grew 8,044%, from $162.50 a share when the ESOP acquired Segerdahl in 2003, to $13,072 a share by the time the ESOP sold its shares to ICV Partners in December 2016 ("ICV Sale"). This outstanding growth in ESOP value occurred because of the long-standing exercise of sound business judgment by Defendant Richard Joutras and other officers and directors of Segerdahl, which sound business judgment was applied to selling Segerdahl in 2016. This outstanding growth in ESOP value, including the very rapid increase in Segerdahl's share price from $7,792.45 a share at mid-year 2015 to $12,638 a share at year-end 2015, also created very large repurchase exposure on Segerdahl of approximately

$80,000,000 by the time the company was sold. These capital needs were resolved by selling Segerdahl to ICV Partners, and thus locking in these profits and retirement benefits for the ESOP participants, despite that Segerdahl was facing declining sales in 2016 as part of an incipient industry decline that accelerated post-sale.

4. An employee stock ownership plan, like the ESOP here, is a type of trust covered by ERISA. ESOPs are designed to hold and safeguard the retirement savings of the company's employee participants and give the participants an ownership stake in their employer.

ANSWER: Defendants admit the allegations contained in paragraph 4 of Plaintiff's Amended Complaint.

5. As the Seventh Circuit has explained:

> To accomplish the desired remedial and protective purposes of ERISA, Congress required that all assets of the employee benefit plans "be held in trust by one or more trustees," 29 U.S.C. 1103(a), subject to comprehensive standards of conduct wherein a fiduciary or trustee must discharge his duties solely in the interests of the participants "with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters were to use. . . ." 29 U.S.C. § 1104(a).

Sec'y of Labor v. Fitzsimmons, 805 F.2d 682, 690 (7th Cir. 1986).

ANSWER: Paragraph 5 of the Amended Complaint states conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 5 of the Amended Complaint, including any embedded factual assumptions for the reasons stated elsewhere in the Answer, and rely on the law identified in paragraph 5 to speak for itself, including in relation to the rest of the applicable ERISA law, rather than on Plaintiff's characterization thereof. Further answering, Plaintiff ignores more on-point Seventh Circuit authority on this, including (i) that fiduciaries get deference in balancing competing interests under conditions of uncertainty, *George v Kraft Foods, Inc.*, 641 F.3d

786, 797 (7th Cir. 2011), and *Armstrong v. LaSalle Bank National Ass'n*, 446 F.3d 728, 733 (7th Cir. 2006), and (ii) *Armstrong's* rule that ESOP fiduciaries get deference in decisions managing an ESOP, with the caveat they are "supposed to be careful rather than bold" in doing so. *Id.* at 732-33. Defendants further aver that Plaintiff and the putative class he purports to represent suffered no harm and are not entitled to any relief.

6. From January 1, 2003 until December 7, 2016, the ESOP owned 100% of the outstanding common stock of Segerdahl.

ANSWER: Defendants admit the allegations contained in paragraph 6 of Plaintiff's Amended Complaint.

7. The Segerdahl ESOP was funded by rollover contributions from its participants' other retirement plans, including 401(k) plans. Thus the participants' shares in the ESOP were not simply a gratuity provided by their employer, or even exclusively just a form of negotiated compensation. Instead, the majority of the funds in the Segerdahl ESOP represented the employee-participants' already earned and vested retirement savings.

ANSWER: Defendants admit that the Segerdahl ESOP was funded in part by rollover contributions from its participants' other retirement plans, including 401(k) plans, but otherwise deny the remaining allegations contained in paragraph 7 of Plaintiff's Amended Complaint. Further answering, Defendants note that the ESOP was also funded through share offerings and employer matches to 401(k) contributions, and that Defendant Rick Joutras, who had rolled over his entire 401(k) balance when the ESOP was first formed, became the largest shareholder in the ESOP, owning 23% of the ESOP's shares by the time it was sold to ICV Partners.

8. Plaintiff Bruce Rush is a former employee of Segerdahl and a participant in the ESOP. The majority of Plaintiff Rush's account balance was, like that of the other participants, rolled over from other retirement savings plans.

ANSWER: Defendants admit the allegations contained in paragraph 8 of Plaintiff's Amended Complaint. Further answering, Plaintiff Bruce Rush was a former senior vice president of manufacturing at Segerdahl who acquired most of his ESOP shares in share offerings, and the rest in 401(k) matches. As a member of Segerdahl's senior management, Mr. Rush also received stock appreciation rights for which he received $1,809,142 from the proceeds of the sale of Segerdahl.

9. On December 7, 2016, the fiduciaries of the ESOP sold the ESOP's 100% stake in Segerdahl to an outside investment capital firm called ICV Partners, LLC ("ICV" or "ICV Partners").

ANSWER: Defendants admit the allegations contained in paragraph 9 of Plaintiff's Amended Complaint.

10. In the transaction, called the "ESOP Buyout" herein, and "Project Insight" at the time, the ESOP received less than adequate consideration for its shares of Segerdahl.

ANSWER: Defendants deny the allegations contained in paragraph 10 of Plaintiff's Amended Complaint. Further answering, Defendants aver that Segerdahl was sold to the outside buyer ICV Partners through a prudent process, by parties who had substantial financial incentivizes to maximize Segerdahl's sales price, and with the advice and guidance of experienced legal and financial advisors. This sale was further subject to review and approval on behalf of the ESOP by the independent institutional trustee GreatBanc, which

had its own legal advisor, and an independent financial advisor review the ICV Sale for fair market value and financial fairness to the ESOP.

11. By 2015, Segerdahl had more than $300 million per year in sales. Segerdahl had more than 700 employees, and was the fourth largest, fully integrated direct mail printer in North America and the largest company focused on medium and high-volume direct mail printing, holding approximately 10% of this market segment. Segerdahl's customers included Fortune 500 companies across a variety of industries.

ANSWER: Defendants deny the allegations contained in paragraph 11 of Plaintiff's Amended Complaint. Further answering, Defendants aver that Segerdahl was sold to an outside buyer through a prudent process, by parties who had substantial financial incentivizes to maximize Segerdahl's sales price while not taking undue risk, and with the advice and guidance of experienced legal and financial advisors. This sale was further subject to review and approval on behalf of the ESOP by the independent institutional trustee GreatBanc, which had its own legal advisor, and an independent financial advisor that further reviewed the ICV Sale for fair market value and financial fairness to the ESOP.

12. At all relevant times leading up to the ESOP Buyout, and despite the ESOP's ownership of 100% of Segerdahl's shares, Defendants Schneider and Joutras (together, the "Segerdahl Fiduciary Defendants") exercised effective control over Segerdahl. The control in substance that the Segerdahl Fiduciary Defendants wielded gave them the effective ability to hire and fire board members and retain or remove the ESOP's trustee and other fiduciaries. At all relevant times leading up to the ESOP Buyout, the Segerdahl Fiduciary Defendants actually exercised this control, and in fact appointed or retained all members of Segerdahl's board of directors as well as the ESOP's trustee and other fiduciaries.

ANSWER: Defendants deny the allegations contained in paragraph 12 of Plaintiff's Amended Complaint. Further answering, Defendants Schneider and Joutras were only two of the five members of Segerdahl's Board, and the ICV Sale was also reviewed by the independent trustee GreatBanc. Defendant Schneider also was not working at Segerdahl when the three independent outside directors were retained in April 2015, and when the independent trustee, GreatBanc, was retained, which was when the Segerdahl ESOP was first formed in 2003.

As to the Board Defendants, Defendant Rick Joutras, who was at Segerdahl throughout this period, had rolled over his entire 401(k) balance when the ESOP was first formed, and became the largest shareholder in the ESOP, owning 23% of the ESOP's shares by the time it was sold to ICV Partners, and had no interest in ICV Partners pre or post sale. Instead, Mr. Joutras had over $34,000,000 riding on the price for which Segerdahl sold. Likewise, the interests of the three independent Outside Directors (Peter Mason, Rodney Goldstein and Robert Cronin) were aligned with the ESOP's interests through SARS grants that became worth $775,000 each based on the price for which Segerdahl sold. The Outside Directors also had no interest in ICV Partners pre or post sale. Finally, as to the fifth director, Ms. Schneider, Mr. Rush's Amended Complaint had to admit that Ms. Schneider received $4.2 million from her SARS award based on the price for which Segerdahl sold to ICV and, as Mr. Rush later concedes, could have made $3.1 million more if Segerdahl had sold at a 20% higher price. See below at ¶¶ 242-44.

13. The Segerdahl Fiduciary Defendants engaged in a deeply flawed process in marketing Segerdahl to potential buyers leading up to the ESOP Buyout. Instead of seeking to maximize the price the ESOP received for its shares, the Segerdahl Fiduciary Defendants marketed

the company primarily to investment firms and intentionally avoided marketing Segerdahl to its competitors. Even though competitor companies typically pay more than an investment firm like ICV Partners, the competitor would have taken over day to day control of the company's operations from the Segerdahl Fiduciary Defendants, especially from Defendant Schneider, who wanted to retain her role as Segerdahl's chief executive officer after the ESOP Buyout. In addition to the loss of prestige, losing control would come at real cost for Defendant Schneider, who would lose her lucrative compensation arrangement as CEO. Moreover, Defendant Schneider and Segerdahl's other top executives ran a risk of losing their jobs if the company was sold to a competitor, as the buying competitor would eventually consolidate their job functions into the buyers' existing management structure to realize synergistic value from the deal. By contrast, an investment capital firm, like ICV Partners, with less experience in the printing industry, would likely leave management in place and in control over the company's operations for at least several years after the transaction.

ANSWER: Defendants admit Segerdahl was marketed first to financial buyers rather than first to competitors, but not for the reasons articulated by Plaintiff Rush (who posts mere speculation for his assertion), and deny the remaining allegations in paragraph 13 of Plaintiff's Amended Complaint. Further answering, Defendants aver that as detailed above, the Executive Officer Defendants (Joutras and Schneider) and the Outside Director Defendants (Goldstein, Mason and Cronin) (collectively the Board Defendants) had substantial, concrete financial incentivizes (collectively worth more than $40 million) to maximize Segerdahl's sales price while not taking undue risk. Only one of the five Board Defendants (Mary Lee Schneider) had any potential interest in any continuing employment with an unknown financial buyer, which would be worth far less than the certain millions in

value she received from her SARS shares from selling Segerdahl as at high a value as possible, and which became worth $4.2 million in the ICV Sale.

The Board Defendants exercised their sound business judgment to first shop Segerdahl to financial buyers to see if they could lock in Segerdahl's extraordinary gain in value that had occurred under their watch (Segerdahl had more than tripled in value in the two years leading up to the ICV Sale), without taking the heightened risks and certain disruptions from shopping Segerdahl to competitors. The Board Defendants based their business judgment on, among other things, that, in a cut-throat industry, Segerdahl did not have long-term contracts with its customers, that its key managers and salespeople were not subject to non-competes and many had recently left competitors, while Segerdahl's confidential pricing, marketing and compensation info could have been used by competitors to harm Segerdahl and poach clients, and poach or run off key personnel. Segerdahl was also the largest union shop for printing in its area, and its union printers were critical to its business, while its competitors Quad and Donnelley were well known as being non-union. Disruption to Segerdahl's business was certain in these circumstances if it was shopped to competitors, and there was a substantial risk that Segerdahl's competitors could use this process to extract key customer and business info to harm Segerdahl (which would rebound to their benefit) without having to buy it, the "bilk instead of buy" problem.

The Board Defendants further aver that against this certain business disruption and known risk of loss, that the two likely competitors that could have been potential buyers, Quad and Donnelley, each had issues making them unlikely to pay a premium for Segerdahl, including that (i) Quad was having financial problems, while Donnelley was distracted as it was splitting up into three companies, (ii) they typically bought competitors at EBITDA

multiples lower than what ICV ultimately paid for Segerdahl, and (iii) the direct-mail industry was suffering sale downturns beginning in 2016.

14. During the negotiation of the ESOP Buyout, Defendant Schneider and Segerdahl's other top executives all demanded, and received, lucrative employment contracts with Segerdahl post-transaction. In addition, Defendant Schneider and many of Segerdahl's other top executives received an equity ownership interest in post-transaction Segerdahl. Those employment agreements and equity interests gave Defendant Schneider and the other executives an interest directly contrary to the interests of the ESOP.

ANSWER: Defendants admit that Defendant Schneider and Segerdahl's other senior managers, including Mr. Rush, continued employment with and were offered the ability to invest in the post-sale entity created by ICV Partners, but deny any other allegations contained in paragraph 14 of Plaintiff's Amended Complaint. Further answering, Defendants note that Ms. Schneider had over $4 million riding on the price for which Segerdahl sold to ICV Partners, while none of the other four Board Defendants had any employment or other interest in the post-sale entity created by ICV Partners; instead their financial interests were aligned with the Segerdahl ESOP's to maximize Segerdahl's sales price while avoiding undue risk. Defendants further note that Segerdahl's senior managers (including Mr. Rush) were part of what financial buyers sought when acquiring Segerdahl from the ESOP. Thus their continued presence with the company post-sale brought value (not conflict) for the Segerdahl ESOP when shopping to financial buyers, while thereby enabling Segerdahl and its ESOP to avoid the "bilk or buy" risk discussed above of shopping to competitors.

15. The Defendants also agreed to the ESOP Buyout transaction knowing that ICV Partners planned to engage in a sale-leaseback transaction of Segerdahl's primary real estate after the ESOP Buyout. However, the Segerdahl Fiduciary Defendants failed to ensure that ICV Partners paid an appropriate price for the ESOP's Segerdahl shares in light of the immediately realizable cash value of Segerdahl's real estate assets. By the time of the ESOP Buyout, Segerdahl had received five offers for the real estate in the $22-25 million range, and had in fact *accepted* one of the offers. Yet the record is clear that Defendants did not obtain *any* additional value from ICV Partners for the real estate. GreatBanc's determination of the fairness of the ESOP Buyout ultimately assigned no value to the potential sale-leaseback, despite its initial determination that the sale-leaseback "[h]as to be factored into purchase price."

ANSWER: Defendants admit there was the potential for a sale-leaseback transaction involving operating real estate owned by Segerdahl, but deny the other allegations contained in paragraph 15 of Plaintiff's Amended Complaint. Further answering, Defendants note that the potential for this sale-leaseback transaction was marketed to the four potential buyers that gave indications of interest, including ICV. During negotiations for the purchase of Segerdahl, ICV considered the potential for this sale-leaseback transaction when it raised its final offer for Segerdahl, and Segerdahl and ICV used this potential value to negotiate the final purchase price with ICV. Defendants note that Mr. Rush acquired documents in discovery disclosing all of this to him. Defendants further note that any sale-leaseback transaction remained speculative and contingent unless Segerdahl's auditors concluded that Segerdahl would receive favorable accounting treatment of this sale-leaseback on its financial statements. Segerdahl's auditors did not

conclude this until around late January 2017, which was after the ICV Sale, and the sale-leaseback transaction was then able to close shortly thereafter.

Further answering, the sale-leaseback was a financing transaction for Segerdahl's core-operating assets (its two main plants) that, once that financing transaction closed, required Segerdahl to have to incur millions annually in lease and additional tax expenses going forward. Defendants further note that these core operating assets were being overseen by the Board Defendants, whose financial incentives were strongly aligned with the ESOP to maximize its value in use and through any sale, and that they exercised their reasonable and prudent business judgment in doing so. Defendants also note that this real estate was part of the operating assets included in Segerdahl's value determined by the independent financial advisor to the independent trustee, GreatBanc, which independent financial advisor further found the sale to be for fair market value and financially fair to the ESOP. Additionally, Defendants note that since Segerdahl is an operating company, its assets (such as the plant facilities sold in the sale-leaseback) are not "plan assets" under ERISA. See, e.g., 29 C.F.R. § 2510.3-101(a)(2) & (c) (defining "operating company" as one that is primarily engaged in the production or sale of a product or service other than the investment of capital).

16. Three months after the ESOP Buyout, Segerdahl completed the sale-leaseback transaction, and the benefits of that transaction inured to ICV Partners, Defendant Schneider, and the other Segerdahl insiders who received equity interests in the ESOP Buyout, including Segerdahl's CFO, Marcus Bradshaw.

ANSWER: Defendants admit that the sale-leaseback transaction involving operating real estate owned by Segerdahl occurred on February 7, 2017, but deny any other

allegations contained in paragraph 16 of Plaintiff's Amended Complaint. Further answering, Defendants refer to their answers above on these issues.

17. In addition, the Segerdahl Fiduciary Defendants agreed to the ESOP Buyout transaction knowing that ICV Partners planned to make a Section 338(h)(10) election. A 338(h)(10) election is a tax mechanism that allows the buyers of an S Corporation, like Segerdahl was before the ESOP Buyout, to obtain millions of dollars in tax savings. The Defendants understood the value of the 338(h)(10) election to ICV Partners and other potential buyers, and indeed marketed Segerdahl to potential buyers emphasizing that the 338(h)(10) election would be worth tens of millions of dollars. An October of 2016 presentation created by Defendants' advisors estimated that the 338(h)(10) election was worth more than $46 million to ICV. Yet the Segerdahl Fiduciary Defendants made no effort to obtain any value from ICV Partners in exchange, and indeed made the conscious decision not to seek anything from ICV Partners in exchange for that value.

ANSWER: Defendants admit that any potential value of the Section 338(h)(10) election for tax purposes was marketed to potential buyers, and that the four indications of interest from those potential buyers, including from ICV Partners, all rested their offers on acquiring this tax election, but deny any other allegations contained in paragraph 17 of Plaintiff's Amended Complaint. A Section 338(h)(10) election treats a stock sale as an asset sale so that tax basis of assets reflects what the buyer paid for the stock. This is often done in this context, as reflected by its inclusion in the indications of interest received from the four potential buyers. Further answering, Defendants note that this tax election had no value to the Segerdahl ESOP (which was a pass-through tax entity), and was part of what was required to receive the $265 million purchase price offered by ICV Partners. Any value this

tax election had to potential buyers depended on the particular tax attributes of that buyer, and would further be limited by the amount of positive net income generated by Segerdahl post-sale and by the expected length of time the potential buyer would own Segerdahl. Further, fair market value under ERISA and the tax code is based on the price a hypothetical willing buyer would pay a hypothetical willing seller that, by definition, does not consider the unique tax or other attributes of the buyer or seller.

In sum, with full knowledge of Defendants, the potential benefits of this tax election was marketed to the potential buyers, who included whatever value they placed on it in their indications of interest and offers for Segerdahl.

18. Discovery has also shown that, prior to the ESOP Buyout, Defendants had realized they had been the victims of fraudulent overbilling by a temporary employment agency at their Wolf Road facility (the "Wolf Road Fraud"). By the time of the ESOP Buyout, Defendants knew they would be able to obtain significant cost savings at that facility simply from ending the fraud, and expected to receive significant compensation from the agency. Again, however, Defendants made no effort to obtain value from any buyer corresponding to that value, despite their awareness that it "likely the result will be a positive to EBITDA," and this source of value, like the 338(h)(10) election and the sale-leaseback, was "not currently reflected in the purchase price formula."

ANSWER: Defendants admit that they became aware of the "Wolf Road Fraud" prior to the ICV Sale, but deny any other allegations contained in paragraph 18 of Plaintiff's Amended Complaint. Further answering, Defendants aver that potential buyers had access to due diligence materials to evaluate Segerdahl including on the "Wolf Road Fraud" described in paragraph 18 and that the added value received from the elimination of this fraud was contemplated in the sale price paid by ICV Partners. Defendants further note that

Mr. Rush acquired documents in discovery disclosing all of this to him. Defendants also note that the Wolf Road Fraud claims, which Mr. Rush first raised in his Amended Complaint, were settled post-sale for a payment of only $350,000 (which equals 0.0013% of Segerdahl's $265,000,000 sales price), and a "coupon" type promise to reduce future bills, but only to the extent Segerdahl continued to use the service provider that had engaged in this fraudulent over-billing.

19. Section 338(h)(10) elections are commonly made when the target company is an S corporation, and sale-leaseback deals are increasingly common in many private equity transactions. Prudent sellers understand the benefit of the Section 338(h)(10) election and the value of sale-leaseback transactions to buyers and consider this benefit to negotiate for a higher purchase price. But Defendants did not do so. Defendant GreatBanc was actually aware of the value of the sale-leaseback and 338(h)(10) election and made an affirmative decision to disregard those sources of value in order to justify its approval of the unreasonably low price the ESOP received for its shares of Segerdahl. Prudent sellers also ensure that they obtain value for their shares consistent with the company's full financial situation—claims like the Wolf Road Fraud were an important part of that picture for Segerdahl and yet Defendants did nothing to obtain value for that from ICV or any other potential buyer.

ANSWER: Defendants deny the allegations contained in paragraph 19 of Plaintiff's Amended Complaint. Further answering, Defendants refer to their answers above on these issues, including that (i) all of them were marketed to potential buyers who gave them the value they thought they were worth in their indications of interest and in ICV's offers for Segerdahl, (ii) that as part of this due diligence the potential buyers also knew critical material adverse facts related to Segerdahl's missed sales targets and declining sales in 2016,

and (iii) that GreatBanc knew this when deciding whether to approve the ICV Sale. The controlling law in this Circuit further interdicts Mr. Rush's allegations here. That law grants deference to GreatBanc's decision, provided that GreatBanc was careful rather than bold when deciding whether to approve the ICV Sale for $265,000,000 that came out of this sales process and that cashed out Segerdahl's ESOP shares at an all-time high in value (they had more than tripled in value in the two years leading up to this sale), despite that Segerdahl was facing sales downturns as part of industry declines in a highly cyclical business. Further answering, GreatBanc was the trustee for the Segerdahl ESOP throughout its thirteen-year history and had seen industry declines twice before decimate the Segerdahl ESOP's stock price, causing stock price declines of more than 30% in each downturn.

20. Moreover, a significant portion of the purchase price paid by ICV Partners was wrongfully diverted from the ESOP by the Segerdahl Fiduciary Defendants, totaling millions of dollars. In particular, former CEO Defendant Joutras and his relative Paul White received cash payments of $1.225 million out of the purchase proceeds. Joutras and White, who stopped functioning as Segerdahl employees in December of 2015, were allowed to keep all of their stock appreciation rights ("SARs") awards, instead of forfeiting the unvested portion of their awards. Joutras and White received at least $4.4 million for their unforfeited SARs during the ESOP Buyout. In addition, a "transaction bonus" of $1 million was paid to Segerdahl's CFO, Marcus Bradshaw, who was instrumental in helping Defendant Schneider sell Segerdahl to an investment buyer that would retain Bradshaw and Schneider in their management roles. *See also* ¶¶ 321-325, *infra*.

ANSWER: Defendants deny the allegations contained in paragraph 20 of Plaintiff's Amended Complaint. Further answering, Defendants note that each one of these payments was to pay off pre-existing contractual obligations of Segerdahl, just like the payments made

to pay off Mr. Rush's $1.8 million SARS award, which he now has conceded are proper and does not constitute an unlawful diversion of ESOP assets. Segerdahl entered these contracts for sound business reasons that relate to corporate business decisions, not ERISA fiduciary ones, and which included (i) to acquire the former CEO Rick Joutras' critical assistance with Segerdahl's customers, salespeople, managers and union employees as Segerdahl transitioned to a new CEO, and then faced the uncertainty engendered by selling Segerdahl to a new owner, (ii) to keep Mr. Joutras' non-compete in place and to add one for former executive vice president of sales and second-in-command, Paul White, and (iii) to incentivize a key person, Segerdahl's CFO Marcus Bradshaw, to stay through the sales process. Defendants further note that Segerdahl's senior managers (including Mr. Rush) were part of what financial buyers sought when acquiring Segerdahl from the ESOP, and thus their continued presence with the company post-sale brought value for (not conflict with) the Segerdahl ESOP when shopping to financial buyers, while enabling the Segerdahl ESOP to avoid the "bilk or buy" risk of shopping to competitors.

21. Defendant GreatBanc was an ESOP fiduciary and had responsibility for approving the ESOP Buyout on behalf of the Plan. Defendant GreatBanc knew or should have known: (a) that the ESOP Buyout was the result of a flawed sales process; (b) that the price the ESOP received from ICV Partners was below what other buyers would have paid for those shares, (c) that the transaction did not appropriately credit the value of Segerdahl's real estate assets, the value of the 338(h)(10) election, or the value of the Wolf Road Fraud in the sale price for Segerdahl itself, and (d) millions of dollars that should have been paid to the ESOP would be diverted from the ESOP to the Segerdahl Fiduciary Defendants and other Segerdahl insiders *(see* ¶¶*321-325).* Defendant

GreatBanc had an affirmative duty to ensure the fairness of the ESOP Buyout to the ESOP—a duty they failed to fulfill.

ANSWER: Defendants admit that GreatBanc was the ESOP fiduciary delegated the exclusive authority to determine whether to approve the ICV Sale on behalf of the ESOP, but deny the remaining allegations of paragraph 21 of Plaintiff's Amended Complaint and refer to their answers above on these issues.

22. As fiduciaries of the ESOP, Defendants failed to ensure that the ESOP received the fair market value of its shares. Fair market value measures what a hypothetical willing buyer would pay to a hypothetical willing seller, when neither party is under any compulsion to buy or sell. Determining fair market value requires considering the highest and best use of the asset in question, which requires evaluating the characteristics of likely potential buyers, and should take into account the population of potential willing buyers. That includes buyers who, for a variety of reasons, might be willing to pay more than others. This certainly requires evaluating the characteristics of types of likely potential willing buyers. In addition, as this Court has held, in the context of a sale of ESOP stock, determining the fair market value of the ESOP's shares requires the evaluation of the benefits of the transaction of the counterparties. *Montgomery v. Aetna Plywood, Inc.*, 39 F. Supp. 2d 915, 938 (N.D. Ill. 1998). Determining fair market value in the context of the ESOP Buyout was especially important, because all of the ESOP's assets were to be liquidated in that transaction, and the ESOP was permanently giving up its stake in Segerdahl. Because other types of buyers, such as competitors, would have paid a higher price for the ESOP's shares than did ICV Partners, the fair market value of the ESOP's shares was higher than what ICV Partners would have paid. Defendants GreatBanc relied on a valuation of the ESOP in approving the transaction that failed to consider the characteristics of likely potential buyers,

including operating companies like competitors, and failed to consider what those likely potential buyers would have paid. Defendant GreatBanc also failed to appropriately consider the specific benefits of the transaction to the ESOP's counterparties, including Defendant Schneider, the other Segerdahl executives who received equity awards in post-transaction Segerdahl, and ICV Partners. Defendants GreatBanc knew or should have known that the valuation failed to take that higher potential price into account, and knew or should have known that the valuation failed to represent the fair market value of the ESOP's shares for that reason.

ANSWER: Paragraph 22 of the Amended Complaint states argument and conclusions of law, to which no response is required. If, however, a response is required, Defendants deny the allegations of paragraph 22 of Plaintiff's Amended Complaint and note that Plaintiff is misstating the law on fair market value and the dispositive issues in this case. Fair market value under ERISA and the tax code is based on the price a hypothetical willing buyer would pay a hypothetical willing seller that, by definition, does not consider the unique tax or other attributes of the buyer or seller. Further, ICV Partners was an outsider to the Segerdahl ESOP, and thus the sale to it did not trigger the prohibited transaction rules and adequate consideration/fair market value exemption imposed by ERISA on sales to insiders, such as applied to the sale to the insider in the *Montgomery* case cited in of paragraph 22 of Plaintiff's Amended Complaint. Rather, the dispositive issues here are whether the Segerdahl Board and GreatBanc abused their discretion when: (i) the Segerdahl Board exercised its business judgment to shop Segerdahl first to financial buyers instead of risking shopping it first to competitors, and (ii) the Segerdahl Board and GreatBanc exercised their respective judgment to accept the $265,000,000 offer from ICV that came out of this process which, in a highly cyclical industry, locked in the extraordinary gains in Segerdahl's value.

They were able to lock in Segerdahl's more than tripling in value in the two years preceding the ICV Sale, despite that Segerdahl was facing declining sales and an industry decline that begin in 2016. GreatBanc and the Board Defendants' business judgment is due deference on these decisions, as long as they were "careful rather than bold" when making them. *E.g.*, *Armstrong v. LaSalle Bank Nat'l Ass'n*, 446 F.3d 728, 732-33 (7th Cir. 2006).

Further answering, Defendants note that GreatBanc and its advisors Stout Risius and Drinker Biddle and the Special Committee of the Segerdahl Board, which consisted of its three outside directors and their legal advisors, each looked at the agreements offered Segerdahl's continuing senior management to make sure there was nothing commercially unreasonable. These reviews confirmed that these agreements were similar to but less rich than what these senior managers had at Segerdahl pre-sale, while ICV (and other financial buyers) wanted to incentivize senior management (like Mr. Rush) to stay on and grow the company. This is part of what ICV paid for, and enabled the Segerdahl ESOP to capitalize on this value while avoiding the "bilk or buy" risk of shopping to competitors.

Finally, Defendants note that Plaintiff's allegations that a competitor may have paid more than ICV are inherently speculative. ICV paid 6.6 times Segerdahl's EBITDA in a declining sales market, while neither Quad nor RR Donnelley were in a position that made it likely that they would have paid a premium for Segerdahl. It was public during this period that Quad was having financial problems, while Donnelley was distracted as it was splitting up into three companies, while Quad and Donnelly previously had typically bought competitors at EBITDA multiples lower than the 6.6x multiple that ICV paid for Segerdahl.

23. The Board of Director Defendants were responsible for appointing, retaining and overseeing Defendant GreatBanc and the members of the ESOP Committee, which served as the

named fiduciary of the ESOP and was the ESOP's only discretionary fiduciary before GreatBanc was retained to approve the ESOP Buyout in August of 2016. The Board of Director Defendants, including the Segerdahl Fiduciary Defendants, had interests in the ESOP Buyout that conflicted with the ESOP's interests, and failed to ensure that GreatBanc and the Segerdahl Fiduciary Defendants acted solely in the interests of the ESOP.

ANSWER: Defendants admit that the Board delegated to GreatBanc the exclusive authority to decide whether to approve the ICV Sale, but deny the remaining allegations of paragraph 23 of Plaintiff's Amended Complaint. Further answering, as detailed above, Defendants note that Plaintiff Rush has ignored documents he has showing that the financial interests of the Board Defendants were aligned with the ESOP's interests.

24. Defendant Schneider's equity and employment interests in the post-sale company gave her a financial interest contrary to the ESOP, yet she, more than anyone else, was primarily responsible for marketing the company to investors only as well as the negotiations with ICV. Moreover, discovery has revealed numerous troubling instances in which Defendants put management's interests ahead of the interests of the ESOP—including failing to pursue an in-hand indication of interest from a potential buyer at a higher price than the ultimate deal price due to concerns about the bidder's compatibility with existing management.

ANSWER: Defendants admit Segerdahl was initially marketed to financial buyers rather than to competitors, but not for the reasons articulated by Plaintiff Rush (who posts mere speculation for his assertion), and deny the allegations contained in paragraph 24 of Plaintiff's Amended Complaint. Further answering, Defendants note that it was all five of the Board Defendants who decided to first shop Segerdahl to financial buyers for the reasons noted above. Defendants also note that the potential buyer Mr. Rush has failed to name here

is Wynnchurch, which did not offer a higher price than what ICV Partners paid, and which further told Mr. Rush's counsel in open court and then in an affidavit that it withdrew from this sales process because it was no longer interested in buying Segerdahl after conducting preliminary due diligence.

25. Stout Risius Ross ("SRR"), the valuation firm hired by GreatBanc to evaluate the ESOP Buyout, set out two methodologies to estimate the value of Segerdahl as a check to the fairness of the ESOP Buyout—a guideline public company method and a discounted cash flow method. Both of those methodologies yielded prices higher than the $265 million ICV was going to pay. SRR simply overrode the guideline public company analysis, and manipulated the results to justify the too-low price. As set forth in more detail below, SRR's manipulation of its results is apparent on the face of SRR's valuation. SRR also ignored numerous precedent transactions in the printing industry which could have served as guideposts for the fair market value of Segerdahl, but which also would have shown that the price in the ESOP Buyout was much too low.

ANSWER: Defendants admit that GreatBanc retained SRR to evaluate the ICV Sale, but deny the remaining allegations contained in paragraph 25. Further answering, Defendants note that recent acquisitions by Quad and Donnelley were at lower EBIDTA multiples than what ICV paid for Segerdahl. As to SRR, it has extensive experience in valuing Segerdahl throughout the Segerdahl ESOP's thirteen-year history. SRR's ESOP professionals have extensive experience in some of the largest and most complex ESOP transactions and has provided ESOP services to every major institutional ESOP trustee in the United States and is experienced in documenting and defending valuation analyses with various regulatory agencies (e.g., Department of Labor (DOL), and Internal Revenue Service

(IRS)). The process undertaken by SRR to evaluate the ICV Salet met all applicable industry standards.

26. Moreover, discovery has shown that SRR and GreatBanc were well-aware of the sale-leaseback transaction, the 338(h)(10) election and the Wolf Road Fraud. Despite determining in August of 2016 that the 338(h)(10) election and sale-leaseback "[h]as to be factored into the purchase price," the sale-leaseback and the 338(h)(10) election were "not included in the valuation" and "had not been incorporated into the analysis" when the final valuation was prepared in December of 2016. The sale-leaseback was worth up to $13 million, the 338(h)(10) election was worth tens of millions of dollars (Vergamini estimated the value of the 338(h)(10) election alone at $46 million in October of 2016), and the Wolf Road Fraud which was worth several million dollars more, and yet SRR and GreatBanc chose to ignore them in order to make the transaction look fair to the ESOP.

ANSWER: Defendants admit that GreatBanc retained SRR to evaluate the ESOP Buyout, but deny the remaining allegations contained in paragraph 26. Further answering, as detailed above, the sale-leaseback transaction, the 338(h)(10) election, and the Wolf Road Fraud issues were all taken into consideration by the potential buyers when they formulated their indications of interests and offers for Segerdahl, just as they took into account Segerdahl's declining sales. SRR and GreatBanc knew this as well. As to SRR, it had long-standing experience in valuing Segerdahl for the ESOP, while its valuation methodology had become more aggressive for Segerdahl (valuing it at higher multiples of EBITDA) beginning at the end of 2015 and continued through the sale to ICV. SRR continued using this more aggressive valuation for Segerdahl when valuing it for the ICV Sale, despite that Segerdahl's

sales had begun to decline in 2016 as part of an incipient industry decline that accelerated post-sale.

27. SRR's manipulation of its valuation methodology and its intentional failure to include these major sources of value were a whitewash designed to protect the fiduciary misconduct of the Segerdahl Fiduciary Defendants and Defendant GreatBanc. Defendant GreatBanc was well aware of these problems and elected to approve the transaction anyway.

ANSWER: Defendants deny the conclusory allegations contained in paragraph 27 of the Amended Complaint, and Defendants refer to their answers above on the valuation issues. Further answering, Plaintiff's allegations attacking SRR have no basis in fact and are contradicted by the historical valuations of Segerdahl as well as market conditions. Those market conditions show that Segerdahl was sold shortly after a historical and cyclical high point, despite that Segerdahl's sales had begun to decline in 2016 as part of an incipient industry decline that accelerated post-sale.

28. At the heart of ERISA's legislative framework are broadly applicable, stringent fiduciary standards. ERISA requires that plan assets be held in trust, and imposes strict fiduciary duties of prudence and loyalty on trustees and fiduciaries with any authority or control over the plan's assets in the trust. 29 U.S.C. § 1104 (a)(1)(A)-(D). ERISA's fiduciary duties have repeatedly been characterized by the courts of appeal as the "highest known to the law." *E.g.*, *Donovan v. Bierwirth*, 680 F.2d 263, 272 n.8 (2d Cir. 1982) (Friendly, J.); *see also George v. Kraft Foods Glob., Inc.*, 814 F. Supp. 2d 832, 852 (N.D. Ill. 2011).

ANSWER: Paragraph 28 of the Amended Complaint states conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 28 of the Amended Complaint, including any embedded factual

assumptions for the reasons stated earlier in the Answer, and rely on the law identified in paragraph 28 to speak for itself, including in relation to the rest of the applicable ERISA law, rather than on Plaintiff's characterization thereof.

29. The Seventh Circuit has explained that "[w]hether an ERISA fiduciary has acted prudently requires consideration of both the substantive reasonableness of the fiduciary's actions and the procedures by which the fiduciary made its decision: In reviewing the acts of ESOP fiduciaries under the objective prudent person standard, courts examine both the process used by the fiduciaries to reach their decision as well as an evaluation of the merits." *Fish v. GreatBanc Tr. Co.*, 749 F.3d 671, 680 (7th Cir. 2014) (quotations omitted). ERISA's duty of prudence requires fiduciaries to "act in good faith as an objectively prudent fiduciary would act, not simply as a prudent layperson would act." *Chesemore v. All. Holdings, Inc.*, 886 F. Supp. 2d 1007, 1041 (W.D. Wis. 2012), *aff'd* 829 F.3d 803 (7th Cir. 2016).

ANSWER: Paragraph 29 of the Amended Complaint states conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 29 of the Amended Complaint, including any embedded factual assumptions for the reasons stated earlier in the Answer, and rely on the law identified in paragraph 29 to speak for itself, including in relation to the rest of the applicable ERISA law, rather than on Plaintiff's characterization thereof.

30. ERISA's "duty of loyalty 'requires that fiduciaries keep the interests of beneficiaries foremost in their minds, taking all steps necessary to prevent conflicting interests from entering into the decision-making process…[i]n other words, conflicts of interest must be shunned." *Perez v. Bruister*, 823 F.3d 250, 261 (5th Cir. 2016). And "[w]here it might be possible to question the fiduciaries' loyalty, they are obliged at a minimum to engage in an intensive and

scrupulous independent investigation of their options to insure that they act in the best interests of the plan beneficiaries." *Leigh v. Engle*, 727 F.2d 113, 125–26 (7th Cir. 1984)

ANSWER: Paragraph 30 of the Amended Complaint states conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 30 of the Amended Complaint, including any embedded factual assumptions for the reasons stated earlier in the Answer, and rely on the law identified in paragraph 30 to speak for itself, including in relation to the rest of the applicable ERISA law, rather than on Plaintiff's characterization thereof.

31. As set forth in more detail below, Defendants breached their fiduciary duties of loyalty and prudence in conducting a self-interested and disloyal sale process and by approving a transaction that was procedurally and substantively unreasonable and unfair to the ESOP, and thereby cost the ESOP and its participants tens of millions of dollars.

ANSWER: Defendants deny the allegations contained in paragraph 31 of Plaintiff's Amended Complaint. Further answering, Defendants refer to its Answer above on these points, including noting that Mr. Rush's key allegations repeatedly are contradicted by the documents he has acquired in discovery.

JURISDICTION

32. Plaintiff brings this action pursuant to ERISA §§ 502(a)(2) and 502(a)(3), 29 U.S.C. §§ 1132(a)(2) and (3).

ANSWER: Defendants admit that this case is governed by ERISA and that jurisdiction is proper in this case as a result. Except as expressly admitted herein, Defendants deny the allegations of paragraph 32 of Plaintiff's Amended Complaint.

33. This Court has subject matter jurisdiction over Plaintiff's claims pursuant to ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1) and 28 U.S.C. § 1331 because this action arises under the laws of the United States.

ANSWER: Defendants admit that this case is governed by ERISA and that jurisdiction is proper in this case as a result. Except as expressly admitted herein, Defendants deny the allegations of paragraph 33 of Plaintiff's Amended Complaint.

34. This Court has general personal jurisdiction over Defendant GreatBanc, the Board of Director Defendants, and the Segerdahl Fiduciary Defendants because those Defendants reside in this District. This Court has specific personal jurisdiction over all Defendants because they took the actions described herein in this District or directed those actions specifically at this District.

ANSWER: Defendants admit the allegations contained in paragraph 34 of Plaintiff's Amended Complaint, except to deny Plaintiff's allegations regarding the residency of defendants Robert Cronin and Peter Mason. Defendants aver that defendants Robert Cronin and Peter Mason are citizens and residents of the state of Florida.

35. Pursuant to 29 U.S.C. § 1132(e)(2) venue is proper in this District because the Plan is administered in this District and the misconduct described herein occurred in this District. Venue is also proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because, for the same reasons, a substantial part of the events or omissions giving rise to the claims occurred in this District.

ANSWER: Defendants admit that venue is proper in this District. Defendants deny the remaining allegations contained in paragraph 35 of Plaintiff's Amended Complaint.

THE PARTIES AND THE ESOP

36. The ESOP is an employee benefit plan and an employee pension benefit plan covered by ERISA within the meaning of ERISA § 3(2)(A) & (7), 29 U.S.C. § 1002(2)(A) & (7).

ANSWER: Defendants admit the allegations contained in paragraph 36 of Plaintiff's Amended Complaint.

37. The ESOP's assets were held in the Segerdahl Corp. Employee Stock Ownership Trust (the "ESOT"). The ESOP and the ESOT are referred to collectively herein as the "ESOP" unless otherwise specified.

ANSWER: Defendants admit the allegations contained in paragraph 37 of Plaintiff's Amended Complaint.

38. At all relevant times, Plaintiff Bruce Rush has been a participant in the ESOP. At the time of the filing of the Complaint in this action in February of 2019, Rush was a citizen and resident of Illinois. Rush has subsequently moved to Florida and is now a citizen and resident of Florida.

ANSWER: Defendants admit Plaintiff Bruce Rush has been a participant in the ESOP. Defendants deny the remaining allegations contained in paragraph 38 of Plaintiff's Amended Complaint for lack of information as to Mr. Rush's citizenship and residency.

39. Defendant GreatBanc Trust Company ("GreatBanc") is an Illinois corporation with its principal place of business in Lisle, Illinois. At all relevant times prior to December 7, 2016, Defendant GreatBanc served as the trustee of the ESOP.

ANSWER: Defendants admit the allegations contained in paragraph 39 of Plaintiff's Amended Complaint.

40. Defendant Mary Lee Schneider was the Chief Executive Officer and President of Segerdahl from December 1, 2015 until December 1, 2018. Defendant Schneider was a member of the committee serving as Administrator of the ESOP starting April 11, 2016, until the

termination of the ESOP in December of 2016. Defendant Schneider is a citizen and resident of Illinois.

ANSWER: Defendants admit that Mary Lee Schneider was the President and Chief Executive Officer of Segerdahl from December 1, 2015 until December 1, 2018 and is a citizen and resident of Illinois. Except as expressly admitted herein, Defendants deny the allegations of paragraph 40 of Plaintiff's Amended Complaint.

41. Defendant Richard Joutras was the President and Chief Executive Officer of Segerdahl until December 1, 2015. Defendant Joutras was the Chairman of Segerdahl's Board of Directors from prior to December 1, 2015 until December 7, 2016. Defendant Joutras was the Administrator of the ESOP until April 11, 2016. Defendant Joutras is a citizen and resident of Illinois.

ANSWER: Defendants admit that Richard Joutras was President and CEO of Segerdahl prior to December 1, 2015, that he continued as an employee of Segerdahl and as Chairman of Segerdahl's Board of Directors until December 7, 2016. Defendants deny that Richard Joutras is a citizen and resident of Illinois. He is a citizen and resident of Florida. Except as expressly admitted herein, Defendants deny the allegations of paragraph 41 of Plaintiff's Amended Complaint.

42. Defendants Rodney Goldstein, Peter Mason, Robert Cronin were members of Segerdahl's Board of Directors (and together with Schneider and Joutras, are referred to herein as the "Board of Directors Defendants") starting in 2016, until December 7, 2016.

a. Defendant Goldstein is a citizen and resident of Illinois.

b. Defendant Mason practices law in Chicago, Illinois at the firm Freeborn & Peters, LLC ("Freeborn"). According to Freeborn's website, Defendant Mason is a member of the State Bar of Illinois.

c. Defendant Cronin is the Managing Partner of the Open Approach, LLC, and Illinois limited liability company with its principal office in Oak Brook, Illinois.

ANSWER: Defendants admit that Rodney Goldstein is a citizen and resident of the state of Illinois, but deny that Peter Mason or Robert Cronin are residents of the state of Illinois. Except as expressly admitted herein, Defendants deny the allegations of paragraph 42 of Plaintiff's Amended Complaint. Further answering, the Outside Directors Rodney Goldstein, Peter Mason and Robert Cronin joined Segerdahl's Board of Directors in April 2015 (not January 2016) and were each awarded 100 SARS units that aligned their interests with the ESOPs to maximize Segerdahl's stock price.

43. Nominal Defendant Segerdahl Corp. is an Illinois corporation with its principal place of business in Wheeling, Illinois.

ANSWER: Defendants admit the allegations contained in paragraph 43 of Plaintiff's Amended Complaint.

GENERAL ALLEGATIONS

44. ICV paid $265 million for the ESOP's shares of Segerdahl in the ESOP Buyout.

ANSWER: Defendants admit Plaintiff's allegation in paragraph 44 of the Amended Complaint.

45. However, the fair market value of the ESOP's shares of Segerdahl was much higher than $265 million. The sale price was too low for several reasons, including:

a. the Segerdahl Fiduciary Defendants and their advisors engaged in a flawed sale process that included, among other things, a failure to market Segerdahl to many potential buyers to obtain the best price for the ESOP's shares, and an unjustified focused on a buyer that, after the transaction, would allow the Segerdahl Fiduciary Defendants to maintain control over the company's day to day operations, and would allow the Segerdahl Fiduciary Defendants and other insiders to remain at their positions; *see* ¶¶ 85-262 *infra*;

b. the Segerdahl Fiduciary Defendants and their advisors failed to pursue in-hand indications of interest to purchase at a higher price than ICV eventually paid because of concerns that the buyer was incompatible with existing management; *see* ¶¶ 192-202, *infra*;

c. the purchase price ICV Partners paid for the ESOP's shares did not appropriately include the value of certain real estate owned by Segerdahl, which any prospective buyer including ICV would be able to sell and which ICV Partners was in fact able to sell for $25 million immediately after the ESOP Buyout; *see* ¶¶ 26363-300, *infra*;

d. the purchase price ICV Partners paid for the ESOP's shares did not appropriately include the value of the 338(h)(10) election ICV Partners planned to make after the sale; *see* ¶¶ 30101-314, *infra*;

e. the purchase price ICV Partners paid for the ESOP's shares did not appropriately include the value of a settlement with a staffing agency responsible for providing employees to Segerdahl's Wolf Road facility (the "Wolf Road Fraud"); *see* ¶¶ 31515-320, *infra*;

f. the Segerdahl Fiduciary Defendants diverted millions of dollars of the purchase price paid by ICV Partners away from the ESOP to the Segerdahl Fiduciary Defendants themselves and other company insiders. *See* ¶¶ 32121-325, *infra*.

ANSWER: Paragraph 45 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 45 of the Amended Complaint, including any embedded factual assumptions, and refer to their answers above on these issues.

46. Defendant Schneider pushed the sale through under these terms unfavorable to the ESOP because she stood to receive significantly more in equity, compensation and prestige from serving as CEO under ICV Partners or another investment buyer than she would have made from her SARs in a sale at a higher price to a strategic buyer, who likely would have replaced her, and had other conflicts of interest with the ESOP regarding the ESOP Buyout transaction. *See* ¶¶ 240-262, *infra*

ANSWER: Defendants deny the allegations contained in paragraph 46 of the Amended Complaint, and refer to their answers above on these issues.

47. Instead of fulfilling their obligation to protect the ESOP, Defendants failed to ensure that the ESOP received the fair market value of its 100% ownership interest of Segerdahl.

ANSWER: Defendants deny the allegations contained in paragraph 47 of Plaintiff's Amended Complaint, and refer to their answers above on these issues.

A. Background

48. Effective January 1, 2003, the ESOP was established to benefit Segerdahl's employees, provide Segerdahl's employees with an ownership interest in Segerdahl, and to help Segerdahl's employees save for retirement.

ANSWER: Defendants admit the allegations contained in paragraph 48 of the Amended Complaint.

49. On January 1, 2003, the ESOP bought out the other owners of the company and became the sole owner of Segerdahl's common stock.

ANSWER: Defendants admit the allegations contained in paragraph 49 of the Amended Complaint.

50. From 2003 until December 7, 2016, the ESOP owned 100% of the common stock of Segerdahl.

ANSWER: Defendants admit the allegations contained in paragraph 50 of the Amended Complaint.

51. After the ESOP purchased Segerdahl, Defendant Joutras became Segerdahl's CEO and President and Chairman of Segerdahl's Board of Directors.

ANSWER: Defendants admit that after the ESOP purchased Segerdahl, Defendant Joutras became Segerdahl's CEO and President and later became Chairman of Segerdahl's Board of Directors.

52. Defendant GreatBanc served as the trustee of the ESOT, which held the ESOP's assets in trust, at all relevant times.

ANSWER: Defendants admit the allegations contained in paragraph 52 of the Amended Complaint.

53. Before August of 2016, Defendant GreatBanc served as a directed trustee. In that capacity, it was entitled to take action only at the direction of the ESOP's named fiduciary.

ANSWER: Defendants deny the allegations contained in paragraph 53 of the Amended Complaint. Further answering, Defendants note that GreatBanc had discretionary authority as trustee for the Segerdahl ESOP from its formation in 2003 forward, and that by August 2016 it was further delegated the exclusive authority as the independent fiduciary for the Segerdahl ESOP to decide whether to approve the ICV Sale.

54. The ESOP's named fiduciary was the Plan Administrator, which was the ESOP Committee.

ANSWER: Defendants admit the allegations contained in paragraph 54 of the Amended Complaint, as qualified by the answer to Paragraph 53 above.

55. Because the ESOP owned 100% of Segerdahl's shares, which were not publicly traded, the shares had no readily ascertainable market value.

ANSWER: Defendants admit the allegations contained in paragraph 55 of the Amended Complaint.

56. During the relevant time, Defendant GreatBanc received valuation reports from the valuation firm SRR every six months that estimated the value of the ESOP's Segerdahl stock.

ANSWER: Defendants admit the allegations contained in paragraph 56 of the Amended Complaint.

57. The share price determined by SRR became the official value of Segerdahl stock for the ESOP.

ANSWER: Defendants admit that the share price determined by SRR was used for ESOP plan administration, including ESOP share redemptions, but otherwise deny the allegations contained in paragraph 57 of the Amended Complaint.

58. Segerdahl hired Marcus Bradshaw at its Chief Financial Officer in early 2014.

ANSWER: Defendants admit the allegations contained in paragraph 58 of the Amended Complaint.

The 2014 SARS Plan

59. In early 2014, Segerdahl adopted a new stock appreciation rights plan, the 2014 SARs Plan.

ANSWER: Defendants admit the allegations contained in paragraph 59 of the Amended Complaint.

60. The 2014 SARs Plan granted appreciation rights that vested over three years or completely at a change in control.

ANSWER: Defendants admit the allegations contained in paragraph 60 of the Amended Complaint.

61. The appreciation rights, or SARs, under the 2014 SARs Plan were issued with a strike price equal to the then current price of Segerdahl's shares, or $4,025.90 per share.

ANSWER: Defendants admit that the first batch of SARS shares were issued with a strike price equal to the then current price of Segerdahl's shares, or $4,025.90 per share, but otherwise deny the allegations contained in paragraph 61 of the Amended Complaint. Further answering, Defendants note that SARS shares had value only to the extent that Segerdahl's stock price increased in value above the grant price.

62. The 2014 SARs Plan capped the number of SARs that could be issued at 20% of the outstanding shares of common stock.

ANSWER: Defendants deny the allegations contained in paragraph 62 of the Amended Complaint. Further answering, Defendants note that the SARS incentive plan was amended to allow SARS to be issued for up to 30% of the outstanding shares of Segerdahl's stock

63. At exercise, the holder of the SARs received the difference between the share price at vesting and the strike price.

ANSWER: Defendants admit the allegations contained in paragraph 63 of the Amended Complaint.

64. The SARs could be exercised if they had vested without previously expiring.

ANSWER: Defendants admit the allegations contained in paragraph 64 of the Amended Complaint.

65. The SARs had a three-year vesting cliff vesting period, vesting "upon the third anniversary of the Grant Date," provided that the holder "continue[d] to be employed" by Segerdahl "on that date."

ANSWER: Defendants deny the allegations contained in paragraph 65 of the Amended Complaint, and note that the SARS shares vested over a three-year period or upon a change in control.

66. However, the SARs would immediately vest in the event of a change in control of Segerdahl.

ANSWER: Defendants admit the allegations contained in paragraph 66 of the Amended Complaint.

67. The SARs also expired on the third anniversary of the grant date, or days following termination of employment.

ANSWER: Defendants admit SARS expired on the third anniversary of the grant date, but otherwise deny the allegations contained in paragraph 67 of the Amended Complaint.

68. The SARs were exercisable on the earlier of expiration or a change in control.

ANSWER: Defendants admit the allegations contained in paragraph 68 of the Amended Complaint.

69. The primary drawback to the SARs from the ESOP's perspective was that the SARs could dilute the ESOP's interest. However, the SARs were designed to incentivize the employees who received the SARs to increase the value of the Segerdahl, which would, theoretically, benefit both the ESOP and the SARs holders.

ANSWER: Defendants admit the allegations contained in paragraph 69 of the Amended Complaint.

Removal of Former Employees from the ESOP in 2014

70. Until 2014, the Segerdahl ESOP permitted former employees to continue participating in the ESOP.

ANSWER: Defendants admit the allegations contained in paragraph 70 of the Amended Complaint.

71. By 2014, a number of former employees were participants in the ESOP.

ANSWER: Defendants admit the allegations contained in paragraph 71 of the Amended Complaint.

72. Bradshaw undertook to remove the former employees from the ESOP, and at which point they would be required to put their ESOP shares.

ANSWER: Defendants deny the allegations contained in paragraph 72 of the Amended Complaint. Further answering, based in part on the advice of the legal advisor

that advised on Segerdahl ESOP issues, Segerdahl decided to amend the ESOP to remove the ability of former employees to continue to own Segerdahl stock. Among other things, Segerdahl believed that current employees should be the ones to reap the benefits from their efforts in increasing Segerdahl's share value, while in contrast certain former employees had gone to work for competitors of Segerdahl.

73. Segerdahl adopted a conformed plan document for the ESOP through the Eleventh Amendment (the "Conformed Plan") on August 27, 2014.

ANSWER: Defendants admit the allegations contained in paragraph 73 of the Amended Complaint.

74. The Conformed Plan did not permit former employees to remain as participants, and required former employees to put the Segerdahl stock in their ESOP accounts back to the ESOP.

ANSWER: Defendants admit the allegations contained in paragraph 74 of the Amended Complaint.

75. Accordingly, after the adoption of the Conformed Plan, Segerdahl was forced to repurchase the interests of the former employee participants.

ANSWER: Defendants deny the allegations contained in paragraph 75 of the Amended Complaint. Further answering, Segerdahl had a pre-existing repurchase obligation to these former employees for which it decided to amend the ESOP to effectively set it at the then applicable share value of $4,230 a share. Segerdahl thus fixed and limited its repurchase exposure to these former employees, which otherwise would have tripled in value leading up to the ICV Sale based on the subsequent rise in Segerdahl's share value.

76. Segerdahl did not pay the former employees 100% of the value of their ESOP accounts immediately. Instead, it paid 20% immediately, and issued notes with a four-year payment cycle for the remainder of the balance, with one-fourth of the remaining balance due each year.

ANSWER: Defendants admit the allegations contained in paragraph 76 of the Amended Complaint.

77. This materially altered Segerdahl's capital structure because:

a. the notes obligated Segerdahl to pay in excess of $40 million, significantly increasing Segerdahl's debt load; and

b. the number of outstanding shares dropped from 19,623.41 to 11,950.23.

ANSWER: Defendants admit that cashing out former employees materially reduced the numbers of shares outstanding and also limited Segerdahl's repurchase exposure as detailed above, but otherwise deny the remaining allegations contained in paragraph 77 of the Amended Complaint. Further answering, Defendants note that Segerdahl's redeeming approximately 8,000 shares of the former employees took its share total from approximately 19,000 shares to approximately 11,000 shares. This also meant that the current employees' ownership of Segerdahl (which is Mr. Rush and his proposed class) went from approximately 60% to 100%, and thus Mr. Rush and his proposed class received all of the benefit (not 60%) of the post cash-out growth in ESOP share value, which went from $4,230 to $13,072 share in the ICV Sale. Segerdahl also made this change because it believed that current employees should be the ones to reap the benefits from their efforts in increasing Segerdahl's share value.

78. By decreasing the number of outstanding shares, forcing the former participants out of the ESOP concentrated the remaining equity interest in the hands of the remaining participants. Thus if Segerdahl increased in value after the force-out, the value of the remaining shares would increase much more.

ANSWER: Defendants admit the allegations contained in paragraph 78 of the Amended Complaint, and refer to their answer above as to how this benefitted Mr. Rush and the proposed class he seeks to represent.

79. These changes to the capital structure left Segerdahl more exposed in the event share prices did increase, for two related reasons. If Segerdahl's price increased, the remaining ESOP participants might retire so that they could put their ESOP shares and realize the increased share price (sometimes called "redemption liability"). However, Segerdahl would have to borrow to pay out those departing ESOP participants, and when added to the already increasing debt load, it would impair Segerdahl's ability to function absent further changes to the capital structure, such as a sale of the Company.

ANSWER: Defendants deny the allegations contained in paragraph 79 of the Amended Complaint, and refer to their answers above on how this force out of former employees fixed and limited Segerdahl's repurchase exposure to these former employees, which otherwise would have tripled based on the subsequent rise in Segerdahl's share value. Further answering, Defendants note that the subsequent rapid rise in Segerdahl's share value (in which it more than tripled in value) inured instead to the benefit of Segerdahl's current employees (which is Mr. Rush and his proposed class), instead of being split between current and former employees. This rapid increase in Segerdahl's share value, which benefitted all current ESOP participants, however, also substantially increased Segerdahl's

repurchase exposure to approximately $80,000,000 by 2016, and drove the Segerdahl Board to consider selling Segerdahl to an outside buyer since this redemption liability would otherwise limit Segerdahl's ability to reinvest in its business going forward.

80. On information and belief, Defendant Joutras and Bradshaw decided to remove the former participants in the ESOP because they were already planning to sell Segerdahl, and wanted to obtain more of the proceeds of the eventual sale for Joutras and the remaining participants.

ANSWER: Defendants deny the allegations contained in paragraph 80, and refer to their answers above including that this allowed all ESOP participants that were current employees, including Mr. Rush and his proposed class and Mr. Joutras and Mr. Bradshaw, to obtain a larger percentage of Segerdahl's post force-out increase in share value.

81. Regardless of the merits of that decision, Defendant Joutras and Bradshaw knew or should have known that it would increase the ESOP's exposure to significantly higher repurchase liability and the resulting debt burden in the event of an increase in share price.

ANSWER: Defendants deny the allegations contained in paragraph 81, and refer to their answers above on these issues.

Segerdahl's 2014 Acquisition of Lehigh Direct

82. In July 2014, Segerdahl acquired its competitor Lehigh Direct, a direct mail printing company.

ANSWER: Defendants admit the allegations contained in paragraph 82 of the Amended Complaint.

83. Segerdahl's discussions and negotiations with Lehigh Direct were conducted on a closed book basis. In particular, Segerdahl was not permitted to access key customer or pricing information until well into the negotiations. On information and belief, Segerdahl entered into

various agreements with Lehigh Direct preventing Segerdahl from poaching Lehigh Direct's employees or contacting Lehigh Direct's customers until after the sale was complete.

ANSWER: Defendants deny the allegations contained in paragraph 83 of the Amended Complaint. Further answering, Segerdahl had done due diligence on Lehigh prior to 2014. Lehigh's customers, employees and salespeople, however, became aware that Lehigh was being shopped to Segerdahl and other competitors, and Lehigh's business suffered during this period. In 2014, Segerdahl again approached Lehigh about selling itself to Segerdahl. Because Lehigh felt it had previously been harmed by allowing Segerdahl to conduct due diligence on its business, Lehigh was not amenable to repeating this process. Segerdahl was agreeable to this in 2014 because Segerdahl's management knew Lehigh's business well by then, and Segerdahl was focused on acquiring Lehigh's assets, in particular its printing equipment, that would give Segerdahl greater capacity to service Segerdahl's then-growing sales and customers. Segerdahl confirmed basic financial information, while Segerdahl's due diligence focused on confirming that the printing equipment was what Segerdahl thought it was. Further, Segerdahl did not need extensive due diligence since it was buying Lehigh at a distress price by 2014, under $20 million, that was so low Segerdahl's auditors required Segerdahl to recognize a close to $ 7 million dollar bargain purchase price gain on Segerdahl's financial statements, *i.e.*, Segerdahl's auditors concluded that Segerdahl had acquired Lehigh for close to $7 million less than the value of just its hard assets.

84. Such closed book transactions are common among competitors in the printing industry, and permit companies to seriously discuss potential mergers without risking the harm to business that could come from premature access to competitive data.

ANSWER: Paragraph 84 of the Amended Complaint contains no allegation against Defendants and, as such, no response is required. Out of an abundance of caution, to the extent an allegation against Defendant exists, Defendants deny such allegation.

B. Defendants' Failure to Appropriately Market Segerdahl

Segerdahl's Board & the Decision to Market Segerdahl

85. In April of 2015, Segerdahl formed a Board of Directors including Defendants Cronin, Goldstein and Mason (the "Board of Director Defendants"), chaired by Defendant Joutras.

ANSWER: Defendants admit the allegations contained in paragraph 85 of the Amended Complaint. Further answering, the Outside Director Defendants Robert Cronin, Rodney Goldstein, and Peter Mason brought extensive industry as well as market experience to the Board of Directors. Peter Mason was an attorney who also had been CEO of a company. Peter Mason had extensive experience advising independent privately held companies, as well as in overseeing transactions. Robert Cronin was a fifty-year veteran of the printing industry who had previously been CEO of Wallace (now part of Donnelly) for 9 years. He serves or has served on numerous boards, all or most of which were involved in the printing industry in some way, and had extensive experience in mergers and acquisitions in the printing industry. Rodney Goldstein was a director of numerous companies, and has extensive experience in mergers and acquisitions and private equity. He was a managing partner at Frontenac (a private equity firm in Chicago), for over 20 years.

86. The Board of Directors was charged with helping ensure Segerdahl's continued growth.

ANSWER: Defendants admit the allegations contained in paragraph 86 of the Amended Complaint, and further note that Segerdahl's stock price close to tripled in value

after the Outside Director Defendants joined the Board, going from $5,719 a share as of April 2015 to $13,072 a share in the ICV Sale on December 7, 2016.

87. The Board of Directors held its first meeting on April 13, 2015.

ANSWER: Defendants admit the allegations contained in paragraph 87 of the Amended Complaint.

88. The Board discussed its goals and objectives, including "providing guidance on possible transactions."

ANSWER: Defendants admit the allegations contained in paragraph 88 of the Amended Complaint.

89. The Board also "noted that the current financing environment in which to enter into a transaction was very favorable and that this 'situation' would probably last for 12-18 months. Several opportunities were discussed."

ANSWER: Defendants admit the allegations contained in paragraph 89 of the Amended Complaint.

90. Each of the three new Board members, Defendants Cronin, Goldstein and Mason, received 100 shares of SARs.

ANSWER: Defendants admit the allegations contained in paragraph 90 of the Amended Complaint.

91. The 300 shares of SARs awarded to Defendants Cronin, Goldstein and Mason further diluted the ESOP's ownership of Segerdahl.

ANSWER: Defendants deny the allegations contained in paragraph 91 of the Amended Complaint. Further answering, like the 200 shares of SARS awarded to Mr. Rush, these SARs awards to the Outside Director Defendants served to incentivize them to

maximize Segerdahl's value and further aligned their interests with those of the ESOP participants.

The 2015 Wind Point Offer

92. On June 10, 2015, Segerdahl's Board discussed upcoming meetings with Wind Point Partners ("Wind Point").

ANSWER: Defendants admit the allegations contained in paragraph 92 of the Amended Complaint.

93. Defendant Joutras retained J.P. Morgan Securities, LLC ("JP Morgan") to serve as an advisor during discussions with Wind Point.

ANSWER: Defendants deny the allegations contained in paragraph 93 of the Amended Complaint. Further answering, Defendants note that the Board decided it wanted to retain JP Morgan to lead these efforts, provided that Jeff Vergamini would be the key point person in this process.

94. JP Morgan's key employee on the Wind Point deal was Jeff Vergamini.

ANSWER: Defendants admit the allegations contained in paragraph 94 of the Amended Complaint.

95. During a special meeting of the Board of Directors on July 21, 2015, Defendant Joutras informed the board members that he was concerned about potential ESOP redemption liability.

ANSWER: Defendants admit the allegations contained in paragraph 95 of the Amended Complaint.

96. At the July 21, 2015 Board meeting, Defendant Joutras told the other members of the Board that, as a result of the potential redemption liability, Joutras "believes it is important that the Board consider strategic alternatives, including the possibility of selling the Company."

ANSWER: Defendants admit the allegations contained in paragraph 96 of the Amended Complaint.

97. At the meeting, Vergamini gave a presentation about Segerdahl's strategic options to address the repurchase liability.

ANSWER: Defendants admit the allegations contained in paragraph 97 of the Amended Complaint.

98. Vergamini identified options including:

a. Execute standalone strategic plan;

b. Significant acquisition;

c. Leverage recapitalization;

d. Sale to a financial sponsor (LBO);

e. Strategic merger; and

f. Sale to a strategic buyer.

ANSWER: Defendants admit that Jeff Vergamini gave a presentation to the Segerdahl Board of Directors on July 21, 2015, and refer to that document as the best evidence of its content. Defendants otherwise deny the allegations in paragraph 98 of the Amended Complaint.

99. Vergamini stated that it was "an opportune time to evaluate a potential transaction to create and unlock value for SG360's shareholders" because, among other reasons, "[s]trategic buyers with health balance sheets fac[e] stagnant organic growth."

ANSWER: Defendants admit that Plaintiff quotes selected excerpts from Jeff Vergamini's presentation, but otherwise deny the allegations in paragraph 99 of the

Amended Complaint and rely on the presentation to speak for itself, rather than on Plaintiff's characterization thereof.

100. Vergamini stated that "SG360 is an attractive acquisition opportunity for potential financial sponsors, family investors and strategic buyers."

ANSWER: Defendants admit that Plaintiff quotes selected excerpts from Jeff Vergamini's presentation, but otherwise deny the allegations in paragraph 100 of the Amended Complaint and rely on the presentation to speak for itself, rather than on Plaintiff's characterization thereof.

101. Looking at sales to strategic buyers, Vergamini explained that benefits included:

a. "immediate significant liquidity and control premium for shareholders"

b. "ability to receive premium valuation given synergy potential" and

c. "likely strategic buyers looking for growth given limited organic growth opportunities."

ANSWER: Defendants admit that Plaintiff quotes selected excerpts from Jeff Vergamini's presentation, but otherwise deny the allegations in paragraph 101 of the Amended Complaint and rely on the presentation to speak for itself, rather than on Plaintiff's characterization thereof.

102. For drawbacks to a sale to a strategic buyer, Vergamini identified:

a. "forgo future value creation potential to the extent value not paid in control premium" and

b. "potentially disruptive to company culture/employees."

ANSWER: Defendants admit that Plaintiff quotes selected excerpts from Jeff Vergamini's presentation, but otherwise deny the allegations in paragraph 102 of the

Amended Complaint and rely on the presentation to speak for itself, rather than on Plaintiff's characterization thereof.

103. Vergamini did not identify risk of loss of competitive information or employees as a risk in a sale to a strategic buyer.

ANSWER: Defendants admit that Jeff Vergamini gave a presentation to the Segerdahl Board of Directors on July 21, 2015, and that document is the best evidence of its content. Further answering, Jeff Vergamini did not need to advise Mr. Joutras and the experienced Outside Board Defendants of this obvious risk.

104. Vergamini did not identify synergistic value premiums as a benefit to a sale to a financial sponsor, and noted that drawbacks to a sale to a financial sponsor included "potentially lower valuation compared to sale to strategic buyer."

ANSWER: Defendants admit that Plaintiff quotes selected excerpts from Jeff Vergamini's presentation, but otherwise deny the allegations in paragraph 104 of the Amended Complaint and rely on the presentation to speak for itself, rather than on Plaintiff's characterization thereof.

105. Vergamini identified 11 of Segerdahl's competitors as "comparable," and noted that in 2015 they were valued at a mean 7.3x EBITDA and median 7.7x EBITDA.

ANSWER: Defendants admit that Plaintiff quotes selected excerpts from Jeff Vergamini's presentation, but otherwise deny the allegations in paragraph 105 of the Amended Complaint and rely on the presentation to speak for itself, rather than on Plaintiff's characterization thereof. Further answering, based on the business judgment of Mr. Joutras and the Outside Director Defendants, the only competitors that were likely to

be interested in and have the potential size to buy Segerdahl were Quad and Donnelley, which had EBITDAs of 4.0x for Quad and 5.8x for Donnelley.

106. EBITDA stands for "Earnings Before Interest, Taxes, Depreciation and Amortization."

ANSWER: There is no allegation contained in paragraph 106 directed toward Defendants to which Defendants must respond. Defendants concur in Plaintiff's definition of "EBITDA."

107. EBITDA is a measure of a company's overall financial performance commonly used by investors and business valuation firms.

ANSWER: There is no allegation contained in paragraph 107 directed toward Defendants to which Defendants must respond. Defendants concur in Plaintiff's definition of "EBITDA."

108. Vergamini then listed 20 precedent transaction in the printing industry between 1999 and 2015. The overall median EBITDA multiplier in those transactions was 7.3x.

ANSWER: Defendants admit that Jeff Vergamini gave a presentation to the Segerdahl Board of Directors on July 21, 2015, but otherwise deny the allegations in paragraph 108 of the Amended Complaint and rely on the presentation to speak for itself, rather than on Plaintiff's characterization thereof. Further answering, the more recent EBITDA multiples were lower, including the ones for Quad and Donnelley's recent most comparably acquisitions.

109. Vergamini identified several potential strategic buyers, including IWCO Direct, Quad Graphics, RR Donnelley, MacAndrews & Forbes and AllianceData.

ANSWER: Defendants admit that Jeff Vergamini gave a presentation to the Segerdahl Board of Directors on July 21, 2015, but otherwise deny the allegations in paragraph 109 of the Amended Complaint and rely on the presentation to speak for itself, rather than on Plaintiff's characterization thereof. Further answering, based on the business judgment of Mr. Joutras and the Outside Director Defendants, the only competitors that were likely to be interested in and have the potential size to buy Segerdahl were Quad and Donnelley.

110. Vergamini also included his biography with the presentation, which emphasized that he had previously worked on a transaction in which a printing company called World Color Press had been sold to Quad Graphics.

ANSWER: Defendants admit that Jeff Vergamini gave a presentation to the Segerdahl Board of Directors on July 21, 2015, but otherwise deny the allegations in paragraph 110 of the Amended Complaint and rely on the presentation to speak for itself, rather than on Plaintiff's characterization thereof. Further answering, Quad acquired Worldcolor for 5.4x EBITDA, substantially below the 6.6x EBITDA that the financial buyer ICV paid for Segerdahl.

111. On August 10, 2015, Segerdahl received an offer from Wind Point to purchase 100% of Segerdahl's stock for an aggregate purchase price of $280 million.

ANSWER: Defendants deny the allegations contained in paragraph 111 as written. Wind Point sent Segerdahl an indication of interest in August 2015, Wind Point never sent Segerdahl a binding offer to purchase the company.

112. Wind Point's $280 million offer was based on an implied value of roughly seven times (7.0x) Segerdahl's expected 2015 EBITDA.

ANSWER: Defendants deny the allegations contained in paragraph 112 as written. Wind Point sent Segerdahl an indication of interest in August 2015, Wind Point never sent Segerdahl a binding offer to purchase the company.

113. During a Board meeting on August 26, 2015, Vergamini "summarized negotiations with Wind Point Partners on a letter of intent to acquire the Company" and the Board discussed "the terms of a possible acquisition."

ANSWER: Defendants admit the allegations contained in paragraph 113 of the Amended Complaint.

114. The Board then authorized Joutras "to execute the letter of intent on behalf of the Company," after incorporating certain revisions requested by the Board.

ANSWER: Defendants admit the allegations contained in paragraph 114 of the Amended Complaint.

115. During a Board meeting on October 7, 2015, the Board discussed "ongoing due diligence being done by Wind Point."

ANSWER: Defendants admit the allegations contained in paragraph 115 of the Amended Complaint.

116. Vergamini then "led a discussion on the value of the 338(h)(10) election to Wind Point."

ANSWER: Defendants admit the allegations contained in paragraph 116 of the Amended Complaint.

117. As explained above, a 338(h)(10) election is a tax election that can provide significant tax savings to the buyer of an S Corporation like Segerdahl.

ANSWER: Defendants deny the allegation contained in paragraph 117 as stating legal conclusions, and refer to its answer elsewhere on the 338(h)(10) election issue.

118. Vergamini noted they had a goal of "an October 22 signing" with Wind Point.

ANSWER: Defendants admit the allegations contained in paragraph 118 of the Amended Complaint.

119. Prior to that time, Defendants had not discussed the potential sale of the ESOP's shares of Segerdahl with Defendant GreatBanc, the ESOP trustee.

ANSWER: Defendants admit that at this meeting the Board requested Peter Mason discuss with Jim Staruck at GreatBanc this potential transaction with Wind Point, but otherwise deny the allegations contained in paragraph 119 of the Amended Complaint.

120. At the October 7, 2015 Board meeting, the Board authorized Defendant Mason to speak to Jim Staruk, the CEO of Defendant GreatBanc, "to explain the transactions being contemplated with Wind Point and their impact on the ESOP."

ANSWER: Defendants admit the allegations contained in paragraph 120 of the Amended Complaint.

121. By October 23, 2015, the deal with Wind Point had fallen through due to issues unrelated to Segerdahl.

ANSWER: Defendants admit the allegations contained in paragraph 121 of the Amended Complaint.

The Retention of Defendant Schneider as CEO

122. From 2006 to 2012, Defendant Schneider had served the president, digital solutions and chief technology officer, of RR Donnelly, one of Segerdahl's competitors.

ANSWER: Defendants admit the allegations contained in paragraph 122 of the Amended Complaint.

123. During 2015, Defendant Schneider worked as an advisor for Wind Point regarding Wind Point's potential acquisition of Segerdahl from the ESOP.

ANSWER: Defendants admit the allegations contained in paragraph 123 of the Amended Complaint.

124. Defendant Joutras decided to bring Defendant Schneider in as the new CEO to help sell Segerdahl.

ANSWER: Defendants admit that Mr. Joutras recommended to the Board hiring Ms. Schneider as the new CEO for Segerdahl, but otherwise deny the allegations contained in paragraph 124 of the Amended Complaint.

125. During the October 23, 2015 meeting of Segerdahl's Board, Defendant Schneider was introduced to the Board of Directors. She confirmed that she did not have an ongoing relationship with Wind Point, and that she was free to work with Segerdahl.

ANSWER: Defendants admit the allegations contained in paragraph 125 of the Amended Complaint.

126. Defendant Schneider then "made a high level presentation on her view of the Company's market, its potential and strategies for future growth."

ANSWER: Defendants admit the allegations contained in paragraph 126 of the Amended Complaint.

127. Later during the Board meeting on October 23, 2015, at Defendant Joutras's request, Vergamini addressed the topic of strategic alternatives and "whether the Wind Point deal terms could be fulfilled by a different private equity firm."

ANSWER: Defendants admit the allegations contained in paragraph 127 of the Amended Complaint.

128. Defendant Schneider was appointed CEO and President of Segerdahl on December 1, 2015, and on or about that time became a member of Segerdahl's Board of Directors.

ANSWER: Defendants admit the allegations contained in paragraph 128 of the Amended Complaint.

129. Defendant Joutras simultaneously resigned as CEO and President.

ANSWER: Defendants deny the allegations contained in paragraph 129 of the Amended Complaint as written. Richard Joutras resigned as CEO and President of Segerdahl on November 30, 2015.

130. Joutras retained the title of "Chairman" of Segerdahl's Board.

ANSWER: Defendants admit that Richard Joutras retained the title of "Chairman" of Segerdahl's Board of Directors following his resignation as CEO and President of Segerdahl.

131. However, company marketing materials identify Joutras as a "Non-Executive Chairman."

ANSWER: Defendants deny the allegations contained in paragraph 131 of the Amended Complaint as it is unclear to which "marketing materials" Plaintiff refers.

132. In his capacity as Chairman, Joutras was no longer a Segerdahl employee.

ANSWER: Defendants deny the allegations contained in paragraph 132 of the Amended Complaint. Further answering, under the terms of his employment agreement with Segerdahl, Mr. Joutras continued as an employee of Segerdahl, which kept his non-compete in place and extended it. Under this employment agreement, Mr. Joutras also undertook certain key job duties, including facilitating the transition to the new CEO and

calming key customers and employees when Segerdahl was being shopped, which resulted in the ICV Sale on December 7, 2016. All of this rebounded to the benefit of Segerdahl.

133. When Schneider became the CEO, the Board awarded her 800 SARs, the same number Joutras had received in April of 2014.

ANSWER: Defendants admit the allegations contained in paragraph 133 of the Amended Complaint.

134. However, only one-third (1/3) of Defendant Joutras's 2014 SARs had vested by the time he stepped down in favor of Schneider in December of 2015.

ANSWER: Defendants deny the allegations contained in paragraph 134 of the Amended Complaint. Further answering, under the terms of his employment agreement with Segerdahl, Mr. Joutras remained as an employee of Segerdahl until the ICV Sale on December 7, 2016. This included certain key job duties Mr. Joutras had to facilitate the transition to the new CEO, and to calm Segerdahl's customers and key employees once Segerdahl was being shopped to potential buyers.

135. And, under the terms of the 2014 SARs, employees who left before fully vesting forfeited their unvested SARs.

ANSWER: Defendants admit the allegations contained in paragraph 135 of the Amended Complaint.

136. Nevertheless, Joutras did not forfeit any of his unvested SARs.

ANSWER: Defendants deny the allegations contained in paragraph 136 of the Amended Complaint. Further answering, under the terms of his employment agreement with Segerdahl, Mr. Joutras remained as an employee of Segerdahl until the ICV Sale on December 7, 2016. This included certain key job duties Mr. Joutras had to facilitate the

transition to the new CEO, and to calm Segerdahl's customers and key employees once Segerdahl was being shopped to potential buyers.

137. Accordingly, Segerdahl then had 1,600 outstanding SARs awarded to its current and former CEO.

ANSWER: Defendants deny the allegations contained in paragraph 137 of the Amended Complaint. Further answering, Defendants note that Mr. Joutras and Ms. Schneider had different job roles and duties by this time, and that the employment agreement with Mr. Joutras that allowed him to continue to vest in his previously awarded SARS units imposed critical job obligations on Mr. Joutras and kept his non-compete in effect, all to the benefit of Segerdahl. As to Ms. Schneider, the Board exercised its reasonable business judgment to award her the same number of SARS shares as had been awarded to her male CEO predecessor. These 800 SARS shares were awarded at the then applicable strike price of $7,792 a share, and strongly incentivized her to maximize Segerdahl's share value, including in the subsequent sale to ICV, where her SARs shares became worth $4.2 million based on the price ICV paid for Segerdahl.

138. The awards to Defendant Schneider and certain other employees on December 1, 2015 pushed the total outstanding SARs awards over the 20% limit set out in the 2014 SARs Plan, yet the Board of Directors did nothing to ensure that any dilution to the ESOP's interest from the new 2015 SARs awards was no more than necessary.

ANSWER: Defendants deny the allegations contained in paragraph 138 of the Amended Complaint. In November 2015 the Board exercised its sound business judgment to vote to increase the SARs award limit to 30% so as to award SARS to the new CEO and other senior managers that became part of the new CEO's team.

139. Any of the Defendants could have helped ameliorate the dilutive effect of the new SARs awards to Defendant Schneider by demanding that, if Joutras would no longer serve as CEO, he forfeit his unvested SARs awards under the 2014 SARs plan.

ANSWER: Defendants deny the allegations contained in paragraph 139 of the Amended Complaint, and refer to their answers above as to why the Board exercised its sound business judgment to enter the employment agreement with Mr. Joutras that kept his non-compete in place and extended it, and under which Mr. Joutras undertook certain key job duties, including facilitating the transition to the new CEO and calming key customers and employees when Segerdahl was being shopped.

140. Instead, the Defendants, including the Board of Director Defendants who had been hand-picked by Joutras, did nothing, and allowed Joutras to retain all of his 800 SARs.

ANSWER: Defendants deny the allegations contained in paragraph 140 of the Amended Complaint, and refer to their answers above as to why the Board exercised its sound business judgment to enter the employment agreement with Mr. Joutras that allowed him to continue to vest in his SARS shares.

141. Defendant Joutras was instead able to exert his influence to retain that valuable compensation for services as an executive he was no longer providing, and to obtain similar treatment for his relative Paul White, who also switched to a non-employment role at the same time.

ANSWER: Defendants deny the allegations contained in paragraph 141 of the Amended Complaint, and refer to their answers above as to why the Board exercised its sound business judgment to enter the employment agreement with Mr. Joutras that kept his non-compete in place and extended it, and under which Mr. Joutras undertook certain key

job duties, including facilitating the transition to the new CEO and calming key customers and employees when Segerdahl was being shopped.

Further answering, as to Mr. White, the new CEO Ms. Schneider negotiated a terminal employment agreement with him that that continued his $300,000 salary for 2016 with employment benefits, but that subjected Mr. White to a non-compete that continued for one-year after his employment ended on December 31, 2016. Mr. White had no non-compete prior to entering this agreement, and he had built Segerdahl's sales force and had strong relationships with key sales people (who also did not have non-competes) and with key customers. Mr. White was also second-in-command in running the company under Mr. Joutras, and thus had extensive knowledge and insight into Segerdahl's business that would be invaluable to any competitor. Mr. White's terminal employment agreement thus was critical to protecting Segerdahl from Mr. White going to a competitor for two years, which was even more important under the circumstances since the Board expected to be putting Segerdahl up for sale in the near future.

142. During an interview with a journalist on or about December 15, 2015, Defendant Schneider described her plans as the new CEO and President of Segerdahl.

ANSWER: Defendants admit that Printing Industry World interviewed Mary Lee Schneider in December 2015. Except as expressly admitted herein, defendants deny the allegations of paragraph 142 of the Complaint.

143. In the interview, Defendant Schneider described Segerdahl as a "$300 million company."

ANSWER: Defendants admit that Printing Industry World interviewed Mary Lee Schneider in December 2015, and that in that interview she expressed Segerdahl's potential

for $300,000,000 in sales, which were never achieved after the direct mail printing industry begin entering a sales downturn in 2016. Except as expressly admitted herein, defendants deny the allegations of paragraph 143 of the Amended Complaint.

Defendants Reject Vergamini's Suggestion to Explore a Transaction with a Strategic Buyer and Instruct Vergamini Only to Contact Investment Buyers that Will Retain Management and Promote Management's Strategies

144. The Segerdahl Fiduciary Defendants and their advisors engaged in a flawed process leading up to the sale of the ESOP's shares of Segerdahl to ICV Partners. Instead of taking reasonable steps to market the ESOP's shares in order to find a buyer that would pay the highest price, the Segerdahl Fiduciary Defendants limited their efforts to finding a buyer that, after the transaction had closed, would allow the Segerdahl Fiduciary Defendants, especially Defendant Schneider, to maintain control over the company's day to day operations, and likely remain at their jobs much longer than would a competitor.

ANSWER: Defendants deny the allegations contained in paragraph 144 of the Amended Complaint. Further answering, the Board Defendants note that their advisor Jeff Vergamini had warned them of the "bilk or buy" risk if they shopped to competitors, and that he agreed with the Board Defendants' business judgment to first shop to financial buyers not competitors for the reasons noted above in the answer to Paragraph 13 of the Amended Complaint. As detailed therein, this was the careful choice in these circumstances. The Board Defendants financial interests (worth more than $40,000,000) were aligned with the ESOP's to maximize the sales price of Segerdahl without taking undue risk as detailed above in the answer to Paragraph 12 of the Amended Complaint, while Mr. Rush's allegations ignored discovery he has confirming that Mr. Joutras did not have any interest in ICV Partners pre or post-sale. Finally, Defendants note that Segerdahl's senior managers

who continued with Segerdahl post-sale (which included Mr. Rush) were part of what financial buyers sought when acquiring Segerdahl from the ESOP. Their continued presence with Segerdahl post-sale brought value (not conflict) for the Segerdahl ESOP when shopping to financial buyers, while thereby enabling Segerdahl to avoid the "bilk or buy" risk discussed above when shopping to competitors.

145. During a Board meeting on January 20, 2016—Schneider's first meeting as President, CEO and a member of the Board—Vergamini "reviewed the market for a potential sale of or private equity investment in the Company."

ANSWER: Defendants admit deny the allegations contained in paragraph 145 of the Amended Complaint.

146. At that meeting, Vergamini delivered a presentation similar to the presentation he had given during the July 21, 2015 Board meeting, identifying the same benefits and drawbacks to sales to strategic buyers and investment buyers, and identifying the same five potential strategic buyers.

ANSWER: Defendants admit that Jeff Vergamini gave a presentation to the Segerdahl Board of Directors on January 20, 2016, but otherwise deny the allegations in paragraph 146 of the Amended Complaint and rely on the presentation to speak for itself, rather than on Plaintiff's characterization thereof. Further answering, the Board Defendants note that based on their business judgment, the only competitors that were likely to be interested in and have the potential size to buy Segerdahl were Quad and Donnelley.

147. Vergamini suggested that, among other things, Segerdahl should explore a sale to a strategic buyer, such as a competitor, and provided a timeframe during the sales process for doing so.

ANSWER: Defendants admit that Jeff Vergamini gave a presentation to the Segerdahl Board of Directors on January 20, 2016, but otherwise deny the allegations in paragraph 1476 of the Amended Complaint and rely on the presentation to speak for itself, rather than on Plaintiff's characterization thereof. Further answering, the Board Defendants note that their advisor Jeff Vergamini had warned them of the "bilk or buy" risk if they shopped to competitors, and that he agreed with the Board Defendants' business judgment to first shop to financial buyers not competitors for the reasons noted above in the answer to Paragraph 13 of the Amended Complaint. Mr. Vergamini proposed timeline in his presentation did leave an opening to contact potential competitors if needed after Segerdahl received indications of interest from financial buyers. This is consistent with what the Board Defendants directed here, for JP Morgan first to see if it could get a good price from financial buyers that locked in Segerdahl's extraordinary increase in value without risking shopping to competitors. This is the careful strategy under the circumstances.

148. However, Vergamini's presentation noted that a determination had not yet been made "whether the process will include both financial sponsor and / or strategic buyers."

ANSWER: Defendants admit that Jeff Vergamini gave a presentation to the Segerdahl Board of Directors on January 20, 2016, but otherwise deny the allegations in paragraph 148 of the Amended Complaint and rely on the presentation to speak for itself, rather than on Plaintiff's characterization thereof. Further answering, the Board Defendants were concerned about shopping to competitors for the reasons noted above in the answer to Paragraph 13 of the Amended Complaint.

149. At the January 20, 2016 meeting, the Board of Directors asked Vergamini "to present options that would enable Segerdahl to continue to invest in the business" while managing ESOP repurchase liability.

ANSWER: Defendants deny the allegations contained in paragraph 149 of the Amended Complaint, and refer to the Board Minutes as the best evidence of its content.

150. The Board asked that Vergamini be ready to initiate the sales process "early in the second calendar quarter of 2016.

ANSWER: Defendants admit the allegations contained in paragraph 150 of the Amended Complaint.

151. At a Board meeting on April 11, 2016, Vergamini gave an updated presentation and "reviewed the current state of the anticipated process to explore a potential sale of the Company."

ANSWER: Defendants admit the allegations contained in paragraph 151 of the Amended Complaint.

152. Vergamini's presentation noted that "strategic acquirers [were] aggressively pursuing M&A to augment stagnant organic growth."

ANSWER: Defendants admit that Jeff Vergamini gave a presentation to the Segerdahl Board of Directors on April 11, 2016, but otherwise deny the allegations in paragraph 152 of the Amended Complaint and rely on the presentation to speak for itself, rather than on Plaintiff's characterization thereof. Further answering, Defendants note that the next bullet in this presentation noted that "Financial sponsors and family office investment partners still have significant capital to be invested."

153. Vergamini's presentation also noted that there was a "significant lack of high quality businesses available with EBITDA of ~$30-$60 million," as Segerdahl had.

ANSWER: Defendants admit that Jeff Vergamini gave a presentation to the Segerdahl Board of Directors on April 11, 2016, but otherwise deny the allegations in paragraph 153 of the Amended Complaint and rely on the presentation to speak for itself, rather than on Plaintiff's characterization thereof.

154. Essentially, Vergamini indicated that Segerdahl was an outstanding and desirable target in a sale to a competitor and that such strategic acquirers were "aggressively" pursuing merger transactions.

ANSWER: Defendants deny the allegation contained in paragraph 154 of the Amended Complaint. Further answering, the Board Defendants note that their advisor Jeff Vergamini had warned them of the "bilk or buy" risk if they shopped to competitors, and that he agreed with the Board Defendants' business judgment to first shop to financial buyers not competitors for the reasons noted above in the answer to Paragraph 13 of the Amended Complaint.

155. Vergamini's presentation again provided a suggested timeline for contacting potential strategic buyers, and, like his July 2015 presentation, showed EBITDA multiples for publicly traded competitors (mean of 7.1x and median of 7.5x for 2016) and in 20 "precedent" printing industry transactions between 1999 and 2016 (median of 7.3x).

ANSWER: Defendants deny the allegation contained in paragraph 154 of the Amended Complaint. Further answering, the Board Defendants note that their advisor Jeff Vergamini had warned them of the "bilk or buy" risk if they shopped to competitors, and that he agreed with the Board Defendants' business judgment to first shop to financial buyers not competitors for the reasons noted above in the answer to Paragraph 13 of the Amended Complaint. The Board Defendants further note that this presentation confirmed

that the EBITDA's of the only potential strategic buyers for Segerdahl, Quad and Donnelley, were low: for 2016 their EBITDA's were 4.2x for Quad and 5.4x for Donnelley. Likewise, and consistent with the Board Defendant's business experience, the prices that Quad and Donnelly paid for printing competitors like Segerdahl were on the low side and were less than the 6.6x EBIDTA multiple ICV paid for Segerdahl.

156. At that meeting, the Board of Director Defendants instructed Vergamini not to explore a sale to a strategic buyer.

ANSWER: Defendants deny paragraph 156 of the Amended Complaint as written. Further answering, as Plaintiff concedes in paragraph 157 of the Amended Complaint, the Board of Directors asked Vergamini that the sale process be limited initially to potential acquirers identified by JP Morgan and agreed to by the Board. This did not preclude the possibility of a sale to a competitor in the future should the search for a financial buyer not yield an acceptable offer.

157. The Board minutes stated that "for competitive and strategic reasons the sale process should be limited initially to potential acquirers specifically identified by JP Morgan and agree to by the Board."

ANSWER: Defendants admit the allegation contained in paragraph 157 of the Amended Complaint, and refer to their answers above as to why the Board Defendants exercised their business judgment to adopt this strategy to first shop Segerdahl to financial buyers.

158. SRR's Analysis of Transaction Fairness, discussed at greater length below, *see infra* ¶¶ 3262-364, states that Segerdahl "considered the disclosure of information to a competitor

(e.g., customer lists, sales personnel, profit margins) to be too damaging to the Company if strategic buyers were approached and a transaction was not completed."

ANSWER: Defendants admit that Plaintiff's quote from the SRR Fairness Opinion is accurate, and refer to that document as the best evidence of its content.

159. The Board of Director Defendants instead instructed Vergamini to consider the following criteria when determining potential acquirers:

a. Growth oriented firm with similar philosophies regarding investment and debt that are consistent with Segerdahl's management's views for running the business.

b. Segerdahl would fit within the firm's investment strategy.

c. Experience in or exposure to direct marketing / advertising industries.

d. Ability to accelerate management's growth strategy through access to capital.

e. Ability to complete a transaction.

ANSWER: Defendants admit the allegations contained in paragraph 159 of the Amended Complaint. Further answering, these criteria were consistent with obtaining maximum value from financial buyers, who if they did not fit at least some of them would have been unlikely to make an offer maximizing Segerdahl's value. These criteria are also consistent with the interests of Mr. Rush and his proposed class members, who all had to be active employees to continue owning ESOP stock. Their interest in their continued employment (which is what also funds their retiree benefits) is not inconsistent with their interest in cashing out the ESOP while not taking undue risk with the extraordinary value in retirement wealth that the Segerdahl ESOP had already accumulated.

160. These criteria all assumed that a buyer would retain management and support management's existing strategy.

ANSWER: Defendants deny the allegations contained in paragraph 160 of the Amended Complaint.

161. Obtaining the best price for the ESOP was not among the criteria identified.

ANSWER: Defendants deny the allegation contained in paragraph 161 of the Amended Complaint, and refer to their answers above on why the Board Defendants exercised their business judgment to seek maximum value for the Segerdahl ESOP that would lock in its recent extraordinary gains without taking undue risk, and why these criteria were consistent with obtaining maximum value from a financial buyer.

162. The ESOP had no interest whatsoever in who managed Segerdahl after the ESOP Buyout.

ANSWER: Defendants deny the allegation contained in paragraph 162 of the Amended Complaint, and refer to their answers above on why the Board Defendants exercised their business judgment to seek maximum value for the Segerdahl ESOP that would lock in its recent extraordinary gains without taking undue risk. Defendants further note that Segerdahl's senior managers (including Mr. Rush) were part of what financial buyers sought when acquiring Segerdahl from the ESOP, and thus their continued presence with the company post-sale brought value (not conflict) for the Segerdahl ESOP when shopping to financial buyers, while thereby enabling the Segerdahl ESOP to avoid the "bilk or buy" risk discussed above of shopping to competitors.

163. The ESOP would be giving up its entire, 100% ownership interest in Segerdahl.

ANSWER: Defendants agree that the sale to ICV allowed the Segerdahl ESOP to cash out all of its undiversified and highly risky investment in Segerdahl stock after its recent extraordinary rise in value (more than tripling in value in the two years leading up to the

ICV Sale) at an all-time high in value, despite that Segerdahl was facing declining sales in 2016 as part of an industry decline that accelerated post-sale.

164. The ESOP's only interest was in obtaining the best possible price for its shares.

ANSWER: Defendants deny the allegation contained in paragraph 164 of the Amended Complaint and refer to their answers above as to why they focused on obtaining maximum value for the ESOP while avoiding undue risk. "Careful rather than bold" was the controlling standard here.

165. It is clear from these criteria on the face of the Board's meeting minutes that the Board of Directors, Schneider and Joutras had already determined to focus on a deal that primarily served management's interests, and not the ESOP's.

ANSWER: Defendants deny the allegations contained in paragraph 165 of the Amended Complaint and refer to their answers above as to why these allegations are erroneous, including that it is implausible to assume that Rick Joutras and the outside directors Peter Mason, Robert Cronin and Rodney Goldstein, would have acted contrary to their financial interests (worth collectively close to $40,000,000) when exercising their business judgment here.

166. The only people that benefitted from selling to a company with the criteria set down by the Board of Director Defendants were Segerdahl's management, and the investment buyer that would be able to buy Segerdahl at a discount and sell in a few years at a significant profit.

ANSWER: Defendants deny the allegations contained in paragraph 166 of the Amended Complaint and refer to their answers above as to why these allegations are erroneous. Further answering, Defendants note that although elsewhere Mr. Rush alleges that he claims that ICV bought Segerdahl cheap, as to his own money, he passed on making

a post-sale investment in Segerdahl offered him even though he had earlier invested in Segerdahl by buying its ESOP stock in stock offerings.

167. Defendants attempted to justify their refusal to explore a sale to a strategic buyer on the grounds that it could be damaging to Segerdahl if a strategic buyer were approached but the transaction was not completed, on the grounds that, Defendants stated, a competitor might use the sales process to obtain customer lists, profit information, or to poach sales personnel.

ANSWER: Defendants deny paragraph 167 of the Amended Complaint as written, and refer to their answers above on why the Board Defendants exercised their business judgment to first shop Segerdahl to financial buyers.

168. However, Defendants' refusal to even explore a sale to a strategic buyer was not related to any potential competitive harm.

ANSWER: Defendants deny paragraph 168 of the Amended Complaint as written, and refer to their answers above on why the Board Defendants exercised their business judgment to first shop Segerdahl to financial buyers, and on Mr. Rush's own allegations above admitting that the option of shopping to competitors was considered by the Board Defendants.

169. Many of the precedent transactions presented by Vergamini involved purchases of printing companies by their competitors.

ANSWER: Defendants deny paragraph 169 of the Amended Complaint as written, and refer to their answers above on why the Board Defendants exercised their business judgment to first shop Segerdahl to financial buyers, including why they were doubtful that Quad or Donnelley would have paid a premium under these circumstances.

170. There is no reason that Segerdahl would have been more likely to experience competitive harm than the numerous other printing companies that were sold to other printing companies—most of whom, as explained below, obtained a much better price than did Segerdahl in the ESOP Buyout.

ANSWER: Paragraph 170 of the Amended Complaint states argument to which no response is required. If, however, a response is required, Defendants deny any allegation therein, and refer to their answers above on why the Board Defendants exercised their business judgment to first shop Segerdahl to financial buyers, including why they were doubtful that Quad or Donnelley would have paid a premium under these circumstances. Defendants also refer to their answers above on the harm Lehigh suffered when it shopped itself to competitors.

171. As noted above, it is common to negotiate potential transactions among competitors in the printing industry on a closed book basis to protect those interests.

ANSWER: Paragraph 171 of the Amended Complaint states argument to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 171 of the Amended Complaint, including any embedded factual assumptions for the reasons stated earlier in the Answer.

172. Instead, Defendants' refusal to explore a sale to a strategic buyer was motivated to preserve their own roles managing Segerdahl.

ANSWER: Paragraph 172 of the Amended Complaint states argument to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 172 of the Amended Complaint, including any embedded factual assumptions for the reasons stated earlier in the Answer. Further answering, Defendants note that Mr. Rush

again makes allegations contradicted the facts he has learned in discovery, including that four of the five Board Defendants had no role in Segerdahl post-sale.

173. Strategic buyers often pay a higher price when they purchase a competitor than do financial or investment buyers, because strategic buyers will be able to quickly achieve economies of scale and synergistic business opportunities that allow them to make more from the acquisition than a financial buyer will make.

ANSWER: Paragraph 173 of the Amended Complaint states argument to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 173 of the Amended Complaint, including any embedded factual assumptions for the reasons stated earlier in the Answer.

174. However, strategic buyers often eliminate upper management from companies they purchase, in part because the buyers' management can manage both enterprises—thereby providing additional efficiencies and making the acquisition even more profitable for the strategic buyer.

ANSWER: Paragraph 174 of the Amended Complaint states argument to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 174 of the Amended Complaint, including any embedded factual assumptions for the reasons stated earlier in the Answer.

175. By contrast, financial or investment buyers typically retain management to continue operating the company.

ANSWER: Paragraph 175 of the Amended Complaint states argument to which no response is required. If, however, a response is required, Defendants note that Segerdahl's senior managers (including Mr. Rush) were part of what financial buyers sought when

acquiring Segerdahl from the ESOP, and thus their continued presence with the company post-sale brought value (not conflict) for the Segerdahl ESOP when shopping to financial buyers, while thereby enabling the Segerdahl ESOP to avoid the "bilk or buy" risk discussed above of shopping to competitors.

176. Instead, financial buyers hope that the company will continue to grow after the acquisition, and often intend to resell the company at a profit after a few years.

ANSWER: Paragraph 176 of the Complaint states argument to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 176 of the Complaint, including any embedded factual assumptions for the reasons stated earlier in the Answer.

177. In addition to instructing Vergamini to focus his search on investment buyers to the exclusion of strategic buyers, during its April 11, 2016 meeting Segerdahl's Board accepted Defendant Joutras's resignation as Administrator of the ESOP, and appointed Defendant Schneider and another Segerdahl employee instead.

ANSWER: Defendants admit the allegations contained in paragraph 177 of the Amended Complaint. Further answering, the ESOP Administrator played no role in the ICV Sale, rather exclusive control over that sale was delegated to the independent trustee GreatBanc.

178. Thus, during the very meeting on April 11, 2016 at which Segerdahl's Board committed to sacrificing the ESOP's interest for the benefit of management, every member of Segerdahl's Board served as an express or *de facto* ERISA fiduciary for the ESOP.

ANSWER: Paragraph 178 of the Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the

allegations in paragraph 178 of the Complaint, including any embedded factual assumptions for the reasons stated earlier in the Answer.

179. ERISA's fiduciary duties are derived from, but are more exacting than, the fiduciary duties imposed on common law trustees under the common law of trusts. *Varity Corp. v. Howe*, 516 U.S. 489, 497 (1996). Under the common law of trusts, when a trustee determines to sell trust assets, "[t]he principal object of the sale is to obtain the maximum price. The trustee should do his best to secure competitive bidding and to surround the sale with such other factors as will tend to cause the property to sell to the greatest advantage." Amy M. Hess & George T. Bogert, The Law of Trusts and Trustees § 745, at 488 (3d ed. 2009). The Restatement (Third) of Trusts § 77 provides that:

> It is entirely proper for the trustee to conduct a study for the purpose of ascertaining intrinsic worth, but the trustee must recognize the limitations of such an appraisal. He must also test the market. The courts of the United States have given full recognition to the duty to test the market….

ANSWER: Paragraph 179 of the Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 179 of the Complaint, including any embedded factual assumptions for the reasons stated earlier in the Answer, and rely on the law identified in paragraph 179 to speak for itself, including in relation to the rest of the applicable ERISA law, rather than on Plaintiff's characterization thereof. Further answering, Plaintiff ignores Seventh Circuit authority on this issue, including (i) that fiduciaries get deference in balancing competing interests under conditions of uncertainty, *George v Kraft Foods, Inc.*, 641 F.3d 786, 797 (7th Cir. 2011), and *Armstrong v. LaSalle Bank National Ass'n*, 446 F.3d 728, 733 (7th Cir. 2006), and (ii) *Armstrong's* rule that ESOP fiduciaries get deference in decisions managing an

ESOP, with the caveat they are "supposed to be careful rather than bold" in doing so. *Id.* at 732-33.

180. Instead of engaging in a process to "test the market" to "obtain the maximum price" for the ESOP's shares or to "cause the [ESOP's shares] to sell to the greatest advantage" for the ESOP, Segerdahl's Board made the conscious and intentional decision to focus on a sale to an investment buyer that would preserve management after the deal.

ANSWER: Defendants deny the allegations in paragraph 180 of the Amended Complaint as written, and refer to their answers above on why the Board Defendants exercised their business judgment to first shop Segerdahl to financial buyers.

181. An ERISA fiduciary is obligated to carry out their obligations "with an 'eye single to the interests of the participants and beneficiaries.'" *Leigh*, 727 F.2d at 128. Here, Defendants did not sell Segerdahl "with an eye single" to the ESOP's interests. Instead, they conducted themselves at every turn to benefit management, even including at the ESOP's expense.

ANSWER: Paragraph 181 of the Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 181 of the Complaint, including any embedded factual assumptions for the reasons stated earlier in the Answer, and rely on the law identified in paragraph 181 to speak for itself, including in relation to the rest of the applicable ERISA law, rather than on Plaintiff's characterization thereof. Further answering, Defendants note that this is one more example of Mr. Rush repeatedly making inaccurate allegations that contradict the facts he has learned in discovery, including ignoring that four of the five Board Defendants had no role in Segerdahl post-sale.

Vergamini Contacts Investment Buyers that Will Preserve Management

182. Applying the criteria set down by the Board of Director Defendants, JPMorgan contacted 18 firms.

ANSWER: Defendants admit that JPMorgan contacted 18 firms as part of the sales process, but otherwise deny the allegations contained in paragraph 182 of the Amended Complaint.

183. Between May and June of 2016, eleven of the eighteen firms JPMorgan contacted received management presentations and facility tours.

ANSWER: Defendants admit the allegations contained in paragraph 183 of the Amended Complaint.

184. The management presentation highlighted that:

a. Segerdahl was the "fourth largest fully-integrated provider of direct mail marketing programs in North America";

b. Segerdahl's 2016 estimated revenue was $311 million and estimated 2016 EBITDA was $46 million;

c. Segerdahl had a "strong, highly experienced management team with significant competitive knowledge/insight";

d. Potential new competitors would face "significant barriers to entry";

e. Segerdahl's management estimated that Segerdahl's EBITDA would grow to $64 million by 2020;

f. Segerdahl was an "attractive platform for additional future growth";

g. Segerdahl had an "industry leading management team" and was "an ideal consolidator";

h. The printing industry was "fragmented" and comprised of "numerous weaker regional and local companies that can easily be acquired and integrated to create significant value"; and

i. There was an "actionable pipeline of potential value-accretive targets that would immediately add customer accounts, sales professionals, sales volumes and additional equipment."

ANSWER: Defendants admit that Plaintiff quotes selected excerpts from this presentation, but deny the allegations in paragraph 184 of the Amended Complaint and rely on the presentation to speak for itself, rather than on Plaintiff's characterization thereof.

Further answering, as 2016 progressed, Segerdahl begin substantially missing the sales and EBITDA targets that JP Morgan had touted in this pitch presentation to potential buyers, all of which became apparent to them in the due diligence process, and which documents were provided or made available to Mr. Rush prior to his Amended Complaint.

185. JPMorgan also sent an updated version of its presentation about "comparable company trading and operating metrics" and "selected precedent transactions" which

a. identified eight of Segerdahl's competitors and explained that they traded at a median 8.7x LTM EBITDA multiple and a mean 8.4x LTM EBITDA multiple; and

b. identified twenty transactions in the printing industry between 1999 and 2016, with a median 7.8x EBITDA multiple.

ANSWER: Defendants admit that JP Morgan included updated materials, and that document is the best evidence of its content. Further answering, Defendants note that these pitch marketing materials included companies that were in very different businesses, and that excluded purchases for lower EBITDA multiples in its "selected precedent

transactions." For the reasons stated earlier in the Answer, the Board Defendants were skeptical that Quad or Donnelly would have paid a premium for Segerdahl above what financial buyers were offering.

186. Vergamini's correspondence with the prospective purchasers emphasized fit with management. For example,

a. On May 20, 2016, Vergamini told one prospective bidder that Defendant Schneider "felt that [the prospective bidder] would be a great partner for her and her management team" and that the bidder would be a "great cultural fit with Mary Lee and SG360"

b. Another prospective bidder, Wynnchurch Capital ("Wynnchurch"), told Vergamini that:

i. "We were very impressed by Mary Lee and excited by the potential business opportunity. She really has a firm grasp of the business and industry, and there seems to be clear opportunity for SG360 to continue its growth, perhaps, even improve upon its overall efficiency and profitability performance"

ii. "At Wynnchurch, we often say that we're in the 'people selection' business, rather than the 'asset or company selection' business, because the most important decision we can make is to partner with a top notch, operationally focused CEO. … Our best CEO partnerships are those in which we have a strong operational leader in the CEO chair and Wynnchurch can simply play the role of supportive board members, strategic sounding boards, and M&A and integration resource."

ANSWER: Defendants admit Jeff Vergamini corresponded with prospective buyers, and that snippets of those communications on management fit are quoted above. The actual

documents are the best evidence of their content. Further answering, Defendants note that Segerdahl's senior managers (including Mr. Rush) were part of what financial buyers sought when acquiring Segerdahl from the ESOP, and thus their continued presence with the company post-sale brought value (not conflict) for the Segerdahl ESOP when shopping to financial buyers, while thereby enabling the Segerdahl ESOP to avoid the "bilk or buy" risk discussed above of shopping to competitors.

187. As set forth in more detail below, Vergamini also highlighted the value a potential bidder could obtain through a sale-leaseback of Segerdahl's real estate and making a 338(h)(10) election, and provided materials to the prospective bidders detailing the financial benefits those bidders would receive from a sale-leaseback and 338(h)(10) transaction.

ANSWER: Defendants admit that Vergamini highlighted the value to potential buyers that could be obtained through a sale-leaseback and making a 338(h)(10) election, and refer to their answers above to Paragraphs 15 and 17 of the Amended Complaint.

188. Of the eleven firms to which JPMorgan provided presentations, four (4) submitted indications of interest.

ANSWER: Defendants admit the allegations contained in paragraph 188 of the Amended Complaint.

189. The indications of interest were non-binding but could be accepted by Segerdahl as a conditional offer.

ANSWER: Defendants deny the allegations contained in paragraph 189 of the Amended Complaint.

190. All four firms that submitted indications of interest were prospective investment buyers, none were strategic buyers.

ANSWER: Defendants admit that four indications of interest were received from potential financial buyers.

191. The contemplated purchase prices in the four proposals ranged from $250 million to $300 million.

ANSWER: Defendants deny the allegations contained in paragraph 191 of the Amended Complaint. Further answering, Defendants note that these were indications of interest that were the prelude to due diligence by potential buyers that may or may not lead to offers, and that ICV Partners gave the highest indication of interest of $300 million.

192. One of the four proposals came from Wynnchurch.

ANSWER: Defendants admit the allegations contained in paragraph 192 of the Amended Complaint.

193. Wynnchurch offered $270-293 million, representing a 5.8x – 6.3x multiple over 2016 estimated EBITDA of $46.4 million.

ANSWER: Defendants deny the allegations contained in paragraph 193 of the Amended Complaint. Further answering, Defendants note that this was an indication of interest from Wynnchurch who dropped out after conducting due diligence on Segerdahl. Even this preliminary indication of interest was for less than the 6.6x EBITDA multiple ultimately paid by ICV Partners.

194. The Board of Directors, however, decided not to pursue discussions further with Wynnchurch because it was a "poor strategic fit" because its focus would be on "operational improvements and not growth initiatives."

ANSWER: Defendants deny the allegations contained in paragraph 194 of the Amended Complaint. Further answering, Defendants note that Wynnchurch told Mr.

Rush's counsel in open court and then in an affidavit that it withdrew from this sales process because it was no longer interested in Segerdahl after conducting preliminary due diligence, while Wynnchurch's preliminary indication of interest was for less than the 6.6x EBITDA multiple ultimately paid by ICV Partners.

195. As GreatBanc later explained it, "when [Wynnchurch] look[ed] to acquire companies, they try to bring a value-added in terms of operational improvements. Mary Lee already brought that, and they didn't feel [Wynnchurch] was as focused on growth-initiatives."

ANSWER: Defendants admit the allegations contained in paragraph 195 of the Amended Complaint were quoted from documents drafted by parties who were not involved in discussions or negotiations with Wynnchurch. Further answering, Defendants note that Wynnchurch told Mr. Rush's counsel in open court and then in an affidavit that it withdrew from this sales process because it was no longer interested in Segerdahl after conducting preliminary due diligence.

196. Essentially, Wynnchurch didn't add anything to Segerdahl in terms of management that Defendant Schneider did not already bring.

ANSWER: Paragraph 196 of the Amended Complaint states argument to which no response is required. Further answering, Defendants note that Wynnchurch told Mr. Rush's counsel in open court and then in an affidavit that it withdrew from this sales process because it was no longer interested in Segerdahl after conducting due diligence.

197. The ESOP, which had been the sole owner of Segerdahl and whose interest was being bought out, had no interest whatsoever in "strategic fit" or whether a buyer would fire management.

ANSWER: Paragraph 197 of the Complaint states argument to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 197 of the Complaint, including any embedded factual assumptions for the reasons stated earlier in the Answer. Further answering, Defendants note that ESOP participants were active employees with a significant financial interest (including in having their continued employment fund retirement) in who would be managing Segerdahl after it was sold.

198. Nor did the ESOP have any interest in whether Mary Lee Schneider or Wynnchurch was responsible for "operational improvements" after the sale.

ANSWER: Paragraph 198 of the Complaint states argument to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 198 of the Complaint, including any embedded factual assumptions for the reasons stated earlier in the Answer. Further answering, Defendants note that ESOP participants were active employees with a significant financial interest (including in having their continued employment fund retirement) in who would be managing Segerdahl after it was sold.

199. Instead, the ESOP's only interest was in maximizing the price it would receive for its 100% ownership of Segerdahl.

ANSWER: Paragraph 199 of the Amended Complaint states a conclusion of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 199 of the Amended Complaint, including any embedded factual assumptions for the reasons stated earlier in the Answer. Further answering, Plaintiff ignores Seventh Circuit authority on this, including (i) that fiduciaries get deference in balancing competing interests under conditions of uncertainty, *George v Kraft Foods, Inc.*, 641 F.3d 786, 797 (7th Cir. 2011), and *Armstrong v. LaSalle Bank National Ass'n*, 446 F.3d

728, 733 (7th Cir. 2006), and (ii) *Armstrong's* rule that ESOP fiduciaries get deference in decisions managing an ESOP, with the caveat they are "supposed to be careful rather than bold" in doing so. *Id.* at 732-33. Defendants aver that *Armstrong* would not countenance reckless decisions that sought a speculative higher purchase price for Segerdahl while exposing the ESOP to greater potential risks and harm as detailed in the Answer above.

200. Yet Defendants made the conscious decision not to pursue a transaction with Wynnchurch because they wanted to preserve Mary Lee Schneider and her strategies in control of the company after the sale.

ANSWER: Defendants deny the allegations contained in paragraph 200 of the Amended Complaint. Further answering, Wynnchurch withdrew its indication of interest after conducting due diligence of Segerdahl, which would show that Segerdahl had declining sales and was missing its sales targets. Wynnchurch further told Mr. Rush's counsel in open court and then in an affidavit that it withdrew from this sales process because it was no longer interested in Segerdahl after conducting this due diligence.

201. Even when ICV eventually dropped its offer price, Defendants never reached back out to Wynnchurch to determine whether Wynnchurch would still be willing to pay $270-293 million.

ANSWER: Defendants deny the allegations contained in paragraph 201 of the Amended Complaint as written. Further answering, Wynnchurch withdrew its indication of interest after conducting due diligence of Segerdahl, which would have revealed that Segerdahl had declining sales and was missing its sales targets. Wynnchurch further told Mr. Rush's counsel in open court and then in an affidavit that it withdrew from this sales process because it was no longer interested in Segerdahl after conducting this due diligence.

Wynnchurch's preliminary indication of interest was for less than the 6.6x EBITDA multiple ultimately paid by ICV Partners.

202. The reason is evident: the Defendants were not interested in obtaining the best price for the ESOP. Defendants' focus was on protecting management and their strategies.

ANSWER: Paragraph 202 of the Complaint states argument to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 202 of the Complaint, including any embedded factual assumptions for the reasons stated earlier in the Answer, and note that again Mr. Rush makes allegations that are contradicted by what he has learned in discovery.

203. Another of the four proposals came from a firm called Madison Dearborn Partners ("Madison Dearborn").

ANSWER: Defendants admit the allegations contained in paragraph 203 of the Amended Complaint.

204. Madison Dearborn offered $270-$280 million, representing 7.0 – 7.3x LTM June 30, 2016 estimated EBITDA of $38.5 million.

ANSWER: Defendants deny the allegations contained in paragraph 204 of the Amended Complaint. Further answering, Defendants note that this was an indication of interest from Madison Dearborn that eventually dropped out of the sales process after conducting due diligence, which would have shown that Segerdahl had declining sales and was missing its sales targets.

205. A third proposal came from ICV.

ANSWER: Defendants admit the allegations contained in paragraph 205 of the Amended Complaint.

206. ICV Partners offered $300 million, representing a 7.0x LTM on June 30, 2016 estimated EBITDA of $42.6 million.

ANSWER: Defendants deny the allegations contained in paragraph 206 of the Amended Complaint. Further answering, Defendants note that this was an indication of interest from ICV Partners that, after due diligence and negotiations with Segerdahl, eventually offered $265,000,000 for Segerdahl based on 6.6x Segerdahl's substantially reduced EBIDTA after further sales decline.

207. However, only $80 million of ICV's equity would be provided by ICV itself, the remaining $220 million would be provided by limited partners as direct co-investors.

ANSWER: Defendants deny the allegations contained in paragraph 207 of the Amended Complaint.

208. On September 9, 2016, ICV Partners submitted a revised indication of interest of $250 million, with a $15 million potential earn out payment based on Segerdahl achieving $45 million in adjusted EBITDA.

ANSWER: Defendants deny the allegations contained in paragraph 208 of the Amended Complaint as written. Further answering, the revised indication of interest was based on a substantially lowered EBITDA following continuing declining sales in the second half of 2016, and refer to that document as the best evidence of its content.

209. At that stage, Madison Dearborn dropped out of the sale process.

ANSWER: Defendants deny the allegations contained in paragraph 209 of the Amended Complaint as written. Further answering, JPMorgan and Segerdahl had tried to keep Madison Dearborn engaged in the sales process, but Madison Dearborn dropped out around this period.

210. After further negotiation, on October 14, 2016, Segerdahl received a revised proposal from ICV with a purchase price of $265 million and no earn out.

ANSWER: Defendants admit the allegations contained in paragraph 210 of the Amended Complaint, and refer to the revised proposal as the best evidence of its content.

211. ICV sent a memorandum to its potential co-investors on October 19, 2016 describing the transaction. The memorandum explained that:

a. The investment bidder only process that Defendants pursued was a "busted auction";

b. Segerdahl's strong August numbers gave ICV "another opportunity … to review" the potential transaction;

c. ICV estimated the transaction price to be 6.1x 2016 estimated EBITDA of $43 million; and

d. Segerdahl "has hired CBRE and has already started the sale-leaseback process approaching 25 buyers" and ICV expected the sale-leaseback "will provide $24 million after fees in 2016" while reducing EBITDA $10-$15 million over time "in hold period"—thus yielding an immediate profit of more than $9 million.

ANSWER: Defendants deny that the memo stated the potential sale leaseback would yield an immediate profit of more than $9 million, but otherwise admit that selected excerpts from this communication are quoted above, and that the actual document is the best evidence of its content. Further answering, this communication showed that ICV was factoring in the potential for a sale-leaseback when it raised its offer from $250 million to $265 million.

212. Segerdahl accepted ICV's offer of $265 million and began finalizing the deal.

ANSWER: With the key qualification that the independent trustee GreatBanc still had to review and approve the sale to ICV, Defendants admit that the Segerdahl Board accepted ICV's offer of $265 million and that work begin by the parties' respective lawyers and others to finalize the deal.

GreatBanc's Imprudent and Disloyal Decision to Approve the ESOP Buyout

213. Starting in April of 2016, and continuing throughout the process of marketing Segerdahl described above, Defendant Schneider was one of two named fiduciaries of the ESOP, the other being another human resources officer of Segerdahl who appears to have played no role in Segerdahl's Board or the marketing process.

ANSWER: Defendants deny the allegations contained in paragraph 213 of the Amended Complaint as written. Further answering, this committee had no role in the marketing of Segerdahl or in the ICV Sale, which was delegated to the independent trustee GreatBanc as detailed elsewhere in the Answer.

214. On July 21, 2016, Defendant Schneider and Bradshaw contacted GreatBanc regarding the pending transaction.

ANSWER: Defendants admit the allegations contained in paragraph 214 of the Amended Complaint.

215. Defendant Schneider explained that the Board was conducting the sale process, "but at this point, there were two lead candidates to buy the company: ICV and Madison Dearborn Partners."

ANSWER: Defendants admit the allegations contained in paragraph 215 of the Amended Complaint.

216. Management and the Board were "leaning towards ICV as it was thought to be the highest bidder and best strategic fit for SG360."

ANSWER: Defendants admit the allegations contained in paragraph 216 of the Amended Complaint.

217. Defendant Schneider and Bradshaw requested that GreatBanc accept an expanded role—transitioning from simply a directed trustee with no discretionary authority to a full trustee with final authority to approve the sale on behalf of the ESOP.

ANSWER: Defendants deny the allegations contained in paragraph 217 of the Amended Complaint. Further answering, GreatBanc had a discretionary role with the ESOP from its formation in 2003 forward, and was further delegated the role to be the independent trustee for this sale as detailed elsewhere in the Answer.

218. GreatBanc requested that Segerdahl approve GreatBanc's retention of separate legal counsel, Drinker Biddle & Reath ("DBR"), and the business valuation firm SRR to advise GreatBanc with respect to the sale. Schneider and Bradshaw approved.

ANSWER: Defendants admit the allegations contained in paragraph 218 of the Amended Complaint.

219. GreatBanc informed Schneider and Bradshaw that GreatBanc would need to "holdback" a portion of the sales proceeds from the ESOP "while awaiting the determination letter from the IRS."

ANSWER: Defendants admit the allegations contained in paragraph 219 of the Amended Complaint.

220. Between July 29, 2016 and August 18, 2016, GreatBanc, DBR and SRR were all retained with respect to the ESOP Buyout.

ANSWER: Defendants admit the allegations contained in paragraph 220 of the Amended Complaint.

221. On August 18, 2016, GreatBanc, SRR and DBR interviewed the Board about the rationale for the sale and the sales process.

ANSWER: Defendants admit the allegations contained in paragraph 221 of the Amended Complaint.

222. On August 30, 2016, Jim Staruck from GreatBanc, Andy Ward and Mike Poteracki from SRR, Defendant Schneider and Bradshaw met to discuss the sale. The notes from that meeting reflect that:

a. Only ICV Partners and Madison Dearborn remained as potential purchasers in the sale process;

b. They hoped to close the deal by September 15, 2016;

c. Staruck indicated that he would need to consider what GreatBanc needed to approve by September 15. Staruck indicated that "normally we would have a first pass through the committee" and SRR "would present to the committee and we would have some indication… before we sign want to make sure that from SRR and GreatBanc's we are comfortable.";

d. "338h10 – leaseback: proceeds could be in the 25-34 million range. ***Has to be factored into purchase price.*** Who identified leaseback opportunity? Company as a matter of course. 7x multiple – far more proceeds in excess. No way they could close that leaseback during this process. They have chosen a broker… Data room CBRE and Newkirk" (emphasis added);

e. "No current waterfall of what the proceeds look like to the various parties"

f. "Of course, need to see the contract";

g. Two documents in the data room, 2.21 and 2.22, "are the two sale leaseback analysis from the two firms";

h. "found some inefficiencies in Wolf Road. Vendor messed with hours numbers. Wolf road fraud where hours were being mis-reported. … **It's a positive to EBITDA plus a potential claim against the supplied.**" (emphasis and color in original).

i. **"A wave of consolidation that we can't participate in. Company is missing opportunities.**" (emphasis in original).

ANSWER: Defendants admit that Plaintiff quotes selected excerpts from these notes, but that the actual document is the best evidence of its content. Further answering, Defendants refer to their Answer above on the 338(h)(10) election, Wolf-Road fraud and sale-leaseback issues, including that all of these issues were shopped to and considered by the potential buyers when they made offers for Segerdahl.

223. On November 29, 2016, GreatBanc, SRR and DBR had a final meeting to discuss the proposed sale to determine whether to approve it.

ANSWER: Defendants admit the allegations contained in paragraph 223 of the Amended Complaint.

224. Minutes of the November 29, 2016 meeting appear in both raw form and a near final, edited draft.

ANSWER: Defendants deny the allegations contained in paragraph 224 of the Amended Complaint. Further answering, one document is draft minutes and the other is rough notes from the meeting.

225. In raw form, the minutes disclose that:

a. The impetus for the deal was concern about ESOP repurchase liability;

b. Staruck from GreatBanc explained that: "We know this [deal] is not a slam dunk. It's not a typical deal, but you have to consider the context of what the company is facing and by not accepting the offer, we need to consider the restraints put on the company.";

c. Staruck explained that Defendant Schneider and Bradshaw would be purchasing and receiving equity interests in the post-sale Segerdahl, and would be receiving new contracts "almost identical to their existing contracts";

d. A portion of the deal price will be "financed through senior debt available to the buyer";

e. ICV "expect[s] to make a 338h10 for income tax purposes";

f. At that point, one of GreatBanc's attorneys asked whether "we are comfortable that [the equity compensation arrangements] is not out of the ordinary with regard to the incentive compensation plans," to which Ward from SRR replied that "a 10% pool is not uncommon" and they were "not aware of anything that the aspects related to incentives could be deemed disguised purchase price.";

g. Nothing in the minutes reflects consideration of whether the value that Defendant Schneider and Bradshaw would receive would exceed, for them, the value of a sale to a higher bidder (*see infra* at ¶¶ 240-262);

h. Nothing in the minutes reflects consideration of the fact that, because the buyer would be using debt financing, that it would be in Defendant Schneider and Bradshaw's interest to minimize the purchase price, so as to minimize the dilution of their post transaction equity (*see infra* at ¶¶ 257-262);

i. Then, the raw minutes reflect the following:

[Ward]: **maybe don't include in minutes** our understanding that people will automatically receive this value. Rick [Joutras] has also put a majority of his shares back to the company. Don't have all the facts, but based on a conversation with [Bradshaw] and [Schneider], they had referenced if he was trying to put his shares back in and they would take a lower price if it wasn't subject to the holdback. Was told verbally that [Joutras] put a majority of his shares back to the company. The value of Rick's stock was about 27 million.
…
[Staruck]: Has there been an update about the plan dealing with [Joutras]?
Howard?: Someone revised the distribution policy to reflect that. There will be a valuation of that accounting date that will be the date used for distribution post-closing. The mere fact he applied for a distribution pre-closing doesn't mean he is entitled to a valuation as of the June 30th date. The other question was whether he is subject to the holdback. Termination letter. … So he may not be subject to the holdback. Anyway, a still in a bit of flux.
Dave: Also received an update that [Schneider] was discussing this with him over the weekend and he was sabre-rattling about how he could take action, he wanted his money. My understanding was that by the time they came out of the meeting he had retracted and said he would support the deal fully. That was just my update from Vedder.
…
Howard: Historically the window for the June valuation is October. That didn't happen. I assume we'll have a distribution for this transaction.
GreatBanc: If there is a process going on, you hold off on making those distributions because it could impact a forthcoming transaction.
Howard: There is usually a 90 day period. Unusual where prior to the transaction we would be pushing through distributions. We also don't have the problem where someone would be foregoing some value because the prices are so close.

(emphasis in original).

j. Based on the foregoing, Defendant Joutras decided to put back the majority of his ESOP shares to the company in the midst of negotiations about the sale. Joutras's motivation appears to have been to avoid having any portion of his ESOP proceeds subject to GreatBanc's 25% holdback pending IRS determination. Joutras's decision to put his shares, during a time when he was a member of Segerdahl's Board, put enormous pressure on Segerdahl to go through with the transaction to ICV;

k. The raw minutes reflect a discussion of the 338(h)(10) election, and reflect that SRR affirmatively decided not to consider the value of the 338(h)(10) election to ICV Partners. Thus GreatBanc was actually aware that despite ICV's intent to take a 338(h)(10) election worth millions of dollars, the ESOP would receive no money in exchange and that SRR's valuation report gave it no credit;

l. The raw minutes note the Wind Point offer was "around a multiple of 7";

m. The raw minutes then state: "The company and J.P. morgan looked at potential buyers, discussing why certain buyers were not interested or they didn't reach out to others. Why didn't the company present this offer to some of the 800 pound gorillas in the industry, but the Company's management decided it would be too damaging to share information with their competitors and then have the deals fall through... They were very proactive about why they did not go to the Donnolleys and Quads of the world.";

n. The raw minutes note that Wynnchurch "was likely a poor fit because when they look to acquire companies, they try to bring a value-added in terms of operational improvements. Mary Lee [Schneider] already brought that, and they didn't feel [Wynnchurch] was as focused on growth-initiative.";

o. The raw minutes explained that the leaseback "has not been incorporated into this analysis due to the execution risk if you were on the buyside and someone said you could do a leaseback. There's certainly execution risk. We spoke to [Bradshaw] about it. They were just in the process of retaining the firm to put that into play. They have done zero due diligence as of this point. Then they would need to raise the funds and perform the leaseback transaction."; and

p. As set forth below, this discussion of the sale-leaseback is erroneous. By November 29, 2016, the company had received five offers in the anticipated range of $22-25 million and had accepted one of those offers for $25 million. Thus whatever execution risk may have existed in the abstract, in actuality, the transaction was well on its way to completion and the value was readily ascertainable.

ANSWER: Defendants admit that Plaintiff quotes selected excerpts from these meeting notes, but deny the allegations in paragraph 225 of the Amended Complaint and rely on the meeting notes to speak for themselves, rather than on Plaintiff's characterization thereof. For example, Plaintiff's selective quoting ignored the part stating that this was "one of the most successful ESOP committee in terms of value creation" and how this value grew from around $160 a share to over $13,000 from this sale. Further answering, Defendants refer to their Answer above on the 338(h)(10) election, Wolf-Road fraud, sale-leaseback and Wynnchurch and other issues discussed in these notes, including why the Segerdahl Board exercised its business judgment to first shop Segerdahl to financial buyers, which was reviewed and accepted by GreatBanc as independent trustee for the Segerdahl ESOP for the reasons noted above in the Answer.

Further answering, these notes show that GreatBanc and its advisors were exercising independent review over the executive compensation offered senior managers who would continue employment with Segerdahl, such as Mr. Rush and others, and their independent conclusions why the offered compensation was not problematic and consistent with what they had before at Segerdahl. Defendants further note that Segerdahl's senior managers (including Mr. Rush) were part of what financial buyers sought when acquiring Segerdahl from the ESOP, and thus their continued presence with the company post-sale brought value

(not conflict) for the Segerdahl ESOP when shopping to financial buyers, while thereby enabling the Segerdahl ESOP to avoid the "bilk or buy" risk discussed above of shopping to competitors.

Further answering, these notes further show that GreatBanc and its advisors were appropriately concerned over Segerdahl's repurchase liability and the risk of a "run on the ESOP" if the ICV Sale was not approved, including that Mr. Joutras was considering (but delaying for now) exercising his legal rights as an ESOP participant to put back his almost $30,000,000 in shares to the ESOP. Mr. Rush also ignored many things in his selective quoting above, including that these notes reflected GreatBanc and its advisors' concerns over the recent downturn emerging in Segerdahl' direct mail printing industry, and over how Segerdahl's sales had started to decline and its sales forecasts were being revised downward.

226. Nevertheless, despite its limited understanding of the terms of the deal, its apparent ignorance of the terms of the sale-leaseback, the massive confusion relating to Defendant Joutras's put—which GreatBanc sought to exclude from the meeting minutes, management's failure to market to competitors ("the 800 pound gorillas"), and the flaws in SRR's Analysis of Transaction Fairness (*infra* ¶¶ 326-364), GreatBanc decided to approve the transaction on behalf of the ESOP.

ANSWER: Defendants deny the allegations contained in paragraph 226 of the Amended Complaint. Further answering, GreatBanc approved the ICV Sale for the reasons stated elsewhere in the answer, including that it locked in the recent extraordinary gain in Segerdahl's share value (that had tripled in value in the two years prior to the ICV Sale) in the face of an industry downturn and declining sales by Segerdahl.

227. GreatBanc's decision to approve the sale was imprudent and disloyal. GreatBanc was actually or constructively aware that Segerdahl's management violated the duty of loyalty by

ignoring a potentially better deal price in a sale to a competitor to protect their own interests by seeking only a deal to an investment buyer. GreatBanc was actually or constructively aware of the value represented by the sale-leaseback and 338(h)(10) elections, knew that the ESOP was receiving no value for the sale-leaseback or 338(h)(10) election, had previously determined that those "ha[ve] to be factored into purchase price," and approved the deal anyway.

ANSWER: Defendants deny the allegations contained in paragraph 227 of the Amended Complaint, and refer to its responses earlier in its Answer on these issues. Further answering, Plaintiff does not make any factual allegations as to why the independent trustee GreatBanc would be disloyal to the Segerdahl ESOP, and his conclusory, unsupported allegation is denied.

228. At best, GreatBanc's decision to approve the deal was based on a hurried, inadequate investigation into the material facts. But even if GreatBanc's failures were purely innocent, ERISA fiduciary duties are "not a search for subjective good faith -- a pure heart and an empty head are not enough." *Keach v. United States Tr. Co., N.A.*, 240 F. Supp. 2d 840, 845 (C.D. Ill. 2002).

ANSWER: Paragraph 228 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 228 of the Amended Complaint and rely on the case identified in paragraph 228 to speak for itself, including in relation to the rest of applicable ERISA law, rather than on Plaintiff's characterization thereof.

229. As the Seventh Circuit has explained:

> Whether an ERISA fiduciary has acted prudently requires consideration of ***both*** the substantive reasonableness of the fiduciary's actions and the procedures by which the fiduciary made its decision: 'In reviewing the acts of ESOP fiduciaries under

> the objective prudent person standard, courts examine ***both*** the process used by the fiduciaries to reach their decision as well as an evaluation of the merits.'

Fish v. GreatBanc Tr. Co., 749 F.3d 671, 680 (7th Cir. 2014) (citations omitted).

ANSWER: Paragraph 229 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 229 of the Amended Complaint and rely on the case identified in paragraph 229 to speak for itself, including in relation to the rest of applicable ERISA law, rather than on Plaintiff's characterization thereof.

230. Here, there are significant flaws with ***both*** GreatBanc's fiduciary process and the "substantive reasonableness" of the transaction. As set forth above, GreatBanc approved the transaction despite its inadequate investigation, despite the red flags about management's interests, despite the failure to obtain any value for the sale-leaseback, 338(h)(10) election or Wolf Road Fraud, and despite the obvious flaws with SRR's Analysis of Transaction Fairness (*infra* ¶¶ 326-364). Moreover, those same factors also demonstrate that the ESOP Buyout was substantively unreasonable from the ESOP's perspective.

ANSWER: Paragraph 230 of the Amended Complaint states argument to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 230 of the Amended Complaint, and refer to its responses earlier in its Answer on these issues. Further answering, Plaintiff cannot show that the ICV Sale was substantively unreasonable, or that GreatBanc's decision to approve it caused harm in light of the market conditions and financial constraints facing Segerdahl, including those discussed above in the Answer.

231. In *Montgomery*, this Court held that when an ESOP sells its interest, a determination of "fairness from a financial point of view must also consider relative fairness to the

ESOP compared to other parties to the transaction." Montgomery v. Aetna Plywood, Inc., 39 F. Supp. 2d 915, 938 (N.D. Ill. 1998). Thus "[a]n analysis of the potential benefits to the buyer was and is a necessary part of establishing the fair market value of the ESOP shares." *Id.*

ANSWER: Paragraph 231 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 231 of the Amended Complaint and rely on the case identified in paragraph 231 to speak for itself, including in relation to the rest of applicable ERISA law, rather than on Plaintiff's characterization thereof. Further answering, *Montgomery* concerned a sale to a party in interest under ERISA, the controlling insider, Jeffrey Davis, the president, director, and part owner of Aetna, and trustee of the Aetna ESOP. 39 F. Supp. 2d at 919. Mr. Davis used his insider control to manipulate the stock's valuation so that he bought these shares for himself cheap, at the ESOP's expense. *Id.* at 924-25 & 936-38. Because the buyer, Mr. Davis, was the controlling insider on the other side of this transaction, this triggered ERISA's prohibited transaction rules and its fair market value exemption that protect the ESOP from conflicted and manipulated valuations, like what Mr. Davis did there. In contrast, here ICV Partners was an outsider to the ESOP that made the highest offer for Segerdahl, after Segerdahl's investment banker JP Morgan had shopped Segerdahl to 18 financial buyers. Because ICV Partners was an outsider, ERISA's prohibited transaction rules and its fair market value exemption do not apply to ICV's acquisition of Segerdahl's stock from the ESOP.

232. In determining whether to approve the sale of the ESOP's shares, GreatBanc:

a. had actual knowledge of, but expressly refused to analyze the value of the 338(h)(10) election—a significant "potential benefit" to ICV Partners or any other prospective buyer;

b. had actual knowledge of, but failed to consider, the value of the Wolf Road Fraud, another significant "potential benefit" to ICV Partners or any other prospective buyer;

c. had actual knowledge of the value of the sale-leaseback, a multi-million dollar "potential benefit" to ICV Partners or any other prospective buyer, and had actual knowledge at the time it approved the deal that by October of 2016 that management had received multiple bids in the $25 million range for the properties, and knew or should have known that Defendant Schneider had in fact accepted an offer to purchase the real estate on November 23, 2016 for $25 million; and

d. failed to appropriately consider the benefits of the transaction to Defendant Schneider including "the opportunity for substantial dividends," a significant ongoing salary, and "large bonuses"—all factors the Court in *Montgomery* held were relevant to assessing the fairness of the transaction and all of which in this case gave Defendant Schneider, who was primarily responsible for marketing Segerdahl and negotiating with prospective purchasers, a significant interest to focus the search on investment buyers who would pay less but preserve management.

ANSWER: Defendants deny the allegations contained in paragraph 232 of the Amended Complaint. Further answering, the considerations listed by Plaintiff were all

considered by GreatBanc and its advisors in evaluating whether to approve the ICV Sale. Further answering, GreatBanc approved the ICV Sale for the reasons stated elsewhere in the answer, including that it locked in the recent extraordinary gain in Segerdahl's share value (that had tripled in value in the two years prior to the ICV Sale) in the face of an industry downturn and declining sales by Segerdahl.

233. GreatBanc accordingly had actual or constructive knowledge of many key aspects of the ESOP Buyout that benefitted the other parties to the transaction, but not the ESOP, yet GreatBanc expressly did not take those benefits into account when determining the fairness of the transaction to the ESOP.

ANSWER: Defendants deny the allegations contained in paragraph 233 of the Amended Complaint, and refer to its responses earlier in its Answer on these issues.

Vergamini Confirms that No Strategic Buyers Were Contacted and that a Strategic Buyer Would Have Paid Much More than ICV Did

234. On December 1, 2016, Vergamini, the employee of JPMorgan advising the Segerdahl Fiduciary Defendants on the transaction, led an information session with Defendant Schneider for many of Segerdahl's senior managers about the pending transaction with ICV Partners.

ANSWER: Defendants admit that Jeff Vergamini led an information session on or about December 1, 2016 for the purpose of discussing ICV's purchase of Segerdahl with senior managers Mr. Rush and others. Except as expressly admitted herein, defendants deny the allegations of paragraph 234 of the Amended Complaint.

235. At that information session, Vergamini stated that the total purchase price for the ESOP's shares in the ESOP Buyout, which Vergamini quoted as $265 million, would have been much higher, even as high as $320 million, had Segerdahl been sold to a competitor.

ANSWER: Defendants deny the allegations contained in paragraph 235 of the Amended Complaint.

236. Notably, Vergamini's figure of $320 million is within the range of valuations for Segerdahl pursuant to the guideline public company method described by SRR in the Analysis of Transaction Fairness, *infra* ¶ 0. In addition, Vergamini's figure of $320 million is within the range of valuations for Segerdahl in light of the precedent transactions Vergamini identified in his presentations to the Board and prospective purchasers (*supra* at ¶¶ 108, 155).

ANSWER: Defendants deny the allegations contained in paragraph 236 of the Amended Complaint.

Defendant Schneider Confirmed that No Strategic Buyers Were Contacted

237. On several occasions prior to the sale to ICV, including during round table discussions with senior management, Defendant Schneider stated that marketing efforts had focused on investment buyers—like ICV Partners, and no attempt had been made to market Segerdahl to any of Segerdahl's competitors.

ANSWER: Defendants admit that the Segerdahl Board decided to first shop Segerdahl to financial buyers not competitors for the reasons stated in their Answer above, and that Mr. Rush and others knew this before the sale to ICV closed. Except as expressly admitted herein, Defendants deny the allegations of paragraph 237 of Plaintiff's Amended Complaint.

238. Typically, investment buyers allow management to remain in place after a sale. By contrast, strategic buyers may replace management but typically pay a much higher price.

ANSWER: Paragraph 238 of the Amended Complaint states argument to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 238 of the Amended Complaint.

239. Defendant Schneider also stated that they did not put out a deal book about the potential sale to their competitors (and potential strategic buyers) including RR Donnelly, Quad or other competitors to see if those companies were interested in making an offer for Segerdahl.

ANSWER: Defendants admit that the Segerdahl Board decided to first shop Segerdahl to financial buyers not competitors for the reasons stated in their Answer above. Except as expressly admitted herein, Defendants deny the allegations of paragraph 239 of the Amended Complaint.

The Equity Interests and Employment Contracts Received by Defendant Schneider and Bradshaw, Segerdahl's CFO

240. After the ESOP Buyout, ICV Partners in fact retained Schneider and the great majority of other Segerdahl insiders as CEO and management, and left them in control of Segerdahl's operations after the ESOP Buyout.

ANSWER: Defendants admit that Mary Lee Schneider remained as CEO and President of Segerdahl for approximately two years after the sale to ICV Partners. Further answering, note that, as part of Segerdahl's senior management team, Mr. Rush likewise continued his employment for approximately two years after the sale to ICV. Except as expressly admitted herein, Defendants deny the allegations of paragraph 240 of the Amended Complaint.

241. As alleged above, Schneider received 800 SARs effective 12/1/2015 with a strike price of $7,792, and Bradshaw received 300 SARs effective 1/1/2014 with a strike price of $4,026.

ANSWER: Defendants admit the allegations contained in paragraph 241 of the Amended Complaint.

242. In the sale to ICV, where the $265 million purchase price yielded a per share price for Segerdahl's 9,138 outstanding shares of $13,072, Schneider received $4.2 million on her SARs, Bradshaw received $2.7 million on his SARs, and Bradshaw received $459,612 on his ESOP shares.

ANSWER: Defendants admit the allegations contained in paragraph 242 of the Amended Complaint. Further answering, as part of Segerdahl's senior management team, Mr. Rush likewise received approximately $1.8 million on his SARS and approximately $700,000 for his ESOP shares.

243. Had the ESOP's shares of Segerdahl been sold for $320 million, the share price would have been $17,004.28.

ANSWER: Defendants deny the allegations contained in paragraph 243 of the Amended Complaint. Further answering, had the ESOP's shares of Segerdahl been sold for $320 million, the share price would have been approximately $17,191 with 9,138 shares.

244. Thus in a sale at $320 million, Schneider would have received $7.4 million on her SARs (an increase of $3.1 million), Bradshaw would have made $3.9 million on his SARs (an increase of $1.2 million), and Bradshaw would have received $506,375 for his ESOP shares (an increase of $50,000).

ANSWER: Defendants deny the allegation contained in paragraph 244 of the Amended Complaint. Had the ESOP's shares of Segerdahl been sold for $320 million, Ms. Schneider and Mr. Bradshaw would have received even larger increases based on a share price of approximately $17,191 instead of the $17,004 used in this allegation. Plaintiff also has a math error on his calculation using the $17,004 share price: Using that price, Mr.

Bradshaw would have received $597,860 for his ESOP shares (an increase of approximately $138,000).

245. Those numbers, standing alone, suggest that Schneider and Bradshaw would have been incentivized to sell Segerdahl for as much as they could get.

ANSWER: Defendants admit that Ms. Schneider and Mr. Bradshaw's SARS and ESOP holdings strongly incentivized them to help sell Segerdahl for as much as they could get without taking undue risk, and that gains from selling Segerdahl at a high price generated certain and immediate financial benefits for them when the ICV Sale closed through the pay out of their SARS awards and ESOP shares, but deny any remaining allegations contained in paragraph 245 of the Amended Complaint.

246. But those numbers do not tell the whole story.

ANSWER: Defendants deny the allegations contained in paragraph 246 of the Amended Complaint.

247. Schneider and Bradshaw received significant additional compensation from ICV Partners that more than offset the amounts they would have received from a sale at a higher price, even a sale at $320 million (the potential price Vergamini quoted in the meeting attended by Plaintiff Rush, Defendant Schneider and other Segerdahl employees).

ANSWER: Defendants deny the allegations contained in paragraph 247 of the Amended Complaint. Further answering, gains from selling Segerdahl at a high price generated certain and immediate financial benefits for Ms. Schneider and Mr. Bradshaw when the ICV Sale closed through the payout of their SARS awards and ESOP shares, the proverbial "bird in the hand," as compared to uncertain earnings in their post-sale employment at Segerdahl. Mr. Rush further was provided documents in discovery showing

that, in fact, their post-sale employment and benefits were worth far less than the amounts they received from the ICV Sale, and far less even then the increased amounts that they would have received using the example put forth by Mr. Rush above. Mr. Rush ignored these documents when making these allegations in his Amended Complaint.

248. Schneider received a five-year employment agreement from ICV with $600,000 per year in base salary and a potential $600,000 annual bonus. Over five years that arrangement was worth between $3 million and $6 million.

ANSWER: Defendants deny the allegations contained in paragraph 248 of the Amended Complaint. Further answering, under her post-sale employment agreement, Ms. Schneider could be terminated at any time without cause with a one-year payout of her base salary. Nothing was guaranteed for Ms. Schneider beyond that $600,000 payout, which replaced the same deal she had at Segerdahl pre-sale. Ms. Schneider was already entitled to a one-year payout pre-sale, and the rest was compensation for her work at the same pay as she received pre-sale from Segerdahl.

249. Bradshaw received a five-year employment agreement from ICV with $350,000 per year in base salary and a potential $210,000 annual bonus. Over five years that arrangement was worth between $1.75 million and $2.8 million.

ANSWER: Defendants deny the allegations contained in paragraph 249 of the Amended Complaint. Further answering, under his post-sale employment agreement, Mr. Bradshaw could be terminated at any time without cause with a one-year payout of his base salary. Nothing was guaranteed for Mr. Bradshaw beyond that $350,000 payout, which was similar to the protections he had at Segerdahl pre-sale. The rest was compensation for his work at the same pay as he received pre-sale from Segerdahl.

250. Schneider also rolled over $1,195,000 of her SARs proceeds in exchange for 1,195 Class A Units in reorganized Segerdahl. She also received 4,483 Class B "incentive" Units. Altogether, that gave her a 4% ownership interest in Segerdahl after the sale. At the time of the sale, the total shareholder equity was approximately $128 million—meaning that Schneider's ownership interest in Segerdahl after the deal was worth in excess of $5 million.

ANSWER: Defendants deny the allegations contained in paragraph 250 of the Amended Complaint. Further answering, Defendant Schneider and Segerdahl's other senior managers, including Mr. Rush, were offered the ability to invest in the post-sale entity created and controlled by ICV Partners. The only equity investment Ms. Schneider had in ICV Partners' entity was the $1,195,000 of her SARS proceeds invested in the Class A Units, which represented approximately 50% of her after-tax SARS proceeds. The Class B "incentive" Units Ms. Schneider received had stringent vesting requirements, and Schneider only qualified for Class B units worth $573,174 at the time of her resignation. Mr. Rush further requested and was provided documents in discovery showing this.

251. Bradshaw also rolled over $750,000 of his SARs proceeds in exchange for 750 Class A Units in reorganized Segerdahl. He also received 3,138 Class B "incentive" Units. Altogether, that gave him a 2.7% ownership interest in Segerdahl after the sale. At the time of the sale, the total shareholder equity was approximately $128 million—meaning that Bradshaw's ownership interest in Segerdahl after the deal was worth in excess of $3.5 million.

ANSWER: Defendants deny the allegations contained in paragraph 251 of the Amended Complaint. Further answering, Mr. Bradshaw and Segerdahl's other senior managers, including Mr. Rush, were offered the ability to invest in the post-sale entity created and controlled by ICV Partners. The only equity investment Mr. Bradshaw had in

ICV Partners' post-sale entity was the $750,000 of his SARS proceeds invested in the Class A Units, which represented approximately 50% of his after-tax SARS proceeds. The Class B "incentive" Units Mr. Bradshaw received had stringent vesting requirements, and Schneider only qualified for Class B units worth $491,850 at the time of his resignation. Mr. Rush further requested and was provided documents in discovery showing this.

252. Thus the value of the deal with ICV, which would retain management, was worth more to Schneider and Bradshaw in monetary terms than a transaction at a much higher price with a strategic buyer that would not retain management.

ANSWER: Defendants deny the allegations contained in paragraph 252 of the Amended Complaint, and refer to their answers above on these issues. This includes that the gains from selling Segerdahl at a high price generated certain and immediate financial benefits for Ms. Schneider and Mr. Bradshaw when the ICV Sale closed through the payout of their SARS awards and ESOP shares, the proverbial "bird in the hand," as compared to uncertain earnings in their post-sale employment at Segerdahl. Mr. Rush further was provided documents in discovery showing that, in fact, their post-sale employment and benefits were worth far less than the amounts they received from the ICV Sale, and far less even then the increased amounts that they would have received using the example put forth by Mr. Rush above. Mr. Rush ignored these documents when making these allegations in his Amended Complaint.

253. It is easy to see why Defendant Schneider was not interested in pursuing a sale to a competitor that would not retain her as management, even if it would have meant a higher price for her SARs: she stood to make millions of dollars more through retaining her position as CEO.

ANSWER: Paragraph 253 of the Amended Complaint states argument to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 253 of the Amended Complaint and refer to their answers above on these issues.

254. As an equity holder in reorganized Segerdahl after the sale, Schneider's interest would benefit from the post-sale sale-leaseback transaction, the 338(h)(10) election, and the Wolf Road Fraud.

ANSWER: Defendants deny the allegations contained in paragraph 254 of the Amended Complaint and refer to their answers above on these issues. Among other things, each of these items was shopped to and considered by ICV and the other potential buyers when they were formulating their offers for Segerdahl. Further, selling Segerdahl at a high price generated certain and immediate financial benefits for Ms. Schneider when the ICV Sale closed through the payout of her $4.2 million SARS award, the proverbial "bird in the hand," as compared to the uncertain value from any post-sale investment in Segerdahl. Further answering, ICV encouraged all of Segerdahl's senior management team, including Mr. Rush, to invest in the company post-sale so that their interests would be aligned to grow its value, like the ESOP stock and SARS awards had done for them pre-sale.

The post-sale equity benefits offered to Segerdahl's senior management team, including Mr. Rush, were, however, less rich then what they had received pre-sale, and many senior managers, including Mr. Rush, declined to invest in Segerdahl post-sale. Ms. Schneider and Mr. Bradshaw invested only around 50% of their net SARS proceeds after taxes. The post-sale equity offerings by ICV were further reviewed by a Special Committee of the Segerdahl Board (consisting of the three outside directors, Mason, Cronin and Goldstein) with its advisors, and by GreatBanc and its advisors SRR and Drinker, who all

concluded they were commercially reasonable and common in these circumstances, when they reviewed and approved the ICV Sale.

255. Thus Schneider had a direct, conflicting interest with the ESOP to defer the benefits of those transactions until after the sale, and to ensure that her equity would not be diluted by ICV actually paying the fair market value for Segerdahl that took into account the value of the sale-leaseback transaction, the 338(h)(10) election, and the Wolf Road Fraud.

ANSWER: Paragraph 255 of the Amended Complaint states argument to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 255 of the Amended Complaint, and refer to their answers above on these issues.

256. In addition, Schneider and Bradshaw would obtain significant intangible benefits from being the CEO and CFO, respectively, of a large, well-established and successful printing company for many years after the transaction.

ANSWER: Paragraph 256 of the Amended Complaint states argument to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 256 of the Amended Complaint, and refer to their answers above on these issues.

257. Moreover, the equity interests that Defendant Schneider and Bradshaw received in post-transaction Segerdahl created another conflict of interest between their interests and the interests of the ESOP.

ANSWER: Paragraph 257 of the Amended Complaint states argument to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 257 of the Amended Complaint, and refer to their answers above on these issues.

258. Defendant Schneider and Bradshaw expected to participate as equity owners of post-transaction Segerdahl *in pari passu* with ICV.

ANSWER: Defendants admit that ICV encouraged all of Segerdahl's senior management team, including Mr. Rush, to invest in the company post-sale so that their interests would be aligned to grow its value, like the ESOP stock and SARS awards had done for them pre-sale, and that many senior managers, including Mr. Rush, declined to invest in Segerdahl post-sale. Defendants deny the remaining allegations in paragraph 258 of the Amended Complaint and refer to their answers above on these issues.

259. But ICV Partners financed more than half of the purchase price of Segerdahl with debt—that is, ICV borrowed money to buy Segerdahl.

ANSWER: There is no allegation contained in paragraph 259 of the Amended Complaint directed toward Defendants to which Defendants must respond. Defendants admit that ICV used financing as part of its funding to buy Segerdahl, and refer to the documents which Mr. Rush already has that detail those financing terms as the best evidence of their content, and otherwise deny the allegations contained in paragraph 259 of the Amended Complaint.

260. Because ICV Partners would have to borrow more money to pay any higher purchase price, any higher purchase price would have simply diluted the equity position in the post-transaction Segerdahl.

ANSWER: There is no allegation contained in paragraph 260 of the Amended Complaint directed toward Defendants to which Defendants must respond. Defendants deny the allegations contained in paragraph 260 of the Amended Complaint and refer to their answer above on these issues.

261. Defendant Schneider and Bradshaw thus had an affirmative interest in minimizing the amount of debt taken on during the deal.

ANSWER: Paragraph 261 of the Amended Complaint states argument to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 261 of the Amended Complaint and refer to their answers above on these issues.

262. Accordingly, Defendant Schneider and Bradshaw had an affirmative interest in lowering the price paid by ICV.

ANSWER: Paragraph 262 of the Amended Complaint states argument to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 262 of the Amended Complaint and refer to their answers above on these issues.

C. The Sale-Leaseback of Segerdahl's Real Estate

263. In the ESOP Buyout, ICV Partners did not pay a price for the ESOP's shares of Segerdahl that adequately reflected the value of certain real estate owned by Segerdahl.

ANSWER: Defendants deny the allegations contained in paragraph 263 of Plaintiff's Amended Complaint, and refer to their answers above on these issues. Further answering, Defendants note that the potential for this sale-leaseback transaction was marketed to the four potential buyers that gave indications of interest, including ICV during negotiations for the purchase of Segerdahl, that ICV considered the potential for this sale-leaseback transaction when it raised its final offer for Segerdahl, and that Segerdahl and ICV used this potential value to negotiate the final purchase price with ICV. Defendants note that Mr. Rush acquired documents in discovery disclosing all of this to him.

264. Instead, ICV Partners was able to purchase Segerdahl, and thereby the real estate it owned, at a lower price than it would have paid had the sale-leaseback financing been appropriately included in the price of the company.

ANSWER: Defendants deny the allegations contained in paragraph 264 of the Amended Complaint, and refer to their answers above on these issues.

265. By purchasing Segerdahl for a price that did not adequately reflect the realizable cash value of Segerdahl's real estate assets, ICV Partners was able to profit by, shortly after the ESOP Buyout, selling the real estate that had belonged to Segerdahl and causing Segerdahl to lease that property from the purchasers. This kind of transaction is referred to as a "sale-leaseback."

ANSWER: Defendants deny the allegations contained in paragraph 265 of the Amended Complaint, and refer to their answers above on these issues. Further answering, Defendants note that the potential for this sale-leaseback transaction was marketed to the four potential buyers that gave indications of interest, including ICV during negotiations for the purchase of Segerdahl, that ICV considered the potential for this sale-leaseback transaction when it raised its final offer for Segerdahl, and that Segerdahl and ICV used this potential value to negotiate the final purchase price with ICV. Defendants further note that any sale-leaseback transaction remained speculative and contingent unless and until Segerdahl was able to get agreement from its auditors that Segerdahl would receive favorable treatment of this sale-leaseback on its financial statements. Segerdahl's auditor did not conclude this until around late January 2017, and the sale-leaseback transaction was then able to close shortly thereafter. The sale-leaseback was a financing transaction for Segerdahl's core-operating assets (its two main plants) that, once it was closed, required Segerdahl to have to incur millions annually in lease and additional tax expenses going forward.

266. ICV Partners, as such, underpaid for Segerdahl's shares at the ESOP's expense.

ANSWER: Defendants deny the allegations contained in paragraph 266 of the Amended Complaint, and refer to their answers above on these issues.

267. During a meeting of Segerdahl executives in December of 2016, just a few days prior to the ESOP Buyout, at which Vergamini and representatives of ICV Partners were present, Plaintiff Rush heard one of the representatives of ICV Partners discussing the real estate aspects of the pending ESOP Buyout. Vergamini explained that the real estate portion of the transaction represented a "$7 million arbitrage opportunity" for the buyer, who could immediately realize the cash value of those properties through a sale-leaseback arrangement.

ANSWER: Defendants deny the allegations contained in paragraph 267 of the Amended Complaint, and refer to their answers above on these issues. Further answering, Defendants note that the sale-leaseback was a financing transaction for Segerdahl's core-operating assets (its two main plants) that, once it was closed, required Segerdahl to have to incur millions annually in lease and tax expenses going forward.

268. The two parcels of real estate involved in the sale-leaseback were large industrial facilities owned by Segerdahl. One of the properties is located at 1351 Wheeling Road, in Wheeling, Illinois ("1351 Wheeling"). The other property is located at 1900 S. 25th Avenue, in Broadview, Illinois ("1900/Broadview").

ANSWER: Defendants admit that there were two parcels of real estate involved in the potential sale-leaseback transaction, and that one of the properties is located at 1351 Wheeling Road, in Wheeling, Illinois and the other property is located at 1900 S. 25th Avenue, in Broadview, Illinois. Further answering, Defendants note that these plants constituted core-operating assets of Segerdahl. Except as expressly admitted herein, Defendants deny the allegations of paragraph 268 of Plaintiff's Amended Complaint.

269. 1351 Wheeling serves, and has served, as Segerdahl's corporate headquarters and is Segerdahl's largest manufacturing site by size and revenue. 1351 Wheeling has a clear height of 16 to 24 feet, 27 loading docks and 279 surface parking spaces. 1351 Wheeling houses nine printing presses including a newly acquired printing press that prints or has printed advertising for Costco of approximately 28 million pieces per month.

ANSWER: With the clarification that the "newly acquired printing press" is approximately six years old, Defendants admit the allegations contained in paragraph 269 of the Amended Complaint.

270. 1900 Broadview is Segerdahl's second largest manufacturing site by size and revenue and is located 12 miles from downtown Chicago. 1900/Broadview has clear heights of 14 to 23 feet, 11 loading docks and 195 surface parking spaces. 1900/Broadview houses eight printing presses as well as a secured analytics server room which houses significant customer data.

ANSWER: Defendants admit the allegations contained in paragraph 270 of the Amended Complaint.

271. And, in fact, just three months after the ESOP Buyout, on February 7, 2017, Segerdahl did sell 1351 Wheeling and 1900/Broadview to AGNL Mail, LLC.

ANSWER: Defendants admit that on February 7, 2017, Segerdahl sold 1351 Wheeling and 1900 Broadview to AGNL Mail, LLC in a sale-leaseback transaction, but deny the remaining allegations in paragraph 271 of the Amended Complaint. Further answering, Defendants note that any sale-leaseback transaction remained speculative and contingent unless and until Segerdahl was able to get agreement from its auditors that Segerdahl would receive favorable treatment of this sale-leaseback on its financial statements. Segerdahl's auditor did not conclude this until around late January 2017, and the sale-leaseback

transaction was then able to close shortly thereafter. The sale-leaseback was a financing transaction for Segerdahl's core-operating assets (its two main plants) that, once it was closed, required Segerdahl to have to incur millions annually in lease and additional tax expenses going forward.

272. Segerdahl entered into lease agreements with AGNL Mail, LLC for both properties that same day.

ANSWER: Defendants admit that Segerdahl entered into lease agreements with AGNL Mail, LLC on February 7, 2017. Except as expressly admitted herein, defendants deny the allegations of paragraph 272 of the Amended Complaint.

273. 1351 Wheeling and 1900 Broadview appraised on March 1, 2017 for $14.9 million and $10.1 million, respectively (for a total of $25 million).

ANSWER: Defendants admit 1351 Wheeling and 1900 Broadview appraised on March 1, 2017 for $14.9 million and $10.1 million, respectively. Except as expressly admitted herein, defendants deny the allegations of paragraph 273 of the Amended Complaint.

274. Discovery has confirmed the price ICV Partners paid for Segerdahl failed to include any adjustment whatsoever for the cash value of Segerdahl's real estate.

ANSWER: Defendants deny the allegations contained in paragraph 274 of the Amended Complaint, and refer to their answers above on this issue. Defendants note that the potential for this sale-leaseback transaction was marketed to the four potential buyers that gave indications of interest, including ICV during negotiations for the purchase of Segerdahl, that ICV considered the potential for this sale-leaseback transaction when it raised its final offer for Segerdahl, and that Segerdahl and ICV used this potential value to negotiate the final purchase price with ICV. Defendants note that Mr. Rush acquired

documents in discovery disclosing all of this to him, which he ignored in his Amended Complaint.

275. Thus when ICV Partners sold the real estate, it received millions of dollars for the two properties that it should have paid, but did not pay, for the Segerdahl shares during the ESOP Buyout.

ANSWER: Defendants deny the allegations contained in paragraph 275 of Plaintiff's Amended Complaint, and refer to its answers above on these issues. This included that the sale-leaseback was a financing transaction for Segerdahl's core-operating assets (its two main plants) that, once it was closed, required Segerdahl to have to incur millions annually in lease and additional tax expenses going forward.

276. A sale-leaseback allows a company that owns real estate to realize the cash value of the real estate, and either take the cash out of the business or reinvest the cash and achieve the company's rate of return (sometimes called a "WACC" or "Weighted Average Cost of Capital") on the cash. The difference between the rate of return on the cash, and the rental payments on the ensuing lease, represent the company's profit on the sale-leaseback transaction.

ANSWER: Paragraph 276 of the Amended Complaint states argument to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 276 of the Complaint. Further answering, Defendants note that a sale-leaseback is a financing transaction that here was for Segerdahl's core-operating assets (its two main plants) that, once it was closed, required Segerdahl to have to incur millions annually in lease and additional tax expenses going forward. Whether or not a transaction like this would be profitable depended on if the seller of the assets was later able to reinvest the funds received

in the sale-leaseback and earn more on those funds than what it was paying for them through its increased lease and tax expenses.

277. Discovery has confirmed that Defendants were actually or constructively aware of the significant value of the real estate, but failed to capture the value of the real estate for the ESOP during the sale to ICV. In fact, Defendants and their agents used the real estate as a selling point when approaching potential buyers.

ANSWER: Other than to admit that the sale-leaseback was marketed to potential buyers, Defendants deny the remaining allegations contained in paragraph 277 of the Amended Complaint, which are also logically incoherent, and refer to its answers above on these issues. Using something as a selling point is how you get value for it.

278. However, because of the equity interests Schneider and other executives received in the reorganized entity, they stood to personally realize profits from the sale of the real estate after the transaction.

ANSWER: Defendants deny the allegations contained in paragraph 278 of Plaintiff's Amended Complaint, and refer to their answers above on these issues.

279. First, it is clear that the value of the real estate was not included in the transaction price paid by ICV.

ANSWER: Defendants deny the allegations contained in paragraph 279 of the Amended Complaint, and refer to their answers above on these issues. Defendants note that the potential for this sale-leaseback transaction was marketed to the four potential buyers that gave indications of interest, including ICV during negotiations for the purchase of Segerdahl, that ICV considered the potential for this sale-leaseback transaction when it raised its final offer for Segerdahl, and that Segerdahl and ICV used this potential value to

negotiate the final purchase price with ICV. Defendants note that Mr. Rush acquired documents in discovery disclosing all of this to him.

280. Defendant GreatBanc and SRR (the valuation firm hired by GreatBanc) held a meeting on November 29, 2016, just a week before the closing of the ESOP Buyout.

ANSWER: Defendants admit that a meeting between GreatBanc and SRR occurred on November 29, 2016.

281. At the November 29, 2016 meeting, SRR explained that the sale-leaseback transaction was "not included in the valuation…" The minutes of the November 29, 2016 meeting reflect that the purported reason the sale-leaseback was not included was because of "execution risk."

ANSWER: Paragraph 281 of the Amended Complaint states argument to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 281 of the Complaint. Further answering, Defendants note that any sale-leaseback transaction remained speculative and contingent unless and until Segerdahl was able to get agreement from its auditors that Segerdahl would receive favorable treatment of this sale-leaseback on its financial statements. Segerdahl's auditor did not conclude this until around late January 2017, and the sale-leaseback transaction was then able to close shortly thereafter. The sale-leaseback was a financing transaction for Segerdahl's core-operating assets (its two main plants) that, once it was closed, required Segerdahl to have to incur millions annually in lease and additional tax expenses going forward.

282. Another version of the minutes from the November 29, 2016 meeting show that Staruck, GreatBanc's employee, asked "how, if at all, the real estate sale/leaseback factored into the valuation and projected cash flows."

ANSWER: Paragraph 282 of the Amended Complaint states argument to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 282 of the Complaint, and refer to their answers elsewhere on these issues. If this potential transaction later closed, it would require Segerdahl to have to incur millions annually in lease and additional tax expenses going forward.

283. SRR's employee "Mr. Ward explained that [the sale/leaseback] had not been incorporated into the analysis due to the execution risk, particularly because the Company was just in the process of retaining the firm to put that into play and has done zero due diligence."

ANSWER: Paragraph 283 of the Amended Complaint states argument to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 283 of the Complaint. Further answering, Defendants note that any sale-leaseback transaction remained speculative and contingent unless and until Segerdahl was able to get agreement from its auditors that Segerdahl would receive favorable treatment of this sale-leaseback on its financial statements. Segerdahl's auditor did not conclude this until around late January 2017, and the sale-leaseback transaction was then able to close shortly thereafter. The sale-leaseback was a financing transaction for Segerdahl's core-operating assets (its two main plants) that, once it was closed, required Segerdahl to have to incur millions annually in lease and additional tax expenses going forward.

284. The minutes then state that "[n]o educated value could be assigned at this point."

ANSWER: Paragraph 284 of the Amended Complaint states argument to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 284 of the Complaint, and refer to their answers above on this issue. Further answering, Defendants note that the proposed sale-leaseback transaction here was still

contingent and was a financing transaction for Segerdahl's core-operating assets (its two main plants) that was not part of fair market value under the applicable hypothetical willing buyer and seller standard. If it was later able to close, this transaction would require Segerdahl to have to incur millions annually in lease and additional tax expenses going forward. Whether or not a transaction like this would be profitable depended on if the seller of the assets was later able to reinvest and earn more on the funds received in the sale-leaseback than what it was paying for them through its increased lease and tax expenses.

285. Segerdahl and its advisors long understood that the sale/leaseback would be highly lucrative:

a. For example, the "Due Diligence Report" prepared by DBR for GreatBanc's review in determining whether to approve the sale stated that "the result" of the "sale-and-leaseback opportunity" will "likely be a positive to EBITDA."

b. At the July 6, 2016 meeting of the Board of Directors, Defendant Schneider and Bradshaw "led a discussion about a potential sale/leaseback of the Company's real property which they believe will add **significant value** to a prospective buyer." (emphasis added).

ANSWER: Defendants admit that Plaintiff has selectively quoted from various documents, and refers to those documents as the best evidence of their contents. Defendants otherwise deny the allegations contained in paragraph 285 of Plaintiff's Amended Complaint, and refer to its answers elsewhere on these issues.

286. Far from any significant execution risk, however, by October 16, 2016, Segerdahl had already received "five bids on the potential sale-leaseback transaction in the range of $22-25 million," as reflected in the minutes of Segerdahl's Board of Directors meeting on that date.

ANSWER: Defendants admit that Plaintiff has selectively quoted from the Board minutes and refers to those minutes as the best evidence of their contents. Plaintiff failed to quote the completion of that sentence, which informed the Segerdahl Board "but that this transaction was very unlikely to close prior to the ICV closing, assuming that occurs." Defendants otherwise deny the allegations contained in paragraph 285 of Plaintiff's Amended Complaint, and refer to its answers elsewhere on these issues. Further answering, Defendants note that any sale-leaseback transaction remained speculative and contingent unless and until Segerdahl was able to get agreement from its auditors that Segerdahl would receive favorable treatment of this sale-leaseback on its financial statements. Segerdahl's auditor did not conclude this until around late January 2017, and the sale-leaseback transaction was then able to close shortly thereafter.

287. On November 23, 2016 Segerdahl actually accepted one of the offers – for $25 million from AG Net Lease. The transaction would eventually close in February of 2017 with the buyer identified as AGNL Mail, an affiliate of AG Net Lease.

ANSWER: Defendants admit that Segerdahl entered into lease agreements with AGNL Mail, LLC on February 7, 2017, but deny the remaining allegations of paragraph 287 of the Amended Complaint, and refer to its answers elsewhere on these issues. Further answering, Defendants note that the November 23, 2016 letter was a letter of intent, not a binding offer to buy. Defendants also note that any sale-leaseback transaction remained speculative and contingent unless and until Segerdahl was able to get agreement from its auditors that Segerdahl would receive favorable treatment of this sale-leaseback on its financial statements. Segerdahl's auditor did not conclude this until around late January 2017, and the sale-leaseback transaction was then able to close shortly thereafter.

288. The minutes of the November 4, 2016 Board of Directors meeting, at which Defendants Schneider, Joutras and the other Board of Director Defendants were present, state that Defendant Schneider "led a discussion on the sale/leaseback" including a "summary of proposals prepared by CBRE… the bidding process, the comparison of the proposals, and the state of due diligence."

ANSWER: Defendants admit that Plaintiff has selectively quoted from the Board of Directors meeting notes from November 4, 2016, and refers to those minutes as the best evidence of their contents.

289. Thus the November 4, 2016 Board meeting minutes show that due diligence on the potential transaction was underway well before the transaction. Moreover, the company had bids in-hand at that time.

ANSWER: Defendants deny the allegations contained in paragraph 289 of Plaintiff's Amended Complaint, and refer to their answers above on these issues. Defendants note that the November 23, 2016 letter referred to by Plaintiff above was a letter of intent, not a binding offer to buy. Defendants also note that any sale-leaseback transaction remained speculative and contingent unless and until Segerdahl was able to get agreement from its auditors that Segerdahl would receive favorable treatment of this sale-leaseback on its financial statements. Segerdahl's auditor did not conclude this until around late January 2017, and the sale-leaseback transaction was then able to close shortly thereafter.

290. Therefore GreatBanc's fiduciary committee minutes reflect that GreatBanc at best was mistaken when it concluded that Segerdahl had done "zero due diligence" and "no educated value" could be assigned to the transaction.

ANSWER: Defendants deny the allegations contained in paragraph 290 of Plaintiff's Amended Complaint, and refer to their answers above on these issues.

291. In addition, the bids in the $22-25 million range were in line with the estimates prepared by CBRE and Newmark Grubb:

a. An undated presentation prepared by Newmark Grubb, that JPMorgan provided to at least one of the bidders (Madison Dearborn) during the negotiations, estimated a purchase price for the real estate in the range of $23.7-$27.1 million.

b. A July 2016 presentation prepared by CBRE, the broker, showed a valuation range for $22.6 - $29.1 million for the properties.

ANSWER: There is no allegation contained in paragraph 291 of the Amended Complaint directed toward Defendants to which Defendants must respond. Defendants aver that CBRE is the best source of information regarding its own valuation. Defendants otherwise deny the allegations contained in paragraph 291 of Plaintiff's Amended Complaint, and refer to its answers elsewhere on these issues.

292. During a meeting during or about the last week of August 2016 including Defendant Schneider, Staruck (from GreatBanc), Ward (from SRR), and Bradshaw, the attendees discussed the sale-leaseback and the 338(h)(10) election, discussed in more detail below. Minutes of the meeting reflect the following discussion:

> 338h10 – leaseback: proceeds could be in the 25-34 million range. ***Has to be factored into purchase price.*** Who identified leaseback opportunity? Company as a matter of course. 7x multiple – far more proceeds in excess. No way they could close that leaseback during this process. They have chosen a broker…Data room CBRE and [Newmark Grubb]. (emphasis added)

ANSWER: Defendants admit that a conversation occurred in August 2016 regarding the sale-leaseback and the 338(h)(10) election, and that Plaintiff has selectively quoted from

the notes on that meeting. Defendants deny any other allegations contained in paragraph 292 of Plaintiff's Amended Complaint, and refer to their answers above on these issues.

293. But, as noted above, it is clear that the sale-leaseback was not "factored into the purchase price."

ANSWER: Defendants deny the allegations contained in paragraph 293 of Plaintiff's Amended Complaint, and refer to their answers above on these issues.

294. GreatBanc's stated concerns about "execution risk" do not hold water. By the time GreatBanc met on November 29 to approve the deal and expressed concern about "execution risk," Segerdahl had ***already accepted a $25 million dollar offer from AG Net Lease,*** the eventual buyer of the property. And Segerdahl had received multiple offers from other bidders in the same $22-$25 million range, confirming that, even if the accepted offer fell through (it did not—the sale-leaseback to AG Net Lease closed in February of 2017), a reasonable estimate of the value of the transaction was readily available and was in line with the numerous financial projections prepared by Segerdahl's advisors. Those estimates were included in the documents made available to GreatBanc in the data room. GreatBanc, as the ESOP's trustee, had an affirmative duty to investigate and understand the terms of the transaction, including the sale-leaseback. Because of that duty, GreatBanc had at least constructive knowledge of the real facts about the sale-leaseback, and its failure to ensure the ESOP was properly compensated was a breach of GreatBanc's fiduciary duties.

ANSWER: Paragraph 294 of the Amended Complaint states argument to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 294 of the Amended Complaint, and refer to their answers above on these issues.

295. The errors in GreatBanc's analysis on the eve of the transaction--that no due diligence had been undertaken, that no educated value could be assigned, that a broker had just been hired--each of which is contradicted by the foregoing, and each of which was evident in GreatBanc's prior notes and the documents available to GreatBanc, suggest that GreatBanc's omission of the sale-leaseback proceeds from the valuation and sale price was a deliberate and disloyal whitewash to justify a low purchase price. At best, these errors show reckless negligence on GreatBanc's part regarding assets worth millions of dollars, which should have inured to the benefit of the ESOP.

ANSWER: Paragraph 295 of the Amended Complaint states argument and to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 295, and refer to their answers above on these issues.

296. Moreover, this evidence is entirely consistent with Vergamini's statements at the meeting that Plaintiff Rush heard: that the sale-leaseback represented a benefit worth at least $7 million to the buyers. Vergamini euphemistically referred to the $7 million as "arbitrage." See *infra* ¶ 0. Arbitrage is the simultaneous purchase and sale of an asset to profit from an imbalance in the price. Here, the imbalance came at the expense of the ESOP. The ESOP gave up its interest in the real estate without receiving any compensation, and ICV was able to able to engage in the sale-leaseback and realize $7 million in profit.

ANSWER: Defendants deny the allegations contained in paragraph 296 of the Amended Complaint, and refer to their answers above on these issues.

297. Documents produced in discovery further corroborate Plaintiff Rush's recollection that Vergamini stated the sale-leaseback represented a $7 million "arbitrage" opportunity for the buyer. In particular, in an email dated July 10, 2016 to bidder Wynnchurch, Vergamini stated that:

> Fyi. Third-party sales-leaseback analysis attached that we uploaded to the data room on Friday. This is worth ~$10-14mm net pretax and ~$6-9mm net after-tax (after cap gains taxes). … We (JPM) are spending a lot of time with clients w/ RE assets looking at sales-leasebacks….**very large multiple arb**…the implied EBITDA multiple on the sales-leaseback is ~14x…we just did one for Bob Evans Restaurants who has Sandell agitating. BOBE trades in the ~9x EBITDA area.

(emphasis added).

ANSWER: Defendants admit that Plaintiff has selectively quoted from an email from Jeff Vergamini to the bidder Wynnchurch, and refers to that email as the best evidence of their contents. Further answering, Defendants note this is one example of Segerdahl's investment banker actively touting the sale-leaseback to potential bidders. Defendants further note that the potential for this sale-leaseback transaction was marketed to the other potential buyers that gave indications of interest, including ICV during negotiations for the purchase of Segerdahl, that ICV considered the potential for this sale-leaseback transaction when it raised its final offer for Segerdahl, and that Segerdahl and ICV used this potential value to negotiate the final purchase price with ICV.

298. "Arb" is a commonly used abbreviation for arbitrage, and the $6-9 million after tax range closely matches the $7 million figure Rush heard Vergamini quote.

ANSWER: There is no allegation contained in paragraph 298 of the Amended Complaint directed toward Defendants to which Defendants must respond. Defendants otherwise deny the allegations contained in paragraph 298 of the Amended Complaint.

299. Vergamini's July 10, 2016 email was unknown to Plaintiff Rush at the time he filed the Complaint in this action. However, Vergamini's use of the word "arbitrage" in that email, including its cynical connotations, provides independent support for Plaintiff's allegation in the original Complaint that he heard Vergamini describe the sale-leaseback as an arbitrage opportunity. *See* Complaint, Docket No. 1, ¶ 58; *supra* ¶ 0.

ANSWER: Paragraph 299 of the Amended Complaint states argument and to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 299, and refer to their answers above on these issues.

300. Thus the Board of Director Defendants and Defendant GreatBanc were actually or constructively aware of ICV Partners' plans to sell the real estate, and were aware of the value of the real estate. Despite that awareness, the Board of Director Defendants and Defendant GreatBanc took no action to ensure that ICV Partners paid a price for the Segerdahl shares that appropriately reflected the value of Segerdahl's real estate assets.

ANSWER: Defendants deny the allegations contained in paragraph 300 of the Amended Complaint, and refer to their answers above on these issues. Further answering, Defendants note that the potential for this sale-leaseback transaction was marketed to the four potential buyers that gave indications of interest, including ICV during negotiations for the purchase of Segerdahl, that ICV considered the potential for this sale-leaseback transaction when it raised its final offer for Segerdahl, and that Segerdahl and ICV used this potential value to negotiate the final purchase price with ICV. Defendants note that Mr. Rush acquired documents in discovery disclosing this to him.

D. The Section 338(h)(10) Election

301. ICV Partners also made what is called a section 338(h)(10) election under the tax code, obtaining significant additional value from the ESOP Buyout.

ANSWER: Defendants deny the allegations contained in paragraph 301 of the Amended Complaint. Further answering, Defendants admit that any potential value of the Section 338(h)(10) election for tax purposes was marketed to potential buyers, and that the four indications of interest from those potential buyers, including from ICV Partners, all

rested their offers on acquiring this tax election. A Section 338(h)(10) election treats a stock sale as an asset sale so that the tax basis of assets reflects what buyer paid for the stock. This is often done in this context, as reflected by its inclusion in the indications of interest received from the four potential buyers. Defendants note that this tax election had no value to the Segerdahl ESOP (which was a pass-through tax entity), and was part of what was required to receive the $265 million purchase price offered by ICV Partners. Any value this tax election had to potential buyers depended on the particular tax attributes of that buyer, and would further be limited by the amount of positive net income generated by Segerdahl post-sale, and by the expected length of time the potential buyer would own Segerdahl. Further, fair market value under ERISA and the tax code is based on the price a hypothetical willing buyer would pay a hypothetical willing seller that, by definition, does not consider the unique tax or other attributes of the buyer or seller.

In sum, with full knowledge of Defendants, the availability of this tax election was marketed to the potential buyers, including ICV, who included the value they placed on it in their indications of interest and offers for Segerdahl.

302. Section 338(h)(10) elections are commonly utilized when the target company is structured as an S corporation, as Segerdahl was before the ESOP Buyout.

ANSWER: Defendants admit the allegations contained in paragraph 302 of the Amended Complaint.

303. Sellers of S corporations attain higher purchase prices due to the ability of the buyer to make the favorable 338(h)(10) election.

ANSWER: Defendants deny the allegations contained in paragraph 303 of the Amended Complaint, and refer to their answers above on these issues. Further answering,

Defendants note that this tax election had no value to the Segerdahl ESOP (which was a pass-through tax entity), and was part of what was required to receive the $265 million purchase price offered by ICV Partners. Any value this tax election had to potential buyers would depend on their particular tax attributes, and would further be limited by the amount of positive net income generated by Segerdahl post-sale and by the expected length of time the potential buyer would own Segerdahl.

304. Making a 338(h)(10) election would have been a "no brainer" for a purchaser of Segerdahl.

ANSWER: Defendants deny the allegations contained in paragraph 304 of the Amended Complaint, and refer to their answers above on these issues.

305. In 2015, Wind Point intended to take a 338(h)(10) election, and Vergamini emphasized the value of the 338(h)(10) election to potential bidders in his marketing presentations.

ANSWER: The allegations contained in paragraph 305 are not directed at Defendants and, as such, no response is required. Out of an abundance of caution, Defendants deny any allegations contained in paragraph 305 of the Amended Complaint, and refer to their answers above on how the 338(h)(10) election was shopped to and considered by potential buyers leading up to the ICV Sale.

306. In October of 2016, for example, Vergamini gave a presentation to ICV Partners in which he estimated the "present value" of the 338(h)(10) election was **$46 million**.

ANSWER: Defendants admit that in October 2016 Mr. Vergamini gave a presentation to ICV touting many things to encourage ICV to raise its final offer to Segerdahl, including the potential tax benefits of a 338(h)(10) election, but refer to that presentation as the best evidence of its content, and otherwise deny the allegations contained

in paragraph 306 of the Amended Complaint. Further answering, Defendants note that this tax election had no value to the Segerdahl ESOP (which was a pass-through tax entity), and was part of what was required to receive the $265 million purchase price in the final offer by ICV Partners. Any value this tax election had to potential buyers like ICV depended on the particular tax attributes of that buyer, and would further be limited by the amount of positive net income generated by Segerdahl post-sale, and by the expected length of time the potential buyer would own Segerdahl.

307. Vergamini estimated that including the value of the 338(h)(10) multiple lowered the effective EBITDA multiple in the ESOP Buyout to just 4.8x.

ANSWER: Defendants admit that in October 2016 Mr. Vergamini gave a presentation to ICV touting many things to encourage ICV to raise its final offer to Segerdahl, including the potential tax benefits of a 338(h)(10) election, but refer to that presentation as the best evidence of its content, and otherwise deny the allegations contained in paragraph 307 of the Amended Complaint. Further answering, Defendants note that this tax election had no value to the Segerdahl ESOP (which was a pass-through tax entity), and was part of what was required to receive the $265 million purchase price offered by ICV Partners. Any value this tax election had to potential buyers like ICV depended on the particular tax attributes of that buyer, and would further be limited by the amount of positive net income generated by Segerdahl post-sale, and by the expected length of time the potential buyer would own Segerdahl.

308. GreatBanc was actually aware of these numbers, and received and reviewed a copy of Vergamini's presentation.

ANSWER: Defendants admit that GreatBanc was aware that the 338(h)(10) election had been shopped to potential buyers, including ICV, but otherwise deny the allegations contained in paragraph 308 of the Amended Complaint, and refer to the referenced presentation as the best evidence of its content and refer to its answers above on these issues.

309. Here, GreatBanc and the Segerdahl Fiduciary Defendants were actually aware that ICV planned to make a 338(h)(10) election, and were actually aware that the ESOP received no value for the 338(h)(10) election in the deal.

ANSWER: Defendants deny the allegations contained in paragraph 309 of the Amended Complaint, and refer to its answers above on these issues, including that this election was shopped to and considered by potential buyers, including ICV, when they made their indications of interest and offers for Segerdahl. This is how the market sets value to any particular buyer (this tax election would have no value to the Segerdahl ESOP), while any value this tax election had to potential buyers like ICV depended on the particular tax attributes of that buyer, and would be limited by the amount of positive net income generated by Segerdahl post-sale, and by the expected length of time the potential buyer would own Segerdahl.

310. Indeed, when GreatBanc first heard about the potential 338(h)(10) election, GreatBanc noted that it "[h]as to be factored into purchase price."

ANSWER: Defendants admit that Mr. Rush excerpts a section of meeting notes, but refer to those meeting notes as the best evidence of their content, and otherwise deny the allegations contained in paragraph 310 of the Amended Complaint and refer to their answers above on these issues.

311. But it was ***not*** factored into the purchase price, and ICV paid no value for that valuable right.

ANSWER: Defendants deny the allegations contained in paragraph 311 of the Amended Complaint, and refer to their answers above on these issues.

312. The Segerdahl Fiduciary Defendants and GreatBanc were actually aware that the value of the 338(h)(10) election was not factored into the purchase price and were actually aware that ICV paid no value for it.

ANSWER: Defendants deny the allegations contained in paragraph 312 of the Amended Complaint, and refer to their answers above on these issues.

313. Any reasonably prudent and loyal fiduciary representing the ESOP in the Segerdahl buyout would have insisted on obtaining at least some value for the 338(h)(10) election.

ANSWER: Paragraph 313 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 313 of the Amended Complaint, and refer to their answers above on these issues.

314. The failure of the Segerdahl Fiduciary Defendants and GreatBanc to obtain any value for the ESOP was a breach of their fiduciary duties of prudence and loyalty under ERISA.

ANSWER: Paragraph 314 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 314 of the Amended Complaint, and refer to their answers above on these issues.

E. The Wolf Road Fraud

315. DBR presented a final due diligence report to GreatBanc on November 28, 2016.

ANSWER: Defendants admit the allegations contained in paragraph 315 of Plaintiff's Amended Complaint.

316. DBR's report stated that:

> *Wolf Road Fraud*
>
> Management has reported a potential claim against Workforce LLC d/b/a MVP based on its substantial misreporting to the Company of hours allegedly worked by its temporary workers. Given the large number of temporary workers the Company hires, the claims raise some concerns about the Company's internal processes, some of which may impact customer security and background screening policies to which the Company is required to adhere (e.g. Leo Burnett Background Screening Policy Amendment to Standard Provisions for Print and Digital Services).
>
> Management informs us that it will likely take several years for this claim to be processed as the insurance companies are processing slowly and the vendor may argue that the Company's processes enabled this to happen. Nevertheless, it seems likely the result will be a positive to EBITDA due to the increased efficiency at the facility plus a potential claim against the supplier, Workforce LLC d/b/a MVP. This is not currently reflected in the purchase price formula.

ANSWER: Defendants admit that Plaintiff quotes selected excerpts from this report, but that the actual document is the best evidence of its content. Further answering, Defendants refer to their answers above on the Wolf-Road fraud issue. This includes that this issue was shopped to and considered by the potential buyers when they made offers for Segerdahl, while this claim was settled post-sale for a payment of only $350,000 (which equals 0.0013% of Segerdahl's $265,000,000 sales price), and a "coupon" type promise to reduce future bills, but only to the extent Segerdahl continued to use the service provider that had engaged in this fraudulent over-billing.

317. The DBR report, on its face, shows that Segerdahl stood to obtain significant value, both in immediate productivity benefits and through a longer term litigation recovery which were "likely to be a positive to EBITDA" and yet were "not currently reflected in the purchase price formula."

ANSWER: Defendants admit that Plaintiff quotes selected excerpts from this report, but that the actual document is the best evidence of its content, and otherwise deny the allegations in Paragraph 317 of the Amended Complaint and refer to their answers above on the Wolf-Road fraud issue.

318. There is no legitimate business reason for Defendants to fail to obtain any value for these claims and increased productivity from ICV.

ANSWER: Paragraph 318 of the Amended Complaint states argument to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 318 of the Amended Complaint and refer to their answers above on the Wolf-Road fraud issue.

319. Defendants' failure to obtain any value related to the Wolf Road Fraud was intentional and knowing, and appears on the face of DBR's report.

ANSWER: Paragraph 319 of the Amended Complaint states argument to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 319 of the Amended Complaint and refer to their answers above on the Wolf-Road fraud issue.

320. Defendants' failure to obtain any value related to the Wolf Road Fraud was a violation of Defendants' ERISA fiduciary duties of prudence and loyalty.

ANSWER: Paragraph 320 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 320 of the Complaint and refer to their answers above on the Wolf-Road fraud issue.

F. The Diverted Purchase Proceeds

321. The total purchase price for Segerdahl was approximately $265 million.

ANSWER: Defendants admit that the total purchase price ICV Partners paid for Segerdahl was $265 million, plus a $7 million addition for a working capital adjustment.

322. The Segerdahl Fiduciary Defendants used their control over Segerdahl and the ESOP to wrongfully divert from the ESOP millions of dollars of the proceeds of the ESOP Buyout paid by ICV Partners.

ANSWER: Defendants deny the allegations contained in paragraph 322 of the Amended Complaint, and refer to their answers elsewhere on these issues.

323. In particular, Defendant Joutras and his relative by marriage Paul White received $1.225 million out of the proceeds of the ESOP Buyout.

ANSWER: Defendants admit that Mr. Joutras and Mr. White received $1.225 million in payouts from the ICV Sale, but otherwise deny the allegations contained in paragraph 323 of the Amended Complaint. Further answering, Defendants note these each one of these payments was to pay off pre-existing contractual obligations of Segerdahl, just like the payments made to Mr. Rush's to pay off his $1.8 million SARS award, which he now has conceded are proper and does not constitute an unlawful diversion of ESOP assets. Segerdahl entered these contracts for sound business reasons that relate to corporate business decisions, not ERISA fiduciary ones. As to Mr. Joutras, the Board exercised its sound business judgment to enter the employment agreement with Mr. Joutras that continued his base salary and continued and extended his non-compete, and under which Mr. Joutras undertook certain key job duties, including facilitating the transition to the new CEO Mary Lee Schneider and calming key customers and employees when Segerdahl was being shopped.

As to Mr. White, the new CEO Ms. Schneider exercised her sound business judgment to enter a terminal employment agreement with Mr. White that continued his $300,000 salary for 2016 with employment benefits, but that subjected Mr. White to a non-compete that continued for one-year after his employment ended on December 31, 2016. Mr. White had no non-compete prior to entering this agreement, and he had built Segerdahl's sales force and had strong relationships with key sales people (who also did not have non-competes) and with key customers. Mr. White was also second-in-command in running the company under Mr. Joutras, and thus had extensive knowledge and insight into Segerdahl's business that would be invaluable to any competitor. Mr. White's terminal employment agreement thus was critical to protected Segerdahl from Mr. White going to a competitor for two years, which was even more important under the circumstances since the Board expected to be putting Segerdahl up for sale in the near future.

324. In addition, Joutras and White were allowed to keep 100% of their SARs, despite effectively leaving the employment for which they received the SARs months in advance of the transaction.

ANSWER: Defendants deny the allegations in paragraph 324 of the Amended Complaint, and refer to their answers above on these issues. Under the terms of their employment agreements, Mr. Joutras and Mr. White were still Segerdahl employees on December 7, 2016 when the ICV Sale occurred, and just like Mr. Rush, they were thus entitled to pay out of their SARS awards when this sale occurred.

325. In addition, a "transaction bonus" of $1 million was paid to Segerdahl's CFO, Bradshaw. That transaction bonus for Bradshaw was far in excess of reasonable compensation.

ANSWER: Paragraph 325 of the Amended Complaint states argument to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 325 of the Amended Complaint. Further answering, Defendants note that this payment was to pay off a pre-existing contractual obligation of Segerdahl, just like the payments made to pay off Mr. Rush's $1.8 million SARS award, which he now has conceded are proper and does not constitute an unlawful diversion of ESOP assets. The Segerdahl Board entered this contract with Mr. Bradshaw for sound business reasons that relate to corporate business decisions, not ERISA fiduciary ones, and which included that they need to incentivize a key person, Segerdahl's CFO Marcus Bradshaw, to stay through the sales process. Defendants further note that Segerdahl's senior managers (including Mr. Rush) were part of what financial buyers sought when acquiring Segerdahl from the ESOP, and thus their continued presence with the company post-sale brought value for (not conflict with) the Segerdahl ESOP when shopping to financial buyers, while enabling the Segerdahl ESOP to avoid the "bilk or buy" risk of shopping to competitors.

G. SRR's Flawed Valuation

326. In approving the ESOP Buyout, GreatBanc received and purported to rely on a fairness opinion, supported by an "Analysis of Transaction Fairness," that GreatBanc commissioned from SRR.

ANSWER: Defendants admit that GreatBanc received and relied in part upon a fairness opinion commissioned from SRR when deciding whether to approve the sale to the outside party ICV for $265,000,000, but otherwise deny the allegations in paragraph 326 of the Amended Complaint. Further answering, Defendants note that the ICV Sale that GreatBanc reviewed and approved resulted in the Segerdahl ESOP receiving an all-time

high in stock value after it had recently tripled in value in the two years leading up to the sale. This was despite that Segerdahl was facing declining sales and an industry decline pre-sale that accelerated post-sale, and in light of that, during GreatBanc's tenure as the independent trustee of the Segerdahl ESOP, Segerdahl's stock had twice before had substantial declines in value (over 30%) in the face of these industry declines.

Defendants further note that SRR had long-standing experience in valuing Segerdahl for the Segerdahl ESOP since its inception in 2003, while its valuation methodology had become more aggressive for Segerdahl (valuing it at higher multiples of EBITDA) beginning at the end of 2015 and continued through its valuation for the ICV Sale. This was despite that SRR was aware that Segerdahl's sales had begun to decline in 2016 as part of an incipient industry decline, which accelerated post-sale.

327. The Analysis of Transaction Fairness dated December 7, 2016, is replete with red flags that are apparent on the face of the document.

ANSWER: Paragraph 327 of the Amended Complaint states argument to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 327 of the Amended Complaint, and refer to their answers elsewhere on these issues.

328. The Analysis of Transaction Fairness reflects that a "sale to a strategic buyer" was "considered" but not pursued.

ANSWER: Defendants admit that GreatBanc received and relied upon a fairness opinion commissioned from SRR, and that document is the best evidence of its content, and that GreatBanc and SRR knew that the Segerdahl Board had exercised its business judgment

to first shop Segerdahl to financial buyers for the reasons stated above in the Answer. Defendants deny the remaining allegations in paragraph 328 of the Amended Complaint.

329. The Analysis of Transaction Fairness reflected that Segerdahl's management would receive approximately 10% of the equity in the company after the transaction.

ANSWER: Defendants admit that GreatBanc received and relied upon a fairness opinion commissioned from SRR, and that document is the best evidence of its content, and that GreatBanc and SRR and its legal advisor Drinker had reviewed the equity that ICV was offering senior managers post-sale so as to align their incentives to grow the value of the company post-sale (like ESOP stock and SARS awards had done for Mr. Rush and other senior managers pre-sale), but otherwise deny the remaining allegations in paragraph 329 of the Amended Complaint.

Further answering, Defendants note that the post-sale equity offered by ICV had stringent vesting requirements, which GreatBanc, its advisors, and Segerdahl's senior managers knew applied, and which resulted in the vast majority of these awards being forfeited. Defendants further note that Segerdahl's senior managers (including Mr. Rush) were part of what financial buyers sought when acquiring Segerdahl from the ESOP. Thus their continued presence with the company post-sale brought value (not conflict) for the Segerdahl ESOP when shopping to financial buyers, while thereby enabling the Segerdahl ESOP to avoid the "bilk or buy" risk discussed above of shopping to competitors.

330. The Analysis of Transaction Fairness reflects that "the Buyer and [Segerdahl] are anticipated to make a 338(h)(10) election for income tax purposes."

ANSWER: Defendants admit that GreatBanc received and relied upon a fairness opinion commissioned from SRR, and that document is the best evidence of its content, that

GreatBanc and SRR knew that ICV (like the other potential buyers) had factored in the 338(h)(10) election when making its offers for Segerdahl, and refer to their answers above on the 338(h)(10) election issue.

331. The Analysis of Transaction Fairness does not attempt to quantify the value of the 338(h)(10) election.

ANSWER: Defendants deny the allegations contained in paragraph 331 of the Amended Complaint, and refer to their answers above on these issues.

332. The Analysis of Transaction Fairness reflected that the criteria set out in the April 11, 2016 Board meeting for a potential purchaser included "growth oriented firm with similar philosophies regarding investment and debt that are consistent with Segerdahl management's views for running the business" and "ability to accelerate management's growth strategy through access to capital," but did not include obtaining the best price for the ESOP.

ANSWER: Defendants admit that Plaintiff quotes selected excerpts from the referenced document, and aver that the actual document is the best evidence of its content. Defendants otherwise deny the allegations contained in paragraph 332 of the Amended Complaint, and refer to their answers above on these issues. Further answering, Defendants note these criteria were consistent with obtaining maximum value from financial buyers, who if they did not fit at least some of them would have been unlikely to make an offer maximizing Segerdahl's value.

333. The Analysis of Transaction Fairness reflected that Segerdahl's management chose not to pursue the indication of interest from Wynnchurch because Wynnchurch "was likely a poor strategic fit given that its primary focus would be on operational improvements and not growth initiatives for Segerdahl."

ANSWER: Defendants deny the allegations contained in paragraph 333 of the Amended Complaint, and refer to their answers above on these issues. Further answering, Defendants note that Wynnchurch withdrew its indication of interest following its initial participation in the due diligence procedure, which Wynnchurch told Mr. Rush's counsel in open court and then in an affidavit that it withdrew from this sales process because it was no longer interested in Segerdahl after conducting preliminary due diligence.

334. The Analysis of Transaction Fairness reflected that "[c]onsolidation has characterized the U.S. commercial printing industry since the 1990s, and is ongoing due to the dramatic changes in the marketplace. The latest major example of consolidation is R.R. Donnelley's acquisition of Consolidated Graphics in 2013. Much of the merger and acquisition activity in the commercial printing industry is being driven by companies seeking to diversify beyond traditional printing services, and into industries such as logistics, online document services, and financial data."

ANSWER: Defendants admit that Plaintiff quotes selected excerpts from the referenced document, and aver that the actual document is the best evidence of its content. Defendants otherwise deny the allegations contained in paragraph 334 of the Amended Complaint, and refer to their answers above on these issues. Further answering, Defendants note that Donnelley acquired Consolidated Graphics for 6.3x its EBIDTA, which was less than the 6.6x EBITDA that ICV paid for Segerdahl.

335. The Analysis of Transaction Fairness reflected that Segerdahl's gross profits were projected to increase from $57.5 million in FY 2015 to $63.3 million in FY 2016, and Segerdahl's EBITDA was $40.2 million for the 12 months ending October 31, 2016.

ANSWER: Defendants admit that GreatBanc received and relied upon a fairness opinion commissioned from SRR, and that document is the best evidence of its content. Defendants otherwise deny the allegations contained in paragraph 335 of the Amended Complaint, and refer to their answers above on these issues. Further answering, Defendants note that Segerdahl's sales were declining in 2016 as part of an industry decline, and that Segerdahl repeatedly missed the targets it had set on sales and profits for 2016, making its chances of hitting these post-2017 projections even more remote, and that in fact Segerdahl badly missed them post-sale.

336. The Analysis of Transaction Fairness reflected that Segerdahl's "historical return on assets ratios are above the high end of the range of the guideline companies," Segerdahl's "historical EBITDA growth is within the range of the guideline companies," and Segerdahl's "projected growth rates in revenue and earnings are within the historical range of the guideline companies."

ANSWER: Defendants admit that Plaintiff quotes selected excerpts from the referenced document, and aver that the actual document is the best evidence of its content. Defendants otherwise deny the allegations contained in paragraph 336 of the Amended Complaint, and refer to their answers above on these issues. Further answering, Defendants note that Segerdahl's sales were declining in 2016, and that Segerdahl repeatedly missed the targets it had set on sales and profits for 2016, making its chances of hitting these post-2017 projections even more remote, and they have in fact been badly missed post-sale.

337. The Analysis of Transaction Fairness then set out two valuation methodologies that it would use to assess the value of Segerdahl: the "guideline company method" and the "discounted cash flow method."

ANSWER: Defendants admit that GreatBanc received and relied upon a fairness opinion commissioned from SRR, and that document is the best evidence of its content. Defendants admit that SRR used these two valuation methodologies as part of its fairness opinion, but otherwise deny the allegations contained in paragraph 337 of the Amended Complaint, and refer to their answers above on these issues.

338. SRR described the guideline company method as "estimat[ing] the value of a company (in this case, Segerdahl) by comparing it to similar public companies. Once a guideline company is selected, pricing multiples are developed by dividing the market value of equity or Enterprise Value … by appropriate measures of operating results such as sales, operating income, or earnings. After analyzing the risk and return characteristics of the guideline companies relative to the subject company, appropriate pricing multiples are applied to the operating results of the subject company to estimate its value."

ANSWER: Defendants admit that Plaintiff quotes selected excerpts from the referenced document, and aver that the actual document is the best evidence of its content. Defendants otherwise deny the allegations contained in paragraph 338 of the Amended Complaint.

339. SRR described the discounted cash flow method as "a valuation technique in which the value of the company is estimated based on the earning capacity of that company." The discounted cash flow method estimates the value of the company "based on the present value of its expected future economic benefits," in particular, "distributable cash flow."

ANSWER: Defendants admit that Plaintiff quotes selected excerpts from the referenced document, and aver that the actual document is the best evidence of its content.

Defendants otherwise deny the allegations contained in paragraph 339 of the Amended Complaint.

340. SRR elected not to use the "Transaction Method (Comparable Companies)" approach because "[a] search for transactions involving companies in related industries did not indicate a significant number of transactions with sufficient disclosure of financial terms to draw meaningful conclusions to rely on the Transaction Method."

ANSWER: Defendants admit that Plaintiff quotes selected excerpts from the referenced document, and aver that the actual document is the best evidence of its content. Defendants otherwise deny the allegations contained in paragraph 340 of the Amended Complaint, and refer to their answers above on these issues, including on the limited number of competitors in Segerdahl's direct mail printing industry that would have been of sufficient size to bid on Segerdahl.

341. SRR's failure to identify such transactions is strange given that JPMorgan compiled a list of comparable transactions that it presented to Segerdahl's Board on more than one occasion and presented to potential bidders for Segerdahl (*supra* at ¶¶ 108, 155).

ANSWER: Paragraph 341 of the Amended Complaint states argument to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 341 of the Amended Complaint, and refer to their answers above on these issues.

342. It would have been appropriate for SRR to include and rely on the Transaction Method in this case given the context of the fairness analysis—that is, to review a proposed sale transaction.

ANSWER: Paragraph 342 of the Amended Complaint states argument to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 342, and refer to their answers above on these issues.

343. It is apparent from the study of precedent transactions compiled by JPMorgan that the Transaction Method would have yielded a higher value for Segerdahl than $265 million.

ANSWER: Paragraph 343 of the Amended Complaint states argument to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 343, and refer to their answers above on these issues.

344. GreatBanc had actual or constructive knowledge of the precedent transactions identified by JPMorgan, which were made available to GreatBanc in the deal room.

ANSWER: Defendants admit that GreatBanc and its advisors had access to the deal room documents and to the marketing presentations that JPMorgan made to the Segerdahl Board and to potential buyers. Defendants otherwise deny the allegations in Paragraph 344 of the Amended Complaint, and refer to their answers above on these issues.

345. By contrast, SRR purported to apply the guideline public company method, and reached the following results:

Conclusion

Guideline Company Method

U.S. Dollars in Thousands

	Segerdahl Corporation and Subsidiaries Results	Indicated Pricing Multiples[a] Low	High	Mean	Median	Selected Multiples			Indicated Values		
Next Fiscal Year (2017):											
EBIT	29,134	10.3x	14.9x	13.6x	14.7x	8.5x	-	9.5x	247,600	-	276,800
EBITDA	47,286	5.9x	14.2x	9.4x	9.4x	5.0x	-	6.0x	236,400	-	283,700
Latest Twelve Months:											
EBIT	22,849	11.6x	17.3x	14.1x	13.5x	10.5x	-	11.5x	239,900	-	262,800
EBITDA	40,206	5.4x	18.1x	11.9x	12.3x	6.0x	-	7.0x	241,200	-	281,400
Three-Year Average [b]:											
EBIT	21,365	7.8x	17.4x	13.1x	13.7x	n/m	-	n/m	n/m	-	n/m
EBITDA	36,923	4.6x	19.5x	11.5x	10.2x	n/m	-	n/m	n/m	-	n/m
Enterprise Value, Controlling Interest Basis (Rounded)									$ 240,000	-	$ 280,000

ANSWER: Defendants admit that Plaintiff quotes selected excerpts from the referenced document, and aver that the actual document is the best evidence of its content. Defendants otherwise deny the allegations contained in paragraph 345 of the Amended Complaint, and refer to their answers above on these issues.

346. Thus, for example, the guideline companies traded at multiples of 10.3x – 14.9x estimated 2017 (next fiscal year) EBIT, with a mean of 13.6x and a median of 14.7x.

ANSWER: Defendants admit that Plaintiff quotes selected numbers from the referenced document, and aver that the actual document is the best evidence of its content. Defendants otherwise deny the allegations contained in paragraph 346 of the Amended Complaint, and refer to their answers above on these issues.

347. For Segerdahl, SRR chose values in range of 8.5x – 9.5x EBIT.

ANSWER: Defendants admit that Plaintiff quotes selected excerpts from the referenced document, and aver that the actual document is the best evidence of its content.

Defendants otherwise deny the allegations contained in paragraph 347 of the Amended Complaint, and refer to their answers above on these issues. Defendants further note that SRR had long-standing experience in valuing Segerdahl for the Segerdahl ESOP since its inception in 2003, while its valuation methodology had become more aggressive for Segerdahl (valuing it at higher multiples of EBITDA) beginning at the end of 2015 and continued through its valuation for the ICV Sale. This was despite that SRR was aware that Segerdahl's sales had begun to decline in 2016 as part of an incipient industry decline, which accelerated post-sale. Defendants note that Segerdahl repeatedly missed the targets it had set on sales and profits for 2016, making its chances of hitting post-sale projections even more remote, and they have in fact been badly missed post-sale.

348. SRR therefore entirely ignored the range of the guideline companies for the next fiscal year EBIT metric, and picked a range for estimating Segerdahl's value the ***high end*** of which was below the ***low end*** of the range of the guideline public companies.

ANSWER: Paragraph 348 of the Amended Complaint states argument to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 348, and refer to their answers above on these issues. Defendants further note that SRR had long-standing experience in valuing Segerdahl for the Segerdahl ESOP since its inception in 2003, while its valuation methodology had become more aggressive for Segerdahl (valuing it at higher multiples of EBITDA) beginning at the end of 2015 and continued through its valuation for the ICV Sale. This was despite that SRR was aware that Segerdahl's sales had begun to decline in 2016 as part of an incipient industry decline, which accelerated post-sale. Defendants note that Segerdahl repeatedly missed the targets it had

set on sales and profits for 2016, making its chances of hitting post-sale projections even more remote, and they have in fact been badly missed post-sale.

349. For last twelve months EBITDA, SRR calculated a range of 5.4x – 18.1x, with a mean of 11.9x and a median of 12.3x.

ANSWER: Defendants admit that Plaintiff quotes selected excerpts from the referenced document, and aver that the actual document is the best evidence of its content. Defendants otherwise deny the allegations contained in paragraph 349 of the Amended Complaint, and refer to their answers above on these issues. Defendants further note that SRR had long-standing experience in valuing Segerdahl for the Segerdahl ESOP since its inception in 2003, while its valuation methodology had become more aggressive for Segerdahl (valuing it at higher multiples of EBITDA) beginning at the end of 2015 and continued through its valuation for the ICV Sale. This was despite that SRR was aware that Segerdahl's sales had begun to decline in 2016 as part of an incipient industry decline, which accelerated post-sale. Defendants note that Segerdahl repeatedly missed the targets it had set on sales and profits for 2016, making its chances of hitting post-sale projections even more remote, and they have in fact been badly missed post-sale.

350. SRR chose a range of 6x-7x for Segerdahl—well below mean or median and only slightly above the bottom end of the guideline range.

ANSWER: Defendants admit that Plaintiff quotes selected excerpts from the referenced document, and aver that the actual document is the best evidence of its content. Defendants otherwise deny the allegations contained in paragraph 350 of the Amended Complaint, and refer to their answers above on these issues. Defendants further note that SRR had long-standing experience in valuing Segerdahl for the Segerdahl ESOP since its

inception in 2003, while its valuation methodology had become more aggressive for Segerdahl (valuing it at higher multiples of EBITDA) beginning at the end of 2015 and continued through its valuation for the ICV Sale. This was despite that SRR was aware that Segerdahl's sales had begun to decline in 2016 as part of an incipient industry decline, which accelerated post-sale. Defendants note that Segerdahl repeatedly missed the targets it had set on sales and profits for 2016, making its chances of hitting post-sale projections even more remote, and they have in fact been badly missed post-sale.

351. However, the range chosen by SRR, while bearing little, if any, relationship to the guideline public company analysis it set out, did neatly encompass the previously agreed upon $265 million price, which represented a roughly 6.6x EBITDA multiple.

ANSWER: Defendants admit that the sale to ICV for $265,000,000 constituted a 6.6x multiple of Segerdahl's current EBIDTA earned through year ending October 2016. Paragraph 351 of the Amended Complaint otherwise states argument to which no response is required. If, however, a response is required, Defendants deny the remaining allegations in paragraph 351, and refer to their answers above on these issues.

352. In every case, the high end of the range chosen by SRR for Segerdahl was below or near the low end of the range suggested by the guideline public company method, and in every case the high end of the range SRR chose for Segerdahl was well below mean or median for the guideline public companies.

ANSWER: Paragraph 352 of the Amended Complaint states argument to which no response is required. If, however, a response is required, Defendants deny the remaining allegations in paragraph 352, and refer to their answers above on these issues. Defendants further note that SRR had long-standing experience in valuing Segerdahl for the Segerdahl

ESOP since its inception in 2003, while its valuation methodology had become more aggressive for Segerdahl (valuing it at higher multiples of EBITDA) beginning at the end of 2015 and continued through its valuation for the ICV Sale. This was despite that SRR was aware that Segerdahl's sales had begun to decline in 2016 as part of an incipient industry decline, which accelerated post-sale. Defendants note that Segerdahl repeatedly missed the targets it had set on sales and profits for 2016, making its chances of hitting post-sale projections even more remote, and they have in fact been badly missed post-sale.

353. Conveniently, the range chosen by SRR for Segerdahl yielded a result that included the deal price with ICV: $240 million to $280 million, compared to a deal price of $265 million.

ANSWER: Paragraph 353 of the Amended Complaint states argument to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 353, and refer to their answers above on these issues.

354. If SRR had actually applied the ranges it deduced for the guideline companies, the range of values for Segerdahl stock would have been far higher: an absolute range of $217 million to as much as $728 million (with a midpoint of $472.5 million), a mean range from $321 million to $478 million, and a median range of $308 million to $494 million.

ANSWER: Paragraph 354 of the Amended Complaint states argument to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 354, and refer to their answers above on these issues.

355. SRR essentially ignored the results of its own guideline public company analysis.

ANSWER: Paragraph 355 of the Amended Complaint states argument to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 355, and refer to their answers above on these issues.

356. SRR's decision to depart from the guideline public company method was intentional and designed to justify the already agreed upon purchase price with ICV.

ANSWER: Paragraph 356 of the Amended Complaint states argument to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 356, and refer to their answers above on these issues. Defendants further note that SRR had long-standing experience in valuing Segerdahl for the Segerdahl ESOP since its inception in 2003, while its valuation methodology had become more aggressive for Segerdahl (valuing it at higher multiples of EBITDA) beginning at the end of 2015 and continued through its valuation for the ICV Sale. This was despite that SRR was aware that Segerdahl's sales had begun to decline in 2016 as part of an incipient industry decline, which accelerated post-sale. Defendants note that Segerdahl repeatedly missed the targets it had set on sales and profits for 2016, making its chances of hitting post-sale projections even more remote, and they have in fact been badly missed post-sale.

357. SRR's decision to depart from the results of the guideline public company analysis was in stark contrast to its observation that Segerdahl's "historical return on assets ratios are above the high end of the range of the guideline companies," Segerdahl's "historical EBITDA growth is within the range of the guideline companies," and Segerdahl's "projected growth rates in revenue and earnings are within the historical range of the guideline companies."

ANSWER: Defendants admit that Plaintiff quotes selected excerpts from the referenced document, and aver that the actual document is the best evidence of its content. Defendants otherwise deny the allegations contained in paragraph 357 of the Amended Complaint, and refer to their answers above on these issues. Defendants further note that SRR had long-standing experience in valuing Segerdahl for the Segerdahl ESOP since its

inception in 2003, while its valuation methodology had become more aggressive for Segerdahl (valuing it at higher multiples of EBITDA) beginning at the end of 2015 and continued through its valuation for the ICV Sale. This was despite that SRR was aware that Segerdahl's sales had begun to decline in 2016 as part of an incipient industry decline, which accelerated post-sale. Defendants note that Segerdahl repeatedly missed the targets it had set on sales and profits for 2016, making its chances of hitting post-sale projections even more remote, and they have in fact been badly missed post-sale.

358. SRR then performed a discounted cash flow analysis.

ANSWER: Defendants admit that SRR performed a discounted cash flow analysis of Segerdahl.

359. SRR determined a range of values from the discounted cash flow analysis of $258 million to $306 million.

ANSWER: Defendants admit that SRR determined a range of values from the discounted cash flow analysis of $258 million to $306 million for Segerdahl. Further answering, Defendants note that SRR determined this value by lowering the discount rate for its weighted average cost of capital by 2.0% from what it had previously used, thus substantially driving up the range of value created in this cash flow analysis. Defendants further note that SRR was using these more aggressive valuation assumptions for Segerdahl despite that SRR was aware that Segerdahl's sales had begun to decline in 2016 as part of an incipient industry decline, which accelerated post-sale. Defendants also note that Segerdahl repeatedly missed these targets, making its chances of hitting post-sale projections incorporated in a discounted cash flow analysis even more remote, and they have in fact been badly missed post-sale.

360. SRR adopted the midpoint of the range, estimating Segerdahl's value at $278 million—higher than the ESOP Buyout deal price of $265 million.

ANSWER: Defendants admit that Plaintiff quotes selected excerpts from the referenced document, and aver that the actual document is the best evidence of its content. Defendants otherwise deny the allegations contained in paragraph 360 of the Amended Complaint, and refer to their answers above on these issues.

361. SRR's discounted cash flow analysis showed that the deal price of $265 million was much closer to the bottom of the range of the discounted cash flow analysis than it was to the midpoint of the range that SRR adopted.

ANSWER: Paragraph 361 of the Amended Complaint states argument to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 361, and refer to their answers above on these issues.

362. SRR's Analysis of Transaction Fairness thus contains serious red flags on its face, including:

a. A frank acknowledgment that the sale process was not designed to maximize the value to the ESOP and was instead designed to protect management and further management's strategies;

b. A discussion of in-hand indications of interest at a higher price than the sale price that were ignored because of a desire to protect management;

c. An acknowledgement that management would receive 10% of the equity in the company after the transaction;

d. A notation that a 338(h)(10) election was planned but no discussion of the value of that election;

e. A failure to consider numerous transactions of comparable companies in the years before the ESOP Buyout;

f. A wholesale departure from the results of the guideline company analysis;

g. A chart showing the trading multiples of the guideline companies suggesting the value of Segerdahl was between $300 million and $500 million; and

h. A discounted cash flow method analysis showing that ICV's purchase price was $12 million below Segerdahl's value.

ANSWER: Paragraph 362 of the Amended Complaint states argument to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 362, and refer to their answers above on these issues.

363. The Seventh Circuit has held that "[a]n independent appraisal is not a magic wand that fiduciaries may simply waive over a transaction to ensure that their responsibilities are fulfilled," and "soliciting outside advice does not operate as a 'complete whitewash' which, without more, satisfies ERISA's prudence requirement." *George v. Kraft Foods Glob., Inc.*, 641 F.3d 786, 800 (7th Cir. 2011). "The fiduciary must (1) investigate the expert's qualifications, (2) provide the expert with complete and accurate information, and (3) make certain that reliance on the expert's advice is reasonably justified under the circumstances." *Montgomery v. Aetna Plywood, Inc.*, 39 F. Supp. 2d 915, 936 (N.D. Ill. 1998).

ANSWER: Paragraph 363 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 363 of the Amended Complaint and rely on the statutes and rules identified in paragraph 363 to speak for themselves, including in

relation to the rest of applicable ERISA law, rather than on Plaintiff's characterization thereof.

364. Any reasonably prudent and loyal ESOP fiduciary reviewing SRR's Analysis of Transaction Fairness in an effort to "make certain that reliance" on the Analysis of Transaction Fairness was "reasonably justified under the circumstances" would and should have questioned these obvious problems with SRR's Analysis of Transaction Fairness. Moreover, any reasonably prudent and loyal ESOP fiduciary would have objected to the ESOP Buyout in light of the fundamental unfairness to the ESOP that the problems with SRR's Analysis of Transaction Fairness revealed. Putting aside the gross failure of SRR to even apply the valuation methods it set out, and its failure to consider the many precedent transactions available, the Analysis of Transaction Fairness on its face reflects breaches of the duty of loyalty including (a) marketing the company only to potential purchasers that would protect management and (b) a transaction in which management stood to directly profit as an equity holder in the post-transaction company at the expense of the ESOP.

ANSWER: Paragraph 364 of the Amended Complaint states argument to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 364 of the Amended Complaint, and refer to their answers above on these issues.

DEFENDANTS' FIDUCIARY STATUS UNDER ERISA

365. ERISA requires that every plan identify "one or more" "named fiduciaries" with general responsibility for administering the plan. ERISA § 402(a)(1).

ANSWER: Paragraph 365 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 365 of the Amended Complaint and rely on

the statutes and rules identified in paragraph 365 to speak for themselves, including in relation to the rest of applicable ERISA law, rather than on Plaintiff's characterization thereof.

366. According to the Conformed Plan, Segerdahl's Board of Directors created an "ESOP Committee" and appointed the members of the ESOP Committee. Under the terms of the Conformed Plan, the ESOP Committee was the plan administrator of the ESOP and the ESOP's named fiduciary, with general authority to carry out essentially all fiduciary functions for the ESOP.

ANSWER: Defendants admit that under the Conformed Plan Segerdahl's Board of Directors appoints an Administrator to administer the ESOP. Further answering, Defendants note that GreatBanc was the independent trustee for the Segerdahl ESOP from its formation in 2003 through the ICV Sale on December 7, 2016. GreatBanc was further delegated the exclusive authority on behalf of the Segerdahl ESOP to determine whether to approve the ICV Sale. Except as expressly admitted herein, defendants deny the allegations of paragraph 366 of the Amended Complaint.

367. Defendant Joutras was the only member of the ESOP Committee from 2014 until April 11, 2016, when he resigned. Defendant Schneider was appointed by the Board of Directors to the ESOP Committee that same day, and served on the ESOP Committee until the termination of the ESOP in December of 2016. Defendants Joutras and Schneider were, accordingly, express fiduciaries of the ESOP under ERISA § 402(a)(1) during all or part of the relevant period.

ANSWER: Defendants deny the allegations contained in paragraph 367 of the Amended Complaint. Further answering, Defendants note that Mr. Joutras was a member of the ESOP Committee from 2014 until April 11, 2016 when he resigned and Ms. Schneider

and the head of Human Resources were appointed on April 11, 2016 to replace him. GreatBanc was the independent trustee for the Segerdahl ESOP from its formation in 2003 through the ICV Sale on December 7, 2016. GreatBanc was further delegated the exclusive authority on behalf of the Segerdahl ESOP to determine whether to approve the ICV Sale.

368. The Conformed Plan provided that "[i]n the event of a tender offer or other offer to purchase shares of [Segerdahl] Stock held by the Trust, the Trustee shall tender or sell shares as it is directed by the Administrator [the ESOP Committee], subject to the Trustee's fiduciary duties under ERISA."

ANSWER: Defendants deny the allegations contained in paragraph 368 of the Amended Complaint. Further answering, Defendants note that the Plan was amended to make GreatBanc the independent fiduciary with the exclusive authority on behalf of the Segerdahl ESOP to determine whether to approve the ICV Sale

369. Thus the ESOP Committee and the Trustee GreatBanc both had express fiduciary duties with respect to the ESOP Buyout. The ESOP Committee was responsible for the sale process of Segerdahl up until the time GreatBanc was appointed in August of 2016.

ANSWER: Defendants deny the allegations contained in paragraph 369 of the Amended Complaint, and refer to their answers elsewhere on these issues.

370. From that point, GreatBanc shares responsibility for the imprudent and disloyal marketing of Segerdahl, and has primary responsibility for the ultimate decision to accept ICV's offer.

ANSWER: Defendants deny the allegations contained in paragraph 370 of the Amended Complaint, and refer to their answers elsewhere on these issues.

371. ERISA also defines fiduciary status so that anyone is a fiduciary "to the extent" they *in fact* perform a fiduciary function. *See* ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A). Thus in addition to expressly designated fiduciaries, anyone is a fiduciary "to the extent" he "exercises any discretionary authority or discretionary control respecting management of such plan" or "exercises any authority or control respecting management or disposition of its assets" or "has any discretionary authority or discretionary responsibility in the administration of such plan." *Id*.

ANSWER: Paragraph 371 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 371 of the Amended Complaint and rely on the statutes and rules identified in paragraph 371 to speak for themselves, including in relation to the rest of applicable ERISA law, rather than on Plaintiff's characterization thereof.

372. The Seventh Circuit has applied a "consistently broad reading" to the functional definition of fiduciary under ERISA. *Baker v. Kingsley*, 387 F.3d 649, 663–64 (7th Cir. 2004)).

ANSWER: Paragraph 372 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 372 of the Amended Complaint and rely on the case identified in paragraph 372 to speak for itself, including in relation to the rest of applicable ERISA law, rather than on Plaintiff's characterization thereof.

373. In particular, appointing another ERISA fiduciary is itself a fiduciary function, and carries with it fiduciary duties to prudently and loyalty appoint, monitor the performance of, and, if necessary, remove an appointee. *Leigh*, 727 F.2d at 133 ("selecting and retaining plan administrators" is an ERISA fiduciary function).

ANSWER: Paragraph 373 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 373 of the Amended Complaint and rely on the case identified in paragraph 373 to speak for itself, including in relation to the rest of applicable ERISA law, rather than on Plaintiff's characterization thereof.

374. Here, Schneider and Joutras effectively exercised complete control over Segerdahl and the ESOP, including appointments to the Board of Directors and ESOP Committee. Schneider and Joutras used that control to ensure that the Board of Directors and ESOP Committee included only members who were primarily loyal to Schneider and Joutras, not the ESOP.

ANSWER: Defendants deny the allegations contained in paragraph 374 of the Amended Complaint, and refer to their answers elsewhere on these issues.

375. Schneider and Joutras are also ERISA fiduciaries by virtue of their appointment and effective control over the ESOP's other fiduciaries, including the Board of Directors, ESOP Committee and Trustee. Schneider and Joutras are also fiduciaries by virtue of their control over Segerdahl itself, which was a plan asset of the ESOP.

ANSWER: Paragraph 375 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 375 of the Amended Complaint and rely on the law referred to in paragraph 375 to speak for itself, including in relation to the rest of applicable ERISA law, rather than on Plaintiff's characterization thereof. Further answering, Defendants note that Segerdahl is an operating company that is not a plan asset of the ESOP. *See, e.g.*, 29 C.F.R. § 2510.3-101(a)(2) & (c) (defining "operating company" as

one that is primarily engaged in the production or sale of a product or service other than the investment of capital).

376. The Board of Directors Defendants, in turn, are fiduciaries because they had formal authority under the Plan to appoint the ESOP's Trustee as well as the members of the ESOP Committee, and thus had fiduciary duties with respect to those appoints, duties to monitor the performance of the Trustee and the ESOP Committee members and duties to remove the Trustee and ESOP Committee members if they failed to fulfill their fiduciary duties.

ANSWER: Paragraph 376 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 376 of the Amended Complaint and rely on the law discussed in paragraph 376 to speak for itself, including in relation to the rest of applicable ERISA law, rather than on Plaintiff's characterization thereof.

ERISA'S FIDUCIARY DUTIES

377. ERISA §§ 404(a)(1)(A) and (B), 29 U.S.C. §§ 1104(a)(1)(A) and (B), provides, in pertinent part, that a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries, for the exclusive purpose of providing benefits to participants and their beneficiaries, and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

ANSWER: Paragraph 377 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 377 of the Amended Complaint and rely on the statutes and rules identified in paragraph 377 to speak for themselves, including in

relation to the rest of applicable ERISA law, rather than on Plaintiff's characterization thereof.

378. These fiduciary duties under ERISA §§ 404(a)(1)(A) and (B) are referred to as the duties of loyalty, exclusive purpose and prudence.

ANSWER: Paragraph 378 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 378 of the Amended Complaint and rely on the statutes and rules identified in paragraph 378 to speak for themselves, including in relation to the rest of applicable ERISA law, rather than on Plaintiff's characterization thereof.

379. "[T]he duties charged to an ERISA fiduciary are 'the highest known to the law.'" *George v. Kraft Foods Glob., Inc.*, 814 F. Supp. 2d 832, 852 (N.D. Ill. 2011). ERISA's duty of prudence "is not that of a prudent layperson but rather that of a prudent fiduciary with experience dealing with a similar enterprise." *Whitfield v. Cohen*, 682 F. Supp. 188, 194 (S.D.N.Y. 1988). Put another way, ERISA fiduciaries must "act in good faith as an objectively prudent fiduciary would act, not simply as a prudent layperson would act." *Chesemore v. All. Holdings, Inc.*, 886 F. Supp. 2d 1007, 1041 (W.D. Wis. 2012), *aff'd* 829 F.3d 803 (7th Cir. 2016).

ANSWER: Paragraph 379 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 379 of the Amended Complaint and rely on the cases identified in paragraph 379 to speak for themselves, including in relation to the rest of applicable ERISA law, rather than on Plaintiff's characterization thereof.

380. ERISA's fiduciary duties entail, among other things:

(a) The duty to conduct an independent and thorough investigation into, and to continually monitor the merits of all the investment alternatives of a plan;

(b) The duty to avoid conflicts of interest and to resolve them promptly when they occur. A fiduciary must always administer a plan with an "eye single" to the interests of the participants and beneficiaries, regardless of the interests of the fiduciaries themselves or the plan sponsor; and

(c) The duty to disclose and inform, which encompasses: (1) a negative duty not to misinform; (2) an affirmative duty to inform when the fiduciary knows or should know that silence might be harmful; and (3) a duty to convey complete and accurate information material to the circumstances of participants and beneficiaries.

ANSWER: Paragraph 380 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 380 of the Amended Complaint and rely on the law identified in paragraph 380 to speak for itself, including in relation to the rest of applicable ERISA law, rather than on Plaintiff's characterization thereof.

381. According to Department of Labor ("DOL") regulations and case law interpreting these statutory provisions, in order to comply with the prudence requirement under ERISA §404(a), a fiduciary must show that: (a) he has given appropriate consideration to those facts and circumstances that, given the scope of such fiduciary's investment duties, the fiduciary knows or should know are relevant to the particular investment or investment course of action involved, including the role the investment or investment course of action plays in that portion of the plan's investment portfolio with respect to which the fiduciary has investment duties; and (b) he has acted accordingly.

ANSWER: Paragraph 381 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 381 of the Amended Complaint and rely on the law identified in paragraph 381 to speak for itself, including in relation to the rest of applicable ERISA law, rather than on Plaintiff's characterization thereof.

382. Again, according to DOL regulations, "appropriate consideration" in this context includes, but is not necessarily limited to:

- A determination by the fiduciary that the particular investment or investment course of action is reasonably designed, as part of the portfolio (or, where applicable, that portion of the plan portfolio with respect to which the fiduciary has investment duties), to further the purposes of the plan, taking into consideration the risk of loss and the opportunity for gain (or other return) associated with the investment or investment course of action; and
- Consideration of the following factors as they relate to such portion of the portfolio:
  - The composition of the portfolio with regard to diversification;
  - The liquidity and current return of the portfolio relative to the anticipated cash flow requirements of the plan; and
  - The projected return of the portfolio relative to the funding objectives of the plan.

ANSWER: Paragraph 382 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 382 of the Amended Complaint and rely on

the regulation identified in paragraph 382 to speak for itself, including in relation to the rest of applicable ERISA law, rather than on Plaintiff's characterization thereof.

383. A fiduciary that undertakes to sell plan assets is bound by the duties of prudence and loyalty when they do so. A prudent and loyal fiduciary with experience selling large private companies would make sure that they identified and solicited offers from all types of potential buyers, including competitors.

ANSWER: Paragraph 383 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 383 of the Amended Complaint and rely on the law referred to in paragraph 383 to speak for itself, including in relation to the rest of applicable ERISA law, rather than on Plaintiff's characterization thereof.

384. ERISA § 405 renders Plan fiduciaries liable for the breaches of other fiduciaries under certain circumstances, such as when a fiduciary knowingly participates in or conceals the breach of another fiduciary, if the fiduciary's own breach enables the breach by the other fiduciary, or if the fiduciary is aware of the other fiduciary's breach yet makes no reasonable effort to correct the breach.

ANSWER: Paragraph 384 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 384 of the Amended Complaint and rely on the statute identified in paragraph 384 to speak for itself, including in relation to the rest of applicable ERISA law, rather than on Plaintiff's characterization thereof.

385. ERISA § 406 prohibits Plan fiduciaries from entering into transactions between the plan and a party in interest or from entering into various transactions involving the plan and a fiduciary that directly involve, or raise a heightened risk of, self-dealing by the plan's fiduciary.

ANSWER: Paragraph 385 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 385 of the Amended Complaint and rely on the statute identified in paragraph 385 to speak for itself, including in relation to the rest of applicable ERISA law, rather than on Plaintiff's characterization thereof. Further answering, Defendants note that ERISA § 406 applies only to transactions involving parties in interest to a plan. ICV Partners does not qualify as a party in interest under ERISA § 406.

386. ERISA § 206(d)(4) provides that courts may order an offset of all or part of a participant's benefits against the amount the participant is ordered or required to pay to the plan, if, among other things, the participant breached his ERISA fiduciary duties.

ANSWER: Paragraph 386 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 386 of the Amended Complaint and rely on the statute identified in paragraph 386 to speak for itself, including in relation to the rest of applicable ERISA law, rather than on Plaintiff's characterization thereof.

CLASS ACTION ALLEGATIONS

387. ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2), authorizes any participant or beneficiary of a retirement plan to bring an action individually on behalf of that plan to enforce a breaching fiduciary's liability to the plan under 29 U.S.C. § 1109(a). Such claims are brought "in

a representative capacity on behalf of the plan as a whole." *Massachusetts Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 142 (1985).

ANSWER: Paragraph 387 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 387 of the Amended Complaint and rely on the statutes and rules identified in paragraph 387 to speak for themselves, including in relation to the rest of applicable ERISA law, rather than on Plaintiff's characterization thereof.

388. The claims set forth in this action meet the requirements of Rule 23, and class certification would be appropriate with respect to the following class (the "Class"):

> All participants in and beneficiaries of the Segerdahl Corporation Employee Stock Ownership Plan at the time the ESOP was terminated, with the exception of Defendants in this action and their beneficiaries.

ANSWER: Paragraph 388 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 388 of the Amended Complaint and rely on the statutes and rules identified in paragraph 388 to speak for themselves, including in relation to the rest of applicable ERISA law, rather than on Plaintiff's characterization thereof.

389. The Class includes at least 400 participants in the ESOP, and is therefore so numerous that joinder of all class members would be impracticable.

ANSWER: Defendants admit that the ESOP had at least 400 participants. Paragraph 389 of the Amended Complaint otherwise states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations

in paragraph 389 of the Amended Complaint and rely on the law identified in paragraph 389 to speak for itself, including in relation to the rest of the applicable federal procedural and ERISA law, rather than on Plaintiff's characterization thereof. Further answering, Defendants aver that Plaintiff and the putative class he purports to represent suffered no harm and are not entitled to any relief.

390. There are numerous questions of law and fact common to the Class because the claims asserted herein arise out of a singular course of common conduct by Defendants that affected all class members through their participation in the ESOP in precisely the same way, in violation of precisely the same legal duties. Common questions of law and fact include the following:

a. whether Defendants GreatBanc or the Board of Directors Defendants breached their fiduciary duties with respect to the ESOP Buyout;

b. whether Defendants Schneider and Joutras breached their fiduciary duties or engaged in self-dealing prohibited transactions;

c. whether Defendants GreatBanc or the Board of Directors Defendants breached their duties as cofiduciaries; and

d. whether Defendants Schneider or Joutras knowingly participated in and benefitted from the ESOP Buyout and the other misconduct described above, and, if so, whether they are subject to equitable remedies for such conduct.

ANSWER: Paragraph 390 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 390 of the Amended Complaint and rely on the law identified in paragraph 390 to speak for itself, including in relation to the rest of the

applicable federal procedural and ERISA law, rather than on Plaintiff's characterization thereof. Further answering, Defendants aver that Plaintiff and the putative class he purports to represent suffered no harm and are not entitled to any relief.

391. Plaintiff Rush's claims are typical of the claims of the Class because Mr. Rush was an ESOP participant who received less than adequate consideration for the shares of Segerdahl in his ESOP account as a result of the ESOP Buyout and the other misconduct described herein in precisely the same way that all other Class members received less than adequate consideration for the shares of Segerdahl in their ESOP accounts as a result of the ESOP Buyout and the other misconduct described herein.

ANSWER: Paragraph 391 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 391 of the Amended Complaint and rely on the law identified in paragraph 391 to speak for itself, including in relation to the rest of the applicable federal procedural and ERISA law, rather than on Plaintiff's characterization thereof. Further answering, Defendants note that Mr. Rush, who was a member of Segerdahl's senior management that participated in and benefitted from the very conduct he seeks to challenge here, does not have claims that are typical of the class. This includes that (i) Mr. Rush was part of Segerdahl's senior management team that was marketed to financial buyers; (ii) that as part of this senior management team, Mr. Rush was able to continue his lucrative employment with Segerdahl post-sale and was also offered equity interests in Segerdahl post-sale; and (iii) that just like other senior managers to which Segerdahl had contractual obligations, Mr. Rush was due and received on his SARS award $1.8 million of the proceeds from the ICV Sale. Defendants also note that although Mr. Rush

is asking to represent a putative class, he failed to disclose anywhere in his 444 paragraph amended complaint his role in Segerdahl's senior management and the benefits he received from that, including his continued employment post-sale with Segerdahl, and the opportunity he had to invest post-sale in the entity created and controlled by ICV. Defendants further aver that Mr. Rush and the putative class he purports to represent suffered no harm and are not entitled to any relief.

392. Plaintiff Rush is an adequate representative of the Class because he is a participant in the ESOP who received less than adequate consideration for the shares of Segerdahl in his ESOP account as a result of the ESOP Buyout and the other misconduct described herein; has no interest that conflicts with other members of the proposed Class; is committed to the vigorous representation of the Class; and has engaged experienced and competent attorneys to represent the Class.

ANSWER: Paragraph 392 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 392 of the Amended Complaint and rely on the law identified in paragraph 392 to speak for itself, including in relation to the rest of the applicable federal procedural and ERISA law, rather than on Plaintiff's characterization thereof. Further answering, Defendants note that Mr. Rush, who was a member of Segerdahl's senior management that participated in and benefitted from the very conduct he seeks to challenge here, is not an adequate representative of the class. This includes that (i) Mr. Rush was part of Segerdahl's senior management team that was marketed to financial buyers; (ii) that as part of this senior management team, Mr. Rush was able to continue his lucrative employment with Segerdahl post-sale and was also offered equity interests in

Segerdahl post-sale; and (iii) that just like other senior managers to which Segerdahl had contractual obligations, Mr. Rush was due and received on his SARS award $1.8 million of the proceeds from the ICV Sale. Defendants further note that although Mr. Rush is asking to represent a putative class, he failed to disclose anywhere in his 444 paragraph amended complaint his role in Segerdahl's senior management and the benefits he received from that, including his continued employment post-sale with Segerdahl, and the opportunity he had to invest post-sale in the entity created and controlled by ICV. Defendants further aver that Mr. Rush and the putative class he purports to represent suffered no harm and are not entitled to any relief.

393. Certification of the claims asserted herein would be appropriate under Rule 23(b)(1)(A) or (B). Prosecution of separate actions by the ESOP participants for the breaches of fiduciary duty and prohibited transactions described herein would create the risk of inconsistent or varying adjudications that would establish incompatible standards of conduct. In addition, an adjudication of the claims asserted herein by any ESOP participant would, as a practical matter, be dispositive of the interests of all other ESOP participants. As this Court has recognized several times, "[b]ecause of ERISA's distinctive 'representative capacity' and remedial provisions, ERISA litigation of this nature presents a paradigmatic example of a [Rule 23](b)(1) class." *Neil v. Zell*, 275 F.R.D. 256, 267 (N.D. Ill. 2011).

ANSWER: Paragraph 393 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 393 of the Amended Complaint and rely on the law identified in paragraph 393 to speak for itself, including in relation to the rest of the applicable federal procedural and ERISA law, rather than on Plaintiff's characterization

thereof. Further answering, Defendants aver that Plaintiff and the putative class he purports to represent suffered no harm and are not entitled to any relief.

394. Alternatively, this action should be certified as a class under Rule 23(b)(3) if it is not certified under Rule 23(b)(1)(A) or (B). A class action is the superior method for the fair and efficient adjudication of this controversy because common questions of law and fact predominate over questions affecting only individual class members, and because, in light of the representative nature of the claims at issue, a class action would be superior to other available methods for fairly and efficiently adjudicating the controversy.

ANSWER: Paragraph 394 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 394 of the Amended Complaint and rely on the law identified in paragraph 394 to speak for itself, including in relation to the rest of the applicable federal procedural and ERISA law, rather than on Plaintiff's characterization thereof. Further answering, Defendants aver that Plaintiff and the putative class he purports to represent suffered no harm and are not entitled to any relief.

395. Plaintiff Rush's counsel will fairly and adequately represent the interests of the Class and is best able to represent the interests of the Class under Rule 23(g).

ANSWER: Paragraph 395 of the Amended Complaint otherwise states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 395 of the Amended Complaint and rely on the law identified in paragraph 395 to speak for itself, including in relation to the rest of the applicable federal procedural and ERISA law, rather than on Plaintiff's characterization

thereof. Further answering, Defendants aver that Plaintiff and the putative class he purports to represent suffered no harm and are not entitled to any relief.

CLAIMS FOR RELIEF

COUNT I

Breach of Fiduciary Duty
ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1)
All Defendants

396. Plaintiff repeats and realleges each of the allegations in the foregoing paragraphs as if fully set forth herein.

ANSWER: Defendants reassert their responses to paragraphs 1 through 395 above and incorporate the same as if fully set forth herein, and further incorporate their affirmative defenses in response thereto.

397. ERISA § 404, 29 U.S.C. §1104, requires ERISA fiduciaries to perform their fiduciary duties and responsibilities prudently, as would an experienced ERISA fiduciary, and loyally, exclusively in the interest of the plan and its participants for the purpose of providing benefits.

ANSWER: Paragraph 397 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 397 of the Amended Complaint and rely on the law identified in paragraph 397 to speak for itself, including in relation to the rest of the applicable ERISA law, rather than on Plaintiff's characterization thereof.

398. As alleged above, Defendant GreatBanc, the Board of Directors Defendants, and the Segerdahl Fiduciary Defendants were express or *de facto* fiduciaries for the ESOP.

ANSWER: Paragraph 398 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants admit that as detailed above in Defendants' answers, GreatBanc was the independent fiduciary delegated the exclusive authority to decide whether to approve the ICV Sale. Defendants otherwise deny the allegations in paragraph 398 of the Complaint and rely on the law identified in paragraph 398 to speak for itself, including in relation to the rest of the applicable ERISA law, rather than on Plaintiff's characterization thereof.

399. As fiduciaries for the ESOP, the Board of Director Defendants and the Segerdahl Fiduciary Defendants failed to prudently and loyally fulfill their fiduciary duties to the ESOP when they engaged in a short sighted and self-interested sale process that excluded higher-paying strategic buyers in favor of investment buyers that would preserve management. Moreover, the Board of Director Defendants and the Segerdahl Fiduciary Defendants were actually or constructively aware of Defendant Schneider and Bradshaw's conflicts of interest with the ESOP, yet permitted Schneider and Bradshaw to handle aspects of marketing Segerdahl to potential buyers.

ANSWER: Paragraph 399 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 399 of the Amended Complaint, including any embedded factual assumptions for the reasons stated earlier in the Answer, and rely on the law identified in paragraph 399 to speak for itself, including in relation to the rest of the applicable ERISA law, rather than on Plaintiff's characterization thereof.

400. The Board of Director Defendants also breached their fiduciary duties when they appointed Schneider the named fiduciary of the ESOP, despite their actual knowledge of her plan to focus the sale on lower paying investment buyers that would retain her as CEO.

ANSWER: Paragraph 400 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 400 of the Amended Complaint, including any embedded factual assumptions for the reasons stated earlier in the Answer, and rely on the law identified in paragraph 400 to speak for itself, including in relation to the rest of the applicable ERISA law, rather than on Plaintiff's characterization thereof.

401. Defendant GreatBanc failed to prudently and loyally fulfill its fiduciary duties when, acting in a fiduciary capacity on behalf of the ESOP, it approved the ESOP Buyout despite actual or constructive knowledge that the sale process leading to the ESOP Buyout was flawed, and that the price received by the ESOP was inadequate and below fair market value for at least the following reasons:

a. it knew or should have known that the Segerdahl Fiduciary Defendants had focused on a sale to a buyer that would preserve management, including Schneider and other insiders, and that the Segerdahl Fiduciary Defendants did not market Segerdahl to other potential buyers, including competitors, who would have paid more but would likely have replaced management (*supra* ¶¶ 85-262);

b. it knew or should have known that the Segerdahl Fiduciary Defendants and their advisors failed to pursue in-hand indications of interest to purchase at a higher price than ICV eventually paid because of concerns that the buyer was incompatible with existing management (*supra* ¶¶ 192-202);

c. it knew or should have known that Defendant Schneider and other senior management at Segerdahl were receiving equity interests in and lucrative employment contracts from ICV that gave them substantial interests conflicting with the ESOP's interests (*supra* ¶¶ 240-262);

d. it knew or should have known that the price the ESOP received for its Segerdahl shares in the ESOP Buyout did not take into account the immediately realizable fair market value of Segerdahl's real estate assets, the value of the 338(h)(10) election, or the value of the Wolf Road Fraud (*supra* ¶¶ 263-320);

e. it knew or should have known that the Analysis of Transaction Fairness prepared by SRR contained numerous red flags and grossly undervalued the ESOP's shares (*supra* ¶¶ 326-364); and

f. it knew or should have known that a significant portion of the purchase price paid by ICV Partners was being diverted away from the ESOP to the Segerdahl Fiduciary Defendants and other Segerdahl insiders (*supra* ¶¶ 321-325).

ANSWER: Paragraph 401 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 401 of the Amended Complaint, including any embedded factual assumptions for the reasons stated earlier in the Answer, and rely on the law identified in paragraph 401 to speak for itself, including in relation to the rest of the applicable ERISA law, rather than on Plaintiff's characterization thereof.

Further answering, Defendants note that GreatBanc is deference if it was "careful rather than bold" when exercising its judgment whether to approve the ICV Sale for $265,000,000. *E.g., Armstrong v. LaSalle Bank Nat'l Ass'n*, 446 F.3d 728, 732-33 (7th Cir.

2006). The ICV Sale reviewed by GreatBanc was cashing out Segerdahl's stock at all-time high in value after the Segerdahl Board had recently tripled its value in the two years leading up to this sale, and despite that Segerdahl was facing declining sales and an industry decline pre-sale that accelerated post-sale. GreatBanc made this decision knowing that Segerdahl's ESOP stock had twice before had substantial declines in value (over 30%) in the face of these industry declines. Under this controlling law Mr. Rush's allegations are not only erroneous for the reasons stated earlier in the Answer, they are also misguided. Under these circumstances, Mr. Rush and the putative class he purports to represent also suffered no harm and are not entitled to any relief.

402. As alleged above, as fiduciaries of the ESOP, Defendant GreatBanc, the Board of Directors Defendants, and the Segerdahl Fiduciary Defendants failed to ensure that the ESOP received the fair market value of its shares. Fair market value measures what a hypothetical willing buyer would pay to a hypothetical willing seller, when neither party is under any compulsion to buy or sell. Determining fair market value requires considering the highest and best use of the asset in question, which requires evaluating the characteristics of likely potential buyers, and should take into account the population of potential willing buyers. That includes buyers who, for a variety of reasons, might want to pay more than others. This certainly requires evaluating the characteristics of types of likely potential willing buyers. In addition, as this Court has held, in the context of a sale of ESOP stock, determining the fair market value of the ESOP's shares requires the evaluation of the benefits of the transaction of the counter-parties. Determining fair market value in the context of the ESOP Buyout was especially important, because all of the ESOP's assets were to be liquidated in that transaction, and the ESOP was permanently giving up its stake in Segerdahl. Because other types of buyers, such as competitors, would have paid a higher price

for the ESOP's shares than did ICV Partners, the fair market value of the ESOP's shares was higher than what ICV Partners would have paid. Defendant GreatBanc, the Board of Directors Defendants, and the Segerdahl Fiduciary Defendants relied on a valuation of the ESOP in approving the transaction that failed to consider the characteristics of likely potential buyers, including operating companies like competitors, and failed to consider what those likely potential buyers would have paid. Defendant GreatBanc also failed to appropriately consider the specific benefits of the transaction to the ESOP's counterparties, including Defendant Schneider, the other Segerdahl executives who received equity awards in post-transaction Segerdahl, and ICV Partners. Defendant GreatBanc knew or should have known that the valuation failed to take that higher potential price into account, and knew or should have known that the valuation failed to represent the fair market value of the ESOP's shares for that reason. In the case of the ESOP Buyout that obligation was especially important, because it represented a sale of 100% of the ESOP's Segerdahl shares.

ANSWER: Paragraph 402 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 402 of the Amended Complaint, including any embedded factual assumptions for the reasons stated earlier in the Answer, and rely on the law identified in paragraph 402 to speak for itself, including in relation to the rest of the applicable ERISA law, rather than on Plaintiff's characterization thereof.

Further answering, Defendants note that Mr. Rush has misstated the standards applicable to fair market value, while the prohibited transaction/fair market standards do not apply to the sale to ICV, which was an outsider to the Segerdahl ESOP. Rather, the controlling issues here are whether under *Armstrong et al's* "careful rather than bold"

standard, Segerdahl's Board abused its discretion when: (i) it exercised its business judgment to shop Segerdahl first to financial buyers instead of risking shopping to competitors, and (ii) it exercised its business judgment to accept the $265,000,000 offer from ICV that came out of this process which, in a highly cyclical industry, locked in the extraordinary gains in Segerdahl's value (it had close to tripled in value in under the watch of this Segerdahl Board), despite that Segerdahl was facing declining sales and an industry decline that begin in 2016 and subsequently accelerated. The same standard applies to GreatBanc's decision to accept this offer under these circumstances.

Under this controlling law Mr. Rush's allegations are misguided and implausible. Under these circumstances, Mr. Rush and the putative class he purports to represent also suffered no harm and are not entitled to any relief.

403. In addition, as fiduciaries for the ESOP, Defendant GreatBanc, the Board of Directors Defendants, and the Segerdahl Fiduciary Defendants failed to prudently and loyally fulfill their fiduciary duties when they failed to act to protect the ESOP's interests when the Segerdahl Fiduciary Defendants diverted millions of dollars of the purchase proceeds in the ESOP Buyout away from the ESOP and to Defendant Schneider, Defendant Joutras, Paul White and Marcus Bradshaw. *See* ¶¶ *321-325.*

ANSWER: Paragraph 403 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 403 of the Complaint, including any embedded factual assumptions for the reasons stated earlier in the Answer, and rely on the law identified in paragraph 403 to speak for itself, including in relation to the rest of the applicable ERISA law, rather than on Plaintiff's characterization thereof.

Further answering, Defendants note that Mr. Rush has not pled a diversion claim against Ms. Schneider. Defendants also note that each one of these challenged payments was to pay off pre-existing contractual obligations of Segerdahl, just like the payments made to pay off Mr. Rush's $1.8 million SARS award, which he now has conceded are proper and does not constitute an unlawful diversion of ESOP assets. Segerdahl entered these contracts for sound business reasons that relate to corporate business decisions, not ERISA fiduciary ones, and which included (i) to acquire the former CEO Rick Joutras' critical assistance with Segerdahl's customers, salespeople, managers and union employees as Segerdahl transitioned to a new CEO, and then faced the uncertainty engendered by selling Segerdahl to a new owner, (ii) to keep Mr. Joutras' non-compete in place and to add one for former executive vice president of sales and second-in-command, Paul White, and (iii) to incentivize a key person, Segerdahl's CFO Marcus Bradshaw, to stay through the sales process.

Defendants further note that Segerdahl's senior managers (including Mr. Rush) were part of what financial buyers sought when acquiring Segerdahl from the ESOP, and thus their continued presence with the company post-sale brought value for (not conflict with) the Segerdahl ESOP when shopping to financial buyers, while enabling the Segerdahl ESOP to avoid the "bilk or buy" risk of shopping to competitors.

404. The Board of Directors Defendants violated their duties of prudence and loyalty when they appointed and failed to monitor or remove Defendant GreatBanc, Defendant Schneider or Defendant Joutras, even though the Board of Directors Defendants knew or should have known that Defendant GreatBanc, the Board of Directors Defendants, and the Segerdahl Fiduciary Defendants were preparing to and in fact did approve the ESOP Buyout even though the ESOP Buyout was not fair to the ESOP.

ANSWER: Paragraph 404 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 404 of the Amended Complaint, including any embedded factual assumptions for the reasons stated earlier in the Answer, and rely on the law identified in paragraph 404 to speak for itself, including in relation to the rest of the applicable ERISA law, rather than on Plaintiff's characterization thereof. Further answering, Defendants note that the ICV Sale for $265,000,000 cashed out Segerdahl's stock at an all-time high in value (Segerdahl's stock had recently close to tripled in value in under the watch of this Segerdahl Board), despite that Segerdahl was facing declining sales and an industry decline that begin in 2016 and subsequently accelerated. In addition to confirming the decision to accept the ICV Sale was not imprudent, these circumstances further show that Plaintiff and the putative class he purports to represent suffered no harm and are not entitled to any relief.

405. Any of these fiduciaries could, and should, have taken any number of actions to protect the ESOP's interests, but they did not. For example, a fiduciary uncertain of the proper course to take and confronted by a situation involving conflicts of interest—as was the case with the ESOP Buyout—could have come to court and obtained direction from the court as the appropriate course of action to protect the ESOP.

ANSWER: Paragraph 405 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 405 of the Complaint, including any embedded factual assumptions for the reasons stated earlier in the Answer, and rely on the law

identified in paragraph 405 to speak for itself, including in relation to the rest of the applicable ERISA law, rather than on Plaintiff's characterization thereof.

Further answering, Defendants note that Mr. Rush has now admitted under oath that he was aware of the very thing he complains of, that Segerdahl was not being shopped to competitors before the ICV Sale, but that instead of seeking to stop that sale, he signed his closing document paperwork so that he could receive his $1.8 million SARS payment. Defendants also note that the ICV Sale for $265,000,000 cashed out Segerdahl's stock at an all-time high in value, despite that Segerdahl was facing declining sales and an industry decline that begin in 2016 and subsequently accelerated. Had Defendants delayed this sale in these circumstances to undertake the course now proposed by Mr. Rush, they would have harmed the Segerdahl ESOP.

406. But Defendant GreatBanc, the Board of Directors Defendants, and the Segerdahl Fiduciary Defendants did not take action to protect the ESOP, and instead allowed the ESOP Buyout to close despite their actual or constructive knowledge of the flawed process leading to the ESOP Buyout described above.

ANSWER: Paragraph 406 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 406 of the Complaint, including any embedded factual assumptions for the reasons stated earlier in the Answer, and rely on the law identified in paragraph 406 to speak for itself, including in relation to the rest of the applicable ERISA law, rather than on Plaintiff's characterization thereof. Further answering, Defendants aver that Plaintiff and the putative class he purports to represent suffered no harm and are not entitled to any relief.

407. These actions, and failures to act, violated the duties of prudence and loyalty contained in ERISA § 404(a).

ANSWER: Paragraph 407 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 407 of the Amended Complaint, including any embedded factual assumptions for the reasons stated earlier in the Answer, and rely on the law identified in paragraph 407 to speak for itself, including in relation to the rest of the applicable ERISA law, rather than on Plaintiff's characterization thereof. Further answering, Defendants aver that Plaintiff and the putative class he purports to represent suffered no harm and are not entitled to any relief.

408. Under ERISA § 409(a), 29 U.S.C. § 1109(a), a fiduciary that violates any of ERISA's duties, including ERISA § 404(a), must "make good" to the plan the losses to the plan resulting from its violations, and is "subject to such other equitable or remedial relief as the court may deem appropriate."

ANSWER: Paragraph 408 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 408 of the Amended Complaint, and rely on the law identified in paragraph 408 to speak for itself, including in relation to the rest of the applicable ERISA law, rather than on Plaintiff's characterization thereof. Further answering, Defendants aver that Plaintiff and the putative class he purports to represent suffered no harm and are not entitled to any relief.

409. Thus, under ERISA §§ 502(a)(2) and 409(a), 29 U.S.C. §§ 1132(a)(2) and 1109(a), Defendant GreatBanc, the Board of Directors Defendants, and the Segerdahl Fiduciary Defendants

are liable, in an amount to be determined at trial, for the losses to the Plan caused by their violations of ERISA § 404(a), and are "subject to such other equitable or remedial relief" as the Court "may deem appropriate."

ANSWER: Paragraph 409 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 409 of the Amended Complaint, including any embedded factual assumptions for the reasons stated earlier in the Answer, and rely on the law identified in paragraph 409 to speak for itself, including in relation to the rest of the applicable ERISA law, rather than on Plaintiff's characterization thereof. Further answering, Defendants aver that Plaintiff and the putative class he purports to represent suffered no harm and are not entitled to any relief.

410. Under ERISA § 502(a)(3), Defendant GreatBanc, the Board of Directors Defendants, and the Segerdahl Fiduciary Defendants are also subject to appropriate equitable relief including, but not limited to, constructive trust and equitable surcharge.

ANSWER: Paragraph 410 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 410 of the Complaint, including any embedded factual assumptions for the reasons stated earlier in the Answer, and rely on the law identified in paragraph 410 to speak for itself, including in relation to the rest of the applicable ERISA law, rather than on Plaintiff's characterization thereof. Further answering, Defendants aver that Plaintiff and the putative class he purports to represent suffered no harm and are not entitled to any relief.

COUNT II

Breach of Fiduciary Duty and Prohibited Transaction
ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1)
ERISA § 406(b), 29 U.S.C § 1106(b)
Defendants Schneider and Joutras

411. Plaintiff repeats and realleges each of the allegations in the foregoing paragraphs as if fully set forth herein.

ANSWER: Defendants reassert their responses to paragraphs 1 through 410 above and incorporate the same as if fully set forth herein, and further incorporate their affirmative defenses in response thereto.

412. ERISA § 404, 29 U.S.C. § 1104, requires ERISA fiduciaries to perform their fiduciary duties and responsibilities prudently, as would an experienced ERISA fiduciary, and loyally, exclusively in the interest of the plan and its participants for the purpose of providing benefits.

ANSWER: Paragraph 412 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 412 of the Amended Complaint, and rely on the law identified in paragraph 412 to speak for itself, including in relation to the rest of the applicable ERISA law, rather than on Plaintiff's characterization thereof.

413. ERISA § 406(b)(1) prohibits plan fiduciaries from "deal[ing] with the assets of the plan in [their] own interest or for [their] own account."

ANSWER: Paragraph 413 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 413 of the Amended Complaint, and rely on the law identified in paragraph 413 to speak for itself, including in relation to the rest of the applicable ERISA law, rather than on Plaintiff's characterization thereof.

414. As alleged above, Defendants Schneider and Joutras were members of the ESOP Committee and in that capacity were named fiduciaries for the ESOP.

ANSWER: Paragraph 414 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 414 of the Amended Complaint, including any embedded factual assumptions for the reasons stated earlier in the Answer, and rely on the law identified in paragraph 414 to speak for itself, including in relation to the rest of the applicable ERISA law, rather than on Plaintiff's characterization thereof. Further answering, Defendants note that the ESOP Committee had no role in the ICV Sale, and that Mr. Joutras had resigned from the ESOP committee eight months before that sale.

415. As alleged above, Defendants Schneider and Joutras were also *de facto* fiduciaries for the ESOP by virtue of the control they exercised over the ESOP and its assets.

ANSWER: Defendants deny the allegations contained in paragraph 415 of the Amended Complaint, and refer to its answers above on these issues. Further answering, Defendants note that GreatBanc was the trustee for the Segerdahl ESOP, including being delegated the exclusive authority to determine whether to approve the sale to ICV.

416. As fiduciaries for the ESOP, Defendants Schneider and Joutras used their control over the ESOP to influence the terms of the ESOP Buyout and preceding sales process and to cause the ESOP to engage in the ESOP Buyout despite the fact that the ESOP Buyout was the result of a flawed sale process and was not in the ESOP's best interests.

ANSWER: Defendants deny the allegations contained in paragraph 416 of the Amended Complaint, and refer to its answers above on these issues. Further answering, Defendants note that GreatBanc was the trustee for the Segerdahl ESOP, including being

delegated the exclusive authority to determine whether to approve the sale to ICV. Further answering, Defendants note Mr. Rush is again making allegations contrary to what he has learned in discovery.

Mr. Rush knows that Mr. Joutras and Ms. Schneider were only two of the five members of Segerdahl's Board of Directors. As to Mr. Joutras, Mr. Rush now knows that Mr. Joutras (who as Segerdahl's CEO led it to its 8,000% plus increase in value over the Segerdahl ESOP's thirteen-year history) had no interest in the outside party, ICV Partners, that bought Segerdahl. Instead, Mr. Joutras owned 23% of the Segerdahl ESOP's stock and had over $34,000,000 riding on the price for which Segerdahl was sold. Yet without disclosing any of this, Mr. Rush continues to rest his allegations on the notion that Mr. Joutras worked with Ms. Schneider (who herself had over $4,000,000 riding on the price for which Segerdahl was sold) to purposefully sell Segerdahl cheap, against Mr. Joutras' own substantial financial interests. These allegations are implausible and misleading.

417. In addition, Defendants Schneider and Joutras used their control over the ESOP and Segerdahl:

a. to divert millions of dollars of the sale proceeds away from the ESOP and to themselves and other Segerdahl insiders; (*see* ¶¶ 321-325),

b. to obtain for Defendant Schneider and other senior management of Segerdahl equity interests in reorganized Segerdahl as well as lucrative employment contracts after the sale; and

c. to prevent the ESOP from protecting its rights as a shareholder of Segerdahl.

ANSWER: Defendants deny the allegations contained in paragraph 416 of the Amended Complaint, and refer to its answers above on these issues, including why the

diversion claims are unfounded factually and legally. Further answering, Defendants note that Mr. Rush has not pled any factual allegations that any of the ICV Sale proceeds were diverted to Ms. Schneider. Defendants also note that Mr. Rush was one of the senior managers for Segerdahl that was offered equity investments in the post-sale entity created by ICV, which he has failed to disclose anywhere in his 444 paragraph amended complaint.

418. This misconduct violated the duties of prudence and loyalty contained in ERISA § 404(a), and the prohibition on self-dealing with plan assets set forth in ERISA § 406(b)(1).

ANSWER: Paragraph 418 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 418 of the Amended Complaint, including any embedded factual assumptions for the reasons stated earlier in the Answer, and rely on the law identified in paragraph 418 to speak for itself, including in relation to the rest of the applicable ERISA law, rather than on Plaintiff's characterization thereof. Further answering, Defendants note that Ms. Schneider and Mr. Joutras could not cause the ICV Sale as would be required to state a prohibited transaction claim under ERISA § 406(b)(1), which sale had to be agreed to by the independent trustee GreatBanc.

419. Under ERISA § 409(a), 29 U.S.C. § 1109(a), a fiduciary that violates any of ERISA's duties, including ERISA § 404(a) or ERISA § 406(b)(1), must "make good" to the plan the losses to the plan resulting from its violations, and is "subject to such other equitable or remedial relief as the court may deem appropriate."

ANSWER: Paragraph 419 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 419 of the Amended Complaint, and rely on

the law identified in paragraph 419 to speak for itself, including in relation to the rest of the applicable ERISA law, rather than on Plaintiff's characterization thereof. Further answering, Defendants aver that Plaintiff and the putative class he purports to represent suffered no harm and are not entitled to any relief.

420. Thus, under ERISA §§ 502(a)(2) and 409(a), 29 U.S.C. §§ 1132(a)(2) and 1109(a), Defendants Schneider and Joutras are liable, in an amount to be determined at trial, for the losses to the Plan caused by their violations of ERISA § 404(a) and ERISA § 406(b)(1), and are "subject to such other equitable or remedial relief" as the Court "may deem appropriate."

ANSWER: Paragraph 420 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 420 of the Amended Complaint, including any embedded factual assumptions for the reasons stated earlier in the Answer, and rely on the law identified in paragraph 420 to speak for itself, including in relation to the rest of the applicable ERISA law, rather than on Plaintiff's characterization thereof. Further answering, Defendants aver that Plaintiff and the putative class he purports to represent suffered no harm and are not entitled to any relief.

421. Under ERISA § 502(a)(3), Defendants Schneider and Joutras are also subject to appropriate equitable relief including, but not limited to, constructive trust and equitable surcharge.

ANSWER: Paragraph 421 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 421 of the Amended Complaint, including any embedded factual assumptions for the reasons stated earlier in the Answer, and rely on the law identified in paragraph 421 to speak for itself, including in relation to the rest of the

applicable ERISA law, rather than on Plaintiff's characterization thereof. Further answering, Defendants aver that Plaintiff and the putative class he purports to represent suffered no harm and are not entitled to any relief.

COUNT III

Prohibited Transaction: Sale of Plan Assets to a Party in Interest
ERISA § 406(a)(1), 29 U.S.C. § 1106(a)(1)
Defendant GreatBanc

422. Plaintiff repeats and realleges each of the allegations in the foregoing paragraphs as if fully set forth herein.

ANSWER: Defendants reassert their responses to paragraphs 1 through 421 above and incorporate the same as if fully set forth herein, and further incorporate their affirmative defenses in response thereto.

423. ERISA § 406(a)(1), 29 U.S.C. § 1106(a)(1), categorically prohibits certain types of "direct or indirect" transactions between plans, like the ESOP, and parties in interest.

ANSWER: Paragraph 423 of the Amended Complaint otherwise states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 423 of the Amended Complaint and rely on the law identified in paragraph 423 to speak for itself, including in relation to the rest of the applicable federal procedural and ERISA law, rather than on Plaintiff's characterization thereof.

424. ERISA § 406(a)(1)(A) prohibits the sale of assets of a plan to a party in interest, and ERISA § 406(a)(1)(D) prohibits the transfer of plan assets between a plan and a party in interest.

ANSWER: Paragraph 424 of the Amended Complaint otherwise states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 424 of the Amended Complaint and rely on the law identified in paragraph 424 to speak for itself, including in relation to the rest of the applicable federal procedural and ERISA law, rather than on Plaintiff's characterization thereof.

425. As a named and de facto fiduciary of the ESOP, and as an officer of Segerdahl, Defendant Schneider was a party in interest under ERISA § 3(14)(A), 29 U.S.C. § 1002(14)(A).

ANSWER: Paragraph 425 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants admit that, like Mr. Rush, Ms. Schneider was a party-in-interest to the Segerdahl ESOP. Defendants otherwise deny the allegations in paragraph 425 of the Amended Complaint and rely on the law identified in paragraph 425 to speak for itself, including in relation to the rest of the applicable ERISA law, rather than on Plaintiff's characterization thereof.

426. During the ESOP Buyout, Defendant Schneider acted as a buyer, directly or indirectly, of the ESOP's shares when she purchased equity interests in post-transaction Segerdahl.

ANSWER: Defendants deny the allegations contained in paragraph 426 of the Amended Complaint. Further answering, Defendants note that elsewhere Mr. Rush accurately alleges that ICV acquired 100% of the ESOP's stock in the ICV Sale. See above at paragraph 9. ICV negotiated this sale with Segerdahl's Board and its financial advisor JP Morgan, and ICV created and controlled the entity that bought Segerdahl, called SGDL Intermediate. Both in form and in substance, Ms. Schneider did not buy stock from the

Segerdahl ESOP, ICV did. As the buyer, ICV asked Segerdahl's senior management to invest in its entity post-sale so that they would be incentivized to grow the value of the company post-sale, the same as the ESOP shares and SARS awards had done for them pre-sale. Although he fails to mention it, Mr. Rush was part of the senior management team offered the opportunity to invest in ICV's entity post-sale. Further, although Mr. Rush now claims ICV bought Segerdahl too cheap, Mr. Rush invested none of the $2.5 million he received from the ICV Sale in ICV's entity post-sale. Ms. Schneider invested only 50% of her after-tax proceeds from her SARS awards, $1,195,000.

427. Defendant Schneider's purchase of shares is accordingly a prohibited transaction under ERISA § 406(a)(1).

ANSWER: Defendants deny the allegations contained in paragraph 427 of the Amended Complaint, and refer to their answers above on these issues. Further answering, even if contrary to the facts, Ms. Schneider was treated as if she had bought $1,195,000 of stock from the ESOP, GreatBanc with the help of its financial advisor SRR determined that this sale qualified for the prohibited transaction exemption since it was for at least fair market value.

428. Defendant GreatBanc had formal authority to approve the ESOP Buyout, and did so with actual knowledge that Defendant Schneider would be purchasing shares, directly or indirectly, from the ESOP.

ANSWER: Defendants admit that GreatBanc was delegated the exclusive authority to decide whether to approve the ICV Sale. Defendants deny the remaining allegations contained in paragraph 428 of the Amended Complaint, and refer to its answers above on these issues. Further answering, even if contrary to the facts, Ms. Schneider was treated as

if she had bought $1,195,000 of stock from the ESOP, GreatBanc with the help of its financial advisor SRR determined that this sale qualified for the prohibited transaction exemption since it was for at least fair market value.

429. Under ERISA § 409(a), 29 U.S.C. § 1109(a), a fiduciary that violates any of ERISA's duties, including ERISA § 406(a)(1), must "make good" to the plan the losses to the plan resulting from its violations, and is "subject to such other equitable or remedial relief as the court may deem appropriate."

ANSWER: Paragraph 429 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 429 of the Amended Complaint, and rely on the law identified in paragraph 429 to speak for itself, including in relation to the rest of the applicable ERISA law, rather than on Plaintiff's characterization thereof. Further answering, Defendants aver that Plaintiff and the putative class he purports to represent suffered no harm and are not entitled to any relief.

430. Thus, under ERISA §§ 502(a)(2) and 409(a), 29 U.S.C. §§ 1132(a)(2) and 1109(a), Defendant GreatBanc is liable, in an amount to be determined at trial, for the losses to the Plan caused by its violation of ERISA § 406(a)(1), and is "subject to such other equitable or remedial relief" as the Court "may deem appropriate."

ANSWER: Paragraph 430 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 430 of the Amended Complaint, including any embedded factual assumptions for the reasons stated earlier in the Answer, and rely on the law identified in paragraph 430 to speak for itself, including in relation to the rest of the

applicable ERISA law, rather than on Plaintiff's characterization thereof. Further answering, Defendants aver that Plaintiff and the putative class he purports to represent suffered no harm and are not entitled to any relief.

431. Under ERISA § 502(a)(3), Defendant GreatBanc is also subject to appropriate equitable relief including, but not limited to, constructive trust and equitable surcharge.

ANSWER: Paragraph 431 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 431 of the Amended Complaint, including any embedded factual assumptions for the reasons stated earlier in the Answer, and rely on the law identified in paragraph 431 to speak for itself, including in relation to the rest of the applicable ERISA law, rather than on Plaintiff's characterization thereof. Further answering, Defendants aver that Plaintiff and the putative class he purports to represent suffered no harm and are not entitled to any relief.

COUNT IV

Breach of Co-Fiduciary Duty
ERISA § 405(a)(1)-(3), 29 U.S.C. § 1105(a)(1)-(3)
All Defendants

432. Plaintiff repeats and realleges each of the allegations in the foregoing paragraphs as if fully set forth herein.

ANSWER: Defendants reassert their responses to paragraphs 1 through 431 above and incorporate the same as if fully set forth herein, and further incorporate their affirmative defenses in response thereto.

433. A fiduciary with respect to a plan is liable for the breach "of another fiduciary" for the same plan if "he participates knowingly in, or knowingly undertakes to conceal, an act or

omissions of such other fiduciary, knowing such act or omission is a breach," ERISA § 405(a)(1), or if, "by his failure to comply with [his fiduciary duties] in the administration of his specific responsibilities which give rise to his status as a fiduciary, he has enabled such other fiduciary to commit a breach," ERISA § 405(a)(2), or if "he has knowledge of a breach by some other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach." ERISA § 405(a)(3).

ANSWER: Paragraph 433 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 433 of the Amended Complaint, and rely on the law identified in paragraph 433 to speak for itself, including in relation to the rest of the applicable ERISA law, rather than on Plaintiff's characterization thereof. Further answering, Defendants aver that Plaintiff and the putative class he purports to represent suffered no harm and are not entitled to any relief.

434. Pursuant to § 405 of ERISA, 29 U.S.C. § 1105, Defendant GreatBanc, the Board of Directors Defendants, and the Segerdahl Fiduciary Defendants are also liable as co-fiduciaries with respect to the above-described violations because they participated knowingly in their co-fiduciaries' breaches; enabled other fiduciaries to violate ERISA by virtue of their own breaches of fiduciary duty; knowingly undertook to conceal those breaches; enabled their co-fiduciaries to commit the breaches and failed to make any reasonable efforts to remedy the breaches.

ANSWER: Paragraph 434 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 434 of the Amended Complaint, including any embedded factual assumptions for the reasons stated earlier in the Answer, and rely on the

law identified in paragraph 434 to speak for itself, including in relation to the rest of the applicable ERISA law, rather than on Plaintiff's characterization thereof. Further answering, Defendants aver that Plaintiff and the putative class he purports to represent suffered no harm and are not entitled to any relief.

435. ERISA § 502(a)(2) permits plan participants, such as Plaintiff, to bring civil actions for "appropriate relief" under ERISA § 409.

ANSWER: Paragraph 435 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 435 of the Amended Complaint, and rely on the law identified in paragraph 435 to speak for itself, including in relation to the rest of the applicable ERISA law, rather than on Plaintiff's characterization thereof. Further answering, Defendants aver that Plaintiff and the putative class he purports to represent suffered no harm and are not entitled to any relief.

436. Under ERISA § 409(a), a fiduciary that violates any of ERISA's duties, including ERISA § 405(a)(1), (a)(2) and (a)(3), must "make good" to the Plans the losses to the Plans resulting from its violations of ERISA § 405(a)(1), (a)(2) and (a)(3), and is "subject to such other equitable or remedial relief as the court may deem appropriate."

ANSWER: Paragraph 436 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 436 of the Amended Complaint, and rely on the law identified in paragraph 436 to speak for itself, including in relation to the rest of the applicable ERISA law, rather than on Plaintiff's characterization thereof. Further

answering, Defendants aver that Plaintiff and the putative class he purports to represent suffered no harm and are not entitled to any relief.

437. Thus, Defendant GreatBanc, the Board of Directors Defendants, and the Segerdahl Fiduciary Defendants are liable, in an amount to be determined at trial, for the losses to the ESOP caused by their violations of ERISA § 405(a)(1), (a)(2) and (a)(3), and are "subject to such other equitable or remedial relief" as the Court "may deem appropriate."

ANSWER: Paragraph 437 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 437 of the Amended Complaint, including any embedded factual assumptions for the reasons stated earlier in the Answer, and rely on the law identified in paragraph 437 to speak for itself, including in relation to the rest of the applicable ERISA law, rather than on Plaintiff's characterization thereof. Further answering, Defendants aver that Plaintiff and the putative class he purports to represent suffered no harm and are not entitled to any relief.

438. Under ERISA § 502(a)(3), Defendant GreatBanc, the Board of Directors Defendants, and the Segerdahl Fiduciary Defendants are also subject to appropriate equitable relief including, but not limited to, constructive trust and equitable surcharge.

ANSWER: Paragraph 438 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 438 of the Amended Complaint, including any embedded factual assumptions for the reasons stated earlier in the Answer, and rely on the law identified in paragraph 438 to speak for itself, including in relation to the rest of the applicable ERISA law, rather than on Plaintiff's characterization thereof. Further

answering, Defendants aver that Plaintiff and the putative class he purports to represent suffered no harm and are not entitled to any relief.

COUNT V

Knowing Participation in and Receipt of Benefit from Violations of ERISA
ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3)
Defendants Schneider and Joutras

439. Plaintiff repeats and realleges each of the allegations in the foregoing paragraphs as if fully set forth herein.

ANSWER: Defendants reassert their responses to paragraphs 1 through 438 above and incorporate the same as if fully set forth herein, and further incorporate their affirmative defenses in response thereto.

440. ERISA § 502(a)(3) permits a plan participant to bring a civil action to obtain appropriate equitable relief to enforce the provisions of Title I of ERISA or to enforce the terms of a plan.

ANSWER: Paragraph 440 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 440 of the Amended Complaint, and rely on the law identified in paragraph 440 to speak for itself, including in relation to the rest of the applicable ERISA law, rather than on Plaintiff's characterization thereof. Further answering, Defendants aver that Plaintiff and the putative class he purports to represent suffered no harm and are not entitled to any relief.

441. The Supreme Court has held that anyone, including a non-fiduciary, who receives the benefit of conduct that violates ERISA may be subject to equitable remedies under ERISA

§ 502(a)(3) if they have "actual or constructive knowledge of the circumstances that rendered the transaction unlawful." *Harris Trust*, 530 U.S. at 251.

ANSWER: Paragraph 441 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 441 of the Amended Complaint, and rely on the law identified in paragraph 441 to speak for itself, including in relation to the rest of the applicable ERISA law, rather than on Plaintiff's characterization thereof. Further answering, Defendants aver that Plaintiff and the putative class he purports to represent suffered no harm and are not entitled to any relief.

442. As a result of the fiduciary breaches and prohibited transactions described herein, Defendants Schneider and Joutras received millions of dollars that otherwise would have been paid to the ESOP.

ANSWER: Paragraph 442 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 442 of the Amended Complaint, including any embedded factual assumptions for the reasons stated earlier in the Answer, and rely on the law identified in paragraph 442 to speak for itself, including in relation to the rest of the applicable ERISA law, rather than on Plaintiff's characterization thereof. Further answering, Defendants note that Mr. Rush has not pled any factual allegations that any of the ICV Sale proceeds were diverted to Ms. Schneider. Defendants aver that Plaintiff and the putative class he purports to represent suffered no harm and are not entitled to any relief.

443. Defendants Schneider and Joutras had full knowledge of the existence of the ESOP and the reasons why these transactions were unlawful and unfair to the ESOP.

ANSWER: Paragraph 443 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 443 of the Amended Complaint, including any embedded factual assumptions for the reasons stated earlier in the Answer, and rely on the law identified in paragraph 443 to speak for itself, including in relation to the rest of the applicable ERISA law, rather than on Plaintiff's characterization thereof. Further answering, Defendants aver that Plaintiff and the putative class he purports to represent suffered no harm and are not entitled to any relief.

444. Defendants Schneider and Joutras have profited from these fiduciary breaches and prohibited transactions in an amount to be proven at trial, and on information and belief they remain in possession of at least some of the proceeds that belong in good conscience to the Plans. All such money that belongs in good conscience to the Plans is subject to a constructive trust in favor of the Plans, for which Defendants Schneider and Joutras serve as constructive trustees. As constructive trustees, under ERISA § 502(a)(3), Defendants must disgorge to the Plans all such money or the product thereof that is traceable to the prohibited transactions as well as any profits made thereon.

ANSWER: Paragraph 444 of the Amended Complaint states argument and conclusions of law to which no response is required. If, however, a response is required, Defendants deny the allegations in paragraph 444 of the Amended Complaint, including any embedded factual assumptions for the reasons stated earlier in the Answer, and rely on the law identified in paragraph 444 to speak for itself, including in relation to the rest of the applicable ERISA law, rather than on Plaintiff's characterization thereof. Further answering, Defendants note that Mr. Rush has not pled any factual allegations that any of

the ICV Sale proceeds were diverted to Ms. Schneider. Defendants also aver that Plaintiff and the putative class he purports to represent suffered no harm and are not entitled to any relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

A. Certify this action as a class action pursuant to Fed. R. Civ. P. 23(a);

B. Declare that Defendants breached their fiduciary duties to the ESOP;

C. Enjoin Defendants from further violations of their fiduciary responsibilities, obligations, and duties and from further engaging in transactions prohibited by ERISA;

D. Order that Defendants make good to the ESOP the losses resulting from their serial breaches of fiduciary duty;

E. Order that Defendants disgorge any profits that they have made through their breaches of fiduciary duty and prohibited transactions and impose a constructive trust and/or equitable lien on any funds received by Defendants therefrom;

F. Order any other available equitable relief, or remedies, including but not limited to, the imposition of a surcharge, the restoration of the ESOP to the position they would have been but for the breaches of fiduciary duty and self-dealing; and any other kind of relief and/or damages available pursuant to ERISA §§ 409 and 502(a)(2) and (3);

G. Order that Defendants' accounts in the ESOP be offset under ERISA § 206(d)(4) to cover the losses to the ESOP from Defendants' misconduct set forth herein;

H. Award Plaintiff reasonable attorneys' fees and costs of suit incurred herein pursuant to ERISA § 502(g), 29 U.S.C. § 1132(g), and/or for the benefit obtained for the ESOP;

I. Order Defendants to pay prejudgment interest; and

J. Award such other and further relief as the Court deems equitable and just.

ANSWER: Defendants deny that Plaintiff is entitled to any of the relief set forth in the "Prayer for Relief," including its constituent sub-parts. Defendants aver that Plaintiff is not entitled to any relief whatsoever, whether on his own behalf or on behalf of any other person(s), including a putative class or the ESOP itself. Defendants also aver that Plaintiff and the putative class he purports to represent suffered no harm and are not entitled to any relief.

OBJECTION TO JURY TRIAL

Defendants object to Mr. Rush's jury demand. ERISA fiduciary claims are equitable claims tried to the Court not a jury. *See, e.g., George v. Kraft Foods Global, Inc.*, 2008 U.S. Dist. LEXIS 22126 (N.D. Ill. March 20, 2018) (applying Supreme Court and Seventh Circuit precedent to detail why there is no jury trial under ERISA); *Daugherty v. Univ. of Chicago*, 2017 U.S. Dist. LEXIS 155948 at *26-27 (N.D. Ill. Sept. 22, 2017) (holding same).

ADDITIONAL DEFENSES

Without assuming the burden of proof on any matters that would otherwise rest with Plaintiff and the purported class members, and expressly denying any and all wrongdoing, Defendants allege the following additional and/or affirmative defenses. Accordingly, in further response to the Amended Complaint, Defendants aver as follows:

First Defense

Plaintiff Rush's claims are barred, in whole or in part, for failure to state a claim upon which relief may be granted.

Second Defense

Defendants other than GreatBanc were not ERISA fiduciaries, or were not acting in an ERISA fiduciary capacity, with respect to the complained-of conduct.

Third Defense

To the extent that Defendants were acting as ERISA fiduciaries, they are entitled to substantial deference for their decisions, including to the business judgment or fiduciary discretion they exercised in making these decisions.

Fourth Defense

Plaintiff Rush's putative class-action claims are barred because Plaintiff cannot satisfy the requirements of Rule 23(a) or Rule 23(b) of the Federal Rules of Civil Procedure.

Fifth Defense

Plaintiff Rush's claims are barred in whole or in part by the doctrine of unclean hands, since he participated in the very conduct of which he complains.

Sixth Defense

Any alleged loss, injury and/or damages suffered by Plaintiff Rush was not caused by, or a result of, any fault, act, or omission by Defendant(s), but was caused by circumstances, persons, or entities, including Plaintiff Rush, for which Defendants are not responsible, and for which Defendants cannot be held liable.

Seventh Defense

Plaintiff Rush's claimed relief does not constitute "appropriate equitable relief" under § 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3).

Eighth Defense

Plaintiff Rush's Count II claim for a prohibited transaction under ERISA § 406(b), 29 U.S.C. § 1106(b) against Defendants Joutras and Schneider fails because neither Joutras nor Schneider caused the ESOP to agree to the ICV Sale or to make payments under their pre-existing employment or stock appreciation right agreements with Segerdahl.

Ninth Defense

Plaintiff Rush's Count II claim for a fiduciary breach under ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1) against Defendants Joutras and Schneider fails because neither Joutras nor Schneider caused the ESOP to agree to the ICV Sale or to make payments under their pre-existing employment or stock appreciation right agreements with Segerdahl.

Tenth Defense

Plaintiff Rush's Count V claim against Defendants Joutras and Schneider as non-fiduciaries fails because the receipt of amounts due under their pre-existing employment or stock appreciation right agreements with Segerdahl does not violate ERISA, or constitute ill-gotten proceeds subject to disgorgement or restitution.

Eleventh Defense

ICV Partners was an outside buyer, and was not a party-in-interest to the ESOP Plan at the time of the ESOP Buyout. Thus, this sale to ICV Partners was not a prohibited transaction under ERISA § 406 for which Defendants have to prove the applicability of the adequate consideration/fair market value exemption in ERISA § 408. Defendant GreatBanc nonetheless complied with this exemption by confirming that the sale to ICV Partners was for at least fair market value and that the terms and conditions of this transaction were, taken as a whole, fair to the ESOP from a financial point of view. This compliance provides a safe harbor, including to Plaintiff Rush's Count III claim against GreatBanc regarding Ms. Schneider's $1,195,000

investment post-sale in the entity created and controlled by ICV Partners, and is an additional reason why GreatBanc did not breach any fiduciary duties when it approved this sale.

RESERVATION OF DEFENSES

Defendants reserve the right to assert any additional affirmative defenses and matters in avoidance that may be discovered or disclosed during the course of additional investigation and discovery.

WHEREFORE, Defendants pray for a judgment against Plaintiff dismissing this case with prejudice and awarding any further relief as the Court deems just and proper, including an award of costs and attorneys' fees.

Dated: March 13, 2020.

Respectfully submitted,

GREATBANC TRUST COMPANY, MARY LEE SCHNEIDER, RICHARD JOUTRAS, RODNEY GOLDSTEIN, PETER MASON, ROBERT CRONIN, AND SEGERDAHL CORP D/B/A SG360°

s/ Charles F. Seemann III
Sarah J. Gasperini (local counsel)
JACKSON LEWIS P.C.
150 N. Michigan Ave., Suite 2500
Chicago, Illinois 60601
Tel: 312.787.4949
Fax: 312.787.4995
Email: Sarah.Gasperini@jacksonlewis.com

Charles F. Seemann III
Robert W. Rachal
Katelyn W. Harrell
JACKSON LEWIS P.C.
650 Poydras Street, Suite 1900
New Orleans, Louisiana 70130
Tel: 504.208.1755
Fax: 504. 208.1759
Email: Charles.Seemann@jacksonlewis.com
Robert.Rachal@jacksonlewis.com
Katelyn.Harrell@jacksonlewis.com

CERTIFICATE OF SERVICE

I, Charles F. Seemann III, certify that on March 13, 2020, I caused Defendants' Answer to Plaintiff's First Amended Complaint, Statement of Affirmative Defenses, and Compulsory Counterclaim to be filed with the Court by electronic filing protocols, and that same will therefore be electronically served upon all attorneys of record registered with the Court's ECF/CM system.

s/ Charles F. Seemann III

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