

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

DENNIS PALKON, Derivatively on Behalf
of FTD COMPANIES, INC.,

Plaintiff,

v.

ROBERT BERGLASS, CHRISTOPHER W.
SHEAN, ROBIN S. HICKENLOOPER,
JOSEPH W. HARCH, JAMES T.
ARMSTRONG, CANDACE H. DUNCAN,
DENNIS HOLT, SUE ANN R.
HAMILTON, TRACEY L. BELCOURT,
MICHAEL J. SILVERSTEIN, ROBERT S.
APATOFF, and BECKY A. SHEEHAN,

Defendants,

-and-

FTD COMPANIES, INC., a Delaware
corporation,

Nominal Defendant.

No.

DEMAND FOR JURY TRIAL

**VERIFIED STOCKHOLDER DERIVATIVE COMPLAINT FOR
VIOLATION OF SECURITIES LAW, BREACH OF FIDUCIARY DUTY, WASTE OF
CORPORATE ASSETS, AND UNJUST ENRICHMENT**

Plaintiff DENNIS PALKON, derivatively on behalf of FTD COMPANIES, INC., by his attorneys, submits this Verified Stockholder Derivative Complaint for Violation of Securities Law, Breach of Fiduciary Duty, Waste of Corporate Assets, and Unjust Enrichment. Plaintiff alleges the following on information and belief, except as to the allegations specifically pertaining to plaintiff which are based on personal knowledge. This Verified Complaint is also based on the investigation of plaintiff's counsel, which included, among other things, a review of public filings with the U.S. Securities and Exchange Commission ("SEC") and a review of news reports, press releases, and other publicly available sources.

NATURE AND SUMMARY OF THE ACTION

1. This is a stockholder derivative action brought on behalf of nominal defendant FTD Companies, Inc. ("FTD" or the "Company") against certain of its officers and directors for violations of section 14(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), breaches of fiduciary duties, and violations of law. These wrongs resulted in hundreds of millions of dollars in damages to FTD's reputation, goodwill, and standing in the business community. Moreover, these actions have exposed the Company to millions of dollars in potential liability for violations of state and federal law.

2. FTD provides floral and gifting products and services to its customers. The Company can trace its roots back to 1910, when thirteen American florists agreed to exchange orders for out of town deliveries. The florists would tell each other about the orders through telegraph, and thus Florists' Telegraph Delivery was born. Until November 1, 2013, FTD was a wholly owned subsidiary of United Online, Inc. ("United Online"). On that day, United Online spun off FTD to its stockholders in a tax-free dividend transaction.

3. At the time of the spinoff, the Company had approximately \$620 million in revenues. In 2014, shortly after it became a public traded company, FTD embarked on a massive acquisition that would almost double its size. In particular, FTD acquired Provide Commerce Inc. ("Provide Commerce") from Liberty Interactive Corporation ("Liberty Interactive") for \$430 million worth of stock and cash (the "Provide Commerce Transaction"). Of the \$430 million purchase price, FTD attributed \$323.5 million, over 75%, to the acquisition of Provide Commerce's "goodwill."¹

¹ Goodwill is an accounting term for the value of many of a company's intangible assets, such as name recognition or good customer relations.

4. Unfortunately for the Company and its stockholders, FTD drastically overpaid for Provide Commerce, especially for this "goodwill" portion. Over the past two years, Provide Commerce has done much worse than defendants told the public to expect and, in turn, FTD has written down \$169 million worth of its goodwill, approximately 39% of the purchase price for Provide Commerce and more than half the goodwill associated with the transaction.

5. There is no excuse for this massive overstatement, and corresponding overpayment, for Provide Commerce. The Individual Defendants (as defined herein) were awash with red flags alerting them to Provide Commerce's flailing business, including that it continuously and massively underperformed internal expectations. In fact, at one point, Provide Commerce's "adjusted" earnings before interest, taxes, depreciation, and amortization ("EBITDA") was 18% below expectations. Despite that fact, FTD's Board of Directors (the "Board") pushed forward with the overpriced purchase of Provide Commerce with its inflated goodwill.

6. The Board's approval of the transaction was a result of its abdication of its role in the negotiations of the Provide Commerce Transaction to the Company's executives. These insiders, however, were hopelessly conflicted and thus the deferral to them by the Board members was improper.

7. In particular, defendants Robert S. Apatoff ("Apatoff"), the Company's Chief Executive Officer ("CEO"), and Becky A. Sheehan ("Sheehan"), the Company's Chief Financial Officer ("CFO") secured for themselves amended employment agreements that called for massive raises and grants of restricted stock units that were collectively worth millions of dollars at the same time they were negotiating the Provide Commerce Transaction. These amended employment agreements and grants of restricted stock would only become effective, however, if the Provide Commerce Transaction closed. Otherwise, the amended employment agreements would become

null and void and the raises and restricted stock unit grants would never be triggered. Thus, it is unsurprising then as Provide Commerce failed to live up to expectations, defendants Apatoff and Sheehan continued to push for the closing of the transaction with Liberty Interactive with only a token reduction in the purchase price of Provide Commerce.

8. After the close of the Provide Commerce Transaction, defendants made a series of improper statements that disguised how poorly the acquisition was working out for the Company.

9. However, after defendant Apatoff "retired" and the Company brought in a new full-time CEO, the truth about the Provide Commerce Transaction came out. On March 14, 2017, the Company disclosed that it would take an \$80+ million goodwill impairment charge related to Provide Commerce's disastrous results, bringing the total impairment charges to almost \$170 million. Unlike previous announcements of the goodwill impairments, there was no hiding the reasons for the write down. In connection with the impairment, the Company announced that Provide Commerce's most important unit, ProFlowers, saw revenues fall over 17%.

10. In the same announcement, FTD revealed that it accounted for its cross-border indirect taxes incorrectly. While the amounts of the incorrect calculation were immaterial, the combined result of years of incorrect accounting demonstrated a material weaknesses in FTD's internal controls related to financial disclosures.

11. In the wake of the March 14, 2017 disclosure, FTD's stock plunged more than 23.6%, or \$5.54 per share the next day, to close at \$17.85 compared to the previous trading day's closing of \$23.39, erasing almost \$152 million in market capitalization. Further, as a direct result of this unlawful course of conduct, the Company is now the subject of a federal securities class action lawsuit filed in the United States District Court for the Northern District of Illinois on behalf of investors who purchased FTD's shares.

12. Finally, the Company's recent revelations have shown that the Special Proxy (as defined herein) issued by the Board seeking stockholder approval of the Provide Commerce Transaction contained materially misleading information. Among other things, the Special Proxy overstated Provide Commerce's goodwill, which was used by the Board to justify the price it agreed FTD would pay for Provide Commerce. If the Company's stockholders knew that FTD planned to overpay for Provide Commerce by approximately 40%, they never would have voted in favor of the issuance of more stock to effectuate the Provide Commerce Transaction. Accordingly, the Board violated section 14(a) of the Exchange Act when it negligently issued the misleading Special Proxy.

13. Plaintiff now brings this action to rectify the harm described above and hold the Individual Defendants accountable for their wrongdoing.

JURISDICTION AND VENUE

14. Pursuant to 28 U.S.C. §1331 and section 27 of the Exchange Act, this Court has jurisdiction over the claims asserted herein for violations of section 14(a) of the Exchange Act and SEC Rule 14a-9 promulgated thereunder. This Court has supplemented jurisdiction over the remaining claims under 28 U.S.C. §1367.

15. This Court has jurisdiction over each defendant because each defendant is either a corporation that conducts business in and maintains operations within this District, or is an individual with sufficient minimum contacts with this District so as to make the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

16. Venue is proper under 28 U.S.C. §1391(a) because FTD maintains offices within this District, a substantial portion of the transactions and wrongs complained of herein occurred in this District, and defendants have received substantial compensation in this District by doing business here and engaging in numerous activities that had an effect in this District.

THE PARTIES

Plaintiff

17. Plaintiff Dennis Palkon was a stockholder of FTD at the time of the wrongdoing complained of, has continuously been a FTD stockholder since the Company was spun off from United Online, and is a current FTD stockholder.

Nominal Defendant

18. FTD is a Delaware corporation with principal executive offices located at 3113 Woodcreek Drive, Downers Grove, Illinois. FTD is a floral and gift products and services company, which operates primarily in the United States, Canada, the United Kingdom, and the Republic of Ireland. FTD offers its products and services to consumers, retail florists, and other retail locations and companies through its portfolio of branded websites. FTD was formed out of United Online's acquisition of FTD's predecessor company, FTD Group, Inc. ("FTD Group") in August 2008. Following United Online's acquisition of FTD Group, FTD operated as a wholly owned subsidiary of United Online until November 1, 2013, when United Online separated into two independent publicly traded companies: FTD and United Online. On December 31, 2014, FTD acquired all of the issued and outstanding stock of Provide Commerce from a wholly owned subsidiary of Liberty Interactive. As of December 31, 2016, Liberty Interactive held 37.4% of the outstanding shares of FTD common stock. Also as of December 31, 2016, FTD employed 1,528 people worldwide.

Defendants

19. Defendant Robert Berglass ("Berglass") is FTD's Chairman of the Board and a director and has been since November 2013. Defendant Berglass was also United Online's Lead Independent Director from February 2006 to November 2013, and a United Online director from

September 2001 to June 2016. Defendant Berglass is a member of FTD's Audit Committee and has been since at least April 2014. FTD paid defendant Berglass the following compensation as a director:

Fiscal Year	Fees Paid in Cash	Stock Awards	Total
2015	\$188,708	\$160,028	\$348,736

20. Defendant Christopher W. Shean ("Shean") is a FTD director and has been since December 2014. Defendant Shean was also FTD's Interim President and CEO from November 2016 to February 2017. Defendant Shean was Liberty Interactive's CFO from November 2011 to October 2016; Senior Vice President from January 2002 to December 2015; Controller from October 2000 to October 2011; and Vice President from October 2000 to January 2002. Defendant Shean is named as a defendant in the related securities class action complaint that alleges he violated sections 10(b) and 20(a) of the Exchange Act. FTD paid defendant Shean the following compensation as a director:

Fiscal Year	Fees Paid in Cash	Stock Awards	Total
2015	\$77,500	\$125,014	\$202,514

21. Defendant Robin S. Hickenlooper ("Hickenlooper"), formerly Robin S. Pringle, is a FTD director and has been since December 2014. Defendant Hickenlooper is also Liberty Interactive's Vice President, Corporate Development and has been since January 2013. Defendant Hickenlooper was Liberty Interactive's Director, Corporate Development from January 2010 to December 2012, and Manager, Corporate Development from July 2008 to December 2010. FTD paid defendant Hickenlooper the following compensation as a director:

Fiscal Year	Fees Paid in Cash	Stock Awards	Total
2015	\$59,500	\$125,014	\$184,514

22. Defendant Joseph W. Harch ("Harch") is a FTD director and has been since November 2013. Defendant Harch is also the Chairman of FTD's Audit Committee and a member of that committee and has been since at least April 2014. FTD paid defendant Harch the following compensation as a director:

Fiscal Year	Fees Paid in Cash	Stock Awards	Total
2015	\$109,333	\$125,014	\$234,347

23. Defendant James T. Armstrong ("Armstrong") is a FTD director and has been since November 2013. Defendant Armstrong was also a United Online director from September 2001 to June 2016. Defendant Armstrong is a member of FTD's Audit Committee and has been since at least April 2014. FTD paid defendant Armstrong the following compensation as a director:

Fiscal Year	Fees Paid in Cash	Stock Awards	Total
2015	\$91,917	\$125,014	\$216,931

24. Defendant Candace H. Duncan ("Duncan") is a FTD director and has been since December 2014. Defendant Duncan is also a member of FTD's Audit Committee and has been since December 2014. FTD paid defendant Duncan the following compensation as a director:

Fiscal Year	Fees Paid in Cash	Stock Awards	Total
2015	\$73,500	\$125,014	\$198,514

25. Defendant Dennis Holt ("Holt") is a FTD director and has been since November 2013. Defendant Holt was also a United Online director from September 2001 to June 2015. FTD paid defendant Holt the following compensation as a director:

Fiscal Year	Fees Paid in Cash	Stock Awards	Total
2015	\$87,000	\$125,014	\$212,014

26. Defendant Sue Ann R. Hamilton ("Hamilton") is a FTD director and has been since December 2014. FTD paid defendant Hamilton the following compensation as a director:

Fiscal Year	Fees Paid in Cash	Stock Awards	Total
2015	\$69,000	\$125,014	\$194,014

27. Defendant Tracey L. Belcourt ("Belcourt") is a FTD director and has been since February 2014. FTD paid defendant Belcourt the following compensation as a director:

Fiscal Year	Fees Paid in Cash	Stock Awards	Total
2015	\$59,500	\$125,014	\$184,514

28. Defendant Michael J. Silverstein ("Silverstein") is a FTD director and has been since January 2014. FTD paid defendant Silverstein the following compensation as a director:

Fiscal Year	Fees Paid in Cash	Stock Awards	Total
2015	\$69,000	\$125,014	\$194,014

29. Defendant Apatoff was FTD's President, CEO, and a director from November 2013 to November 2016. Defendant Apatoff was also FTD Group's President from November 2008 to October 2013, and a FTD Group director from November 2004 to August 2008. Defendant Apatoff is named as a defendant in the related securities class action complaint that alleges he violated sections 10(b) and 20(a) of the Exchange Act. FTD paid defendant Apatoff the following compensation as an executive:

Year	Salary	Stock Awards	Option Awards	Non-Equity Incentive Plan Compensation	All Other Compensation	Total
2015	\$830,000	\$688,800	\$3,814,800	\$806,861	\$21,957	\$6,162,418

30. Defendant Sheehan was FTD's Executive Vice President and CFO from November 2013 to December 2016. Defendant Sheehan was also FTD Group's Executive Vice President and CFO from July 2006 to November 2013. Defendant Sheehan is named as a defendant in the related securities class action complaint that alleges she violated sections 10(b) and 20(a) of the Exchange Act. FTD paid defendant Sheehan the following compensation as an executive:

Year	Salary	Stock Awards	Option Awards	Non-Equity Incentive Plan Compensation	All Other Compensation	Total
2015	\$488,152	\$430,500	\$1,907,400	\$452,467	\$24,385	\$3,302,904

31. The defendants identified in ¶¶20, 29-30 are referred to herein as the "Officer Defendants." The defendants identified in ¶¶19-29 are referred to herein as the "Director Defendants." The defendants identified in ¶¶19, 22-24 are referred to herein as the "Audit Committee Defendants." Collectively, the defendants identified in ¶¶19-30 are referred to herein as the "Individual Defendants."

DUTIES OF THE INDIVIDUAL DEFENDANTS

Fiduciary Duties

32. By reason of their positions as officers and directors of the Company, each of the Individual Defendants owed and owe FTD and its stockholders fiduciary obligations of trust, loyalty, good faith, and due care, and were and are required to use their utmost ability to control and manage FTD in a fair, just, honest, and equitable manner. The Individual Defendants were and are required to act in furtherance of the best interests of FTD and not in furtherance of their personal interest or benefit.

33. To discharge their duties, the officers and directors of FTD were required to exercise reasonable and prudent supervision over the management, policies, practices, and controls of the financial affairs of the Company. By virtue of such duties, the officers and directors of FTD were required to, among other things:

- (a) review and consider all reasonably available information before causing the Company to enter into a transaction;
- (b) accurately guide the Company's stockholders by accurately and truthfully disclosing all material information to them;

(c) conduct the affairs of the Company in an efficient, business-like manner in compliance with all applicable laws, rules, and regulations so as to make it possible to provide the highest quality performance of its business, to avoid wasting the Company's assets, and to maximize the value of the Company's stock; and

(d) remain informed as to how FTD conducted its operations, and, upon receipt of notice or information of imprudent or unsound conditions or practices, make reasonable inquiry in connection therewith, and take steps to correct such conditions or practices and make such disclosures as necessary to comply with applicable laws.

Breaches of Duties

34. The conduct of the Individual Defendants complained of herein involves a knowing and culpable violation of their obligations as officers and directors of FTD, the absence of good faith on their part, and a reckless disregard for their duties to the Company that the Individual Defendants were aware or reckless in not being aware posed a risk of serious injury to the Company.

35. The Individual Defendants breached their duty of loyalty and good faith by allowing defendants to cause, or by themselves causing, the Company to engage in improper practices that wasted the Company's assets and caused FTD to incur substantial damage.

36. The Individual Defendants, because of their positions of control and authority as officers and/or directors of FTD, were able to and did, directly or indirectly, exercise control over the wrongful acts complained of herein. The Individual Defendants also failed to prevent the other Individual Defendants from taking such illegal actions. As a result, and in addition to the damage the Company has already incurred, FTD has expended, and will continue to expend, significant sums of money.

Additional Duties of the Audit Committee Defendants

37. In addition to these duties, under the Audit Committee's Charter, the members of the Audit Committee, defendants Armstrong, Berglass, Duncan, and Harch owed specific duties to FTD to assist the Board in overseeing the Company's financial and disclosure controls. In particular, the Audit Committee's Charter provides:

I. PURPOSE OF THE COMMITTEE

The purpose of the Audit Committee (the "Committee") of the Board of Directors (the "Board") of FTD Companies, Inc. (the "Corporation") is to oversee the accounting and financial reporting processes of the Corporation and its subsidiaries and the audits of the financial statements of the Corporation.

And that the Audit Committee must:

Review with management, the Corporation's independent auditors and the Corporation's internal auditing department, if any, the following information which is required to be reported by the independent auditor:

- (i) all critical accounting policies and practices to be used;
- (ii) all alternative treatments of financial information that have been discussed by the independent auditors and management, ramifications of the use of such alternative disclosures and treatments, and the treatment preferred by the independent auditors;
- (iii) all other material written communications between the independent auditors and management, such as any management letter and any schedule of unadjusted differences; and
- (iv) any material financial arrangements of the Corporation which do not appear on the financial statements of the Corporation;

* * *

Review:

- (i) the adequacy and effectiveness of the Corporation's accounting and internal control policies and procedures on a regular basis, including the responsibilities, budget, compensation and staffing of the Corporation's internal audit function, through inquiry and discussions or periodic meetings with the Corporation's independent auditors, management and the Corporation's internal auditing department, if any;

- (ii) the yearly report prepared by management, and attested to by the Corporation's independent auditors, assessing the effectiveness of the Corporation's internal control over financial reporting and stating management's responsibility for establishing and maintaining adequate internal control over financial reporting prior to its inclusion in the Corporation's Annual Report on Form 10-K; and
- (iii) the Committee's level of involvement and interaction with the Corporation's internal audit function, if any, including the Committee's line of authority and role in appointing and compensating employees in the internal audit function;

Review with the chief executive officer, chief financial officer and independent auditors, periodically, the following:

- (i) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Corporation's ability to record, process, summarize and report financial information; and
- (ii) any fraud, whether or not material, that involves management or other employees who have a significant role in the Corporation's internal control over financial reporting;

* * *

Review with management the Corporation's policies and procedures with respect to risk assessment and risk management, including a review of the Corporation's major financial risk exposures and its insurance program.

CONSPIRACY, AIDING AND ABETTING, AND CONCERTED ACTION

38. In committing the wrongful acts alleged herein, the Individual Defendants have pursued, or joined in the pursuit of, a common course of conduct, and have acted in concert with and conspired with one another in furtherance of their common plan or design. In addition to the wrongful conduct herein alleged as giving rise to primary liability, the Individual Defendants further aided and abetted and/or assisted each other in breaching their respective duties.

39. During all times relevant hereto, the Individual Defendants, collectively and individually, initiated a course of conduct that was designed to and did: (i) push through the Provide Commerce Transaction, despite numerous red flags the Company was overpaying; (ii) deceive the

investing public, including stockholders of FTD, regarding the Individual Defendants' management of FTD's operations; and (iii) enhance the Individual Defendants' executive and directorial positions at FTD and the profits, power, and prestige that the Individual Defendants enjoyed as a result of holding these positions. In furtherance of this plan, conspiracy, and course of conduct, the Individual Defendants, collectively and individually, took the actions set forth herein.

40. The Individual Defendants engaged in a conspiracy, common enterprise, and/or common course of conduct. During this time, the Individual Defendants caused the Company to issue improper financial statements.

41. The purpose and effect of the Individual Defendants' conspiracy, common enterprise, and/or common course of conduct was, among other things, to disguise the Individual Defendants' violations of law, breaches of fiduciary duty, waste of corporate assets, and unjust enrichment; and to conceal adverse information concerning the Company's operations, financial condition, and future business prospects.

42. The Individual Defendants accomplished their conspiracy, common enterprise, and/or common course of conduct by causing the Company to purposefully or recklessly release improper statements. Because the actions described herein occurred under the authority of the Board, each of the Individual Defendants was a direct, necessary, and substantial participant in the conspiracy, common enterprise, and/or common course of conduct complained of herein.

43. Each of the Individual Defendants aided and abetted and rendered substantial assistance in the wrongs complained of herein. In taking such actions to substantially assist the commission of the wrongdoing complained of herein, each Individual Defendant acted with knowledge of the primary wrongdoing, substantially assisted in the accomplishment of that wrongdoing, and was aware of his or her overall contribution to and furtherance of the wrongdoing.

**THE INDIVIDUAL DEFENDANTS CAUSE THE COMPANY TO PURCHASE
PROVIDE COMMERCE AT AN INFLATED PRICE**

44. Though FTD can trace its history to 1910, it has only been a publicly traded company in its most current form since 2013. In particular, on November 1, 2013, United Online spun off FTD. United Online provided each of its stockholders one share of FTD stock for every five shares of United Online stock they owned as a tax-free dividend.

45. Almost immediately after the spinoff, in January 2014, the Board began looking at substantially increasing the size of the Company through the acquisition of Provide Commerce, a floral and gift business, then a wholly owned subsidiary of Liberty Interactive. On July 30, 2014, FTD announced that it entered into an agreement with Liberty Interactive to acquire Provide Commerce. FTD planned to issue Liberty Interactive 10.2 million shares and pay \$121 million in cash.² The transaction was worth approximately \$430 million at the time it was announced and over \$500 million by the time it closed due to an increase in FTD's stock price. Immediately before the Provide Commerce Transaction, FTD had approximately nineteen million shares of stock outstanding. After the close of the transaction, and the accompanying issuance of 10.2 million shares, Liberty Interactive would own approximately 35% of the Company.³ In addition, the Board would increase from seven directors to eleven, with Liberty Interactive appointing the new four directors.

46. Because of the substantial amount of stock that FTD would issue to Liberty Interactive, the Company's stockholders were required to vote on the Provide Commerce Transaction. On November 3, 2014, the Board issued a special proxy asking for stockholders to vote

² The cash component was subsequently increased to \$144.7 million.

³ As of December 31, 2016, Liberty Interactive owns 37.4% of the Company's stock.

in favor of the Provide Commerce Transaction at a special meeting on December 11, 2014 (the "Special Proxy").

47. Based on the Board's improper statements in the Special Proxy, the Company's stockholders voted in favor of the Provide Commerce Transaction. On December 31, 2014, FTD announced the closing of its acquisition of Provide Commerce.

48. Provide Commerce substantially increased the size of the Company. Provide Commerce accounted for 48% of FTD's revenues in 2015 and 47% in 2016.

49. Though the Provide Commerce Transaction substantially increased FTD's size, the Company drastically overpaid for Provide Commerce. As explained further herein, Provide Commerce's goodwill was overstated by at least \$169 million, equal to 39% of the acquisition price of Provide Commerce. The members of the Board at that time, defendants Apatoff, Armstrong, Holt, Belcourt, Berglass, Harch, and Silverstein should have been aware of Provide Commerce's overstatement of its goodwill due to its repeated inability to meet the internal forecasts Liberty Interactive provided. The Board failed to do so, however, because it left the negotiations of the transaction to conflicted insiders, defendants Apatoff and Sheehan.

50. Defendants Apatoff and Sheehan pushed the Provide Commerce Transaction because it gave them the justification to seek additional compensation for themselves for overseeing a larger company. In connection with the Provide Commerce Transaction, defendants Apatoff and Sheehan entered into amended employment agreements. The amended employment agreements increased defendant Apatoff's base pay by \$100,000 and defendant Sheehan's pay by \$50,000.⁴ In addition, since bonuses are based as a percentage of base pay, the increase in base pay leads to an increase in

⁴ The Company entered into additional employment agreements with other executives at FTD, also increasing their base compensation.

bonus, since the amount of bonus increases even if the percentage is the same. If the Provide Commerce Transaction did not close, the amended employment agreements would become null and void. Finally, upon the close of the Provide Commerce Transaction, the Company would grant defendants Apatoff and Sheehan an award of restricted stock units with a value of \$730,000 and \$438,000. Though the Special Proxy is silent on when the amended employment agreements were being negotiated, it appears to have occurred at the time of Provide Commerce Transaction discussions and before a deal was reached.

51. Despite this clear conflict of interest, the Board abdicated its responsibilities of oversight and instead allowed defendants Apatoff and Sheehan to handle the direct negotiations with Liberty Interactive. For instance, on February 19, 2014, it was only defendants Apatoff and Sheehan who met with representatives of Liberty Interactive to discuss the initial parameters of a transaction between the two companies. The next meeting between the representatives of the two companies occurred on March 18, 2014. At this meeting, only defendants Apatoff and Sheenan and FTD Executive Vice President and General Counsel Scott D. Levin were present. It was this same conflicted management that would then provide updates on negotiations to the Board at its meetings. This pattern continued throughout the negotiation process.

52. While the Board did retain a financial advisor, its opinion was provided on July 28, 2014, five months before the close of the Provide Commerce Transaction, and was limited to the fairness of the transaction *on the date of the opinion*. Further, the opinion contained a number of limitations, including that the advisor, at FTD's then-Board's direction, accepted as correct the future financial projections provided by Provide Commerce. In addition, and again with the Board's consent, the advisor did not conduct any independent appraisal of Provide Commerce's assets or liabilities, which would necessarily include Provide Commerce's goodwill. These assumptions were

unreasonable. Already by the time of the advisor's opinion, Provide Commerce had massively missed its internal projections on at least two different occasions, proving that its future forecasts were unreliable.

53. The Board, consisting at that time of defendants Apatoff, Armstrong, Holt, Belcourt, Berglass, Harch, and Silverstein breached their fiduciary duties by allowing conflicted insiders to push through the Provide Commerce Transaction at a drastically inflated price. Defendants Apatoff and Sheenan breached their fiduciary duties by seeking and receiving the boost in pay and the restricted stock unit award from the Company through the Provide Commerce Transaction at the grossly inflated price.

THE IMPROPER FINANCIAL STATEMENTS

54. On March 13, 2015, the Company filed its Annual Report on Form 10-K for fourth quarter and fiscal year ended December 31, 2014, with the SEC. For the fourth quarter, FTD reported net income of \$3.8 million, or \$0.19 per diluted share, on revenue of \$157.4 million, compared to a net loss of \$2.4 million, or \$0.13 per diluted share, on revenue of \$154.2 million for the same period in the prior year. For fiscal year 2014, FTD reported net income of \$22.8 million, or \$1.17 per diluted share, on revenue of \$640.5 million, compared to net income of \$12.5 million, or \$0.67 per diluted share, on revenue of \$627.3 million for fiscal year 2013. The Company's Form 10-K claimed that its controls and procedures were effective. In particular, the Form 10-K, stated:

ITEM 9A. CONTROLS AND PROCEDURES

Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of the Company's disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of the end of the period covered by this report.

Based on such evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that, as of the end of such period, the Company's disclosure controls and procedures are effective in recording, processing, summarizing, and reporting, on a timely basis, information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act and are effective in ensuring that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

We acquired Provide Commerce on December 31, 2014, and have excluded Provide Commerce from our evaluation of the effectiveness of internal control over financial reporting. Accordingly, pursuant to the SEC's general guidance that an assessment of a recently acquired business may be omitted from our scope of an assessment in the year of acquisition, the scope of our assessment of the effectiveness of the Company's disclosure controls and procedures does not include Provide Commerce.

Management's Report on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act. Under the supervision and with the participation of our management, including the Chief Executive Officer and Chief Financial Officer, we conducted an evaluation of the effectiveness of the Company's internal control over financial reporting as of December 31, 2014 based on the 2013 framework established in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). The Company's internal control over financial reporting includes policies and procedures that provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external reporting purposes in accordance with GAAP. ***Based on our evaluation under this framework, our management concluded that the Company's internal control over financial reporting was effective as of December 31, 2014.***

55. On May 8, 2015, FTD filed its Quarterly Report on Form 10-Q with the SEC, announcing the Company's financial and operating results for the first quarter ended March 31, 2015. For the quarter, FTD reported net income of \$2.03 million, or \$0.07 per diluted share, on revenue of \$367.7 million, compared to net income of \$9.6 million, or \$0.50 per diluted share, on revenue of \$189.8 million for the same period in the prior year. In the Form 10-Q, the Company reiterated that it had effective disclosure controls and procedures, stating:

Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of the Company's disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of the end of the period covered by this report. Based on such evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that, as of the end of such period, the Company's disclosure controls and procedures are effective in recording, processing, summarizing, and reporting, on a timely basis, information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act and are effective in ensuring that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the Company's management, including the Company's Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

As permitted by interpretive guidance issued by the Securities and Exchange Commission ("SEC") staff, companies are allowed to exclude acquired businesses from their assessment of internal control over financial reporting during the first year after completion of an acquisition while integrating the acquired company. Accordingly, as Provide Commerce was acquired by the Company on December 31, 2014, management's assessment of the effectiveness of the Company's internal control over financial reporting as of December 31, 2014 excluded Provide Commerce. Management's evaluation and conclusion as to the effectiveness of the design and operation of the Company's disclosure controls and procedures as of the end of the period covered by this report excludes any evaluation of the internal controls of Provide Commerce. Provide Commerce's assets and revenues represented approximately 52% and approximately 50% of the Company's consolidated total assets and consolidated total revenues, respectively, as of and for the three months ended March 31, 2015.

Changes in internal controls

As the Company completed the acquisition of Provide Commerce on December 31, 2014, the Company is currently evaluating the internal controls of Provide Commerce and the impact of Provide Commerce on the Company's internal control over financial reporting. Except as described in this Item 4, during the Company's most recent quarter, ***there was no change in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.***

56. On August 6, 2015, FTD filed its Quarterly Report on Form 10-Q with the SEC, announcing the Company's financial and operating results for the second quarter ended June 30, 2015.

For the quarter, FTD reported net income of \$17.8 million, or \$0.61 per diluted share, on revenue of

\$365.8 million, compared to net income of \$4.7 million, or \$0.24 per diluted share, on revenue of \$168 million for the same period in the prior year. In the Form 10-Q, the Company reiterated that it had effective disclosure controls and procedures, stating:

Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of the Company's disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of the end of the period covered by this report. Based on such evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that, as of the end of such period, the Company's disclosure controls and procedures are effective in recording, processing, summarizing, and reporting, on a timely basis, information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act and are effective in ensuring that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the Company's management, including the Company's Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

As permitted by interpretive guidance issued by the Securities and Exchange Commission ("SEC") staff, companies are allowed to exclude acquired businesses from their assessment of internal control over financial reporting during the first year after completion of an acquisition while integrating the acquired company. Accordingly, as Provide Commerce was acquired by the Company on December 31, 2014, management's assessment of the effectiveness of the Company's internal control over financial reporting as of December 31, 2014 excluded Provide Commerce. Management's evaluation and conclusion as to the effectiveness of the design and operation of the Company's disclosure controls and procedures as of the end of the period covered by this report excludes any evaluation of the internal controls of Provide Commerce. Provide Commerce's assets and revenues represented approximately 49% and approximately 52% of the Company's consolidated total assets and consolidated total revenues, respectively, as of and for the six months ended June 30, 2015.

Changes in internal controls

As the Company completed the acquisition of Provide Commerce on December 31, 2014, the Company continues to evaluate the internal controls of Provide Commerce and the impact of Provide Commerce on the Company's internal control over financial reporting. Except as described in this Item 4, during the Company's most recent quarter, ***there was no change in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.***

57. On November 6, 2015, FTD filed its Quarterly Report on Form 10-Q with the SEC, announcing the Company's financial and operating results for the third quarter ended September 30, 2015. For the quarter, FTD reported a net loss of \$16.4 million, or \$0.57 per diluted share, on revenue of \$188.5 million, compared to net income of \$4.6 million, or \$0.24 per diluted share, on revenue of \$125.1 million for the same period in the prior year. In the Form 10-Q, the Company reiterated that it had effective disclosure controls and procedures, stating:

Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of the Company's disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of the end of the period covered by this report. Based on such evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that, as of the end of such period, the Company's disclosure controls and procedures are effective in recording, processing, summarizing, and reporting, on a timely basis, information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act and are effective in ensuring that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the Company's management, including the Company's Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

As permitted by interpretive guidance issued by the Securities and Exchange Commission ("SEC") staff, companies are allowed to exclude acquired businesses from their assessment of internal control over financial reporting during the first year after completion of an acquisition while integrating the acquired company. Accordingly, as Provide Commerce was acquired by the Company on December 31, 2014, management's assessment of the effectiveness of the Company's internal control over financial reporting as of December 31, 2014 excluded Provide Commerce. Management's evaluation and conclusion as to the effectiveness of the design and operation of the Company's disclosure controls and procedures as of the end of the period covered by this report excludes any evaluation of the internal controls of Provide Commerce. Provide Commerce's assets and revenues represented approximately 50% and approximately 48% of the Company's consolidated total assets and consolidated total revenues, respectively, as of and for the nine months ended September 30, 2015.

Changes in internal controls

As the Company completed the acquisition of Provide Commerce on December 31, 2014, the Company continues to evaluate the internal controls of Provide Commerce and the impact of Provide Commerce on the Company's internal control over financial reporting. Except as described in this Item 4, during the Company's most recent quarter, ***there was no change in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.***

58. On March 11, 2016, FTD filed its Annual Report on Form 10-K with the SEC, announcing the Company's financial and operating results for the quarter and fiscal year ended December 31, 2015 (the "2015 Form 10-K"). For the quarter, FTD reported a net loss of \$82.2 million, or \$2.90 per diluted share, on revenue of \$297.6 million, compared to net income of \$3.89 million, or \$0.19 per diluted share, on revenue of \$157.4 million for the same period in the prior year. For fiscal year 2015, FTD reported a net loss of \$78.8 million, or \$2.74 per diluted share, on revenue of \$1.2 billion, compared to net income of \$22.8 million, or \$1.17 per diluted share, on revenue of \$640.5 million for fiscal year 2014. The 2015 Form 10-K stated that the Company's disclosure controls and procedures were effective, stating:

ITEM 9A. CONTROLS AND PROCEDURES

Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of the Company's disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of the end of the period covered by this report. Based on such evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that, as of the end of such period, the Company's disclosure controls and procedures are effective in recording, processing, summarizing, and reporting, on a timely basis, information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act and are effective in ensuring that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

Changes in Internal Control over Financial Reporting

We acquired Provide Commerce on December 31, 2014. In conjunction with the audit of the December 31, 2013 financial statements, material weaknesses related to: the technical accounting competency of the accounting department; the adequacy of staffing and qualifications of the accounting department; and ineffective general information technology controls were identified by Provide Commerce's external auditor.

In fiscal year 2015, the Company implemented internal controls to address the weaknesses in the competency and staffing of the accounting department as well as the general information technology controls. ***We concluded that no material weaknesses exist as of December 31, 2015.*** Except for the items described above, there have been no changes in our internal control over financial reporting identified in connection with the evaluation required by Rule 13a-15(d) and 15d-15(d) of the Exchange Act that occurred during the three months ended December 31, 2015 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Management's Report on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act. Under the supervision and with the participation of our management, including the Chief Executive Officer and Chief Financial Officer, we conducted an evaluation of the effectiveness of the Company's internal control over financial reporting as of December 31, 2015 based on the 2013 framework established in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). The Company's internal control over financial reporting includes policies and procedures that provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external reporting purposes in accordance with GAAP. ***Based on our evaluation under this framework, our management concluded that the Company's internal control over financial reporting was effective as of December 31, 2015.***

59. The 2015 Form 10-K also announced that it wrote down the goodwill from the Provide Commerce segment by \$85 million. As an initial matter, this write down was inadequate for the reasons described below. Moreover, during the analyst conference call held on March 10, 2015, defendant Sheehan downplayed the reasons for the impairment, stating: "During 2015 our focus for these businesses was on profitability. In light of recent trends in the business along with

other market factors we reassessed the valuation of the Provide Commerce business for goodwill impairment purposes."

60. On May 6, 2016, FTD filed its Quarterly Report on Form 10-Q with the SEC, announcing the Company's financial and operating results for the first quarter ended March 31, 2016. For the quarter, FTD reported net income of \$2.09 million, or \$0.07 per diluted share, on revenue of \$330.6 million, compared to net income of \$2.03 million, or \$0.07 per diluted share, on revenue of \$367.7 million for the same period in the prior year. In the Form 10-Q, the Company reiterated that it had effective disclosure controls and procedures, stating:

Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of the Company's disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of the end of the period covered by this report. Based on such evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that, as of the end of such period, the Company's disclosure controls and procedures are effective in recording, processing, summarizing, and reporting, on a timely basis, information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act and are effective in ensuring that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the Company's management, including the Company's Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

61. The Form 10-Q contained signed certifications pursuant to the Sarbanes-Oxley Act of 2002 by defendants Apatoff and Sheehan, stating that the financial information contained in the Form 10-Q was accurate and disclosed any material changes to the Company's internal control over financial reporting.

62. On August 5, 2016, FTD filed its Quarterly Report on Form 10-Q with the SEC, announcing the Company's financial and operating results for the second quarter ended June 30, 2016. For the quarter, FTD reported net income of \$12.1 million, or \$0.43 per diluted share, on revenue of

\$338.5 million, compared to net income of \$17.8 million, or \$0.61 per diluted share, on revenue of \$365.8 million for the same period in the prior year. In the Form 10-Q, the Company reiterated that it had effective disclosure controls and procedures, stating:

Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of the Company's disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of the end of the period covered by this report. Based on such evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that, as of the end of such period, the Company's disclosure controls and procedures are effective in recording, processing, summarizing, and reporting, on a timely basis, information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act and are effective in ensuring that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the Company's management, including the Company's Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

63. On August 16, 2016, the SEC sent a letter to defendant Apatoff and FTD with comments regarding the Company's disclosure in the 2015 Form 10-K. Specifically, the SEC noted that the 2015 Form 10-K included inappropriate disclosures regarding the pre- and post-acquisition results of operations of Provide Commerce. In addition, the letter requested that the Company respond to questions regarding the disclosure within ten business days and to also provide a written statement acknowledging that "the company is responsible for the adequacy and accuracy of the disclosure in the filing."

64. On August 29, 2016, defendant Sheehan responded to the August 16, 2016 letter, including the Company's responses to the SEC's requests and the requested written acknowledgement regarding adequacy and accuracy in disclosures.

65. On September 22, 2016, the SEC responded to the August 29, 2016 letter and made an additional comment requesting further information on the Company's disclosure in the 2015 Form 10-K.

66. On October 5, 2016, defendant Sheehan responded to the September 22, 2016 letter including the Company's responses to the SEC's further comment and the requested written acknowledgement regarding adequacy and accuracy in disclosures.

67. On October 18, 2016, the SEC sent a letter to the Company stating that the SEC had completed its review of the 2015 Form 10-K.

68. On November 8, 2016, FTD filed its Quarterly Report on Form 10-Q with the SEC, announcing the Company's financial and operating results for the third quarter ended September 30, 2016. For the quarter, FTD reported a net loss of \$9.9 million, or \$0.36 per diluted share, on revenue of \$173.1 million, compared to a net loss of \$16.4 million, or \$0.57 per diluted share, on revenue of \$188.5 million for the same period in the prior year. In the Form 10-Q, the Company reiterated that it had effective disclosure controls and procedures, stating:

Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of the Company's disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of the end of the period covered by this report. Based on such evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that, as of the end of such period, the Company's disclosure controls and procedures are effective in recording, processing, summarizing, and reporting, on a timely basis, information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act and are effective in ensuring that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the Company's management, including the Company's Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

69. The statements referenced above were improper. These statements were improper because they: (i) omitted that FTD's financial statements contained errors relating to the assessment of cross-border indirect taxes; (ii) omitted that the Company lacked effective internal controls over financial reporting; and (iii) claimed that FTD had overstated the benefits of the Provide Commerce Transaction, and in fact, Provide Commerce's business was failing.

THE TRUTH EMERGES

70. On March 14, 2017, after the market closed, FTD issued a press release, entitled "FTD Companies, Inc. Announces Fourth Quarter and Full Year 2016 Financial Results," announcing certain of the Company's financial and operating results for the quarter and year ended December 31, 2016. The Company announced that it would take another \$84 million impairment of goodwill due to Provide Commerce's negative business effect on FTD. The Company also announced it would need to restate previously reported consolidated financial statements for the years ended December 31, 2015 and 2014 and for the quarters in the years ended December 31, 2015 and 2016. The press release stated:

Fourth Quarter Results

Consolidated revenues were \$280.7 million for the fourth quarter of 2016, compared to \$297.3 million for the fourth quarter of 2015. Changes in foreign currency exchange rates negatively impacted 2016 fourth quarter revenues by \$7.8 million. ***The decrease in consolidated revenues was due to decreases in revenues in the Provide Commerce and Consumer segments.*** Revenues in the Florist segment and the International segment, excluding foreign currency fluctuations, for the fourth quarter of 2016 were relatively flat compared to the prior year period.

Net loss was \$86.4 million for the fourth quarter of 2016, compared to a net loss of \$82.6 million for the fourth quarter of 2015. ***Net losses in the fourth quarters of both 2016 and 2015 were primarily due to goodwill impairment charges related to the Provide Commerce segment of \$84.0 million and \$85.0 million,*** respectively. Adjusted Net Income for the fourth quarter of 2016 was \$13.3 million, compared to \$15.2 million for the same period of the prior year. Adjusted Net Income excludes the after-tax impact of stock-based compensation,

amortization, transaction-related costs, litigation and dispute settlement charges, restructuring and other exit costs, and impairment of goodwill and intangible assets.

* * *

Full Year Results

Consolidated revenues were \$1.12 billion for the year ended December 31, 2016, compared to \$1.22 billion for the prior year. *The decrease in consolidated revenues compared to the prior year was primarily due to a decrease in revenues in the Provide Commerce and Consumer segments.* Changes in foreign currency exchange rates negatively impacted revenues by \$18.7 million for the year ended December 31, 2016.

* * *

Segment Results

* * *

Provide Commerce Segment: Provide Commerce segment revenues for the fourth quarter of 2016 decreased 2.9% to \$139.0 million, compared to \$143.1 million for the fourth quarter of 2015. This decline was due to a 1.5% decrease in consumer orders and a 1.4% decrease in average order value to \$37.09. The decline in segment revenues was due to a decline in the ProFlowers business of 16.5%, partially offset by increases in revenues in the Personal Creations and Gourmet Foods businesses of 7.0% and 3.2%, respectively, compared to the prior year quarter. Provide Commerce segment operating income was \$13.1 million, or 9.4% of segment revenues, for the fourth quarter of 2016, compared to operating income of \$12.5 million, or 8.7% of segment revenues, for the prior year quarter.

Provide Commerce segment revenues for the year ended December 31, 2016 decreased 9.2% to \$529.7 million, compared to \$583.3 million for the prior year. This decline was due to an 8.6% decrease in consumer orders and a 1.1%, or \$0.52, decrease in average order value to \$45.50. The decline in revenues in the Provide Commerce segment for 2016 was due to a 17.3% and 1.6% decline in revenues in the ProFlowers and Gourmet Foods businesses, respectively, partially offset by a 7.7% increase in revenues in the Personal Creations business. Provide Commerce segment revenues for 2016 were negatively impacted by the aforementioned Sunday timing of the Valentine's Day holiday as well as lower order volumes due to reductions in marketing spend. Provide Commerce segment operating income was \$40.5 million, or 7.6% of segment revenues, for the year ended December 31, 2016, compared to \$41.8 million, or 7.2% of segment revenues, for the prior year.

* * *

Immaterial Restatement of Prior Period Financial Statements

The Company also announced today that in connection with the preparation of the financial statements for the year ended December 31, 2016, immaterial errors were identified relating to the assessment of cross-border indirect taxes that affected prior periods. *Certain revisions have been recorded in prior periods to correct for immaterial errors on previously reported consolidated financial statements. While the Company has concluded that the impact of these errors on the Company's previously issued consolidated financial statements was not material, the Company has determined to revise its previously-reported consolidated financial statements for the years ended December 31, 2015 and 2014 and the quarters in the years ended December 31, 2016 and 2015 to correct for these immaterial errors.* Please refer to the tables in this press release for further information relating to these revisions to prior periods. In addition, as a result of these immaterial errors, the cumulative effect of the changes to retained earnings as of January 1, 2014, the earliest date presented in the consolidated financial statements for the year ended December 31, 2016, was a reduction of \$12.4 million.

71. On this news, FTD's stock price fell 23.6%, to close at \$17.85 on March 15, 2017, erasing almost \$152 million in market capitalization.

72. On March 16, 2017, the Company filed its Annual Report on Form 10-K for the fourth quarter and fiscal year ended December 31, 2016, with the SEC. In the Form 10-K, the Company admitted:

We have identified a material weakness in our internal control over financial reporting, and our business and stock price may be adversely affected if we do not adequately address the weakness or if we have other material weaknesses or significant deficiencies in our internal control over financial reporting.

We did not adequately design the control over the completeness and precision of our assessment of certain cross-border indirect taxes, the periodic monitoring of these positions, and the appropriate accounting related to these positions. The errors were the result of an incorrect assessment of certain cross-border indirect taxes and required an immaterial restatement of our previously issued consolidated financial statements for the years ended December 31, 2015 and 2014 and for the quarters within the years ended December 31, 2016 and 2015. Management reviewed the control related to the completeness and precision of its assessment as well as the periodic monitoring of cross-border indirect taxes and concluded that there was a reasonable possibility that a material misstatement of the annual or interim financial statements would not be prevented or detected on a timely basis.

STOCKHOLDERS APPROVE THE PROVIDE COMMERCE TRANSACTION PURSUANT TO A MISLEADING SPECIAL PROXY IN VIOLATION OF FEDERAL LAW

73. Plaintiff brings this claim against defendants Apatoff, Berglass, Armstrong, Harch, Holt, Silverstein, and Belcourt solely on the basis of their negligent actions. Plaintiff disclaims any fraud or intentional wrongdoing as to the misleading Special Proxy.

74. On November 3, 2014, defendants Apatoff, Berglass, Armstrong, Harch, Holt, Silverstein, and Belcourt, acting as the Board of FTD, issued the Special Proxy. In this proxy, the Board requested that stockholders vote in favor the issuance of stock to Liberty Interactive. Without this stockholder approval, the Company could not issue the stock and therefore complete the Provide Commerce Transaction. The Special Proxy was the essential link in both issuing the stock to Liberty Interactive and completing the Provide Commerce Transaction.

75. The Special Proxy contained financial information on Provide Commerce (a unit of Liberty Interactive), the valuation used for the \$430 million purchase price, and the pro forma financials for the Company post-transaction. The Special Proxy stated that Provide Commerce's goodwill was \$336 million. In addition, the Company was allocating \$323.5 million of the \$430 million acquisition price to Provide Commerce's goodwill. These goodwill numbers were drastically inflated.

76. On March 14, 2017, the Company announced it wrote down the goodwill associated with its Provide Commerce unit by \$84 million. This write down was on top of a goodwill impairment charge of \$85 million taken the previous year, for a total of \$169 million in write downs of Provide Commerce's goodwill.⁵ The total \$169 million write down of Provide Commerce's

⁵ While the Company wrote down \$85 million worth of goodwill the previous year, it was couched as a result of, among other things, FTD's focus on profitability at the expense of revenues and that the insiders at the Company continued to believe in the value of the Provide Commerce Transaction. It was only after the Company's March 14, 2017, disclosure that the truth was revealed about the drastic overpayment of Provide Commerce's goodwill.

goodwill equals 52% of the goodwill that the Company took on as part of the Provide Commerce Transaction and 39% of the total value of the Provide Commerce Transaction. Essentially, FTD overpaid for Provide Commerce by 39%. Stockholders would not have voted in favor of the issuance of the stock if they knew it would lead to the Company drastically overpaying for Provide Commerce.

77. Defendants Apatoff, Berglass, Armstrong, Harch, Holt, Silverstein, and Belcourt were negligent in not knowing that goodwill was overstated. The Board knew that Provide Commerce was drastically underperforming expectations at the time of the purchase. In fact, the Special Proxy acknowledges that adjusted EBITDA for Provide Commerce came in 18% below Provide Commerce's internal adjusted EBITDA budget. Further, defendants Apatoff, Berglass, Armstrong, Harch, Holt, Silverstein, and Belcourt should have known there were issues with Provide Commerce's valuations when Liberty Interactive agreed to a small price reduction after Provide Commerce's horrible first six months of 2016, but only if the parties finalized all documents as soon as possible. Rather than acting as the red flag it should have, defendants Apatoff, Berglass, Armstrong, Harch, Holt, Silverstein, and Belcourt acceded to Liberty Interactive's bullying tactics, and in doing so, negligently failed to take into account Provide Commerce's declining business and reveal the true effect of those declines in the Special Proxy.

78. Unlike defendants Apatoff, Berglass, Armstrong, Harch, Holt, Silverstein, and Belcourt, stockholders were justified in relying on the goodwill numbers in the Special Proxy. The Special Proxy detailed the two-step process that Provide Commerce allegedly took to calculate its goodwill and that in using this process it wrote down the goodwill associated with Gifts.com™ by \$35 million. This language gave stockholders the misleading impression that Provide Commerce's goodwill was being actively monitored and reduced when appropriate, which in turn, meant that the goodwill associated with the purchase price was correct.

79. Defendants Apatoff, Berglass, Armstrong, Harch, Holt, Silverstein, and Belcourt claimed that one of the reasons for the Provide Commerce Transaction was that it would provide the Company's customers with an "enhanced consumer shopping experience." This statement was false, as defendants Apatoff, Berglass, Armstrong, Harch, Holt, Silverstein, and Belcourt were negligently aware. Provide Commerce, and indeed, the entire Company's, interactions with customer was outdated and would negatively harm sales. As John C. Walden ("Walden"), the Company's new CEO, recently stated "FTD has focused on short-term profit objectives to such a degree, that it compromised its investments in customer experiences, marketing, and other capabilities required for a contemporary digital business." Therefore, the Provide Commerce Transaction did not and it was negligent to believe that it would the "enhance consumer shopping experience."

DAMAGES TO FTD

80. As a result of the Individual Defendants' improprieties, FTD disseminated improper, public statements. These improper statements have devastated FTD's credibility as reflected by the Company's almost \$206 million, or 29%, market capitalization loss.

81. FTD's performance issues also damaged its reputation within the business community and in the capital markets. In addition to price, FTD's current and potential customers consider a company's ability to accurately value its business prospects and the business prospects of companies that it is acquiring. Businesses are less likely to award contracts to companies that are uncertain about their own financial conditions. FTD's ability to raise equity capital or debt on favorable terms in the future is now impaired. In addition, the Company stands to incur higher marginal costs of capital and debt because the improper statements and misleading projections

disseminated by the Individual Defendants have materially increased the perceived risks of investing in and lending money to the Company.

82. Further, as a direct and proximate result of the Individual Defendants' actions, FTD has expended, and will continue to expend, significant sums of money. Such expenditures include, but are not limited to:

(a) costs incurred from defending and paying any settlement in the class action for violations of federal securities laws;

(b) costs incurred from overpaying for Provide Commerce;

(c) costs incurred from paying the excessive compensation the executives negotiated for themselves in the Provide Commerce Transaction;

(d) costs incurred from having to restate its historical financial statements due to material errors; and

(e) costs incurred from compensation and benefits paid to the defendants who have breached their duties to FTD.

DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS

83. Plaintiff brings this action derivatively in the right and for the benefit of FTD to redress injuries suffered, and to be suffered, by FTD as a direct result of violations of securities law, breaches of fiduciary duty, waste of corporate assets, and unjust enrichment, as well as the aiding and abetting thereof, by the Individual Defendants. FTD is named as a nominal defendant solely in a derivative capacity. This is not a collusive action to confer jurisdiction on this Court that it would not otherwise have. Plaintiff will adequately and fairly represent the interests of FTD in enforcing and prosecuting its rights.

84. Plaintiff was a stockholder of FTD at the time of the wrongdoing complained of, has continuously been a stockholder since it was spun off from United Online, and is a current FTD stockholder.

85. The current Board of FTD consists of the following eleven individuals: defendants Armstrong, Belcourt, Berglass, Duncan, Hamilton, Harch, Hickenlooper, Holt, Shean, and Silverstein, and non-defendant Walden. Plaintiff has not made any demand on the present Board to institute this action because such a demand would be a futile, wasteful, and useless act, as set forth below.

Demand Is Excused Because Defendants Armstrong, Belcourt, Berglass, Duncan, Hamilton, Harch, Hickenlooper, Holt, Shean, and Silverstein Face a Substantial Likelihood of Liability for Their Misconduct

86. Defendants Armstrong, Belcourt, Berglass, Harch, Holt, and Silverstein are negligently responsible for the misleading Special Proxy, as described herein. Because public policy prohibits the exculpation of violations of securities laws, the Company's exculpation provision does not apply to defendants Armstrong, Belcourt, Berglass, Harch, Holt, and Silverstein's violations of section 14a of the Exchange Act. Accordingly, these defendants, a majority of the Board, face a substantial likelihood of liability. Therefore, demand upon them is excused.

87. As alleged above, defendants Armstrong, Belcourt, Berglass, Duncan, Hamilton, Harch, Hickenlooper, Holt, Shean, and Silverstein breached their fiduciary duties of loyalty by making improper statements in the Company's SEC filings about the Company's internal controls and the Provide Commerce business.

88. Defendants Armstrong, Berglass, Duncan, and Harch, as members of the Audit Committee, reviewed and approved the improper statements detailed herein. The Audit Committee's Charter provides that its members are charged with the oversight of the Company's

annual audit and quarterly reviews and its financial reporting process and internal controls. The Audit Committee must review the adequacy and effectiveness of FTD's accounting and internal control policies and procedures. In addition, the Audit Committee is explicitly required under the Audit Committee Charter to review "the yearly report prepared by management ... assessing the effectiveness of the Corporation's internal control over financial reporting." Thus, defendants Armstrong, Berglass, Duncan, and Harch were responsible for knowingly or recklessly allowing the improper statements related to the Company's earnings guidance and financial and disclosure controls. Moreover, defendants Armstrong, Berglass, Duncan, and Harch reviewed and approved the improper press releases made to the public. Despite their knowledge or reckless disregard, defendants Armstrong, Berglass, Duncan, and Harch caused these improper statements. Accordingly, defendants Armstrong, Berglass, Duncan, and Harch breached their fiduciary duty of loyalty and good faith because they participated in the wrongdoing described herein. Thus, defendants Armstrong, Berglass, Duncan, and Harch face a substantial likelihood of liability for their breach of fiduciary duties so any demand upon them is futile.

Demand Is Excused Because the Decision to Enter into the Provide Commerce Transaction Is Not Protected by the Business Judgment Rule

89. Defendants Armstrong, Belcourt, Berglass, Harch, Holt, and Silverstein approved and recommended to the Company's stockholders the Provide Commerce Transaction. These defendants breached their fiduciary duties of care and loyalty by entering into the Provide Commerce transaction at a drastically inflated price. As explained herein, defendants Armstrong, Belcourt, Berglass, Harch, Holt, and Silverstein were on notice of Provide Commerce's failing ProFlowers' business. However, in their rush to close the deal, defendants Armstrong, Belcourt, Berglass, Harch, Holt, and Silverstein failed to insist on the correct markdown of the goodwill of Provide Commerce and negotiate a price that reflected the true value of Provide Commerce. Because

defendants Armstrong, Belcourt, Berglass, Harch, Holt, and Silverstein breached their fiduciary duties of care and loyalty in entering into the Provide Commerce Transaction, demand upon them is excused.

90. Defendants Duncan, Hamilton, Hickenlooper, and Shean are Liberty Interactive's director representatives. Thus, they owe their position on the Board, and the lucrative payments such positions bring, to the Provide Commerce Transaction. They will not vote to initiate litigation against people over the very transaction that is responsible for their Board seats and over a transaction in which Liberty Interactive received an excellent deal. Accordingly, demand upon defendants Duncan, Hamilton, Hickenlooper, and Shean is excused.

91. The principal professional occupation of non-defendant Walden is his employment with FTD, pursuant to which he has received and continues to receive substantial monetary compensation and other benefits. Accordingly, non-defendant Walden lacks independence from Belcourt, Berglass, Duncan, Hamilton, Harch, Hickenlooper, Holt, Shean, and Silverstein due to his interest in maintaining his executive position at FTD, which these defendants control. This lack of independence renders non-defendant Walden incapable of impartially considering a demand to commence and vigorously prosecute this action.

92. Plaintiff has not made any demand on the other stockholders of FTD to institute this action since such demand would be a futile and useless act for at least the following reasons:

(a) FTD is a publicly held company with over 27.4 million shares outstanding as of March 6, 2017, and thousands of stockholders;

(b) making demand on such a number of stockholders would be impossible for plaintiff who has no way of finding out the names, addresses, or phone numbers of stockholders; and

(c) making demand on all stockholders would force plaintiff to incur excessive

expenses, assuming all stockholders could be individually identified.

COUNT I

**Against Defendants Apatoff, Berglass, Armstrong, Harch, Holt, Silverstein, and Belcourt
for Violation of Section 14(a) of the Exchange Act**

93. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

94. The section 14(a) Exchange Act claims alleged herein are based solely on negligence. They are not based on any allegation of reckless or knowing conduct by or on behalf of defendants Apatoff, Berglass, Armstrong, Harch, Holt, Silverstein, and Belcourt. The section 14(a) claims alleged herein do not allege and do not sound in fraud. Plaintiff specifically disclaims any allegations of, reliance upon any allegation of, or reference to any allegation of fraud, scienter, or recklessness with regard to these non-fraud claims.

95. Defendants Apatoff, Berglass, Armstrong, Harch, Holt, Silverstein, and Belcourt negligently issued, caused to be issued, and participated in the issuance of materially false and misleading written statements to stockholders that were contained in the Special Proxy. The Special Proxy overstated the goodwill of Provide Commerce and incorrectly claimed that the Provide Commerce Transaction would enhance customer experience, which would and therefore lead to greater sales. The truth was that Provide Commerce's goodwill was overstated by at least 39%, and thus the Company was drastically overpaying for Provide Commerce. In addition, Provide Commerce's web offerings were outdated, which would negatively affect the customer experience, and therefore sales. Thus, defendants Apatoff, Berglass, Armstrong, Harch, Holt, Silverstein, and Belcourt violated section 14(a) of the Exchange Act. As a direct and proximate result of these violations, stockholders voted in favor of the stock issuance and the Provide Commerce Transaction.

96. Plaintiff, on behalf FTD, thereby seeks relief for damages inflicted upon the Company in connection with approval of the Special Proxy.

COUNT II

Against the Individual Defendants for Breach of Fiduciary Duty

97. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

98. The Individual Defendants owed and owe FTD fiduciary obligations. By reason of their fiduciary relationships, the Individual Defendants owed and owe FTD the highest obligation of good faith, fair dealing, loyalty, and due care.

99. The Individual Defendants and each of them, violated and breached their fiduciary duties of candor, good faith, and loyalty. More specifically, the Individual Defendants violated their fiduciary duties by entering into the Provide Commerce Transaction at drastically inflated prices, pursuing their own self-interests at the expense of FTD, issuing the improper public statements, and consciously failing to prevent the Company from engaging in the unlawful acts complained of herein.

100. As a direct and proximate result of the Individual Defendants' breaches of their fiduciary obligations, FTD has sustained significant damages, as alleged herein. As a result of the misconduct alleged herein, these defendants are liable to the Company.

101. Plaintiff, on behalf of FTD, has no adequate remedy at law.

COUNT III

Against the Individual Defendants for Waste of Corporate Assets

102. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

103. As a result of the wrongdoing detailed above, the Individual Defendants have caused FTD to waste its assets by paying improper compensation and bonuses to certain of its executive officers and directors that breached their fiduciary duty and overpaid for Provide Commerce.

104. As a result of the waste of corporate assets, the Individual Defendants are liable to the Company.

105. Plaintiff, on behalf of FTD, has no adequate remedy at law.

COUNT IV

Against the Individual Defendants for Unjust Enrichment

106. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

107. By their wrongful acts and omissions, the Individual Defendants were unjustly enriched at the expense of and to the detriment of FTD. The Individual Defendants were unjustly enriched as a result of the compensation and director remuneration they received while breaching fiduciary duties owed to FTD.

108. Plaintiff, as a stockholder and representative of FTD, seeks restitution from these defendants, and each of them, and seeks an order of this Court disgorging all profits, benefits, and other compensation obtained by these defendants, and each of them, from their wrongful conduct and fiduciary breaches.

109. Plaintiff, on behalf of FTD, has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, DENNIS PALKON, derivatively on behalf of FTD COMPANIES, INC., demands judgment as follows:

A. Against all of the defendants and in favor of the Company for the amount of damages sustained by the Company as a result of the defendants' violations of law, breaches of fiduciary duties, waste of corporate assets, and unjust enrichment;

B. Directing FTD to take all necessary actions to reform and improve its corporate governance and internal procedures to comply with applicable laws and to protect FTD and its stockholders from a repeat of the damaging events described herein, including, but not limited to, putting forward for stockholder vote, resolutions for amendments to the Company's By-Laws or Articles of Incorporation and taking such other action as may be necessary to place before stockholders for a vote of the following Corporate Governance Policies:

1. the removal of the directors appointed by Liberty Interactive;
2. a proposal to strengthen FTD's oversight of its disclosure procedures
3. a proposal to strengthen the Company's controls over financial reporting;
4. a proposal to strengthen the Board's supervision of operations and develop and implement procedures for greater stockholder input into the policies and guidelines of the Board; and
5. a provision to permit the stockholders of FTD to nominate at least three candidates for election to the Board.

C. Extraordinary equitable and/or injunctive relief as permitted by law, equity, and state statutory provisions sued hereunder, including attaching, impounding, imposing a constructive trust on, or otherwise restricting the proceeds of defendants' trading activities or their other assets so as to assure that plaintiff on behalf of FTD has an effective remedy;

D. Awarding to FTD restitution from defendants, and each of them, and ordering disgorgement of all profits, benefits, and other compensation obtained by the defendants;

E. Awarding to plaintiff the costs and disbursements of the action, including reasonable attorneys' fees, accountants' and experts' fees, costs, and expenses; and

F. Granting such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

Dated: April 28, 2017

Respectfully Submitted,

**DENNIS PALKON, Derivatively on Behalf of
FTD COMPANIES, INC.**

/s/ Charles F. Morrissey

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VERIFICATION

I, Dennis Palkon, hereby declare as follows:

I am the plaintiff in the within entitled action. I have read the Verified Stockholder Derivative Complaint for Violation of Securities Law, Breach of Fiduciary Duty, Waste of Corporate Assets, and Unjust Enrichment. Based upon discussions with and reliance upon my counsel, and as to those facts of which I have personal knowledge, the Complaint is true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: April 26, 2017

Dennis Palkon
DENNIS PALKON