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Case No. 2019-0115-JTL

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

STEAMFITTERS LOCAL 449 PENSION PLAN, HOWARD MUEHLGAY, CARMINE GARELLI, and SCOTT SNOEK, on behalf of themselves and all similarly situated stockholders, Plaintiffs, v. MICHAEL DELL, DAVID DORMAN, EGON DURBAN, WILLIAM GREEN, ELLEN KULLMAN, SIMON PATTERSON, MSDC DENALI INVESTORS, L.P., MSDC DENALI EIV, LLC, SUSAN LIEBERMAN DELL SEPARATE PROPERTY TRUST, and SILVER LAKE GROUP LLC, Defendants.	C.A. No. 2019-___-___ **Public Redacted Version** **Filed February 19, 2019**

VERIFIED STOCKHOLDER CLASS ACTION COMPLAINT

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Plaintiffs Steamfitters Local 449 Pension Plan ("Steamfitters"), Howard Muehlgay ("Muehlgay"), Carmine Garelli ("Garelli"), and Scott Snoek ("Snoek") (together the "Plaintiffs"), on behalf of themselves and all other similarly situated former holders of Dell Technologies, Inc. ("Dell" or the "Company") Class V common stock (the "Class V Stock"), bring this Verified Stockholder Class Action Complaint (the "Complaint") against Dell's controlling stockholder group (the "Control Group Defendants") and the members of Dell's board of directors (the "Board" or the "Director Defendants"). The allegations in this Complaint are based on the knowledge of Plaintiffs as to themselves, and on information and belief—including based on the review of publicly available information and certain books and records produced by the Company in response to Plaintiffs' demands made under 8 *Del. C.* § 220 (the "220 Demands")—as to all other matters.

INTRODUCTION

1. This action (the "Action") challenges a share exchange transaction (the "Transaction") through which the controlling stockholders of Dell—*i.e.*, Michael Dell and Silver Lake Group LLC ("Silver Lake")—disloyally expropriated billions of dollars in value from Dell's Class V Stockholders in flagrant disregard of their fiduciary duties. Pursuant to the Transaction, Dell redeemed all outstanding shares of Class V Stock for a combination of cash and Dell Class C Stock purportedly valued at a total of $120 per Class V share. This

consideration was woefully inadequate. Class V Stock was intended to track, on a one-for-one basis, shares of VMware, Inc. ("VMware"), which consistently traded far in excess of $120 per share. Moreover, the consideration was not worth anywhere close to $120 per share. That valuation was based, among other things, on the demonstrably untenable notion that the value of Dell's non-public Class C Stock had multiplied several-fold during the negotiations themselves. To obtain this price, Dell's controllers created a sham Special Committee (the "Special Committee" or "Committee") that was riddled with conflicts *ab initio*, failed to obtain appropriate and independent advice, and ultimately aligned itself with Dell and negotiated nothing of value for the benefit of the Class V Stockholders the Committee purportedly represented.

2. Prior to agreeing to the unfair Transaction, the Special Committee accepted and recommended an initial proposal (the "Initial Proposal") at an even lower price, prompting a revolt by Class V Stockholders. When it became clear that the Special Committee had failed and that stockholders would reject the deal it had rubber-stamped, the Special Committee reiterated its support for the Initial Proposal and then effectively removed itself from the negotiations, standing idly by as Dell and its financial advisors sidelined the Special Committee and negotiated directly with a small group of stockholders to secure those stockholders'

support for the Transaction. In so doing, the Special Committee deprived Class V Stockholders of the protection to which they were legally entitled: a fully empowered and well-functioning negotiating agent to zealously bargain for the best price on their behalf.

3. Documents from this period obtained pursuant to the 220 Demands (and described in detail herein) reveal that the Special Committee abdicated its obligations to Dell and its financial advisors. [redacted]

4. The absence of a properly functioning Special Committee was particularly harmful to Class V stockholders because Dell's controllers applied significant coercive pressure on stockholders to accept their wholly inadequate offers. Throughout the negotiations, Dell's controllers threatened that if stockholders failed to approve the controllers' preferred deal, the controllers would

orchestrate an initial public offering followed by a forced conversion of Class V shares into Class C shares (the "Forced Conversion")—an alternative widely recognized as an even worse outcome for the Class V Stockholders.

5. While the Special Committee acted as a neutered bystander to the negotiations, Dell offered a small increase in consideration and put the Class V Transaction to a coerced and uninformed vote. Unsurprisingly, given that the Special Committee had already stated its preference for the same deal at a lower price point, the Special Committee once again accepted the controllers' offer and recommended in favor of the Transaction. [redacted] This too was never disclosed. Class V Stockholders were likewise misled about myriad other material aspects of the Special Committee process, including extensive conflicts of interest afflicting the Committee members and their financial advisors.

6. Ultimately, the strategy employed by Dell's controllers in concert with the Special Committee worked. Faced with the coercive threat of a Forced Conversion, lacking a proper advocate in the Special Committee, and based on materially misleading and incomplete proxy materials, Class V stockholders voted by a narrow margin to accept the inadequate Class V Transaction. This action seeks damages on their behalf.

* * *

7. Class V Stock was a "tracking" stock tied exclusively to Dell's interest in VMware, a highly valuable computer virtualization company controlled by Dell as a result of its 2016 acquisition of EMC Corporation ("EMC"). The Class V Transaction required Class V Stockholders to exchange their Class V shares for a purported $120 per share, consisting of (i) then-non-public Class C shares tied to the value of Dell's business as a whole, and (ii) limited cash (subject to proration depending on stockholder election).

8. The purported value of the Class C shares was premised on an absurd overstatement of Dell's core equity value and the fanciful premise that the value had more than doubled from internal Dell valuations immediately before negotiations commenced. In December 2017, Dell's Board adopted an equity value for the Company (excluding the Class V shares' interest in VMware) of only

$19.5 billion. Approximately six months later, the Special Committee accepted the Initial Proposal based on a ***$48.4 billion*** valuation. The ultimate Transaction was likewise expressly based on a $48.4 billion valuation. Because Dell used its Class C shares—then tied to the value of Dell without VMware—as currency to acquire the Class V Stock, any alleged increase in Dell's valuation thereby reduced, on a dollar-for-dollar basis, the cash consideration offered for the Class V shares. Simply put, Dell printed its own money to pay for the Transaction.

9. Prior to the Transaction, Class V Stock was Dell's only publicly traded stock. As a result of the Transaction, however, Dell is now a public company with a single class of publicly traded Class C common stock representing an interest in its entire business. In effect, this Transaction stole the VMware upside from Class V Stockholders, combining in a single class of stock the interests of Michael Dell and Silver Lake in Dell's slow-growth computer hardware business with the high-growth prospects of VMware to which the Class V Stockholders were entitled. In addition, Dell's controllers—who can freely convert their supermajority shares into Class C stock—gained the ability to access public markets without the cost, expense, or scrutiny of a formal initial public offering, a unique and highly valuable benefit not shared by any other Dell investors.

10. Dell first created the Class V Stock only three years ago to finance its acquisition of EMC and that company's coveted stake in VMware. At the time, Dell did not have the funds to offer EMC stockholders a fair cash price and could not raise the capital because of the significant debt-load remaining from Dell's 2013 going-private transaction. The issuance of Class V Stock addressed this shortfall. Because Dell could not afford to buy all of EMC, it created the Class V Stock as a tracking stock tied to a significant portion of EMC's stake in VMware and gave that stock in lieu of cash to EMC's stockholders so that they would retain an interest in VMware even after Dell acquired EMC. Essentially, Dell paid cash for that portion of EMC that it could afford and left a portion of EMC's valuable VMware stake with EMC's former stockholders by giving them Class V Stock to represent its value.

11. That transaction structure only made sense if the value of the Class V Stock was tied closely to the value of the underlying VMware shares. But investors had their doubts, which were compounded by the widely held perception that Dell's 2013 take-private deal was unfair and opportunistic on the part of Michael Dell and his Silver Lake partners. To quell these concerns, Dell and EMC publicly stressed that the combined company would support the Class V shares and treat their holders fairly. Joseph Tucci ("Tucci"), EMC's former CEO (who is now

both an "advisor" to Michael Dell and a close business partner of one the Special Committee members) stated at the time: "This should be the highest quality tracker in the history of trackers."

12. Investors were also provided a fairness opinion from Evercore Inc. ("Evercore")—then a "new entrant in the Silicon Valley market"[1]—stating that the Class V tracking stock could be expected to trade at a mere 0–10% discount to the publicly-traded shares of VMware, and might even trade at a premium. That quickly proved false. VMware exploded in value, with the price of its publicly-traded shares more than doubling. But the price of Class V Stock failed to keep pace, consistently trading at a substantial discount to VMware's stock price that sometimes exceeded 40%. Market commentators attributed the discrepancy in part to a "Dell Discount" reflecting a lack of confidence in Dell's corporate governance practices and a belief that Michael Dell could be expected to treat stockholders unfairly.

13. From the beginning, Michael Dell and Silver Lake had carefully laid the groundwork for a disloyal attempt to oust Class V Stockholders from their investments at an unfair price. At the time of the EMC acquisition, they imposed an amendment to Dell's corporate charter (the "Charter") providing that, if Dell

[1] *Verition Partners Master Fund Ltd. v. Aruba Networks, Inc.* ("*Aruba Networks*"), 2018 WL 922139, at *43 (Del. Ch. Feb. 15, 2018).

Class C shares (which represented a stake in the full Company excluding the VMware shares corresponding to Class V shares) ever became publicly traded, the Board could force a conversion of Class V Stock into Dell Class C stock at a complicated exchange ratio based on the relative trading prices of Class V Stock and Class C stock around the time of the conversion (previously defined as the "Forced Conversion"). Class V Stockholders recognized that the complicated exchange ratio, based on relative short-term market prices, could allow Michael Dell and Silver Lake to disloyally manipulate the price of a conversion. As such, Class V stockholders constantly feared that they would be unfairly ousted from their investment.

14. Those fears have now been realized. In late 2017, Michael Dell and Silver Lake began exploring strategies for acquiring a greater interest in VMware's rapidly-growing cash flows. As "Plan A," they sought a full combination of VMware and Dell in a stock-based transaction. But negotiations with VMware fizzled after a VMware special committee determined that Dell was undervaluing VMware stock and overvaluing Dell stock. As a result, Michael Dell and Silver Lake turned to a softer target as "Plan B": acquiring the interest in VMware tied to the Class V Stock through a coercively structured transaction approved by a committee of Dell's own directors.

15. The Class V Transaction process was riddled with impropriety from the start. Indeed, the Special Committee was not even formed at the outset of negotiations, as required. Rather, it carried on from work performed by an earlier three-member committee (the "Capital Stock Committee") whose authority to negotiate the deal had to be revoked due to a crippling conflict of interest. Specifically, Defendant Ellen Kullman ("Kullman"), a member of Dell's Board and also the board of Goldman Sachs ("Goldman"), sat on the Capital Stock Committee even though Goldman was the longstanding banker of both Dell and Silver Lake, had already been advising both concerning the potential Class V Transaction for several months, and stood to receive a "success fee" of $70 million from the Transaction, reportedly among the highest such fees in history.

16. [redacted] The Dell Board allowed the situation to linger unaddressed while negotiations continued for several weeks before forming a Special Committee that excluded Kullman. [redacted]

[redacted] This essentially rendered the Special Committee a nullity.

17. Furthermore, even after its belated formal creation, the Special Committee continued to suffer from irreconcilable conflicts of interest, a lack of independence, and a crippling lack of authority to negotiate with Dell's controllers. The Special Committee consisted only of Defendants William Green ("Green") and David Dorman ("Dorman"). Among other conflicts, Defendant Dorman is a founding partner of Centerview Capital, which has only eight investments, one of which is a material position in SecureWorks Inc. ("SecureWorks"), a computer security company owned by Dell. Indeed, Centerview is the largest investor other than Dell and Silver Lake in SecureWorks, which is consolidated on Dell's balance sheet and was thus an essential part of the valuation at issue in the Class V Transaction. For his part, Defendant Green's principal current business venture is GTY Technology Holdings, Inc. ("GTY"), in which he is partners and co-CEO with Tucci, who is described in GTY's SEC filings as "an advisor to Dell's founder, Michael Dell, and its board of directors." Thus, both members of the Special Committee had direct and material connections to Dell and its controlling stockholders that undermined their ability to independently represent the interests of the Class V Stockholders.

18. The Special Committee also employed Evercore as its advisor, even though Evercore (i) had obviously failed to correctly assess the value of the Class V Stock in the EMC transaction only three years earlier, and (ii) was originally retained by the conflicted Capital Stock Committee, such that its work was tainted. Moreover, Evercore's long and lucrative history of blessing deals for Dell and Silver Lake made it an inappropriate choice for a purportedly independent committee supposedly negotiating against Dell and Silver Lake. Indeed, concurrently with its work with the Special Committee, Evercore advised another Silver Lake portfolio company on its IPO—another material fact omitted from the proxy materials for the Class V Transaction.

19. The terms of Evercore's engagement—which rewarded it for closing ***any*** deal—further heightened the conflict of interest stemming from Evercore's clear interest in pleasing long-time clients on the opposite side of the deal. That skewed incentive structure presented a genuine risk given that Evercore and its lead banker on the Class V Transaction had developed a reputation, previously recognized by this Court in another case, for acting as a "banker for the deal"[2]—*i.e.*, for advocating to "get the deal done" over the interests of Evercore's client.

[2] *Aruba Networks*, 2018 WL 922139, at **19-20, 43.

20. The Special Committee also retained on this multi-billion dollar transaction a tiny, unknown data analytics firm, DISCERN Analytics, Inc. ("DISCERN"), to support Evercore by providing critical valuation analysis. Despite the ability to retain any number of reputable and experienced firms, the Special Committee elected to use a firm that has no physical address and appears to be operated from the home of its only full-time employee, an individual who happens to be personally acquainted and Facebook friends with the lead Evercore banker managing the assignment. DISCERN has no known record of advising on any remotely comparable transaction or of being qualified to do so. Indeed, its own online business description indicates that the principal service it provides—synthesizing data that affects financial markets and using that information to deliver alerts to investors—is completely different from what the Special Committee asked DISCERN to do. Nevertheless, DISCERN and its lone full-time employee supposedly undertook and completed—*in less than two weeks*—a complex valuation of Dell that was a key underpinning of Evercore's fairness opinion. [redacted]

21. The Special Committee failed to adequately inform itself or seek appropriate professional advice in other areas as well. Dell's financial projections and their treatment for accounting purposes were central to the valuation issues that drove the deal negotiations. As described in Dell's proxy materials, Dell updated these financial projections part-way through the negotiations in light of newly issued accounting standards concerning both revenue recognition and cash flows—both critical to the Company's valuation—and provided these unaudited figures to the Special Committee.

[redacted]

23. Moreover, Michael Dell and Silver Lake had absolutely no intention of adequately empowering the Special Committee to undertake an appropriate review process. Instead, almost immediately, Michael Dell and Silver Lake sought

to short-circuit the Special Committee's process by creating artificial time pressures and threatening that, should the Special Committee not accede to their proposal, they would pursue an IPO and the Forced Conversion on terms even less favorable to the Class V Stockholders.

24. Ultimately, and unsurprisingly, the Special Committee caved to Michael Dell and Silver Lake. On July 1, 2018, the Committee approved a proposal whereby Dell would acquire all outstanding shares of Class V Stock for a combination of cash and Dell Class C Stock purportedly worth $109 per share (the "Initial Proposal"). The day the Initial Proposal was announced, VMware stock closed at $162.02 per share. Thus, Dell was proposing to expropriate Class V stockholders' interests in VMware at a stunning discount of more than $50 per share that, across more than 199 million outstanding shares, would result in Dell's controllers (*i.e.*, Michael Dell and Silver Lake) reaping a windfall of nearly *$10 billion*. Worse still, in reality the offered consideration was worth nowhere near $109 per share. That figure relied on a valuation of shares of Dell Class C Stock at $79.77, when the Dell Board had valued shares of its Class C Stock at $33.17 less than a year earlier in December 2017. In light of the Initial Proposal's blatant unfairness, Class V Stockholders revolted and several large holders of Class V Stock announced their opposition to the Initial Proposal.

25. Facing nearly certain defeat on a stockholder vote to approve the Initial Proposal, Michael Dell and Silver Lake sought to coerce stockholders into supporting the deal with the same tool they had used to coerce the Special Committee: the threat that they would pursue a Forced Conversion in the event that the Initial Proposal failed.[3] At first, it was leaked to the press that Dell was interviewing bankers for a possible IPO if the Initial Proposal failed. Dell thereafter abandoned any subtlety, filing a Form 8-K with the U.S. Securities and Exchange Commission ("SEC") confirming as much. The message was clear: support the deal, or else Michael Dell and Silver Lake would push for a Forced Conversion on terms even less fair to Class V Stockholders.

26. While Dell continued to threaten the Special Committee, Dell inappropriately side-stepped the Committee's purported authority by holding private meetings with a select group of the largest Class V Stockholders. At these meetings, Dell signaled its willingness to modestly improve the proposed deal consideration in an attempt to discern the minimum consideration those particular stockholders would require to accept the "bird in the hand," unfair as it might be,

[3] This threat was widely appreciated in the market and cited by other stockholders in previous litigation in this Court. *See, e.g.*, *High River Master Ltd. P'ship v. Dell Techs., Inc.*, C.A. No. 2018-0790-JTL, Verified Complaint Pursuant to 8 *Del. C.* § 220, filed Oct. 31, 2018 (the "Icahn Complaint"), at 3-5.

instead of voting down the deal with the explicit threat of a subsequent disloyal and unfair Forced Conversion attempt looming.

27. As confirmed by documents received in connection with the 220 Demands, [redacted]

28. On November 8, 2018, after months of negotiations, the Special Committee finally attempted to intervene. [redacted][4]

[4] *Kenneth Riche v. James C. Pappas, et al.* ("*US Geothermal*"), C.A. No. 2018-0177-JTL, at 24-25 (Del. Ch. Oct. 2, 2018) (TRANSCRIPT) ("What we have here is exactly what I think courts worry about, which is that the proxy statement paints a picture that tells a story. We have more and more instances in this court where minutes and disclosure documents seem to have been drafted wishfully rather than accurately. In other words, they are drafted to create a story rather than document what happened.").

29. [redacted] Michael Dell and Silver Lake agreed in principal with those stockholders on revised transaction terms that included an increase in the purported price per share to $120. The $120 deal was communicated to the Special Committee later on November 9, 2018. [redacted]

30. The next day, on November 10, 2018, Evercore conducted a call with DISCERN, which confirmed its analysis that the [redacted] As before, DISCERN's conclusions were a worthless rubber stamp from an unqualified actor.

31. In the ensuing days, Dell engaged in further direct negotiations with a handful of other large stockholders whose support it considered necessary to

cobble together a majority. Again, the Special Committee played no role whatsoever in the negotiations. These further negotiations resulted in a final deal at $120 per share, but with an adjustment to include a "top-up" structure providing for a potential increase in the Class V-to-Class C exchange ratio based on the trading price of Class V Stock and the amount of cash elected by stockholders. The agreement was reached late in the afternoon on November 14, 2018. [redacted] Immediately thereafter, the full Dell Board approved the deal.

32. On November 15, 2018, Dell publicly announced the modestly improved Transaction. Pursuant to the terms of the deal struck between Dell's controllers and several Class V Stockholders—rather than with the Special Committee—the nominal value of the consideration offered to stockholders was increased to $120 per share, with the available cash for pro-rata election increased and the exchange ratio for the stock component to be determined based on the trading price of Class V Stock during the weeks prior to consummation of the deal.

33. Ultimately, the re-cut deal, combined with Dell's threats of a Forced Conversion, were sufficient to secure narrow stockholder approval, with just 61%

of unaffiliated Class V stockholders voting to approve the Transaction at a December 11, 2018 special meeting. The Transaction closed on December 28, 2018.

34. In its modestly improved form, the Class V Transaction remained grossly unfair to Class V Stockholders. At $120 per share, the consideration represented a dramatic discount to VMware's publicly-traded stock, which has consistently traded in excess of $150 per share, when Class V Stockholders should have instead received a *premium* for VMware's future growth prospects and for the passage of unmitigated control to Michael Dell and Silver Lake. Moreover, the $120 valuation remained predicated on an inflated valuation of Dell stock. Ultimately, the stock component valued Dell Class C Stock at $66.42. Since the Transaction closed, the true market value of Dell Class C Stock has been revealed, with that stock trading at a significant discount to the valuation on which the Transaction was premised.

35. The Class V Transaction constituted a massive expropriation of value from Dell's Class V Stockholders to Michael Dell and Silver Lake. No truly independent, adequately empowered, and uncoerced Special Committee could have endorsed this deal. Here, however, there was no independent well-functioning Special Committee to negotiate on behalf of Class V Stockholders.

Rather, from the outset of the Special Committee's belated formation, Dell marginalized the hopelessly conflicted Committee, refusing to take its negotiations with the Committee seriously and side-stepping it entirely by negotiating the terms of the final Transaction directly with a handful of cherry-picked stockholders. Moreover, what meager efforts the Special Committee did make were met with intense efforts to coerce its decision with artificial time pressures and threats of a Forced Conversion. Stockholders—even those who did their best to negotiate directly with Michael Dell and Silver Lake—likewise faced the same powerfully coercive threats. Ultimately, a majority of Class V Stockholders and their conflicted, inadequately empowered agents succumbed to Dell's coercive threats, conveying a windfall upon Dell's controllers at the direct expense of the Class V Stockholders.

THE PARTIES

36. Plaintiff Steamfitters was a holder of Class V Stock at the time of the Transaction.

37. Plaintiff Muehlgay was a holder of Class V Stock at the time of the Transaction.

38. Plaintiff Garelli was a holder of Class V Stock at the time of the Transaction.

39. Plaintiff Snoek was a holder of Class V Stock at the time of the Transaction.

40. Defendant Michael Dell is the founder, Chairman, and CEO of Dell. He and his family control approximately 66.2% of Dell's total stockholder voting power, through a combination of Class A and Class C common stock. Moreover, Michael Dell personally has the power to control the Board. As described in more detail below, Michael Dell owns approximately 91% of Dell's Class A common stock. Under Dell's Charter, prior to the Transaction the holders of Class A common stock voted alone to elect a single director who, by himself, wielded seven of thirteen Board votes for almost all matters. Michael Dell elected himself to this position and, accordingly, constituted a one-man-majority on the Board at the time of the Transaction.

41. Defendant Dorman has been a member of the Board since September 2016. He was a member of the Special Committee formed in connection with the Transaction. Dorman is also a founding partner of Centerview Capital Technology ("Centerview Capital"), the private-equity affiliate of Centerview Partners LLC ("Centerview Partners"). Centerview Partners is a prominent investment bank that advised Michael Dell and Silver Lake in connection with a 2013 management buyout that took Dell private (the "MBO").

42. Defendant Durban has been a member of the Board since October 2013. He is Managing Partner of Silver Lake and joined the Board in connection with the MBO.

43. Defendant Green has been a member of the Board since September 2016. He was a member of the Special Committee formed in connection with the Transaction. Green was also a member of Dell's Capital Stock Committee, the Special Committee's predecessor. He is also a member of the board of directors of Dell subsidiary Pivotal Software, Inc. ("Pivotal")

44. Defendant Kullman has been a member of the Board since September 2016. She is also a member of the board of directors of Goldman Sachs. Kullman was a member of Dell's Capital Stock Committee until her recusal on February 24, 2018.

45. Defendant Simon Patterson ("Patterson") has been a member of the Board since October 2013. He is a Managing Director of Silver Lake and joined the Board in connection with the MBO.

46. Defendant MSDC Denali Investors, L.P. is a Delaware limited partnership through which Michael Dell holds a portion of his Dell stock.

47. Defendant MSDC Denali EIV, LLC is a Delaware limited liability company through which Michael Dell holds a portion of his Dell stock.

48. Defendant Susan Lieberman Dell Separate Property Trust is a trust for the benefit of Michael Dell's wife, through which Michael Dell holds a portion of his Dell stock.

49. Defendant Silver Lake is a private equity firm, organized as a Delaware limited liability company. Silver Lake backed the MBO and owns 100% of Dell's Class B stock.

50. The Defendants identified in paragraphs 40–45 are referred to collectively as the "Director Defendants."

51. Michael Dell and the Defendants identified in paragraphs 46–49 are referred to collectively as the "Control Group Defendants."

FACTS

A. Michael Dell And Silver Lake Assume Control Of Dell Through A Management Buy Out.

52. Dell is one of the world's largest technology companies. Michael Dell founded the Company in 1983 as a college freshman. In 1988, he took the Company public at a valuation of approximately $85 million. The Company continued to grow rapidly after going public, reaching market valuations in the tens of billions of dollars. Michael Dell has served as CEO of the Company since its founding, with the exception of a brief hiatus from 2004 to 2007.

53. In 2013, Michael Dell partnered with Silver Lake to take Dell private, at a valuation of approximately $25 billion (previously defined as the "MBO"). The MBO was accomplished by: (i) Michael Dell rolling over his then-16% equity stake in the Company (valued at approximately $3 billion) and contributing $750 million in cash; (ii) Silver Lake making a $1.4 billion equity investment; and (iii) a consortium of lenders providing financing for the remainder of the deal consideration. After the MBO, Michael Dell and Silver Lake assumed total control of Dell.

54. Since the MBO, Michael Dell and Silver Lake have maintained their control of Dell. Before the Transaction, Michael Dell controlled about 66% of the total stockholder voting power in the Company and Silver Lake controlled about 24%. They also had the power to control the Board. Michael Dell personally wielded seven of thirteen votes on the Board and Silver Lake personnel—*i.e.*, Defendants Durban and Patterson—controlled an additional three votes.

55. Michael Dell and Silver Lake exercised their control of Dell through ownership of high-vote stock with special voting rights. Immediately prior to the Transaction, the Company's capital structure included four classes of common stock: Class A, Class B, Class C, and Class V. As explained above and described in more detail below, Class V Stock was a special class of stock intended to track

the majority of Dell's ownership interest in VMware. It was issued in connection with Dell's acquisition of EMC (the "EMC Merger") and retired as a result of the Transaction. The other three classes of common stock—Classes A, B, and C—corresponded to an ownership interest in the rest of Dell's business, including the portion of its interest in VMware not specifically tied to Class V stock. On most matters, Class A and Class B stock were entitled to ten votes per share, whereas shares of its Class C and Class V Stock were entitled to only one vote per share. Moreover, Class A and Class B stock enjoyed special rights concerning the election of directors. The Dell Board had six directors split into three groups: (i) three Group I directors who collectively wielded three votes; (ii) a single Group II director who by himself wielded seven votes; and (iii) two Group III directors who collectively wielded three votes. All classes of stock voted together to elect the three Group I directors; Class A voted separately to elect the single Group II director; and Class B voted separately to elect the two Group III directors.

56. Michael Dell and his family entities control approximately 91% of the outstanding Class A shares. He used that power to elect himself as the Group II director. Silver Lake controls 100% of the outstanding Class B Shares. Silver Lake used that power to elect two Silver Lake partners—Defendants Durban and Patterson—to the Group III seats on the Board. Thus, Michael Dell and Silver

Lake controlled both Dell's stockholder voting power and the Board at the time of the Transaction.[5]

B. Dell Acquires EMC Corporation And Issues The Class V Stock To EMC's Former Stockholders In Order To Secure That Deal.

57. Almost immediately after closing the MBO, Michael Dell and Silver Lake began plotting the largest acquisition in the history of the technology industry: Dell's acquisition of data-storage giant EMC (previously defined as the "EMC Merger"). Michael Dell began negotiating with EMC during the summer of 2014. On October 12, 2015, following more than a year of negotiations, Dell and EMC announced that they had reached agreement for Dell to acquire EMC in a deal valued in excess of $60 billion. After securing the necessary approvals, the EMC Merger closed on September 7, 2016, with Dell paying EMC stockholders $24.05 in cash as well as 0.11146 shares of newly-issued Class V Stock for each share of EMC stock.

58. The Class V Stock component of the EMC Merger resulted from Dell's inability or unwillingness to raise sufficient financing to purchase EMC in its entirety. Accordingly, Dell needed to get creative to craft a deal that would win

[5] At the same time that stockholders voted to approve the Transaction, they also voted to approve a proposal that will simplify stockholder voting and the structure of the Board. Going forward, all members of the Board will have one vote and will be elected by all stockholders voting together. Michael Dell will continue to control the Company as a result of his majority stockholdings.

the support of EMC stockholders. In addition to its core operating business, EMC owned an 81.9% stake in the publicly-traded cloud-computing and virtualization company, VMware. In order to reduce the cost of the EMC Merger, Michael Dell and Silver Lake crafted a proposal that would allow EMC's stockholders to retain the majority of EMC's ownership interest in VMware. This was accomplished through the issuance of the Class V Stock to EMC's former stockholders. Shares of Class V Stock, Dell promised, would track shares of VMware that Dell acquired from EMC on a one-for-one basis. In total, Dell issued shares of Class V Stock corresponding to approximately 65% of the VMware shares it acquired in the EMC Merger. Accordingly, although Dell technically acquired EMC's full 81.9% ownership interest in VMware, only approximately 28% of the total economic interest in VMware would flow to Dell's pre-EMC Merger stockholders (*i.e.*, primarily Michael Dell and Silver Lake)—the remaining approximately 53% of the interest in VMware would be held for the benefit of the holders of the new Class V Stock.

C. Despite VMware's Rapid Growth, Concerns About Dell's Corporate Governance Depress The Trading Price Of The Class V Stock.

59. In the time since the EMC Merger, the value of VMware has skyrocketed. On September 7, 2016, the day the EMC Merger closed, VMware

stock trading on the New York Stock Exchange closed at a price of $72.76 per share, reflecting a valuation of around $30 billion. One year later, on September 7, 2017, VMware stock closed at a price of $106.50 per share, with a market valuation of around $44 billion. By early 2018, it was trading in excess of $130 per share, with a market valuation of approximately $55 billion.

60. The rapid growth in VMware's value caused consternation for Michael Dell and Silver Lake, who together owned approximately 90% of the non-Class V equity in Dell. They had saddled Dell with tens of billions of dollars in debt to acquire EMC, only to reap an unsatisfying minority interest in what turned out to be EMC's crown jewel—its ownership interest in VMware.

61. At the same time, Class V Stock traded at a significant discount to the trading price of publicly-traded shares of VMware. At the time of the EMC Merger, EMC's CEO stated: "This should be the highest quality tracker in the history of trackers … we would not have done this if we thought it was going to cost [investors] any economic pain whatsoever." The proxy statement issued by EMC in support of the deal touted the assumption of its investment bankers, Evercore and J.P. Morgan, that shares of Class V Stock could be expected to trade at a 0–10% discount to the publicly traded VMware shares and might even trade at a premium to VMware stock. That turned out to be false. Instead, shares of

Class V Stock consistently traded at a massive discount to VMware stock, averaging around a 35% discount, and at times exceeding a 40% discount.

62. Commentators describe this phenomenon as the "Dell-Discount," reflecting that "Michael Dell isn't really shareholder-friendly."[6] That is, the value of Class V Stock was depressed by the market's perception that Michael Dell might ultimately take steps to disloyally divert some of the value of Dell's VMware shares away from the holders of corresponding shares of Class V Stock.

63. The market recognized that, if Michael Dell determined to exploit Class V Stockholders, he would have ways to do so. Class V Stockholders were in a precarious position from a corporate governance perspective. Ominously, after the issuance of Class V Stock, Dell adopted a charter provision—Section 5.2(r)—that would allow Dell to, after an IPO of Class C Stock, force a conversion of Class V Stock into Class C Stock at an exchange rate pegged against the ratio of the market price of the two classes of shares, calculated based on the 10-day volume-weighted average price of each class of stock (adjusted by a premium dependent on how soon after the IPO a conversion occurs). Section 5.2(r) is referred to herein as the "Forced Conversion Provision."

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[6] *The Dell-Discount*, SEEKING ALPHA (July 16, 2018), available at: https://seekingalpha.com/article/4187602-dell-discount (last accessed Feb. 14, 2019).

64. The Forced Conversion Provision created immense uncertainty for Class V Stockholders. As one commentator described it:

> The IPO-then-convert alternative is a … perilous path for [Class V Stock] holders, due in part to the mammoth unpredictability of the pricing ratio's realized value once triggered. The market value of [Class V] shares (comprising the numerator) has long displayed pricing pathologies of its own, consistently—and controversially—trading at a deep discount to VMWare shares—possibly reflecting Class V shareholders' squeamishness about their place in the Dell pecking order. And, the market price of Class C shares (the denominator) does not even exist today, with Dell's projections of its market value careening wildly over the last 10 months (as noted above). Indeed, having spent several months myself grappling with the pricing formula that governs the Class V / Class C share conversion, I am resigned to the conclusion that it is riddled with enough self-referential circularities and indeterminacies to fry the circuits of even the most capable asset pricing algorithm.[7]

65. The Forced Conversion Provision created a ready pathway for Michael Dell and Silver Lake to manipulate the consideration paid to Class V Stockholders in the event they endeavored to capture additional value associated with Dell's stake in VMware. Stockholders were acutely aware that even a slight decrease in the relative value of Class V Stock during the 10-day VWAP period for calculating the Forced Conversion price could trigger a sell-off, creating a

[7] Eric Talley, *Corwin at a Crossroads: Could DVMT Stock Be the Tracker Jacker in Dell's Hunger Games?* THE COLUMBIA LAW SCHOOL BLUE SKY BLOG (Sept. 25, 2018), available at: http://clsbluesky.law.columbia.edu/2018/09/25/corwin-at-a-crossroads-could-dvmt-stock-be-the-tracker-jacker-in-dells-hunger-games/ (last accessed Feb. 14, 2019).

downward spiral. Moreover, holders of Class V Stock lacked effective representation on the Dell Board. Class V Stock was intended to track greater than 60% of Dell's economic interest in VMware, an interest worth tens of billions of dollars and a substantial portion of all Dell equity. However, as a result of the disparate voting rights accorded to the different classes of Dell stock, Class V Stockholders had only around 4% voting power in the Company and no power to elect even a single director. So the Board established a "Capital Stock Committee," comprised of Defendants Dorman, Green, and Kullman, purportedly to advance the interests of Class V Stockholders. However, all members of the committee were also members of the full Dell Board owing fiduciary duties to the Company as a whole. As such, they faced an inherent conflict in attempting to balance the interests of Class V Stockholders against the interests of the Company as a whole.

D. Michael Dell And Silver Lake Move To Capture The Value Of VMware Cash Flows; After VMware Rejects Michael Dell And Silver Lake's Pie-in-the-Sky Valuations Of Dell, They Pivot To The Transaction.

66. In August 2017, Michael Dell and Durban began actively exploring potential strategic transactions that would allow Michael Dell and Silver Lake to acquire a greater interest in VMware's rapidly growing cash flows. In October 2017, Goldman Sachs—Michael Dell's and Silver Lake's long-time advisor—

began actively advising Michael Dell and Company management on potential strategic transactions involving VMware. The terms of Goldman's engagement included the possibility for Goldman to receive a "success fee" of $70 million—reportedly among the largest success fees in history—should the transaction close.

67. "Plan A" for Michael Dell and Silver Lake was a full-scale business combination of Dell and VMware. Dell approached VMware concerning a potential combination in December 2017, kicking off months of negotiations and intensive diligence on both sides. Ultimately, however, a special committee of the VMware board of directors rejected pursuing such a transaction because it could not credit Dell's proposed valuations of either Dell or VMware.

68. In discussions concerning a potential VMware-Dell combination, Dell and Goldman Sachs advanced a valuation range of Dell (excluding the value of VMware common stock associated with the Class V Stock) of $48 billion to $52 billion. The VMware special committee and its financial advisor, Lazard, viewed this valuation as unrealistic and the result of, *inter alia*, an inflation of projected 2020 financials for Dell and the application of an unrealistically high multiple range to such financials for purposes of calculating Dell's enterprise value. In the view of the VMware special committee and Lazard, informed by extensive diligence, Dell's valuation range was inflated by approximately ***$8.5***

billion. Furthermore, Dell had presented a valuation of VMware at its then-current market price of $125.84 per share. The VMware special committee and Lazard believed that the valuation of VMware stock in any potential business combination should reflect a substantial premium and proposed a valuation range of $158.28 to $178.92 per share, representing a 31.9% premium and 49% premium, respectively, when compared to the final $120 per share consideration ultimately offered in the Class V Transaction.

69. The VMware special committee and Lazard provided their criticism of Dell's valuations in March 2018. VMware and Dell continued to hold discussions after March 2018, but the intractable valuation differences foreclosed agreement.

70. In spring 2018, as discussions concerning a VMware-Dell combination fizzled, Michael Dell and Silver Lake pivoted to "Plan B" for increasing their exposure to VMware's growing cash flows: an expropriation of the interest in VMware held by Dell's Class V Stockholders. As described below, their ostensible negotiating counterparty would be a powerless and hopelessly conflicted Special Committee comprised of Defendants Dorman and Green.

E. The Dell Board Forms A Hopelessly Conflicted Special Committee To Negotiate The Class V Transaction.

71. On January 31, 2018, during the beginning stages of Dell's discussions with VMware, Dell held a full Board meeting at which Michael Dell and representatives of Goldman Sachs presented the strategic options being explored by Dell management. [redacted] At the meeting, the Board adopted a resolution providing that, if the Board determined to pursue a transaction that would result in the conversion or exchange of Class V Stock for cash or other securities, or if VMware proposed such a transaction, it would be subject to the investigation and approval of the Capital Stock Committee.

72. After the Board's January 31, 2018 meeting with Michael Dell and Goldman Sachs, it became evident that Goldman Sachs was going to represent Dell in any potential transaction. As a member of Goldman Sachs' board of directors, Kullman harbored an obvious conflict of interest. Pursuant to the resolution adopted at the January 31, 2018 meeting, she would be charged with representing

the interests of Class V Stockholders in negotiations in which Goldman Sachs both sat on the other side of the negotiating table and would stand to benefit from their $70 million "success fee" if they secured a favorable transaction for Michael Dell. Despite this conflict, Kullman failed to recuse herself at this time, and instead remained on the Capital Stock Committee.

73. [redacted]

74. Stuart Francis ("Francis"), Evercore's lead investment banker, started at Evercore in the summer of 2014 and was Evercore's "first tech sector person."[8] In the three years leading up to the Committee's retention of Evercore, Francis and the Evercore team were considered "new entrant[s] in the Silicon Valley market."[9] Evercore hired Francis "to establish a presence in tech."[10] Based on the Delaware Court of Chancery's post-trial appraisal opinion in *Aruba Networks*, Francis established a reputation as being a "banker for the deal" itself as opposed to "acting as a banker for [the selling company]." 2018 WL 922139, at *43. In other

[8] *Aruba Networks*, 2018 WL 922139, at *43 (quotations omitted).

[9] *Id.*

[10] *Id.* at n.146 (quotations omitted).

words, Francis had developed a reputation as a banker more interested in "getting the deal done" than in zealously advocating for his actual client's best interests.

75. [redacted] Had either the Capital Stock Committee or Special Committee done so, they would have learned that Evercore represented Silver Lake portfolio company SolarWinds Corporation ("SolarWinds") in connection with its IPO from June 1, 2018 until October 18, 2018. During this same period, Evercore simultaneously advised the Dell Special Committee in negotiations against Silver Lake and Michael Dell.

76. [redacted] On March 6, 2018, the members of the Capital Stock Committee delivered a unanimous written consent pursuant to which they determined it was appropriate to form a new two-member Special Committee excluding Kullman. On March 14, 2018, the full Dell Board accepted this proposal and established a

Special Committee consisting of Defendants Dorman and Green to represent the interests of Class V Stockholders in connection with the ongoing negotiations. The new Special Committee inherited the legal and financial advisors who had been advising the Capital Stock Committee, including Evercore.

77. However, both Dorman and Green harbored conflicts of interest as a result of their relationships with Michael Dell and Silver Lake.

78. **Defendant Dorman's Conflicts Of Interest:** Dorman served as a director on the board of SecureWorks from April 2016 to September 2016. SecureWorks is sometimes referred to as "Dell SecureWorks," and is a publicly traded subsidiary of Dell. Michael Dell controls SecureWorks through his ownership of Class B shares yielding him over 98% of the total voting power. Michael Dell used that power to elect Dorman to the SecureWorks board shortly after SecureWorks went public. In September 2016, Dorman resigned from the SecureWorks board to *immediately* join the Dell Board. Michael Dell then appointed Yagyensh C. (Buno) Pati, Dorman's partner at Centerview Capital, to the seat on the SecureWorks board vacated by Dorman.

79. SecureWorks' second-largest investor (behind Michael Dell) is Centerview Capital, which currently holds a 14.9% stake in SecureWorks. Dorman is a founding partner of Centerview Capital, a role which remains his

primary occupation. Founded in July 2013, Centerview Capital is the private equity arm of boutique investment banking firm Centerview Partners, Centerview Capital's parent entity. Michael Dell granted Dorman and Centerview Capital the opportunity to invest in SecureWorks in 2015. On August 3, 2015, Centerview Capital purchased $19.5 million in convertible notes from SecureWorks, which have since been converted following SecureWorks' IPO.

80. Centerview Partners has a longstanding and strong relationship with both Michael Dell and Silver Lake. Centerview Partners owes its rise to prominence in the tech market in large part to Michael Dell and Silver Lake. In 2013 and 2015, Centerview Partners advised Michael Dell and Silver Lake in their 2013 buyout of Dell and then again in Michael Dell's 2015 acquisition of EMC. In addition to its lucrative roles in advising Michael Dell, Centerview Partners and Michael Dell are also both members of The Council on Foreign Relations, a private think tank that addresses "foreign policy choices fac[ing] the United States."[11]

81. Dorman regularly leverages his experience with Dell and Michael Dell to raise capital and attract new investment opportunities for Centerview Capital. According to Centerview Capital's website, the firm focuses on "late

[11] Council On Foreign Relations, Corporate Members, https://www.cfr.org/membership/corporate-members (last accessed Feb. 14, 2019).

stage venture and growth capital investments in the technology industry" (*i.e.*, the same space in which Dell, EMC, VMware, and Pivotal operate). Centerview's website further indicates that the firm has made investments in only eight companies, one of which is SecureWorks.

82. The benefits of Dorman's relationship with Michael Dell extend to other companies with which Dorman affiliates. Dorman currently serves as non-executive Chairman of the board of directors of CVS Health Corporation ("CVS"). As evidenced by documents received in response to the 220 Demands, [redacted]

83. Moreover, Dorman has the following additional ties to Dell's control group: (i) both Dell and Centerview have positions in RichRelevance, an internet personalization company; (ii) Centerview has made a $70 million investment in Sauce Labs, Inc., of which Dell is a customer; and (iii) until recently, Defendant Durban appears to have been on the board of directors of Infoworks, another of Centerview's portfolio companies in which two Centerview partners—Bruno Pati and Ned Hooper—also serve on the board.

84. Ultimately, Dell appears to have a relationship—as investor, client, or both—with four companies out of Centerview's eight-company investment portfolio. These myriad connections demonstrate that Mr. Dorman had a greater interest in gaining Dell and Silver Lake's approval than negotiating the best possible deal for Class V Stockholders.

85. **Defendant Green's Conflicts Of Interest:** Green likewise has a well-established and ongoing relationship with Michael Dell. Green serves on the boards of Dell and Pivotal. Pivotal is listed as a "portfolio" company on Dell's website and is part of Michael Dell's intertwined network of companies. Dell controls 95.6% of Pivotal through ownership of Class B stock, which provides its holders ten votes per share. At the time of the EMC Merger, Green was also a board member of Pivotal. Before the Dell-EMC merger, Pivotal was a subsidiary of EMC, which was then led by EMC's CEO Tucci, Green's current business partner at GTY.

86. Green's close relationship with Michael Dell is further demonstrated by the 17-year bond between Green's business partner Tucci and Michael Dell,

which remains strong to this day. For example, in 2015, Tucci was quoted stating that "Mike's my 'brother from another mother.'"[12]

87. Green also receives significant income from Dell and Pivotal. In the months since the IPO, Green has received $500,000 in stock grants from Pivotal. He now stands to receive annual compensation of $270,000 in cash and stock from his position with Pivotal. He has also received hundreds of thousands of dollars for his service on the board of Dell—*e.g.*, he received $325,000 from Dell in 2017.

88. In April 2018, at the same time that Michael Dell and Silver Lake were working towards the Transaction, Dell conducted an IPO of Pivotal. Following Pivotal's IPO, Michael Dell and Silver Lake decided to keep Green on the Board of Pivotal. A majority of the proceeds from Pivotal's IPO went directly to Dell to help pay down its debt from the EMC Merger.

89. Pivotal has a unique role in Michael Dell's network of companies. In addition to being controlled by Mr. Dell, Pivotal's success is dependent on Michael Dell and other companies under his control. An article on MarketWatch describes the Pivotal-Dell relationship as follows: "The [Dell] connection helps Pivotal because it can sell products in packages with hardware sold by DellEMC, or in

[12] Chris Mellor, "EMC-Dell Dynamic Duo: Mike's My 'Brother From Another Mother' – Tucci," THE REGISTER, https://www.theregister.co.uk/2015/10/15/duo_to_integrate_dell_emc/, Oct. 15, 2015 (last accessed Feb. 14, 2019).

coordination with VMware's own software offerings …."[13] Another article in TechCrunch stated that Pivotal's dependence on Dell presents Pivotal with a "fine line to walk" as a supposedly "independently operated entity."[14]

90. Further evidence of Pivotal's dependence on Michael Dell is found in Pivotal's public filings. As disclosed in Pivotal's April 20, 2018 IPO Prospectus, "We leverage our mutually beneficial commercial and go-to-market relationships with Dell Technologies and VMware to win new customers and to expand our customer footprint." In Pivotal's most recent Form 10-Q, filed with the SEC on December 12, 2018, Pivotal admits that its ***"future growth depends in large part on the success of our partner relationships."*** (Emphasis in original). The Form 10-Q further discloses: "Our future growth will be ***increasingly dependent on the success of our partner relationships***, and if those relationships do not provide such benefits, ***our ability to grow our business will be harmed***." (Emphasis added).

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[13] Jeremy C. Owens, *Pivotal IPO: 5 things to know about the cloud software company*, MARKETWATCH, Apr. 22, 2016, https://www.marketwatch.com/story/pivotal-ipo-5-things-to-know-about-the-cloud-software-company-2018-04-20 (last accessed Feb. 14, 2019).

[14] Ron Miller, *Pivotal CEO talks IPO and balancing life in Dell family of Companies*, TECHCRUNCH, Apr. 21, 2018, https://techcrunch.com/2018/04/21/pivotal-ceo-talks-ipo-and-balancing-life-in-dell-family-of-companies/ (last accessed Feb. 14, 2019).

91. Pivotal's public filings identify DellEMC and VMware as Pivotal's "strategic partners," and rightfully so. According to Pivotal's most recent Form 10-Q, "***sales to DellEMC and VMware generated 37% and 44% of Pivotal's total revenue in fiscal 2018 and 2017 respectively***." (Emphasis added). As such, Pivotal disclosed that "[a]ny adverse changes in our joint sales arrangements or the effectiveness of such arrangements with DellEMC or VMware could have a material impact on our results of operations." Pivotal's public filings also concede that even its "stock price could be impacted by the reported results and other statements of Dell Technologies." (Emphasis removed). Pivotal is also responsible for third party liabilities of Dell, and its affiliates DellEMC and/or VMware "which could result in a decrease in our income." (Emphasis removed).

92. In addition to serving as a director for Dell-controlled Pivotal, Green is a co-founder, co-CEO and co-Chairman of GTY, a blank-check company that specializes in investing in "attractive businesses within the technology industry, including software and services." GTY focuses its investments in the same technology space currently dominated by Dell, Pivotal, SecureWorks, VMware and DellEMC. Green and GTY leverage their relationship with Michael Dell to attract investors and raise capital for their technology investing venture. For example, GTY's Registration Statement on Form 424B4, filed with the SEC on

October 28, 2016, mentions "Dell", "Pivotal" and "VMware" ***no less than 27 times***, and indicates GTY used these references to raise capital. At the conclusion of GTY's IPO in November 2016, GTY successfully raised $552 million. Moreover, GTY is part of the broader Green-Tucci-Dell connection. GTY's SEC filings specifically tout that Tucci is "an advisor to Dell's founder, Michael Dell, and its board of directors." Defendant Green's independence is irrevocably tainted because his close associate and business partner is himself a close advisor to Michael Dell, against whom Green was supposedly negotiating.

93. Moreover, both Dorman and Green harbored an additional fundamental and disabling conflict of interest as a result of their service on the full Dell Board. Any transaction involving the Class V Transaction or conversion of Class V Stock would create an irreconcilable, zero-sum, conflict between the interests of Dell's Class V Stockholders and the holders of the Company's other classes of stock. As directors on the full Dell Board, both Dorman and Green owed unyielding fiduciary duties to all classes of Dell stockholders. Moreover, both expected to continue serving—and in fact continue to serve—as directors of Dell after any transaction. Accordingly, their analysis of any transaction was colored by their loyalty to Dell as a whole. Simply put, they were not in a position

to be zealous advocates for the unique and exclusive interests of the Class V Stockholders.

94. The fundamentally conflicted Special Committee could not possibly be expected to reproduce the conditions of zealous arm's-length bargaining in any transaction between Dell and its Class V Stockholders.

95. Moreover, the Special Committee's financial advisor, Evercore, also harbored serious conflicts of interest. Evercore had a long-standing business relationship with Silver Lake, earning more than $8 million in fees from Silver Lake in the two years prior to the Transaction and taking on additional underwriting work for a Silver Lake portfolio company, SolarWinds, during its work for the Special Committee. Furthermore, pursuant to its engagement letter with the Special Committee, Evercore stood to earn up to $20 million for its work in connection with the Transaction, with $7 million payable solely at the discretion of the Special Committee. This incentivized Evercore to do the bidding of the conflicted Special Committee rather than zealously advance the interests of Class V Stockholders.

96. Worse still, as discussed in Section I, *infra*, ***none*** of these conflicts were disclosed in Dell's final prospectus in advance of the Class V Stockholder vote.

F. Michael Dell And Silver Lake Strong-Arm The Special Committee, Disloyally Threatening A Forced Conversion; Management Refuses To Provide The Special Committee With Critical Information.

97. Unsurprisingly, the Special Committee proved in practice to be an exceedingly poor advocate of the interests of Class V Stockholders. In the end, the Special Committee agreed to approve the Initial Proposal on outrageous terms that provoked a revolt by the very Class V Stockholders for whose interests they were supposedly advocating. That result was produced by a confluence of factors. *First*, after being rebuffed by the VMware special committee and pivoting to pursuit of the Transaction, Michael Dell and Silver Lake disloyally sought to coerce the Special Committee by threatening a Forced Conversion in the event that the Special Committee did not accede to a transaction unfair to Class V Stockholders. *Second*, Michael Dell and Silver Lake disloyally failed to disclose information that the Special Committee requested and was entitled to receive concerning the status of negotiations between Dell and VMware. *Third*, in the face of Michael Dell and Silver Lake's disloyal strong-arm tactics, the Special Committee, presumably because of its own conflicts, simply caved.

98. [redacted]

[redacted]

99. When Michael Dell and Silver Lake pivoted to pursuing the Transaction instead of a Dell-VMware combination, they exploited this [redacted] Ultimately, they coerced the Special Committee into supporting the Transaction by threatening that, if the Committee would not agree to a negotiated Transaction, they would use their power to force an IPO and subsequent Forced Conversion.

100. During the week of April 23, 2018, around the time when talks between Dell and the VMware special committee broke down as a result of intractable valuation differences, Goldman Sachs contacted Evercore to communicate that, although Dell was still in discussions with VMware, it now

wished to commence discussions concerning a potential negotiated conversion of Class V Stock into Class C Stock. Goldman Sachs presented a potential transaction framework for such a negotiated conversion to Evercore on April 27, 2018. Evercore then relayed Goldman Sachs's proposed framework to the Special Committee on May 2, 2018. [redacted]

101. Those assumptions were fed also by unaudited financial statements and brand-new accounting changes. As Dell disclosed in the prospectus for the Initial Proposal (the "Initial Prospectus"), in May 2018, "members of Dell Technologies management determined it was appropriate to update the initial Dell projections which had previously been given to Goldman Sachs and Evercore." Dell asserted these changes were appropriate because, *inter alia*, Dell's "non-

public unaudited financial projections" now included accounting changes reflecting: (i) "the adoption of [a] new revenue standard"; (ii) "the adoption of [a] new accounting standard"; and, ***critically***, (iii) "the ***good faith belief of Dell['s] management*** at such time regarding the future performance of Dell['s] business as compared to management's [initial] estimates …."[15] As a result of these changes—based on unaudited financials, new accounting changes, and "the good faith belief of Dell['s] management"—"[t]he updated Dell projections were provided to Dell['s] [B]oard, Goldman Sachs, the Special Committee [*i.e.* the Capital Stock Committee], Evercore[,] and Lazard on May 16."[16] However, those projections implied a significantly greater valuation than employed by the Board immediately before the negotiations commenced. Dell's sudden and stark increase in value was, Dell claimed, due to "the significant improvement in Dell['s] business momentum," and "an improved long-term financial forecast."[17]

102. With these "updated" Dell projections in mind, Goldman Sachs provided a more detailed description of the conversion proposal on May 22, 2018, outlining three specific conversion scenarios. Evercore presented the following three options to the Special Committee at a meeting held on May 28, 2018:

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[15] Initial Prospectus at 156.

[16] *Id.*

[17] *Id.* at 150.

[redacted]

103. [redacted]

104. [redacted] The Special Committee's time for deliberation was, however, short-lived. Almost immediately after Goldman Sachs informed it of the Transaction proposals, the Special Committee began to face intense pressure to accede to a negotiated conversion transaction.

105. At the Special Committee's next meeting, held June 1, 2018, Evercore reported that Goldman Sachs [redacted]

[redacted]

106. Three days later, upon Francis' conflicted recommendation and initiative, the Special Committee decided to engage little-known DISCERN to "perform an independent analysis of certain forecasts and other financial and operating data of Dell"—*i.e.*, Dell's May 2018 accounting changes and higher,

unaudited financial projections—which was listed among the five steps the Special Committee took in reaching its determination.[18]

107. Consistent with his "banker for the deal" reputation, Francis recommended that the Committee retain DISCERN as a "consultant" in connection with the Initial Proposal (and subsequently the Transaction). DISCERN is essentially just Harry Blount ("Blount"), a colleague of Francis dating back to their time together at Lehman Brothers. Blount operates DISCERN out of his home and uses a business address of a P.O. Box at a local UPS store.[19] DISCERN appears to be a financially distressed entity unable to afford its own office space: one predecessor company to DISCERN, "Discern Group Inc., was evicted in July 2017 … after not paying the rent," and another predecessor company, Discern Analytics, "owed back taxes to the state of Delaware as of March 2[, 2018]."[20] Furthermore, DISCERN has only three employees, all of whom work for DISCERN on a part-time, "contract-by-contract basis while balancing other

[18] Scott Deveau, Nico Grant & Alex Barinka, *The Small Firm Working On Dell's $21.7 Billion Deal*, BLOOMBERG, Aug. 24, 2018, https://www.bloomberg.com/news/articles/2018-08-24/big-name-21-7-billion-dell-deal-tapped-small-firm-for-scrutiny (last accessed Feb. 14, 2019) ("Blount … first got involved on the deal after a phone call from an ex-coworker at Lehman, J. Stuart Francis ….").

[19] *See id.*

[20] *Id.*

jobs."[21] Worse still, as of August 2018, DISCERN had not "appear[ed] as a consultant in ***any other*** U.S. public company deal filings over the past four years, according to a search conducted by Bloomberg of [SEC] records."[22] The Special Committee's retention of DISCERN has been questioned by both the media and corporate governance experts. For example, an August 2018 article published by Bloomberg raises red flags as to DISCERN's engagement, and quotes corporate governance expert Charles Elson as stating: "The larger and more complicated the transaction, the more likely you're going to use a larger player …. You're buying their skill, and their ability to hire the right people. You're also buying their reputation."[23]

108. Following the June 1, 2018 Committee meeting, [redacted]

[21] *Id.* Of DISCERN's three other employees (excluding Blount), Bloomberg noted that one "didn't take part in the Dell assessment," and the other two "focus on energy and real estate," rather than tech companies like Dell. *Id.* Accordingly, even if DISCERN's analysis was anything other than a rubber-stamp for Dell's controllers, Blount either performed DISCERN's highly complex assessment in less than two weeks by himself, or he did so with the part-time assistance of just two employees with little to no subject-matter experience.

[22] *Id.* (emphasis added).

[23] *Id.*

[redacted]

109. The Company responded to the Special Committee with its own counterproposal for a negotiated conversion at an implied equity value of $50 billion for Dell and a $105 per share value for the Class V Stock. On June 21, 2018, [redacted] During the following week, on June 26,

2018, DISCERN submitted its final analysis to the Special Committee which contained an analysis of (i) certain Dell financial forecasts (including Dell management's assumptions for VMware), and (ii) certain industry and market research. [redacted]

110. Ultimately, on July 1, 2018, in the face of Michael Dell and Silver Lake's disloyal threats, the Special Committee agreed to a proposed transaction on terms adjusted only slightly from the initial proposal outlined by Goldman Sachs. Under the terms of the deal, Dell would acquire all outstanding shares of Class V Stock for a combination of cash and Dell Class C Stock purportedly valued at $109 per share of Class V Stock (previously defined as the "Initial Proposal"). Class V Stockholders would have the option to receive either $109 per share in cash up to an aggregate cap of $9 billion in cash or 1.3665 shares of Class C Stock per share of Class V Stock.

G. Dell Announces The Unfair Initial Proposal, Causing Class V Stockholders To Revolt.

111. On July 2, 2018, Dell publicly announced the Initial Proposal. Almost immediately—and for good reason—Class V Stockholders revolted. The purported $109 per share consideration did not come close to matching VMware's trading price, let alone include a premium to account for: (i) VMware's growth prospects, or (ii) the passing of unmitigated control over VMware to Dell. On the day Dell announced the Initial Proposal, publicly-traded VMware stock opened at $157.42 per share and closed at $162.02 per share. Thus, even assuming that $109 per share was an accurate valuation of the deal consideration, Dell was proposing to expropriate Class V Stockholders' interests in VMware at a stunning discount of approximately $50 per Class V share. Approximately 199.3 million shares of Class V Stock were then outstanding. Accordingly, the Initial Proposal would have resulted in Dell receiving a windfall of nearly ***$10 billion***. On its face, the Initial Proposal was shockingly unfair.

112. Moreover, the offered consideration was actually worth *nowhere near* $109 per share. At a valuation of $109 per share, the total consideration offered to Class V Stockholders was approximately $21.7 billion. But the cash component of the deal was capped at $9 billion. Thus, more than half of the deal consideration would be paid in Dell Class C Stock, which was offered at a ratio of 1.3665 shares

of Class C Stock for each share of Class V Stock. This implied a $79.77 valuation of shares of Dell Class C Stock. ***Such a valuation of Dell Class C Stock was untethered from reality.*** As noted above, twice in the seven months preceding the announcement of the Initial Proposal, the Board had valued shares of Dell Class C Stock with the aid of independent valuation experts. In December 2017, the Board approved a valuation of shares of Class C Stock at $33.17 per share in connection with an executive compensation grant. [redacted] Then, in April 2018, the Board approved a valuation of Class C Stock at $49.28 per share. [redacted] By contrast, the $79.77 valuation on which the Initial Proposal was premised was based on no independent analysis or report. By any measure, the $79.77 implied valuation of Dell Class C Stock was vastly inflated.

113. Although the deal remained subject to a vote of Class V Stockholders, no vote was scheduled at the time of the Initial Proposal's announcement.

114. A week after Dell announced the Initial Proposal, *The Wall Street Journal* reported that several large Class V Stockholders opposed the Initial Proposal. In August, the *New York Post* reported that one of the largest Class V Stockholders was lobbying fellow stockholders to oppose the deal. In October, a

large activist investor actively began waging a proxy campaign against the Initial Proposal.

[redacted]

[redacted]

H. Facing Certain Defeat At The Ballot Box, Michael Dell And Silver Lake Modestly Adjust The Initial Proposal And Attempt to Coerce Class V Stockholders Into Supporting The Transaction; Meanwhile, The Special Committee Sits On The Sidelines.

118. In view of the overwhelming opposition by large holders of Class V Stock, Michael Dell and Silver Lake knew they were headed for certain defeat at the ballot box if they continued to pursue a transaction in the form of the Initial Proposal.

119. To save their transaction, Michael Dell and Silver Lake pursued a two-pronged approach. *First*, they acted to coerce Class V Stockholders with the same pressure they used to coerce the Special Committee: threatening to pursue a traditional IPO of Class C Stock and then force a conversion pursuant to the Forced Conversion provision in Dell's charter.[24] The possibility that Dell would pursue an IPO if the Initial Proposal failed was leaked to the press. On September 23, 2018, *The Wall Street Journal* published an article reporting that Dell was interviewing investment banks to advise on a potential IPO in lieu of the Class V Stock Transaction. The article noted that "[a] straight IPO, in which Dell would sell shares directly to the public and may buy out the [Class V] stock

[24] *See supra* note 3, and ¶ 103.

holders at a smaller premium, is seen as a backup [to the Initial Proposal]."[25] Then, on October 3, 2018 Dell filed a Form 8-K with the SEC disclosing that "as a potential contingency plan in the event that the [Class V] Exchange is not consummated, Dell has met with certain investment banks to explore a potential initial public offering of its Class C Common Stock." The message from Michael Dell and Silver Lake was clear: approve this deal or face worse terms through a Forced Conversion.

120. *Second*, Dell commenced a series of meetings with select large Class V Stockholders. In the process, Dell bypassed the Special Committee it had purportedly empowered to negotiate on behalf of all Class V Stockholders collectively. At these meetings, Dell signaled its willingness to modestly improve the proposed deal consideration and attempted to discern the minimum consideration large stockholders would require to accept the "bird in the hand," unfair as it might be, instead of voting down the deal and facing a disloyal and likely even more unfair Forced Conversion attempt. The obvious intent of these meetings was to leverage the threat of the Force Conversion in ascertaining the

[25] Cara Lombardo & Dana Cimilluca, *Dell to Interview Banks for IPO in Lieu of Tracking-Stock Acquisition*, THE WALL STREET JOURNAL, Sept. 23, 2018, available at: https://www.wsj.com/articles/dell-to-interview-banks-for-ipo-in-lieu-of-tracking-stock-acquisition-1537730195 (last accessed Feb. 14, 2019).

minimum price Dell could pay to win a bare majority of Class V Stockholders by securing the support of certain large holders of Class V Stock in advance.

121. As a result of the meetings, Dell ultimately agreed to a modestly improved transaction price. On November 15, 2018, Dell announced the revised Transaction. Dell touted the revised Transaction as offering a combination of cash and stock valued at $120 per share, and the addition of one Class C-elected director. The maximum amount of cash to be paid was increased from $9 billion to $14 billion. The stock component of the deal was also adjusted. Dell continued to ascribe a value of $79.77 to its shares. However, the revised transaction offered Class V Stockholders between 1.5 and 1.8 shares of Dell Class C Stock depending on the amount of cash elections and on the trading price of Class V Stock during the 17-day period surrounding December 11, 2018—the date set for a vote on the Transaction. Stockholders representing approximately 17% of the total outstanding Class V common stock signed voting agreements binding them to support the Transaction.

122. Notably, Michael Dell and Silver Lake marginalized the Special Committee and negotiated the terms of the Transaction with select stockholders

directly. The Special Committee, hopelessly beholden to Michael Dell and Silver Lake, was content to remain wholly uninvolved in these negotiations.[26]

[redacted]

[26] By bypassing its deliberately neutered Special Committee, Dell deprived minority stockholders of "the best protection, a structure where stockholders get the benefits of independent, empowered negotiating agents to bargain for the best price and say no if the agents believe the deal is not advisable for any proper reason …." *Kahn v. M & F Worldwide Corp.*, 88 A.3d 635, 644 (Del. 2014) (emphasis and quotations omitted).

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

135. [redacted]

136. The very next day, November 9, 2018—again with no further involvement by the Special Committee—the Company and a large stockholder agreed in principle on revised transaction terms that contemplated a $120 share price, one Class C-elected director, the previously contemplated increase in the cash component to $14 billion, and an increase in the exchange ratio of Class C-for-Class V stock. [redacted] However, even after the deal with that stockholder was struck, there was additional value on the table to be realized for Class V Stockholders.

137. [redacted]

138. [redacted]

139. Before ultimately approving the Transaction, Evercore conducted a call with DISCERN on November 10, 2018, during which DISCERN unsurprisingly affirmed the findings from its June 26, 2018 report to the Special Committee.

140. Between November 12 and November 14, 2018, Dell engaged in further direct negotiations with a handful of other select large stockholders necessary to cobble together a majority for the Transaction. Again, Dell sidelined the Special Committee from these negotiations, which resulted in a final deal that remained at $120 per share, but was adjusted to include a "top-up" structure providing for a potential increase in the Class V-to-Class C exchange ratio based on the trading price of Class V Stock and the amount of cash elected by Class V Stockholders [redacted] At that full Board meeting, resolutions were adopted approving the Transaction in its final form. The next day, November 15, 2018, Dell publicly announced the Transaction.

141. Weeks later, on December 11, 2018, the Transaction was put to a vote of Class V Stockholders.

I. The Class V Transaction Is Put To A Coerced And Uninformed Vote.

142. Class V Stockholders were coerced into voting in favor of the deal by Michael Dell and Silver Lake's disloyal threats of a Forced Conversion.

143. In addition to facing the threat of the Forced Conversion, Class V Stockholders were also materially misinformed and/or uninformed. On November 26, 2018, Dell filed its final prospectus on Form 424B3 (the "Final Prospectus") with the SEC. The Final Prospectus failed to disclose information necessary to permit Class V Stockholders to make a fully-informed decision.

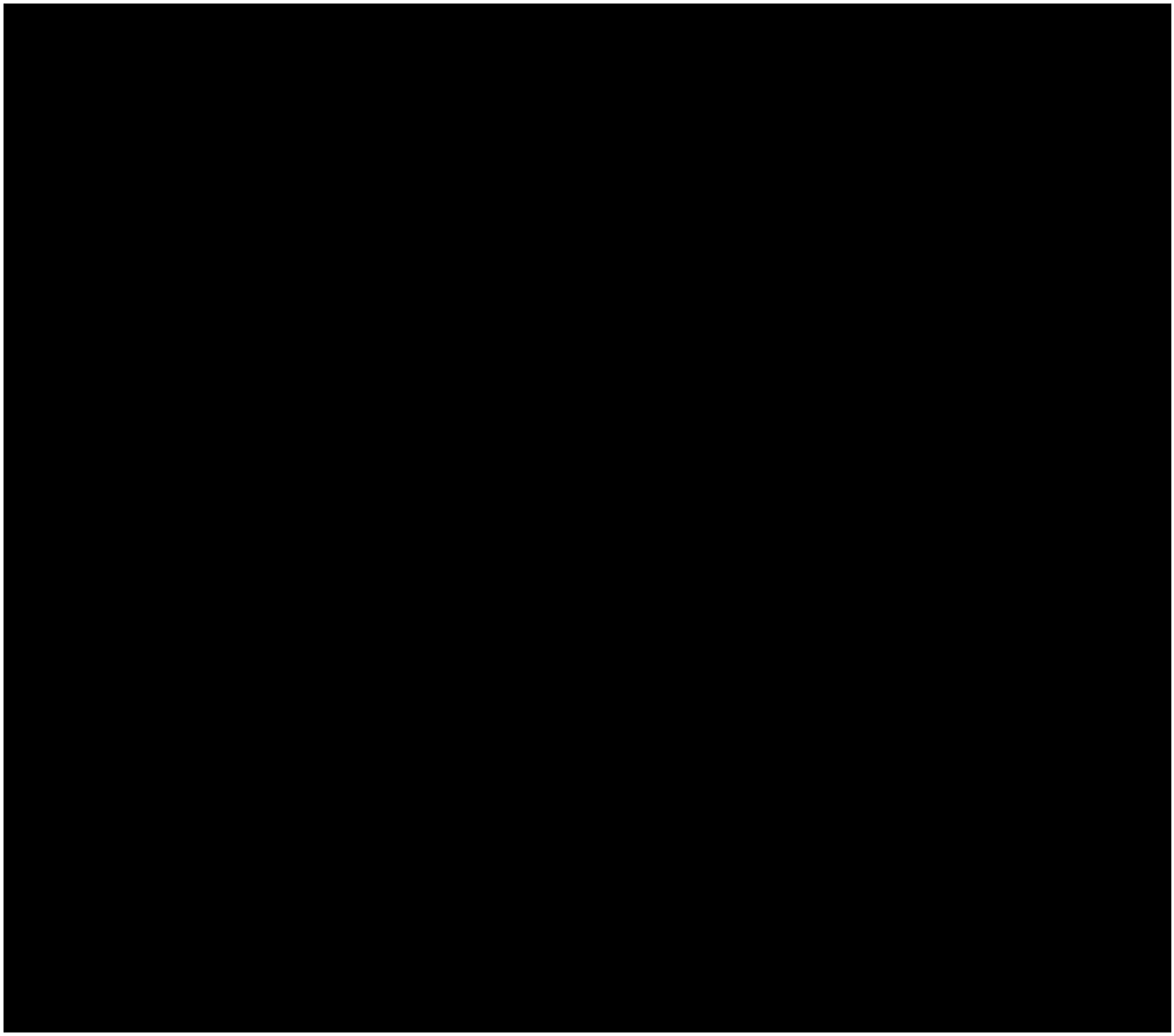
144. *First*, the Final Prospectus failed to inform Class V Stockholders that [redacted]

145. The Final Prospectus includes only the following sanitized, generic description of the Special Committee's November 8, 2018 phone call with Durban:

Also on November 8, 2018, following the Special Committee meeting earlier in the day, the members of the Special Committee discussed the potential revised Class V transaction terms with Mr. Durban and a representative of Goldman Sachs, including, among other things, increasing the per share price of the Class V Common Stock, the potential increase in the aggregate cash consideration and the addition to the Company's board of directors of a director separately elected by holders of the Class C Common Stock.[28]

[redacted]

[28] Final Prospectus at S-61.



148. [redacted]

[redacted]

150. *Second*, the Final Prospectus fails to disclose [redacted]

151. *Third*, the Final Prospectus fails to disclose that Evercore was advising Silver Lake portfolio company SolarWinds at the same time it was

advising the Special Committee in negotiations against Silver Lake and Michael Dell. Disclosure of this information would be material to Dell Class V Stockholders, including in the stockholders' assessment of how much weight to put on Evercore's fairness opinion.

152. *Fourth*, the Final Prospectus fails to disclose the extent of Dorman's extensive connections and relationship with Michael Dell. Specifically, the Final Prospectus fails to disclose that: (i) Dorman's investment firm, Centerview Capital, is the second largest investor in SecureWorks and holds a 14.9% stake in the company and (ii) [redacted]. All of this information, obviously known by Dorman himself, was readily available to the remainder of the Board, and easily could have been disclosed, but was omitted instead.

153. *Fifth*, the Final Prospectus fails to disclose DISCERN's utter lack of qualifications to work on a transaction of this magnitude and complexity. As a threshold matter, it does not appear that DISCERN has any full-time employees other than Mr. Blount and DISCERN appears to have no physical offices (its business address during the Dell assignment was a mailbox at a UPS Store). Nor does DISCERN appear to have any appropriate credentials for it to work on a transaction of this size or complexity. DISCERN does not appear to have ***any***

prior experience working on a similar transaction of ***any*** size. The Final Prospectus discloses virtually nothing about DISCERN's qualifications other than that it is "an independent industry expert."[29] What minimal information is available about the firm on the internet amounts to jargon-filled descriptions that obfuscate what the firm has done and the expertise it supposedly has. For example, in one press release, DISCERN calls itself a "leader in personalized platform-as-a-service (PaaS) for Financial Insight," which supposedly refers to aggregating data to deliver investment alerts. In any event, it has nothing to do with the services it purportedly provided to the Special Committee. Investigation has failed to unearth a single reference to DISCERN as a consultant in another SEC filing. Given DISCERN's complete lack of credentials, the only logical explanation for DISCERN's retention is the conflicted ties between Evercore and DISCERN. Specifically, Harry Blount and Stuart Francis knew each other from their time at Lehman Brothers and remain friends, including on Facebook.

154. The Final Prospectus failed to disclose any of this highly-relevant and material information about DISCERN's lack of qualifications and its conflicted ties to Evercore, each of which casts significant doubt on the accuracy and

[29] In contrast to the Special Committee's hiring of the unknown DISCERN, VMware's special committee sought assistance from what the Proxy describes as a "nationally recognized" valuation firm.

reliability of its analysis. Instead, by simply describing DISCERN as an "independent industry expert," the Final Prospectus gave materially misleading information to Class V stockholders. Furthermore, rather than identifying the lead Evercore banker on the deal as the source of connection to DISCERN, the Final Prospectus creates the misleading impression that Latham & Watkins independently identified and retained DISCERN.

155. These five material omissions ensured that the Class V stockholder vote was not only coerced by the threat of the Forced Conversion, but hopelessly uninformed.

J. Subject To Coercion, Class V Stockholders Narrowly Approve The Unfair Transaction.

156. The Transaction was narrowly approved, with just 61% of the unaffiliated shares of Class V Stock voting in favor.

157. The deal closed on December 28, 2018. During the relevant seventeen-day trading period ending December 21, 2018, Class V Stock traded at an average price of $104.87. According to the terms of the Transaction, this resulted in a final exchange ratio of 1.8066 shares of Dell Class C Stock per share of Class V Stock. The cash offering was fully subscribed, meaning all Class V Stockholders were forced to accept a portion of their consideration in Class C Stock.

158. Although modestly improved from the Initial Proposal, the Transaction remained exceedingly unfair to Class V Stockholders for the same fundamental reasons that the Initial Proposal was unfair to Class V Stockholders: (i) the total purported consideration of $120 per share was too low to adequately compensate Class V Stockholders for their interest in VMware; and (ii) the actual value of the consideration received was substantially lower than even $120 per share as that valuation rested on an inflated valuation of Class C Stock.

159. On November 15, 2018, the day Dell announced the revised Transaction, publicly-traded VMware stock closed at $157.73. On December 28, 2018, the day the Transaction closed, VMware stock closed at $158.38. Class V Stockholders were entitled to the full value of their interest in VMware. A fair price would have provided Class V Stockholders with a premium over VMware's trading price to account for VMware's growth prospects. Additionally, a fair price would have provided Class V Stockholders with a control premium. Even at the purported $120-per-share valuation, the consideration provided to Class V Stockholders did not come close to reflecting fair value.

160. Moreover, the consideration actually received by Class V Stockholders in the Transaction did not come close to $120 per share in value. Based on the final exchange ratio of 1.8066, the Transaction valued share of

Class C Stock at an inflated amount of $66.42 per share. As described above, within the year prior to announcing the Transaction, the Dell Board twice valued its shares of its Class C Stock, with the assistance of independent valuation experts, at $33.17 in December 2017 and $49.28 in April 2018. Notably, the later valuation came at a time when Dell was actively pursuing a stock-based combination with VMware and was incentivized to inflate the value of its equity. Nevertheless, even then the Board did not dare to value shares of Class C Stock anywhere near $66.42. The true value of Class C Stock is better reflected by the trading price of Class V Stock in the final days before the Transaction closed, after the ability to elect partial cash consideration had passed. At the time the Transaction closed, shares of Class V Stock traded at $81.01 per share, reflecting a valuation of shares of Class C Stock at $44.84, or somewhere between the Dell Board's December 2017 and April 2018 valuations.

CLASS ACTION ALLEGATIONS

161. Plaintiffs bring this Action pursuant to Rule 23 of the Rules of the Court of Chancery, individually and on behalf of all other holders of Dell Class V Common Stock at the time of the Transaction (excluding any Defendants herein and any persons, firm, trust, corporation or other entity related to or affiliated with

them or their successors in interest) who were injured because of Defendants' wrongful actions, as described in this Complaint (the "Class").

162. This Action is properly maintainable as a class action.

163. The Class is so numerous that joinder of all members in impracticable. As of the Transaction, there were nearly 200 million shares of Class V Stock outstanding. Accordingly, the Class is believed to include thousands of stockholders scattered throughout the United States and around the globe.

164. There are questions of law and fact common to the Class, including, *inter alia*:

a) Whether Defendants breached their fiduciary duties owed to Class V Stockholders in connection with the Transaction;

b) Whether Plaintiffs and the other members of the Class were injured by the wrongful conduct alleged herein; and

c) The proper measure of damages or other appropriate relief owed to Plaintiffs and the other members of the Class.

165. Plaintiffs are committed to prosecuting the action and have retained competent counsel experienced in litigation of this nature. Plaintiffs' claims are typical of the claims of the other members of the Class, and Plaintiffs have the same interests as the other members of the Class.

166. Furthermore, the prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class that would establish incompatible standards of conduct for Defendants or adjudications with respect to individual members of the Class that would as a practical matter be disjunctive of the interests of the other members not party to the adjudications or substantially impair their ability to protect their interests.

COUNT I

Claim For Breach Of Fiduciary Duty Against The Director Defendants

167. Plaintiffs incorporate by reference and reallege each and every allegation contained above, as though fully set forth herein.

168. The Director Defendants, as Dell directors and/or officers, owed the Class the fiduciary duties of due care, loyalty, good faith, and disclosure.

169. The Director Defendants breached their fiduciary duties by approving the Transaction, by acting to coerce Class V Stockholders to vote in favor of the Transaction for reasons other than its merits, and by issuing the materially false and/or misleading Final Prospectus.

170. As a result of the Director Defendants' breaches of fiduciary duty, Plaintiffs and the Class have been harmed. Plaintiffs and the Class have no adequate remedy at law for this harm.

COUNT II

Claim For Breach Of Fiduciary Duty
Against The Control Group Defendants

171. Plaintiffs incorporate by reference and reallege each and every allegation contained above, as though fully set forth herein.

172. The Control Group Defendants are controlling stockholders of Dell.

173. As controlling stockholders, the Control Group Defendants owed the Class fiduciary duties of due care, loyalty, good faith, and disclosure.

174. The Control Group Defendants breached their fiduciary duties by causing Dell to enter the Transaction, sidelining and disempowering the Special Committee purportedly authorized to negotiate the terms of the Transaction, and acting to coerce Class V Stockholders to vote in favor of the Transaction for reasons other than its merits.

175. As a result of the Control Group Defendants' breaches of fiduciary duty, Plaintiffs and the Class have been harmed. Plaintiffs and the Class have no adequate remedy at law for this harm.

RELIEF REQUESTED

WHEREFORE, Plaintiffs, on behalf of themselves and on behalf of the Class, prays for judgment:

a) Declaring that this Action is properly maintainable as a class action;

b) Finding the Director Defendants liable for breaching their fiduciary duties owed to the Class;

c) Finding the Control Group Defendants liable for breaching their fiduciary duties owed to the Class;

d) Ordering the immediate disgorgement of all profits, benefits and other compensation obtained by Defendants as a result of their breaches of fiduciary duties;

e) Awarding Plaintiffs and the other members of the Class damages in an amount which may be proven at trial, together with interest thereon;

f) Awarding Plaintiffs the costs and disbursements of this Action, including attorneys', accountants', and experts' fees; and

g) Awarding such other and further relief as this Court may deem just, equitable, and proper.

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