



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

JACK WILKINSON,

Plaintiff,

v.

A. SCHULMAN, INC.

Defendant.

C.A. No.

**VERIFIED COMPLAINT PURSUANT TO SECTION 220
OF THE DELAWARE GENERAL CORPORATION LAW**

Plaintiff Jack Wilkinson (“Plaintiff”), by his undersigned counsel, submits this Verified Complaint against defendant A. Schulman, Inc. (“A. Schulman” or the “Company”) seeking an order compelling A. Schulman to make available for inspection and copying certain books and records of the Company pursuant to 8 Del. C. § 220 (“Section 220”) for the purpose of: (i) investigating wrongdoing, breach of fiduciary duty, and mismanagement by A. Schulman’s Board of Directors (the “Board”); (ii) assessing the Board’s ability to impartially consider a demand for action related to the matters described herein and to take appropriate action in the event the members of the Board failed to properly discharge their fiduciary duties; and (iii) communicating with the Board and/or management in order to effectuate changes in A. Schulman’s policies which would prevent future wrongdoing or mismanagement related to the matters described herein.

NATURE AND CAUSE OF ACTION

1. Plaintiff brings this Action to enforce his statutory right to inspect and make copies of certain of A. Schulman's books and records that the Company has refused to produce in response to Plaintiff's proper demands. On August 19, 2016 and September 23, 2016, respectively, Plaintiff served a demand under oath pursuant to Section 220 and reply against A. Schulman's Board requesting to inspect documents related to the Board's decision to grant Joseph M. Gingo ("Gingo"), the Company's former President and Chief Executive Officer ("CEO"), 107,775 shares of A. Schulman common stock in excess of what Gingo's employment agreement with A. Schulman allowed upon his retirement and in violation of the stockholder-approved 2010 Value Creation Rewards Plan ("2010 Value Plan").

2. Plaintiff articulated a proper purpose and credible basis for his demand in his demand letter dated August 19, 2016 (the "Demand"), a copy of which is annexed hereto as Exhibit "A." As explained therein, the Amended and Restated Employment Agreement entered into on May 19, 2011, between Gingo and the Company (the "Employment Agreement") and the 2010 Value Plan unambiguously set forth the terms and conditions that would govern Gingo's employment as President and CEO, including the performance awards that Gingo

would be eligible to receive in a given performance period and upon his termination or retirement (the “Performance Awards”).

3. Pursuant to the Employment Agreement, upon his retirement Gingo would be entitled to receive the shares underlying his Performance Awards only “*on a pro rata basis* for the period of time then elapsed” and “only if the performance criteria described in the awards are satisfied *at the end of the applicable performance period.*” (Emphasis added). As of December 31, 2014, the 2013 Performance Awards (as defined herein) were approximately 2 years into the 3-year performance period and the 2014 Performance Awards (as defined herein) were approximately 1 year into the 3-year performance period.

4. On June 23, 2014, the Company issued a press release announcing that Gingo would retire from his role as President and CEO, effective December 31, 2014. Accordingly, pursuant to the terms the Employment Agreement and the 2010 Value Plan, Gingo would be entitled to receive the shares underlying his Performance Awards: (i) only a pro-rated basis; (ii) after a determination that the predetermined performance criteria had been satisfied; and (iii) at the end of the applicable performance period. Indeed, the Company filed an 8-K on December 15, 2014 (the “December 15 8-K”) explicitly acknowledging that Gingo was “entitled to receive only pro rata vesting upon retirement” of any Performance Awards previously granted to him.

5. As described in the December 15 8-K, however, the Board approved the full vesting of Gingo's potential 2013 and 2014 Performance Awards upon his retirement:

In addition, the Compensation Committee and the independent members of the Board of Directors unanimously *approved the full vesting upon retirement of all of Mr. Gingo's outstanding long-term incentive compensation plan awards, as he would otherwise have been entitled to receive only pro rata vesting upon retirement.*

Emphasis added.

6. Accordingly, the Board completely disregarded the plain restrictions of the Employment Agreement and the 2010 Value Plan that any award should be pro-rated and awarded only at the end of the performance period. Making matters worse, the Board did not wait as required until the "end of the applicable performance period" to determine whether the "performance criteria described in the awards [were] satisfied." Rather, the Board determined to settle the various Performance Awards at the *maximum amount* without any mention of the predetermined performance criteria, let alone a determination that the criteria had been satisfied.

7. As a result, it appears that Gingo received a total of 219,140 shares of A. Schulman common stock upon his retirement. Had Gingo only received pro rata vesting of the Performance Awards previously granted to him, as required by the terms of the Employment Agreement and the 2010 Value Plan for both 2013 and

2014, he would be entitled to receive only 111,365 shares, 107,775 shares less than he actually received. Using the \$36.33 closing price of A. Schulman common stock on December 15, 2014 – the date it appears the Board made the decision to fully vest Gingo’s Performance Awards – *the excess 107,775 shares had a value of over \$3.9 million or more than 5.5% of the Company’s income in 2015.*

8. While the foregoing was described in detail in Plaintiff’s August 19 Demand, the Company summarily rejected the Demand and refused to produce any documents in a September 1, 2016 reply, as annexed hereto as Exhibit “B.” A. Schulman’s rejection was based primarily (if not solely) on the purported absence of any “credible basis” for Plaintiff’s suspicions of wrongdoing. Yet the Company’s September 1 reply simultaneously conceded, *inter alia*, that: (i) had the Board not approved full vesting, Gingo “otherwise would have been subject to *pro rata* vesting of such awards upon retirement;” (ii) the value of the additional fully vested shares received by Gingo was “significant;” and (iii) “the investigation of ‘potential wrongdoing, mismanagement, breaches of fiduciary duties and/or waste of corporate assets by members of’ a board of directors is commonly accepted as a proper purpose” under Section 220.

9. Plaintiff responded to the Company’s rejection in a reply letter dated September 23, 2016, as annexed hereto as Exhibit “C.” The September 23 reply letter rearticulated the credible basis for the alleged wrongdoing described in

Plaintiff's Demand – namely, that the Board violated the plain and unambiguous language of the Employment Agreement and the 2010 Value Plan by fully vesting Gingo's Performance Awards before the expiration of the performance period and without a determination that the performance criteria had been satisfied. These contentions were supported by applicable Delaware precedent finding that the violation of a stockholder approved incentive plan constitutes credible evidence of wrongdoing to satisfy a stockholder's burden under Section 220.

10. Despite Plaintiff's best efforts to use the tools at hand before instituting this Action, the Company, again, summarily rejected Plaintiff's Demand in a reply dated October 12, 2016, as annexed hereto as Exhibit "D." Again, A. Schulman's rejection was based primarily on the purported absence of any "credible basis" for Plaintiff's suspicions of wrongdoing. For the reasons detailed in the August 19 Demand, the September 23 reply, and herein, A. Schulman is wrong. Accordingly, Plaintiff brings this Action under Section 220 to exercise his statutory right to obtain the requested documents regarding the above transactions and events.

11. Plaintiff's desire to inspect A. Schulman's books and records for the purpose of investigating potential wrongdoing and mismanagement is reasonably related to Plaintiff's interest as a stockholder. Plaintiff has a credible basis to believe that A. Schulman's Board breached its fiduciary duties to the Company and

its stockholders by knowingly granting Gingo excess shares, before the expiration of the performance period, and without a determination that the performance criteria had been satisfied. The Board's breach in this regard has resulted in an approximate \$3.9 million loss to the Company, representing more than 5.5% of the Company's income in 2015 – a loss the Company itself described as “understandably significant.” *See* Ex. B at 4. Plaintiff therefore seeks entry of an order permitting him to inspect the documents responsive to the requests as set forth in the Section 220 Demand.

PARTIES

12. Plaintiff is a stockholder of A. Schulman and has been a stockholder of A. Schulman continuously since 1999.

13. Defendant A. Schulman is a publicly traded Delaware corporation, with its executive offices located at 3637 Ridgewood Road, Fairlawn, OH 4433. A. Schulman is a leading international supplier of high-performance plastic compounds and resins, which are used as raw materials in a variety of markets. The Company's principal product lines consist of proprietary and custom-formulated engineered plastic compounds, color concentrates and additives that improve the appearance and performance of plastics in a number of specialized applications.

FACTUAL BACKGROUND

A. The Employment Agreement and 2010 Value Plan

14. Gingo became the Company's President and CEO on January 1, 2008. During his employment, Gingo was party to an employment agreement between himself and the Company that was amended from time to time. The most recent and operative version of Gingo's employment agreement at the time of his resignation was the Employment Agreement, entered into on May 19, 2011, which set forth the terms and conditions that governed Gingo's employment as President and CEO of the Company between May 1, 2011 and December 31, 2014. The Employment Agreement also set forth the terms and conditions that govern Gingo's termination and/or retirement, including the compensation package that Gingo received upon his termination or retirement.

15. Pursuant to the terms of the Employment Agreement, upon his retirement Gingo was entitled to receive the shares underlying his Performance Awards only "*on a pro rata basis* for the period of time then elapsed" and "*only if the performance criteria* described in the awards are satisfied *at the end of the applicable performance period.*" See Exhibit A of Employment Agreement, Section 3(c). Similarly, according to the 2010 Value Plan, Section XII, any Performance Awards granted under the plan that were intended to constitute "qualified performance-based compensation" under Section 162(m) of the Internal

Revenue Code, could not be accelerated or paid in full prior to full satisfaction of the applicable performance criteria:

Subject to Sections 7.3(a), 8.3 and 9.1, or as otherwise provided in the Plan, the vesting conditions of an Award may only be accelerated upon the death, termination due to Disability, Retirement or involuntary termination without Cause of the Participant. ***Notwithstanding the foregoing, in no event shall any Performance-Based Award granted to a Covered Employee that is intended to constitute “qualified performance-based compensation” under Section 162(m) of the Code, be settled or become exercisable in full, upon the termination of employment of the Covered Employee without regard to the satisfaction of the related Performance Criteria.***

Emphasis added.

16. All Performance Awards granted under the 2010 Value Plan are deemed “qualified performance-based compensation” under Section 162(m) of the Internal Revenue Code unless explicitly designated otherwise. For instance, Section 2.3 Fiscal Year Limits of the 2010 Value Plan states:

Subject to Section 2.4 and ***unless and until the Committee determines that an Award to a Covered Employee shall not be designed as “qualified performance-based compensation” under Section 162(m) of the Code***, during any fiscal year of the Company, the Committee may not grant to any Participant who is a Covered Employee (a) Options covering more than 250,000 Shares; (b) Stock Appreciation Rights covering more than 250,000 Shares, (c) Performance-Based Awards that are to be settled in Shares covering more than 150,000 Shares, and (d) Performance-Based Awards that are to be settled in cash equal to more than \$3,000,000.

Emphasis added.

17. In addition, in the Company's Schedule 14A Proxy Statement filed with the U.S. Securities and Exchange Commission (the "SEC") on October 31, 2014 (the "2014 Proxy"), the Company told stockholders that all Performance Awards granted under the 2010 Value Plan would be deemed "qualified performance-based compensation" under Section 162(m) of the Internal Revenue Code. Specifically, the Company stated that: "A. Schulman is submitting the 2010 Rewards Plan, including the performance criteria set forth therein, to the stockholders for approval at the Annual Meeting *to ensure that Performance-Based Awards granted under the 2010 Rewards Plan will be deductible as qualified performance-based compensation.*" Emphasis added.

18. The Company confirmed the same in its Schedule 14A Proxy Statement filed by the Company with the SEC on November 1, 2013 (the "2013 Proxy"), which similarly described the Performance Awards granted that year, at page 16, as "performance-based compensation" which "continue[s] to reflect [the Company's] objective pay for performance philosophy."

19. Accordingly, A. Schulman expressly represented to stockholders that it had *only* granted "qualified performance-based compensation" under Section 162(m). As such, A. Schulman stockholders relied upon the Company's representations in the 2013 and 2014 Proxies that it had granted Gingo qualified performance-based compensation under Section 162(m) of the Internal Revenue

Code pursuant to which Gingo would be entitled to receive only a pro-rata vesting of his Performance Awards upon his retirement and only after a determination that the predetermined performance criteria had been satisfied at the end of the applicable performance period.

B. The 2013 and 2014 Performance Awards

20. As part of Gingo's annual compensation, the Board's Compensation Committee (the "Compensation Committee") granted Gingo Performance Awards under the 2010 Value Plan pursuant to which he had the right to receive a specified number of shares of A. Schulman common stock if certain performance conditions were met. The restrictions on such awards were included in proxy statements filed by A. Schulman with the SEC in anticipation of its annual meeting of stockholders, which A. Schulman stockholders relied upon in approving the Company's executive compensation year-over-year.

21. For example, as described in the 2013 Proxy, on January 10, 2013 the Compensation Committee granted Gingo two sets of Performance Awards (the "2013 Performance Awards"). First, Gingo would have the right to receive no more than 47,897 shares of A. Schulman common stock depending on the achievement of certain total shareholder return ("TSR") goals during a three-year performance period beginning on January 10, 2013 and ending on January 10, 2016 (the "2013 TSR Performance Award"). Following the three-year

performance period, Gingo would receive 9,579 shares of A. Schulman common stock if the threshold TSR goal was achieved, 19,159 shares if the target TSR goal was achieved, and 47,897 if the maximum TSR goal was achieved.

22. Second, Gingo would have the right to receive no more than 95,795 shares of A. Schulman common stock depending on the achievement of certain return on invested capital (“ROIC”) goals during a three-year performance period beginning on January 10, 2013 and ending on January 10, 2016 (the “2013 ROIC Performance Award”). Following the three-year performance period, Gingo would receive 19,159 shares of A. Schulman common stock if the threshold ROIC goal was achieved, 38,318 shares if the target ROIC goal was achieved, and 95,795 if the maximum ROIC goal was achieved.

23. Similar to the 2013 Performance Awards, as described in the Company’s 2014 Proxy, on January 13, 2014 the Compensation Committee granted Gingo two sets of Performance Awards (the “2014 Performance Awards”). First, Gingo would have the right to receive no more than 43,410 shares of A. Schulman common stock depending on the achievement of certain TSR goals during a three-year performance period beginning on January 13, 2014 and ending on January 13, 2017 (the “2014 TSR Performance Award,” and collectively with the 2013 TSR Performance Award, the “TSR Performance Awards”). Following the three-year performance period, Gingo would receive 8,682 shares of A.

Schulman common stock if the threshold TSR goal was achieved, 17,364 shares if the target TSR goal was achieved, and 43,410 if the maximum TSR goal was achieved.

24. Second, Gingo would have the right to receive as many as 86,822 shares of A. Schulman common stock depending on the achievement of certain ROIC goals during a three-year performance period beginning on January 13, 2014 and ending on January 13, 2017 (the “2014 ROIC Performance Award,” and collectively with the 2013 ROIC Performance Award, the “ROIC Performance Awards”). Following the three-year performance period, Gingo would receive 17,364 shares of A. Schulman common stock if the threshold ROIC goal was achieved, 34,729 shares if the target ROIC goal was achieved, and 86,822 if the maximum ROIC goal was achieved.

25. In both the 2013 and 2014 Proxy Statements, A. Schulman expressly represented to stockholders that it had *only* granted “qualified performance-based compensation” under Section 162(m) of the Internal Revenue Code, pursuant to which the Company’s executives would be entitled to receive, upon their retirement, only a pro-rata vesting of their performance awards, after a determination that the predetermined performance criteria had been satisfied at the end of the applicable performance period.

C. The Board Awards Gingo Shares in Violation of the Employment Agreement and 2010 Value Plan

26. On June 23, 2014, the Company issued a press release announcing that Gingo would retire from his role as President and CEO, effective December 31, 2014. Prior to his retirement, Gingo exercised considerable control and influence over the Board as the President, CEO, and Chairman of the Board since his initial appointment in 2008 until the end of the 2014 fiscal year. According to the 2013 Proxy, Gingo's role as Chairman included "direct[ing] Board discussions and focus[ing] Board decision-making." Perhaps realizing the conflict these dual positions created, the Company separated the positions of Chairman and CEO following Gingo's retirement effective December 31, 2014.

27. Pursuant to the terms of the Employment Agreement, upon his retirement Gingo was entitled to receive the shares underlying the Performance Awards "on a *pro rata* basis for the period of time then elapsed" and "only if the performance criteria described in the awards are satisfied at the end of the applicable performance period." Indeed, in the December 15 Form 8-K, A. Schulman acknowledged that Gingo was "entitled to receive only pro rata vesting upon retirement" of the Performance Awards previously granted to him.

28. As further described in the December 15 Form 8-K, however, the Board approved the full vesting of the 2013 Performance Awards and the 2014 Performance Awards upon Gingo's retirement:

In addition, the Compensation Committee and the independent members of the Board of Directors unanimously approved the full vesting upon retirement of all of Mr. Gingo's outstanding long-term incentive compensation plan awards, as he would otherwise have been entitled to receive only pro rata vesting upon retirement.

29. Accordingly, the Board did not wait as required until the "end of the applicable performance period" to determine whether the performance criteria described in the Performance Awards were satisfied. Rather, as described in the December 15 8-K, the Board determined to settle the ROIC Performance Awards *at the maximum level* as "the Company is currently performing at approximately the maximum vesting levels for those grants" and to settle the TSR Performance Awards at the "target level of the grants, as the Company is currently performing approximately at the target level." The December 15 8-K does not mention the predetermined performance criteria, or whether the criteria had been satisfied, and further makes no mention of any consideration Gingo gave to the Company for the excess shares that were awarded as a result of the Board's failure to pro rate the shares as required.

30. As a result, it appears that Gingo received a total of 219,140¹ shares of A. Schulman common stock. Had Gingo only received pro rata vesting of the

¹ This consists of 95,795 shares (the maximum level of the 2013 ROIC Performance Award) plus 86,822 shares (the maximum level of the 2014 ROIC Performance Award) plus 19,159 shares (the target level of the 2013 TSR Performance Award) plus 17,364 shares (the target level of the 2014 ROIC Performance Award).

Performance Awards previously granted to him, as required by the terms of the Employment Agreement and the 2010 Value Plan for both years, he would only be entitled to receive only 111,365² shares, or 107,775 shares less than he actually received. Using the \$36.33 closing price of A. Schulman common stock on December 15, 2014 - - the date it appears the Board decided to fully vest Gingo's Performance Awards - - the excess 107,775 shares had a value of over \$3.9 million.

31. Moreover, had the Board waited until the end of the applicable performance periods underlying the 2013 and 2014 Performance Awards to determine whether the applicable performance goals were ultimately achieved and if so at what level (threshold, target, or maximum), it is possible that Gingo would have been entitled to receive even less than 111,365 shares and even no shares whatsoever (assuming none of the applicable performance goals underlying any of the Performance Awards were achieved). This is particularly likely given that Gingo underperformed in, at least, the 2013 fiscal year. As described in the 2013

² As of December 31, 2014, the 2013 Performance Awards were approximately 2 years into the 3-year performance period and the 2014 Performance Awards were approximately 1 year into the 3-year performance period. Accordingly, Gingo should have only received 63,863 shares (two-thirds of the maximum level of the 2013 ROIC Performance Award) plus 28,941 shares (one-third of the maximum level of the 2014 ROIC Performance Award) plus 12,773 shares (two-thirds of the target level of the 2013 TSR Performance Award) plus 5,788 shares (one-third of the target level of the 2014 ROIC Performance Award).

Proxy, for example, Gingo's 2013 target bonus opportunities were based – like the TSR and ROIC Performance Awards – on “the Company's consolidated worldwide operations,”³ yet Gingo only earned 42% of his total target bonus opportunity for 2013 based upon the Company's “2013 consolidated worldwide, EMEA and Americas segment performance.”

32. The decision to provide Gingo with the extra 107,775 shares of A. Schulman common stock was, thus, above and beyond what the Employment Agreement and 2010 Value Plan plainly allowed. Based on the Company's public disclosures, it appears that A. Schulman received no consideration in exchange for the excess award of 107,775 shares of A. Schulman common stock distributed to

³ See 2013 Proxy at 35 (“In conjunction with establishing the target bonus opportunity for each named executive officer, the Compensation Committee selected performance metrics for evaluating corporate performance, along with the respective weighting for each metric and the threshold, target, stretch, enhanced stretch and maximum performance goal levels. In selecting performance metrics for 2013, the Compensation Committee sought to use metrics that were consistent with the Company's short and long term corporate financial and strategic goals, thereby maintaining consistent management focus, and that were also believed to be key drivers of stockholder value. Under these objectives, the Compensation Committee established the following corporate performance metrics for 2013: (i) consolidated net income; (ii) consolidated operating income; and (iii) days of working capital, each subject to excluding, if applicable, certain unusual or one-time in nature items from a list of such potential items approved by the Compensation Committee. For Messrs. Gingo, Levanduski, and Minc, the Compensation Committee determined that each of their respective annual bonus opportunities would be measured by our consolidated worldwide operations, with corporate net income receiving a 50% weighting, corporate operating income receiving a 30% weighting and corporate days of working capital receiving a 20% weighting.”)

Gingo. Indeed, the December 15 8-K notes that the Company merely made “administrative” changes to the Employment Agreement in order to “facilitate the settlement of” the previously awarded Performance Awards and makes no mention of the 2010 Value Plan. Accordingly, it appears that the Board effectively gave Gingo a \$3.9 million gift, representing more than 5.5% of the Company’s income in 2015.

33. Critically, A. Schulman has acknowledged in both its public filings with the SEC and its response to Plaintiff’s August 19 Demand that, upon his retirement, Gingo would be entitled to receive the shares underlying his Performance Awards only “*on a pro rata basis* for the period of time then elapsed” and “only if the performance criteria described in the awards are satisfied *at the end of the applicable performance period.*” (Emphasis added). Yet the Company has sought to defend its clearly violative grant to Gingo on the basis that the 2013 and 2014 Proxy Statements provided that “[t]he Compensation Committee may choose to award compensation that does not meet the requirements of Section 162(m).” Ex. B. at 5. However, the same proxy statements expressly represented to A. Schulman stockholders that the Company had not exercised this discretion and instead *only* granted “qualified performance-based compensation” under Section 162(m).

34. As such, A. Schulman stockholders relied upon the Company's representations that it had granted Gingo qualified performance-based compensation under Section 162(m) of the Internal Revenue Code, which Gingo would be entitled to receive upon his retirement only on a pro-rated basis, after a determination that the predetermined performance criteria had been satisfied, at the end of the applicable performance period. Accordingly, the Board's decision to knowingly violate the Company's 2010 Value Plan, which had been approved by the Company's stockholders, and the Employment Agreement – a contract between the Company and Gingo – cannot be the product of valid business judgment.

D. The Company Wrongfully Refuses Plaintiff's August 19 Demand

35. On August 19, 2016, Plaintiff, through his counsel, served upon A. Schulman at its principal place of business a written Demand under oath in which Plaintiff demanded to inspect and make copies of certain books and records of A. Schulman for the following purposes: "(1) To investigate potential wrongdoing, mismanagement, breaches of fiduciary duties and/or waste of corporate assets by the members of A. Schulman's Board of Directors (the "Board"), or others related to the issues discussed below; (2) To assess the ability of the Board to consider impartially a demand for action (including a request for permission to file a derivative lawsuit on the Company's behalf) related to the items described in this demand; (3) To take appropriate action in the event the members of the Board did

not properly discharge their fiduciary duties, including the preparation and filing of a stockholder derivative lawsuit or the sending of a litigation demand letter, if appropriate; and (4) To discuss with the Board and/or management proposed reforms to prevent any future wrongdoing or mismanagement related to the issues discussed below.” Plaintiff attached to the letter a true and correct copy of his brokerage account statement for the period November 1, 2013, through November 30, 2013, reflecting his ownership of A. Schulman stock.

36. Plaintiff complied with the provisions of Section 220 relating to the form and manner of making his Demand to inspect and make copies of the books and records of A. Schulman. Consistent with Section 220, the Demand sought production of the following books and records of A. Schulman, which are reasonably related to Plaintiff’s proper purposes:

- 1) Records and minutes of all meetings of the Board, or any regular or specially created committee thereof, where the decision to fully vest the Performance Awards upon Gingo's retirement was made and/or discussed;
- 2) All documents respecting, and created contemporaneously in connection with the decision to fully vest the Performance Awards upon Gingo's retirement;
- 3) Documents sufficient to identify what consideration, if any, the Company received in exchange for the Board's decision to fully vest the Performance Awards upon Gingo's retirement.
- 4) Documents sufficient to identify the reasons the Board and/or Compensation Committee determined to fully vest the Performance Awards upon Gingo's retirement;

- 5) Documents sufficient to identify how many shares were (or are) to be distributed to Gingo as a result of the Board's decision to fully vest the Performance Awards, including whether this decision covered any awards other than the 2013 ROIC Performance Award, the 2013 TSR Performance Award, the 2014 ROIC Performance Award, and 2014 ROIC Performance Award;
- 6) Records and minutes of all meetings of the Board, or any regular or specially created committee thereof, where the decision to pay out the ROIC Performance Awards at the maximum level and the TSR Performance Awards at the target level were made and/or discussed;
- 7) Documents sufficient to identify how the Board, or any regular or specially created committee thereof, determined that the ROIC Performance Awards were "currently performing at approximately the maximum vesting levels for those grants" and that the TSR Performance Awards were "currently performing approximately at the target level."
- 8) Records and minutes of all meetings of the Board, or any regular or specially created committee thereof, where Gingo's retirement was discussed;
- 9) Records and minutes of all meetings of the Board, or any regular or specially created committee thereof, where Gingo's performance as President and Chief Executive Officer were discussed;
- 10) Records and minutes of all meetings of the Board, or any regular or specially created committee thereof, where the terms of the Employment Agreement were discussed;
- 11) Records and minutes of all meetings of the Board, or any regular or specially created committee thereof, where the preparation or filing of the December 15 8-K were discussed; and
- 12) The following documents related to the independence of the Board:

- a. The most recent director independence questionnaires for each current director completed in connection with the director's position on the Board and/or any subcommittee thereof;
- b. The most recent Director & Officer Liability Insurance questionnaires completed by each current director in connection with the purchase or renewal of Director & Officer Liability insurance policies;
- c. All documents reviewed by the Board and/or any subcommittee thereof reflecting an evaluation of the current Board's independence;
- d. All documents provided by the Board and/or any subcommittee thereof to NASDAQ reflecting an evaluation of the current Board's independence;
- e. All written policies relating to director independence applicable to the Board and/or any subcommittee thereof;
- f. All related-party transaction questionnaires for each current director completed in connection with the director's position on the Board and/or any subcommittee thereof;
- g. All documents reviewed by the Board and/or any subcommittee thereof reflecting an evaluation of related-party transactions between members of the current Board and the Company or its affiliates; and
- h. All written policies relating to related-party transactions applicable to the Board and/or any subcommittee thereof.

37. On September 1, 2016, the Company, through its outside counsel, responded that it was rejecting the Demand in its entirety. The Company's September 1, 2016 reply articulated a singular basis for its refusal of the Demand, namely, a purported lack of proper purpose based on the absence of any "credible basis" for Plaintiff's suspicions of wrongdoing. *See* Ex. B. In response, Plaintiff's counsel sent a reply letter dated September 23, 2016, explaining why A. Schulman's refusal of the Demand was improper. By letter dated October 12, 2016, A. Schulman's outside counsel, on behalf of the Company, responded to

Plaintiff's September 23 reply letter, reiterating the Company's rejection of the Demand.

38. Notwithstanding the Company's response, Plaintiff's August 19 Demand and September 23 reply set forth proper requests for inspection of the Company's books and records. The requests specified in the Demand seek documents directly relating to Plaintiff's proper purposes, including investigating potential fiduciary breach issues by some or all members of the Board related to the Board's decision to grant Gingo 107,775 shares of A. Schulman common stock in excess of what the Employment Agreement and the 2010 Value Plan allowed. As noted above, there is good reason to believe that the Board disregarded the plain restrictions of the Employment Agreement and the 2010 Value Plan that any Performance Award to Gingo upon his retirement should: (i) be pro-rated; (ii) awarded only after a determination that the performance criteria had been satisfied; and (iii) awarded at the end of the applicable performance period.

39. The information sought in the Demand, including the propriety of the grant to Gingo, is crucial for Plaintiff since it directly concerns his investment in the Company, and is necessary to help Plaintiff determine whether the current Board members are disinterested and are properly discharging their fiduciary responsibilities to A. Schulman's stockholders such as himself. Indeed, the excess shares granted to Gingo had a value of over \$3.9 million or more than 5.5% of the

Company's income in 2015 – a value that the Company itself has described as “understandably significant.” *See* Ex. B at 4.

40. Plaintiff made the Demand in good faith and with a proper purpose. Plaintiff also described with reasonable particularity his proper purposes and the books and records that he desires to inspect. Moreover, the books and records that Plaintiff seeks to inspect are reasonably related to his proper purposes. By satisfying the aforementioned criteria, Plaintiff fulfilled Section 220's requirements to inspect and copy the books and records of the Company, which is Plaintiff's right as a stockholder of A. Schulman. A. Schulman's rejection of the Demand, therefore, violates Plaintiff's rights pursuant to Section 220 to inspect and make copies and extracts of the books and records of the Company.

41. By reason of the foregoing, pursuant to Section 220, Plaintiff requests that A. Schuman be compelled to permit inspection of all books and records identified in his August 19, 2016 Demand.

COUNT I

42. Plaintiff repeats and realleges paragraphs 1 through 41 of the Verified Complaint as if fully set forth herein.

43. Plaintiff's Demand complied with the requirements of Section 220 with respect to the form and manner of making a demand for the examination of books and records of A. Schulman.

44. Plaintiff's purposes for requesting access to the books and records of A. Schulman are proper and reasonably related to Plaintiff's interest as a stockholder of A. Schulman.

45. The books and records requested in the Demand are necessary and essential to fulfill Plaintiff's proper purposes.

46. Plaintiff is therefore entitled to receive copies and/or inspect the books and records described in the August 19 Demand.

47. A. Schulman has failed to provide Plaintiff with any of the books and records requested in the Demand in violation of Section 220.

48. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter an Order:

A. Compelling A. Schulman to permit Plaintiff, his attorneys and/or agents to inspect and make copies and extracts of the books and records of A. Schulman identified in the August 19 Demand;

B. Requiring A. Schulman to pay Plaintiff's costs and expenses, including reasonable attorneys' fees, incurred in the prosecution of this Action; and

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

Dated: February 22, 2017

FARUQI & FARUQI, LLP

By: /s/ James R. Banko

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