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Case No. 2018-0816-JTL

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE DELL TECHNOLOGIES INC. CLASS V STOCKHOLDERS LITIGATION	))))))	Consol. C.A. No. 2018-0816-JTL **Public Redacted Version** **Filed April 25, 2019**

VERIFIED AMENDED AND CONSOLIDATED STOCKHOLDER CLASS ACTION COMPLAINT

TABLE OF CONTENTS

Page

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

INTRODUCTION

1. This action (the "Action") challenges a transaction (the "Class V Transaction" or "Transaction") through which Dell's controllers—Michael Dell and Silver Lake Group LLC ("Silver Lake")—disloyally expropriated billions of dollars of value from Dell's Class V common stockholders (the "Class V Stockholders").

2. In the Transaction, Dell redeemed the outstanding Class V Stock in exchange for a combination of cash and Dell's privately-held Class C common

stock (the "Class C Stock"). Dell claimed that this combination amounted to $120 in consideration per share of Class V Stock. This consideration was unfair for at least two fundamental reasons: (i) shares of Class V Stock were worth far more than the purported $120 paid per share, and (ii) shares of Class C Stock used as payment were worth far less than Michael Dell and Silver Lake asserted.

3. The Class V Stock was a "tracking" stock Dell issued to track the performance of VMware, Inc. ("VMware") publicly traded common stock. But Dell's $120-per-share offer fell well below the market price of the VMware stock that the Class V Stock was intended to track. For example, on the date that Dell announced the Transaction, VMware stock closed at $157.73 per share, over 30% higher than the purported $120-per-share price offered by Dell for the Class V Stock.

4. At the same time, the actual consideration paid for the Class V shares was worth far less than the $120-per-share price presented to the Class V Stockholders. Nearly half of the $120-per-share offer was paid using non-public Class C Stock, which Dell asserted was worth $79.77 per share. But Dell's Board had valued the same Class C Stock at only $33.17 per share immediately before Transaction negotiations began, and reaffirmed that lower valuation during those negotiations. Thus, Dell's valuation of Class C Stock in the Transaction was based

on the untenable proposition that Dell had ***more than doubled in value during the course of the negotiations themselves***.

5. Notably, subsequent to the Transaction's December 28, 2018 closing, the market price of Dell's Class C Stock has ***never*** traded anywhere close to the controllers' purported valuation, even though those shares now represent the value of Dell's core enterprises ***along with*** the VMware upside taken from Class V Stockholders.

6. Seeking to avoid scrutiny of the extreme unfairness of the Transaction, Dell's controllers and Board attempted to create the impression that the Transaction was negotiated in good faith, under the oversight of a properly functioning special committee (the "Committee" or "Special Committee"), and subject to a fair and fully informed stockholder vote. In reality, the Committee was never independent and never conducted real negotiations, the valuation of Class C Stock was a sham, the process was tainted by coercive threats, and the vote was the product of Class V Stockholders receiving material misinformation and not receiving critical information necessary to make an informed choice.

7. While the Special Committee created the outward appearance of a thorough process by retaining advisors and conducting formal meetings, the process was rigged against Class V Stockholders. The Special Committee failed to investigate numerous lines of inquiry that favored the interests of Class V

Stockholders and would have revealed that Dell's controllers had offered consideration that was wholly inadequate and unfair. The Special Committee's failure to pursue any one of these inquiries, standing alone, constituted gross negligence. Collectively, the conspicuous failure to pursue all of them evinces conscious inaction—*i.e.*, a bad-faith refusal to properly investigate the economics and fairness of the Class V Transaction. The Special Committee's many radical failures include the following:

- ***The Committee was aware*** that VMware common stock—which Class V Stock was supposed to track—traded well-above the consideration offered in the Transaction. Nevertheless, the Committee made no effort to analyze whether the market price of VMware common stock would provide fair value to the Class V Stockholders or whether they were entitled to that higher price.

- ***The Committee was aware*** that the Class V Stock traded at a substantial discount to VMware common stock. Yet the Committee conducted no investigation concerning the causes of this discount. Had they done so, they would have learned that fears over the potential for abuse by Michael Dell and Silver Lake drove the discount. As one commentator put it: "Michael Dell isn't really shareholder-friendly. This leads to what we call the Dell-discount."[1] By failing to investigate and, instead, accepting the discounted valuation, the Committee allowed Dell's controllers to benefit from their own reputation for financial abuses.

- ***The Committee was aware*** that their financial advisor, Evercore, had opined only three years earlier that a fair discount for the Class V Stock would be in the range of 0-to-10%, and that it might even trade at a premium to VMware. The Committee was thus necessarily aware that Evercore's analysis, which endorsed completing the Class V Transaction

[1] *The Dell-Discount*, SEEKING ALPHA (July 16, 2018), https://seekingalpha.com/article/4187602-dell-discount (last accessed April 17, 2019).

at a 40% discount, constituted a stark reversal of Evercore's own recent conclusions. Nevertheless, the Committee accepted without scrutiny or investigation Evercore's latest pronouncement, and even declared the price offered a "premium."

- ***The Committee was aware*** that Dell's valuation of its Class C Stock had supposedly more than doubled during the negotiations—a fact that alone should have raised serious concerns for any fiduciary responsible for protecting the interests of the Class V Stockholders. The Committee also knew that: (1) VMware itself had rejected that same valuation; (2) the valuation was based on new accounting standards and Dell management's unverified, self-serving financial projections; and (3) Goldman Sachs advocated the same optimistic valuation of Class C Stock ***before*** Dell's management had offered these financial projections, suggesting that Michael Dell's hand-picked management team reverse-engineered them.

- ***The Committee decided*** that rather than seeking advice from an independent auditor or other financial advisor, it would engage and rely on DISCERN Analytics, Inc. ("Discern") to evaluate Dell's financial projections. Discern was a previously unknown, financially distressed, one-man operation with no relevant credentials, no experience on any comparable transaction, and whose owner was a personal acquaintance of the lead Evercore banker on the deal.

8. Moreover, from the outset, the Committee was conflicted and unable to advocate impartially for Class V Stockholders. Not only did economic negotiations begin ***before*** the Special Committee was even created—thereby constraining the subsequent negotiations in advance—but after the Special Committee was established, its pervasive conflicts prevented adherence to its fiduciary obligations.

9. Substantive negotiations actually began under a predecessor committee—the Capital Stock Committee—that was ultimately disbanded because

of conflicts of interest. The Capital Stock Committee consisted of three members: Defendants Dorman, Green, and Kullman. But Kullman was also a member of the board of directors of Dell's financial advisor, Goldman Sachs, which stood to receive a massive $70 million "success fee" for the Transaction. It was during Kullman's tenure on the Capital Stock Committee that Goldman Sachs first proposed a valuation range for Dell of $48 billion to $52 billion—*i.e.*, the range implying the $79.77-per-share valuation of Class C Stock that the Special Committee would later endorse.

10. [redacted] Only then did the Board finally remove Kullman from the process. Thereafter, the Board created a new Special Committee consisting of only Defendants Green and Dorman. These belated efforts failed to cure the conflicts that riddled the Committee and did nothing to address the extensive connections between Michael Dell and both Green and Dorman.

11. Green is a close business associate of Joseph Tucci—with whom he presently serves as co-CEO of GTY Technology Holdings Inc. ("GTY"), a company founded by Green and Tucci in 2016 to invest in the technology sector. Tucci, who is described in GTY's public filings as "an advisor" to both Michael Dell and the Dell board of directors, and who describes himself as Michael Dell's

"brother from another mother," was ***personally present at Dell's Board meetings*** throughout the negotiation of the Class V Transaction (a fact never disclosed to investors). Notably, both Green and Tucci, along with Dorman and the other directors, also attended at least one board meeting [redacted] in the lead-up to the stockholder vote. Green has multiple other financial ties to Dell and Michael Dell that have earned Green millions of dollars in compensation in recent years, including in connection with the initial public offering of Pivotal Software, Inc. ("Pivotal"), which occurred during the course of the negotiation of the Class V Transaction. Notably, Pivotal remains majority-owned by Dell, and therefore constituted an important element of the inflated value of the Class C Stock on which the Class V Transaction was premised. Green's extensive conflicts are described in greater detail below.

12. Dorman was likewise conflicted because of a personal financial interest in a private investment fund with significant ties to Dell, including a substantial stake in one of Dell's portfolio companies. Dorman is a founding partner of Centerview Capital, a fund with technology investment positions in only nine companies, six of which have close financial ties to Dell. Notably, Centerview's investments include significant holdings in SecureWorks, in which only Dell itself is a larger stockholder, and which, like Pivotal, ***was one of the companies included in the valuation of the Class C Stock***. As a result, Dell's

excessive Class C valuation directly advanced Dorman's own interests, which were diametrically opposed to those of the Class V Stockholders he purported to represent. Dorman's extensive conflicts are likewise described in greater detail below.

13. The Special Committee initially accepted Dell's controllers' first offer (the "Initial Proposal") of only $109 per share, based on the same valuation of Class C Stock proposed by Goldman Sachs during negotiations with the Capital Stock Committee. When it became clear that a furious majority of Class V Stockholders would reject that deal, the Special Committee never investigated whether it could use those circumstances to extract additional consideration on behalf of Class V Stockholders. Rather, the Committee simply reiterated its support for the Initial Proposal and then effectively removed itself from the negotiations, standing idly by as Dell and its financial advisors negotiated directly with a small group of Class V Stockholders to obtain a bare majority in support of the Transaction. In so doing, the Special Committee deprived Class V Stockholders of the protection to which they were entitled: a fully empowered and well-functioning negotiating agent who would zealously bargain for the best price on their behalf.

14. At the same time that the Special Committee failed to advocate for Class V Stockholders' best interests, Dell's controllers issued coercive threats to manipulate the stockholder vote.

15. Throughout the negotiations, Dell's controllers threatened that if stockholders failed to approve the Transaction, the controllers would orchestrate an initial public offering followed by a forced conversion of Class V Stock into Class C Stock (the "Forced Conversion")—an alternative widely recognized as an even worse outcome for the Class V Stockholders. One leading financial institution went so far as to describe the Forced Conversion as "***the wors*[*t*] *case scenario***."

16. Dell first presented the threat by deliberately leaking it to the press in early 2018, then by filing a Form 13-D disclosure with the SEC shortly thereafter. In the lead-up to the stockholder vote on the Class V Transaction, Dell brandished the threat even more clearly, filing a Form 8-K with the SEC several weeks before the vote stating 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."

17. In the face of these threats, Class V Stockholders could not consider the economic terms of the Class V Transaction alone. Rather, Dell's controllers forced Class V Stockholders to weigh the proposed terms against the looming

danger posed by a more injurious alternative. As a result, in casting their votes, Class V Stockholders were forced to choose between accepting the Class V Transaction as the lesser of two evils or suffering the imposition of an unfair Forced Conversion. Maintaining the status quo was not an option.

18. The proxy materials provided to the Class V Stockholders were also woefully deficient in failing to identify several material aspects of the negotiation and the Transaction. Among other failings, the proxy materials omitted critical information concerning the negotiation history necessary for Class V Stockholders to properly assess the offer and the recommendation of the Committee in favor of the Transaction. In particular, the proxy materials failed to disclose that the Committee had—[redacted]

19. The proxy materials also omitted other material information that would have allowed investors to judge for themselves whether the Committee was actually as independent as claimed, whether its advisors were conflicted, and whether the process substantively advanced the interests of Class V Stockholders. The proxy disclosures similarly failed to reveal [redacted]

[redacted] These failures are detailed herein.

20. In sum, investors voted with materially deficient information about numerous critical aspects of the Transaction including why they were receiving far less than the fair value of their shares; why the Class V Stock traded at a substantial discount to VMware common stock; why their financial advisor, Evercore, had radically reduced its earlier valuation of the Class V Stock; why Dell's valuation of the Class C Stock had more than doubled during the negotiations; and [redacted]

21. Ultimately, the bad-faith strategy employed by Dell's controllers in concert with the Special Committee succeeded. 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 unfair Class V Transaction. This Action seeks damages on their behalf.

THE PARTIES

22. Lead Plaintiff Steamfitters was a holder of Class V Stock at the time of the Transaction. On March 18, 2019, the Court designated Steamfitters as the Lead Plaintiff in this Action. *See* Dkt. No. 41 ¶ 9.

23. Defendant Michael Dell is the founder, Chairman, and CEO of Dell. At the time of the Class V Transaction, Michael Dell and his family controlled approximately 66.2% of Dell's total stockholder voting power, through a combination of Class A and Class C common stock. Michael Dell personally had (and still has) the power to control the Board.[2] As described in more detail below, at the time of the Class V Transaction, Michael Dell owned approximately 91% of Dell's Class A common stock. Under Dell's corporate charter (the "Charter"), prior to the Transaction, the holders of Class A common stock voted alone to elect a single director who individually 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.

24. Defendant Dorman has been a member of the Board since September 2016. Dorman was a member of the Capital Stock Committee and, later, the Special Committee formed for the Transaction. Dorman is a founding partner of Centerview Capital Technology ("Centerview Capital"), the private-equity affiliate of Centerview Partners LLC ("Centerview Partners"). Centerview

[2] At the same time that Class V Stockholders voted to approve the Class V Transaction, they also voted to approve a proposal that simplified 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 continues to control the Company as a result of his majority stockholdings.

Partners is an investment banking and private-equity firm that advised Michael Dell and Silver Lake in connection with a 2013 management buyout that took Dell private (the "MBO").

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

26. Defendant Green has been a member of the Board since September 2016. He was a member of the Special Committee formed for 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-controlled Pivotal.

27. 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 due to her conflicts resulting from her position on the board of Goldman Sachs.

28. 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.

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

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

31. 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.

32. 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.

33. The Defendants identified in paragraphs 23–28 are referred to collectively as the "Director Defendants."

34. Michael Dell and the Defendants identified in paragraphs 29–32 are referred to collectively as the "Control Group Defendants."

FACTUAL ALLEGATIONS

A. Summary Of The Class V Transaction

35. The Class V Transaction involved the redemption by Dell of its then-publicly traded Class V Stock in exchange for consideration purportedly worth $120 per share, consisting of: (i) Dell's then-non-publicly traded Class C Stock, which was tied to a $48.4 billion valuation of Dell's core business (excluding its interest in VMware); and (ii) $14 billion in cash (subject to proration depending on stockholder election). Accordingly, at the advertised consideration of $120 per

share of Class V Stock, and with nearly 200 million shares of Class V Stock outstanding, the overall face-value price for the Class V Transaction was approximately $24 billion.

36. Of that $24 billion, a maximum of $14 billion could be redeemed by the Class V Stockholders in cash, rather than Class C Stock. At the close of the Class V Transaction, 91.2% of the Class V Stock requested to be redeemed in cash rather than Class C Stock. Thus, the cash portion of the Transaction was over-subscribed, meaning that the maximum $14 billion in cash proceeds were paid out pro-rata to Class V Stockholders.

37. Dell covered the remaining $10 billion in consideration (approximately 42% of the total) using its Class C Stock as currency. However, Class C Stock was privately held, so its value was not set by a public marketplace. Instead, Dell's controllers used their corporate control and superior access to information to assert a grossly inflated valuation of Class C Stock. Because Class V Stockholders were not given appraisal rights in the Transaction, their only recourse was to vote "no" and risk a Forced Conversion on even worse terms.[3]

38. When the Class V Transaction closed on December 28, 2018, Class V Stockholders received pro-rata portions of the $14 billion in cash offered in the

[3] The Forced Conversion is described in detail at Sections B.3 and D, *infra*.

Transaction, along with Class C Stock that, based on the $48.4 billion valuation Dell ascribed to its core businesses (without VMware), was ostensibly worth $79.77 per share.[4] However, that valuation was ***more than 150% higher*** than the $33.17 valuation of Class C Stock that Dell's Board had approved in December 2017, and again in May 2018.[5]

39. While Michael Dell and Silver Lake claimed the Class C Stock issued in connection with the Transaction was worth $10 billion, Dell's own prior valuations pegged that figure at closer to $4 billion. Based on these internal valuations, rather than paying $24 billion for all of the minority's outstanding shares of Class V Stock, Dell actually paid only $18 billion. Thus, even assuming that $120 per share would have constituted fair value for the Class V Stock (it did not), the consideration Dell claimed to have offered minority stockholders was worth far less than asserted by Dell.

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[4] The final exchange ratio for the Transaction, which was set based on the volume-weighted average trading price of Class V Stock between the stockholder vote and the close of the Transaction, paid approximately 1.8066 shares of Class C Stock for every one share of Class V Stock. *See* Dell Technologies Inc., Current Report (Form 8-K) (Dec. 28, 2018), https://www.sec.gov/Archives/edgar/data/1571996/000119312518360943/d673794d8k.htm.

[5] *See, e.g.*, Dell Technologies Inc., Proxy Statement at 50-51 (Schedule 14A), (May 15, 2018), https://www.sec.gov/Archives/edgar/data/1571996/000157199618000013/proxystatementforfy2218.htm.

40. The market prices of both VMware common stock and Dell's Class C Stock since the Transaction only confirm that the economic terms of the Transaction were inequitable and inexplicable. On the VMware side of the ledger, VMware common stock has skyrocketed in the months since the Transaction, trading above $189 per share as of the market close the day before this filing, reflecting the significant upside that Dell's controllers captured for their purported $120 per share. At the same time, Dell's Class C Stock (which is now publicly traded as a result of the Transaction), has ***never*** reached the $79.77-per-share valuation ascribed to it in the Class V Transaction, even though Class C Stock should be ***more*** valuable following the Transaction, because it now represents the value of ***both*** Dell's core business ***and*** Dell's interest in VMware's increasingly valuable stock.

41. As a result of the Class V Transaction, Dell became a publicly traded company with a single class of publicly traded stock—the Class C Stock—tied to all of Dell's business. Thus, for Michael Dell and Silver Lake—who can freely convert their supermajority shares into shares of Class C Stock—the Transaction had the effect of an initial public offering ("IPO"), providing Michael Dell and Silver Lake access to public financial markets that were previously off limits, but without the cost, expense, or scrutiny of a formal IPO. This unique, highly valuable, and non-ratable benefit was not shared by Class V Stockholders, who

received nothing of value in exchange for conferring this benefit on Dell's controllers.[6]

B. Origins Of The Class V Stock And The Class V Transaction

42. Dell pursued the Class V Transaction in the wake of two major corporate transactions: (i) its 2013 going-private transaction (previously defined as the "MBO"), and (ii) its 2015 merger with EMC (the "EMC Merger").

1. Michael Dell And Silver Lake Assume Control Of Dell Through A Management Buyout

43. Michael Dell founded Dell in 1983. In 1988, he took the Company public at a valuation of approximately $85 million. The Company continued to grow after going public, reaching market valuations in the billions of dollars. Michael Dell has served as CEO of the Company since its founding, aside from a brief hiatus from 2004 to 2007.

44. In 2013, Michael Dell partnered with Silver Lake to take Dell private through the MBO at a valuation of approximately $25 billion. The MBO was accomplished by: (i) Michael Dell rolling over his then-16% equity stake in the

[6] Instead, following the Class V Transaction, "Michael Dell's return to the public markets … helped make him $12 billion wealthier," in part because "th[e Class V] gap accrued to Dell's owners," instead of Class V Stockholders. Tom Metcalf & Nico Grant, *How Michael Dell Got $12 Billion Richer Out of the Public Eye*, BLOOMBERG (Jan. 11, 2019), https://www.bloomberg.com/news/articles/2019-01-11/michael-dell-gets-12-billion-richer-with-break-from-public-eye (last accessed April 17, 2019).

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.

45. Following the MBO, Michael Dell and Silver Lake maintained their control of Dell. Before the Class V 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 controlled seven of thirteen votes on the Board and Silver Lake personnel controlled an additional three votes.

2. Dell Acquires EMC And Issues The Class V Stock

46. 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 at more than $60 billion. After securing the necessary approvals, the EMC Merger closed on September 7, 2016, with Dell paying EMC stockholders

$24.05 in cash and 0.11146 shares of newly-issued Class V Stock for each share of EMC stock.

47. In addition to its core operating business, EMC owned an 81.9% stake in a publicly-traded cloud-computing and virtualization company known as VMware. However, Dell lacked the assets (or, due to its debts, access to the requisite capital) to acquire EMC's full VMware stake directly, given its value and high upside. 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. Dell assured investors that shares of Class V Stock 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 economic interest in VMware would be held for the benefit of the holders of the new Class V Stock.

48. As a result of the EMC Merger, Michael Dell and Silver Lake restructured their continued control of the Company. After the merger was completed, the Company's capital structure included four classes of common stock: Classes A, B, C, and V. As explained above and described in greater detail herein, Class V Stock was a special class of stock intended to track Dell's ownership interest in VMware. The other three classes of common stock 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 Dell's 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.

49. After the merger, Dell's 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 individually 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.

50. Michael Dell and his family entities control approximately 91% of the outstanding Class A stock. Michael Dell used that power to elect himself as the Group II director, giving him seven board votes by himself. Silver Lake controls 100% of the outstanding Class B stock. 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 Class V Transaction. Together they constituted Dell's dominant control group.

3. The Class V Stock And The Dell Discount

51. VMware's publicly traded stock appreciated rapidly in the wake of the EMC Merger. When the EMC Merger closed on September 7, 2016, VMware stock closed at $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, VMware stock was trading in excess of $130 per share, with a market valuation of approximately $55 billion.

52. However, the rapid growth in VMware's value remained outside the reach of 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*** economic interest in EMC's "crown jewel"—*i.e.*, its interest in VMware.

53. At the same time, the market's concerns about Dell's troubling approach to corporate governance caused the Class V Stock to trade at a significant discount to the trading price of publicly traded shares of VMware. At the time of the EMC Merger, EMC's CEO Joseph Tucci anticipated those concerns, stating: "[Class V Stock] 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."[7] The EMC Merger proxy touted Evercore's opinion that a fair price for Class V Stock would be within a 0-to-10% discount to VMware's publicly traded shares. Evercore even suggested that Class V Stock might trade at a premium to VMware. That turned out to be ***completely false***.

54. Instead, shares of Class V Stock immediately and consistently traded at a massive discount to VMware stock. For broader market context, a Wells Fargo analyst report, "[a]fter analyzing the performance of 11 recent tracking stocks, … determined the mean discount … has been 13.6% over the last 3.5

[7] Denali Holding Inc., Prospectus (Form 425), (Oct. 14, 2018), https://www.sec.gov/Archives/edgar/data/790070/000119312515342979/d55315d425.htm ("[T]ranscript of a town hall meeting held with VMWare, Inc. employees on Oct. 12, 2015.").

years." But the Class V Stock's trading discount never came close to that average—instead, it averaged approximately 35% and at times exceeded 40%. Commentators noted Class V Stock's historically high discount, with Deutsche Bank stating: "It may not be an exaggeration to describe DVMT shares as ***among the worst tracking stocks***" (emphasis added).

55. Commentators described this phenomenon as the "Dell Discount," which reflected the market's attitude that "Michael Dell isn't really shareholder-friendly."[8] That is, the value of Class V Stock was depressed by the market's perception that Michael Dell may 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. Analysts from Gabelli & Co., discussing a then-41% Class V-to-VMware discount, "attribut[ed] the discount to uncertainties on Dell's corporate governance over the future of DVMT interests and interests of DVMT's shareholders, and Dell's highly levered balance sheet." Likewise, Deutsche Bank later noted: "The concern that Dell might do something against the interest of VMware or DVMT stockholders is not hypothetical."

[8] *The Dell-Discount*, SEEKING ALPHA (July 16, 2018), https://seekingalpha.com/article/4187602-dell-discount (last accessed Apr. 17, 2019).

56. Accordingly, the market recognized the likelihood Michael Dell might exploit Class V Stockholders. Indeed, those fiduciary-duty concerns were effectively baked into the Class V Stock's massive discount to VMware.[9]

57. Class V Stockholders were in a precarious position from a corporate-governance perspective. In connection with the EMC Merger, Dell amended its Charter to add Section 5.2(r), which allowed the Company, after an IPO of Class C Stock, to force a conversion of Class V Stock into Class C Stock. This conversion could be effected 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 ("VWAP") 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."

58. The Forced Conversion Provision created immense uncertainty for Class V Stockholders. As Columbia Law School Professor Eric Talley noted:

> The IPO-then-convert alternative is a … perilous path for [Class V Stockholders], due in part to the mammoth unpredictability of the pricing ratio's realized value once triggered. The market value of

[9] As described in greater detail in Section G.2, *infra*, the Special Committee's failure to negotiate away that discount in its deliberations with Dell's controllers effectively ***internalized*** the market's fear that Michael Dell and Silver Lake would rake Class V Stockholders over the coals. The Transaction approved not once, but twice, by the Special Committee was thus premised in significant part on the threat of Michael Dell and Silver Lake's breaches of fiduciary duty.

> [Class V] shares (comprising the numerator) has long displayed pricing pathologies of its own, consistently—and controversially—trading at a deep discount to VMWare [sic] 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 …. 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.[10]

59. The Forced Conversion Provision thus 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 downward spiral. As a result, Deutsche Bank described the threat of a Forced Conversion as "***the wors***[***t***] ***case scenario***" for Class V Stockholders.

60. Moreover, Class V Stockholders lacked effective representation on the Dell Board to counsel against an ill-timed or unfairly administered Forced Conversion. Class V Stock was intended to represent greater than 60% of Dell's

[10] Eric Talley, *Corwin at a Crossroads: Could DVMT Stock Be the Tracker Jacker in Dell's Hunger Games?*, COLUM. L. SCH. BLUE SKY BLOG (Sept. 25, 2018), 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 Apr. 17, 2019).

economic interest in VMware, which was worth tens-of-billions of dollars and comprised 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.

C. Michael Dell And Silver Lake Begin Their Efforts To Appropriate VMware's Upside

61. In August 2017, Michael Dell and Silver Lake began actively exploring potential strategic transactions that would allow them 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 financial advisor—began actively advising Michael Dell and Company management on potential strategic transactions involving VMware and/or the Class V Stock. The terms of Goldman Sachs's engagement included the opportunity for Goldman Sachs to receive a "success fee" of $70 million—reportedly the largest success fee in history—should such a transaction close.

62. On January 31, 2018, after Dell completed its initial strategic review, Dell held a full Board meeting during which Michael Dell and Goldman Sachs presented strategic options being explored by Dell management. [redacted]

[redacted]

63. In the coming months, Dell's controllers pursued and negotiated both potential transactions contemporaneously and on parallel tracks.

1. VMware's Special Committee Rejects Dell's Valuations

64. In December 2017, Dell approached VMware concerning a potential combination, initiating months of negotiations and intensive due diligence on both sides. Ultimately, however, a special committee of the VMware board of directors rejected a transaction because of: (i) Dell's undervaluation of VMware, and (ii) Dell's overvaluation of its own business.

65. In discussions concerning a potential VMware-Dell combination, Dell and Goldman Sachs advanced range of valuations for 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 Frères & Co. ("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. Informed by extensive diligence, the VMware special

committee and Lazard concluded that Dell's valuation range was inflated by approximately ***$8.5 billion***.

66. Furthermore, Dell had presented a valuation of VMware at its then-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 would need to reflect a substantial premium. They 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.

67. The VMware special committee and Lazard provided their criticisms of Dell's valuations in March 2018. VMware and Dell continued to hold discussions after March 2018, but the intractable valuation differences brought the parties to an impasse.

2. The Dell Board Forms Two Conflicted Committees

68. At the same time that they were negotiating with VMWare, Michael Dell and Silver Lake began negotiating a repurchase of Class V Stock that ultimately would result in the Class V Transaction. To do so, they orchestrated a delegation of negotiating authority to two hopelessly conflicted committees—the "Capital Stock Committee" and, later, the "Special Committee"—to serve as their ostensible negotiating counterparties on behalf of Class V Stockholders. In fact,

these Committees were intended to create the appearance of arm's-length negotiations that never occurred.

a. The Capital Stock Committee Is Conflicted As Negotiations Commence

69. During its January 31, 2018 meeting, the Dell Board adopted a resolution providing that if the Board determined to carry out a transaction affecting the rights of Class V Stockholders (like the Class V Transaction), the transaction would be reviewed by Dell's pre-existing Capital Stock Committee.

70. At the time, the Capital Stock Committee was comprised of Defendants Kullman, Dorman, and Green. Each of these Defendants lacked the requisite independence.

71. As a member of Goldman Sachs's board of directors, Kullman harbored an obvious conflict of interest because Goldman Sachs represented Dell's controllers in connection with the Class V Transaction. As a result of the Board's January 31, 2018 resolution, Kullman was responsible for representing the interests of Class V Stockholders in negotiations, even though Goldman Sachs sat on the other side of the negotiating table and would stand to benefit from its unprecedented $70 million "success fee" if it secured a favorable transaction for Michael Dell. Along similar lines, Evercore—or any other financial advisor retained by the Capital Stock Committee—was required to negotiate against Goldman Sachs while simultaneously reporting to a member of Goldman Sachs's

board on the status of those negotiations, an untenable position from which to provide unbiased advice or negotiate zealously on behalf of Class V Stockholders.

72. Despite this obvious conflict of interest, Kullman did not recuse herself from the Capital Stock Committee. Instead, Kullman remained on the Capital Stock Committee while the Capital Stock Committee took critical steps towards the Class V Transaction over the course of several weeks. Thus, from the outset, a conflicted fiduciary represented the Class V Stockholders in the Transaction.

73. Indeed, Kullman remained a member of the Capital Stock Committee even as it undertook critical steps towards assessing and completing a transaction. Kullman was still a member of the Capital Stock Committee on February 7, 2018, when the Capital Stock Committee retained Latham & Watkins LLP ("Latham") as its legal advisor in connection with the Class V Transaction. Three days later, the Capital Stock Committee retained Abrams & Bayliss LLP as its Delaware legal counsel in connection with the Transaction.

74. Only a few days after that, on February 12, 2018, Kullman and others on the Capital Stock Committee began discussions with Evercore, [redacted] The Committee retained Evercore three days later.

75. [redacted] With Kullman at the helm, the Capital Stock Committee was tasked with grading Goldman Sachs's work, giving Kullman considerable control over Goldman Sachs's ability to obtain its $70 million "success fee."

76. Only a few days later, substantive negotiations with Dell's controllers towards the Class V Transaction commenced, all while Kullman's tenure on the Committee remained intact. On February 18, 2018, representatives of Silver Lake and Evercore discussed both a negotiated repurchase transaction and the alternative Forced Conversion.[11] During that same meeting, "Silver Lake [] presented an illustrative range of equity values for Dell Technologies."[12] Two days later, the members of the Capital Stock Committee—including Kullman—met to evaluate Silver Lake's proposals.[13]

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[11] *See* Dell Technologies Inc., Proxy Statement at 148 (Rule 424(b)(3)) (Oct. 19, 2018), https://www.sec.gov/Archives/edgar/data/1571996/000119312518303075/d681091d424b3.htm (referred to herein as the "Initial Proxy").

[12] *Id.*

[13] *Id.*

77. [redacted] Despite the fact that the Capital Stock Committee remained in the midst of negotiations with Dell's controllers, the members of the Capital Stock Committee inexplicably waited several weeks, until March 6, 2018, to deliver a unanimous written consent to form a new two-member Special Committee excluding Kullman. It was not until March 14, 2018 that the full Dell Board acted on this proposal and established the Special Committee consisting of Defendants Dorman and Green to represent the interests of Class V Stockholders in connection with the already ongoing negotiations.

78. In the meantime, on March 12, 2018, Goldman Sachs presented its $48-to-52 billion valuation of Dell (excluding its interest in VMware) to the Capital Stock Committee. This was used as the ***primary valuation*** of Dell's core enterprises throughout the negotiation and renegotiation of the Class V Transaction. In particular, this valuation—presented to the concededly conflicted Capital Stock Committee—set the field of play for the Committee's negotiations by cabining the economic boundaries in which Dell might be valued.

79. Accordingly, Dell failed to form an independent committee at the beginning of substantive negotiations over the Class V Transaction, which were

well underway while Kullman and her conflicts of interest disabled and undermined the Capital Stock Committee.

b. The Special Committee Was Never Independent

80. Even after Kullman's belated recusal and the creation of a new Special Committee, Class V Stockholders lacked an independent negotiating agent to advocate on their behalf in connection with the Transaction. The Special Committee's two members—Dorman and Green—and the Committee's advisors all harbored material conflicts of interest as a result of their relationships with Michael Dell, Silver Lake, and their respective portfolio companies. In addition, the new Special Committee continued to be plagued by the flawed process that preceded it: the inherited negotiating history of the original Capital Stock Committee and its inherited legal and financial advisors.

i. Defendant Dorman's Conflicts Of Interest

81. Dorman lacked the requisite independence to serve on Dell's Special Committee because of long-standing personal and financial connections to Dell's controllers, connections that persisted throughout the period in which the Class V Transaction was negotiated and renegotiated. Those ties rendered him beholden to Dell's controllers.

82. Dorman's substantial interests in one of Dell's portfolio companies, SecureWorks, incentivized him to embrace Dell's inflated self-valuation and to disloyally reallocate VMware's upside to Dell's other assets.

83. 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 after Dell acquired EMC, and was immediately appointed by Michael Dell and Silver Lake to join Dell's Board, pursuant to their powers to appoint representative directors under Dell's Sponsor Stockholders Agreement.[14] Michael Dell then used his power as controlling stockholder of SecureWorks to appoint Dorman's business partner, Yagyensh C. "Buno" Pati, to the seat on the SecureWorks board vacated by Dorman.

84. In addition, Dorman is a founding partner of Centerview Capital, a role that remains his primary occupation. Founded in July 2013, Centerview

[14] Dell Technologies Inc., Current Report, Ex. 10.5 (Form 8-K) (Sept. 9, 2016), https://www.sec.gov/Archives/edgar/data/1571996/000119312516706567/d238698dex105.htm.

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.

85. Dorman's investment in SecureWorks created an inherent conflict of interest with his duties to Class V Stockholders. One of the Special Committee's most important tasks, if not ***the*** most important task, was to thoroughly vet and challenge Dell's self-interested valuation of its Class C Stock, which effectively served as the currency for the Class V Transaction. However, Dell's valuation of the Class C Stock necessarily contained a valuation of Dell's portfolio companies, ***including SecureWorks***. Dorman thus had a substantial personal and financial incentive to support a valuation Dell's assets at the highest possible price, especially as that would include a high valuation of SecureWorks. Moreover, Dorman had every incentive to disloyally allow Dell to misappropriate VMware's upside to improve the overall worth of Dell's portfolio.

86. Beyond SecureWorks, Centerview Partners has longstanding and strong relationships with both Michael Dell and Silver Lake. Indeed, Centerview Partners owes its rise to prominence in the technology market in large part to Michael Dell and Silver Lake. 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 (and its majority stake in VMware).[15] These significant, well-publicized engagements helped cement Centerview Partners' reputation in the technology industry, and allowed it to reap millions of dollars in fees.

87. Furthermore, Dorman regularly leverages his experience with Dell and Michael Dell to raise capital and attract new investment opportunities for Centerview Capital. Indeed, according to Centerview Capital's website, the firm focuses on "late stage venture and growth capital investments in the technology industry" (*i.e.*, the same space in which Dell, EMC, VMware, Pivotal, and SecureWorks operate).

88. The benefits of Dorman's relationship with Michael Dell extended to other companies. In February 2019, Dorman was appointed board chairman of Infoworks.io ("Infoworks"), a Silicon Valley-based software maker that "helps usher corporations into the digital age."[16] Through Centerview Capital, one of

[15] In addition to its lucrative roles in advising Michael Dell, Centerview Partners and 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." Council On Foreign Relations, Corporate Members, https://www.cfr.org/membership/corporate-members (last accessed Apr. 17, 2019).

[16] Jon Swartz, *AT&T's Former CEO, David Dorman, Is Baking This Data Startup*, BARRON'S (Feb. 7, 2019), https://www.barrons.com/articles/atts-former-ceo-is-backing-this-data-startup-51549489971 (last accessed Apr. 17, 2019).

Infoworks' key investors, Dorman has had a (likely significant) financial stake in the company for several years.[17]

89. Infoworks operates in a market that is "broad and filled with competing vendors," as "venture capitalists ha[ve] poured $600 million into [such] digital-transformation companies" in recent years.[18] Major technology firms, including Dell, are similarly taking notice. Just days before Dorman's appointment as Infoworks' chairman, Dell published a favorable report urging businesses to hire firms such as Infoworks.[19] Furthermore, the ties between Dorman and Infoworks on the one hand and Dell's controllers on the other go beyond the board room. Indeed, a number of Infoworks' senior-level employees have ties to Dell's controllers. For instance, Russell Barck, Dell's former "Global Head of Marketing, Operations & Alliances," became Infoworks' Vice President of "Strategic Alliances" in October 2018, during the Class V Transaction

[17] Infoworks, "Board of Directors & Investors," https://www.infoworks.io/board-investors/ (last accessed Apr. 17, 2019) (listing Centerview Capital as one of Infoworks investors).

[18] Swartz, *supra* note 16.

[19] *Id.* (describing Dorman's backing of Infoworks and noting that "digital-transformation efforts aren't up to speed, according to a report from Dell").

negotiations.[20] Mr. Barck's role requires him to forge strong ties between Infoworks and companies such as Dell and investors like Silver Lake.

90. In sum, Infoworks' future—and thus Dorman's investment—in the competitive digital-transformation sector hinges in no small part on Infoworks' ability to maintain strong ties to companies like Dell and investors like Silver Lake.

91. In addition, 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] None of these facts were publicly disclosed by Dell.

92. All told, Michael Dell and Silver Lake appear to have relationships—as investors, clients, or both—with ***six*** of Centerview's nine-company technology

[20] LinkedIn, "Russell Barck," https://www.linkedin.com/in/russellbarck/ (last accessed Apr. 17, 2019). Likewise, Infoworks' Account Executive, Thomas McCabe, left VCE (a Dell portfolio company acquired in the EMC merger) in August 2018, also during the Class V Transaction negotiations. LinkedIn, "Thomas McCabe," https://www.linkedin.com/in/thmccabe/ (last accessed Apr. 17, 2019).

investment portfolio.[21] Centerview Capital has invested in: (i) Dell-controlled SecureWorks; (ii) Hostanalytics, a partner of wholly-owned Dell subsidiary Dell Boomi; (iii) Affirmed Networks, Inc., a partner of both wholly-owned Dell subsidiary Dell-EMC and Dell-controlled VMware; (iv) RichRelevance, in which Dell also has a sizable investment and is a client; (v) Infoworks, of which Dell is one its largest clients; and (vi) Sauce Labs, Inc., of which Dell is a customer. These myriad connections demonstrate that Dorman had a greater interest in gaining Dell and Silver Lake's approval than negotiating the best possible deal for Class V Stockholders.

ii. Defendant Green's Conflicts Of Interest

93. Defendant Green likewise has well-established and ongoing financial interests, fiduciary duties, and relationships that conflicted with his duty to advocate on behalf of Class V Stockholders.

94. Like Dorman, Green's ties to Dell's portfolio companies rendered him unable to provide impartial advice to the Class V Stockholders. 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 its ownership of Class B stock, which provides

[21] Centerview Capital has limited investments outside of the technology industry, with additional investments in only five consumer companies.

its holders ten votes per share. Before the EMC Merger, Pivotal was a subsidiary of EMC. Green served on Pivotal's board of directors prior to the merger.

95. In April 2018, at the same time that Michael Dell and Silver Lake were working towards the Class V Transaction, Dell conducted an IPO of Pivotal. Following Pivotal's IPO, Michael Dell and Silver Lake decided to keep Green on Pivotal's board pursuant to "rights granted to DellEMC" as controlling stockholders, under its then-existing Shareholders' Agreement.[22] A majority of the proceeds from Pivotal's IPO went directly to Dell to help pay down its debt from the EMC Merger.

96. Pivotal plays a unique role in Michael Dell's network of companies. In addition to being controlled by Michael Dell, Pivotal's success is dependent on him 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 coordination with VMware's own software offerings—***transactions processed through*** [***Dell and VMware***] ***represented 46%, 44% and 37% of Pivotal revenue***

[22] Pivotal Software, Inc., Amendment to Registration Statement at 114 (Amended Form S-1) (Apr. 9, 2018), https://www.sec.gov/Archives/edgar/data/1574135/000104746918002636/a2235132zs-1a.htm.

in the last three years, respectively."[23] Another article in TechCrunch explained that Pivotal's dependence on Dell presents Pivotal with a "fine line to walk" as a supposedly "independently operated entity."[24]

97. Pivotal's public filings further evidence its dependence on Michael Dell. 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" (emphasis added). 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 added). 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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[23] 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 Apr. 17, 2019) (emphasis added).

[24] 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 Apr. 17, 2019).

98. 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, filed with the SEC on December 12, 2018, "***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," conceding that even its "stock price could be impacted by the reported results and other statements of Dell Technologies." Pivotal is also responsible for third-party liabilities of Dell and its affiliates, which Pivotal disclosed "could result in a decrease in our income."

99. Green has received millions of dollars in compensation from Dell and Pivotal. In connection with Pivotal's IPO in 2018, Green received $500,000 in stock grants from Pivotal, and now receives annual compensation of $270,000 in cash and stock for serving as a director of Pivotal. Green has also received significant compensation for his service on the board of Dell—*e.g.*, he received salary, stock and options totaling $1,240,281 from Dell in fiscal year 2017 and $300,000 in fiscal year 2018.

100. Given Pivotal's dependence on Dell, Green's independence was compromised by his divided loyalties to Pivotal, Dell, and the Class V

Stockholders. Like Dorman, he had little incentive to challenge a favorable valuation of Dell and its portfolio companies (including Pivotal), and had every incentive to favor reallocating VMware's upside to benefit Dell and Pivotal, including a personal, financial incentive given his ownership of Dell and Pivotal stock. Thus, Green's duties and financial incentives as a director and stockholder of Dell and Pivotal were diametrically opposed to the interests of the Class V Stockholders.

101. Green's impartiality was also compromised by conflicts from other non-Pivotal business ventures. Green is a co-founder, co-CEO, and co-Chairman of GTY, a blank-check company that hopes to specialize in investing in "attractive businesses within the technology industry, including software and services."[25] GTY expects to focus its investments in the same technology space currently dominated by Dell, Pivotal, SecureWorks, VMware, and DellEMC. Throughout the period in which the Class V Transaction was negotiated and renegotiated, Green traded on his relationship with Michael Dell to attract investors and raise capital for GTY, and he continues to do so to find investment targets for GTY's funds. For example, GTY's Registration Statement, filed with the SEC on October 28, 2016, mentions "Dell", "Pivotal" and "VMware" ***no fewer than 27 times***, and

[25] In April 2019, GTY removed Defendant Green from its website, where he was previously listed as a co-chairman and co-CEO.

indicates that GTY used these references to raise capital. At the conclusion of GTY's IPO in November 2016, GTY successfully raised $552 million.

102. In addition, Green's work with GTY renders him personally beholden to Michael Dell through Mr. Dell's close friend and "brother from another mother," Joseph Tucci (previously defined as "Tucci").[26] Green and Tucci are co-founders, co-Chairmen and co-CEOs of GTY.[27] Green's ties to Michael Dell through Tucci persisted throughout the Class V Transaction negotiations.

103. Tucci and Green were each affiliated with EMC prior to the EMC Merger: Tucci as CEO and Green as member of EMC's board of directors. Since the EMC Merger, Tucci has served as a trusted outside advisor to Michael Dell and Green joined Dell's Board. Tucci and Green benefit financially from Tucci's strong relationship with Mr. Dell. For example, GTY's SEC filings specifically

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[26] Chris Mellor, "EMC-Dell Dynamic Duo: Mike's My 'Brother From Another Mother' – Tucci," THE REGISTER (Oct. 15, 2015), https://www.theregister.co.uk/2015/10/15/duo_to_integrate_dell_emc/ (last accessed Apr. 17, 2019). Tucci began working with Michael Dell decades ago in 1994, when Tucci and Michael Dell forged a mutually lucrative partnership between Dell and Wang Laboratories, of which Tucci was CEO at the time.

[27] *GTY Technology Holdings Announces Business Combination*, PR NEWSWIRE (Sept. 12, 2018), https://www.prnewswire.com/news-releases/gty-technology-holdings-announces-business-combination-300711595.html (last accessed Apr. 17, 2019). A third co-founder, Harry You, worked closely with Green and Tucci for years at EMC: Green as a board member, Tucci as CEO, and You as a senior executive. Their initials form GTY's name. Mr. You was primarily responsible for devising the (failed) tracking structure of the Class V Stock during the EMC Merger, on which he worked closely with Defendant Durban of Silver Lake.

touted the fund to investors by noting that Tucci is "an advisor to Dell's founder, Michael Dell, and its board of directors." Thus, Tucci, like Green, trades on his strong relationship with Mr. Dell.

104. Tucci's deep relationship with Mr. Dell allowed him to play a pivotal role in the Class V Transaction. ***Throughout the Class V Transaction negotiations, Tucci sat in on Dell's Board meetings***, including the January 31, 2018 meeting in which Dell's controllers resolved to have the conflicted Capital Stock Committee review any Class V-related transactions—a committee that included his friend and business partner.[28] At that time—and when Dell's controllers later signed off on the creation of the Special Committee—they knew, through Tucci, that they had an ally on the Committee in Defendant Green.

105. Green's ties to Tucci, and thus to Michael Dell, transcend GTY. For instance, Green is a former board chairman of BackOffice Associates, an "information governance and data stewardship solutions" firm.[29] He was appointed to chair BackOffice Associates' board in December 2017, just after

[28] Tucci's outsider presence in Dell's Board meetings was not disclosed in either of the Class V Transaction proxies. In addition, Tucci's presence raises serious privilege waiver issues, including with respect to Dell's books-and-records production in response to the 220 Demands.

[29] BusinessWire, "Former Accenture CEO and Chairman Bill Green Joins BackOffice Associates," https://www.businesswire.com/news/home/20171213005176/en/Accenture-CEO-Chairman-Bill-Green-Joins-BackOffice (last accessed Apr. 17, 2019).

Bridge Growth Partners bought a majority stake of the company from Goldman Sachs.[30] Bridge Growth Partners is a tech-focused private-equity firm chaired by none other than Mr. Tucci.[31]

106. In addition, Green serves on the board of one of Dell's long-time customers—Inovalon, a healthcare technology firm—further deepening his ties to Dell's controllers. Green has sat on Inovalon's board since August 2016 and has a financial stake in the company. Throughout Green's tenure on Inovalon's board, Dell has repeatedly promoted Inovalon's business, to Green's financial benefit.[32]

107. Accordingly, Green's independence was significantly compromised because of his duties to and financial stake in Dell and Pivotal, his ongoing business relationship with a close advisor of Michael Dell (against whom Green was supposedly negotiating), and his financial need (through GTY and Inovalon) for a strong and continuing relationship with Michael Dell.

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[30] *Bridge Growth Partners Makes Majority Investment in BackOffice Associates*, DATABASE TRENDS & APPLICATIONS (Aug. 3, 2017), http://www.dbta.com/Editorial/News-Flashes/Bridge-Growth-Partners-Makes-Majority-Investment-in-BackOffice-Associates-119731.aspx (last accessed Apr. 17, 2019).

[31] Bridge Growth Partners, "Leadership," http://www.bridgegrowthpartners.com/people (last accessed Apr. 17, 2019).

[32] *See, e.g.*, DellEMC, "Inovalon Is Driving Healthcare Transformation With Pre-Engineered Infrastructure And Big Data Analytics," https://www.emc.com/collateral/customer-profiles/inovalon-vscale-case-study.pdf (last accessed Apr. 17, 2019).

iii. Structural Conflicts Of Interest Disabling Dorman And Green

108. Both Dorman and Green harbored additional fundamental and disabling conflicts of interest as a result of their service on the full Dell Board. Any transaction involving the conversion of Class V Stock would create an irreconcilable 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 but conflicting fiduciary duties to all classes of Dell stockholders. Moreover, both Dorman and Green expected to continue serving—and in fact do continue to serve—as directors of Dell after the Transaction. Accordingly, their loyalty to Dell as a whole tainted their analysis of the Transaction. Simply put, they were not in a position to be zealous advocates for the unique and exclusive interests of the Class V Stockholders.

109. This structural conflict was amplified by the possibility of Dell taking on additional debt to finance the Class V Transaction, as ultimately occurred. The Initial Proposal, which offered a purported $109 per share of Class V Stock, did not require Dell to borrow money because the cash portion was both smaller and funded by a special dividend from VMware. Increasing the offer price—particularly its cash portion—required Dell to borrow billions of dollars. Thus, Dorman and Green, who sat on Dell's Board and understood that the Company was already highly leveraged, were in the conflicted position of having to argue

either in favor of increased cash consideration to the Class V Stockholders or against Dell increasing its already massive debt load.

110. Ultimately, under these circumstances, the fundamentally conflicted Special Committee members 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.

D. Dell's Coercive Threat Of A Forced Conversion Loomed Over Dell's Negotiations With The Special Committee And Class V Stockholders

111. The coercive threats that Michael Dell and Silver Lake issued throughout the negotiation and renegotiation process amplified the effect of the Special Committee's grave conflicts. During these negotiations, Dell's controllers repeatedly threatened a detrimental Forced Conversion.

112. As described in detail in Section B.3, *supra*, under Section 5.2(r) of Dell's Charter, a Forced Conversion of Class V Stock into Class C Stock following an IPO of Class C Stock would have been conducted pursuant to an opaque formula that created tremendous uncertainty and was prone to exploitation by Dell's controllers. Specifically, once Dell committed to pursue a Forced Conversion, Michael Dell and Silver Lake could use their control to manipulate the timing of the conversion to maximize their gain at the expense of Class V Stockholders. Moreover, because the conversion formula was based on the market price of Class V Stock—which already incorporated a substantial "Dell Discount"

premised in significant part on the very threat of an ill-timed Forced Conversion—any conversion would have been based on, and thus would have exploited, that unfair discount.

113. Thus, the threat of a Forced Conversion was understood as a threat to conduct it in a manner unfairly detrimental to Class V Stockholders. As a result, Class V Stockholders, and the market generally, viewed a Forced Conversion as the worst case scenario.

114. Contemporaneous with the creation of the initial Capital Stock Committee and the beginning of the negotiations, Dell's controllers began a campaign to improperly influence the negotiations by brandishing the threat of a Forced Conversion.

115. On January 25, 2018, Dell strategically leaked information resulting in a *Bloomberg* article titled, "Dell Mulls Return to Market Four Years After Going Private," which reported the Dell Board's consideration of a potential IPO of Dell's Class C Stock: an option that would trigger a Forced Conversion.[33] In reaction to the news, Class V Stock—which was already trading at a heavy discount to the VMware stock it was supposed to track—plummeted to an even

[33] Dina Bass, *et al.*, *Dell Mulls Return to Market Four Years After Going Private*, BLOOMBERG, (Jan. 25, 2018), https://www.bloomberg.com/news/articles/2018-01-26/dell-technologies-is-said-to-be-considering-ipo-other-options (last accessed Apr. 17, 2019).

deeper ***42%*** discount. As *Barron's* observed in an article titled, "Dude, You're Getting a Dell Discount," the leak of the Board's contemplation of an IPO triggered fears of a "dire outcome" in which Michael Dell or Dell's Board would subject Class V Stockholders to an unfair Forced Conversion.[34]

116. Shortly thereafter, Dell openly confirmed the fears it had sown in the financial press. On February 1, 2018, the day after it created the Capital Stock Committee to negotiate on behalf of Class V Stockholders, Dell filed a Schedule 13-D with the SEC which stated: "Dell Technologies is evaluating potential business opportunities, including a potential public offering of Dell Technologies common stock or a potential business combination between Dell Technologies and [VMware]." The market understood this threat of a Forced Conversion and the uncertainty it created caused the trading price of Class V Stock to tumble 14%.

117. Dell's controllers exploited the fear of a Forced Conversion repeatedly in their negotiations with the Committee and among the Class V Stockholders, forcing them to choose between two terrible options. Ultimately,

[34] Andrew Bary, *Dude, You're Getting a Dell Discount*, BARRON'S (Feb. 3, 2018), https://www.barrons.com/articles/dude-youre-getting-a-dell-discount-1517625280 (last accessed Apr. 17, 2019).

Michael Dell and Silver Lake succeeded in coercing Class V Stockholders to accept the grossly unfair Class V Transaction as the lesser of two evils.

E. The Special Committee Accepts The Initial Proposal And Class V Stockholders Revolt

118. Unsurprisingly, the conflicted Special Committee proved an exceedingly poor advocate for the interests of Class V Stockholders. In the end, the Special Committee agreed—after a deficient review—to approve the Initial Proposal on outrageous terms. Those terms provoked a revolt by Class V Stockholders.

1. Dell And Its Conflicted Special Committee Negotiate The Initial Proposal

119. The negotiations for the Class V Transaction began in February 2018, prior to the elimination of the conflicted Capital Stock Committee and the creation of a new Special Committee. As discussed in Section C, *supra*, those negotiations transpired alongside Dell's negotiations with VMware's special committee concerning a potential business combination of Dell and VMware. And, as discussed in Section D, *supra*, Dell's threat of a Forced Conversion loomed large over the entirety of the negotiations.

120. On February 18, 2018, three days after the Capital Stock Committee selected Evercore as its financial advisor, Defendant Durban and Silver Lake made

a presentation to Evercore outlining a potential Dell IPO.[35]

121. Thus, in addition to Dell's pre-negotiation threats levied in the financial press and in SEC filings, Dell Likewise, the minutes of the Special Committee's first meeting on March 20, 2018 reflect

[35]

122. In April 2018, Goldman Sachs presented to Evercore [redacted] Evercore relayed Goldman Sachs's proposed framework to the Special Committee on May 2, 2018. [redacted] (emphasis added).

123. Later, on May 22, 2018, Goldman Sachs provided a more detailed description of the conversion proposal to Evercore [redacted] As Evercore relayed to the Special Committee in its May 28, 2018 meeting, the following three conversion options were outlined:

1) [redacted]

2) [redacted]

3) [redacted]

[redacted]

124. At the same meeting, [redacted]

[redacted]

125. At a May 29, 2018 meeting, [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 from Michael Dell and Silver Lake to accede to a negotiated conversion transaction.

126. At the Special Committee's next meeting, held two days later on June 1, 2018, Evercore reported that Goldman Sachs [redacted]

127. [redacted]

128. [redacted]

129. [redacted]

[redacted]

130. 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]

131. Ultimately, on July 1, 2018, in the face of Michael Dell and Silver Lake's repeated threats, the Special Committee agreed to a proposed transaction on terms adjusted only slightly from the proposal outlined by Goldman Sachs in April 2018. Under the terms of the deal, the Special Committee agreed to value the Company at $48.4 billion, and 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 request 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. Further, whereas Class A, B, and C stockholders were given appraisal rights, Class V Stockholders were not.

2. Class V Stockholders Revolt When They Learn The Terms Of The Initial Proposal

132. On July 2, 2018, Dell publicly announced the Initial Proposal, which offered consideration purportedly worth $109 per share of Class V Stock, comprised of cash and Class C Stock. The Initial Proposal was premised on a $48.4 billion valuation of Dell's core enterprises.

133. 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 VMware's growth prospects or Dell's internalization of the full value of VMware shares without the tracking discount. 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 (and it was not), Dell was proposing to expropriate Class V Stockholders' interests in VMware at a stunning discount of approximately ***$50*** per share of Class V Stock. Approximately 199.3 million shares of Class V Stock were then outstanding, meaning that the Initial Proposal would have resulted in Dell receiving a windfall of nearly ***$10 billion*** even ***before***

taking into account the egregious overvaluation of Dell. On its face, the Initial Proposal was shockingly unfair.

134. 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, which in turn reflected a valuation of Dell's core business at $48.4 billion.[36] Such a valuation of Dell Class C Stock was untethered from reality.

135. Three times in the six months preceding the announcement of the Initial Proposal, the Board had endorsed a valuation of Dell based on advice from independent experts. None of those valuations came close to the $79.77-per-share figure used in the Initial Proposal.

136. On December 19, 2017, the Board had approved a valuation of shares of Class C Stock at $33.17 per share in connection with an executive compensation grant. That valuation corresponded to a total valuation of Dell's core businesses at

[36] The $79.77-per-share valuation for Class C Stock was also explicitly referenced by Dell on page 9 of the Initial Proxy.

just $19.5 billion, [redacted] Dell's Board later used that ***same valuation*** in a proxy statement filed with the SEC on May 15, 2018, just two months before the Special Committee accepted an implied valuation of $79.77 per share of Class C Stock.[37] In addition, on April 3, 2018, the Board approved a valuation of Class C Stock at just $49.28 per share. [redacted] By contrast, the $79.77-per-share valuation on which the Initial Proposal was premised—and which the Special Committee approved—was based on no independent analysis or report. By any measure, the $79.77 valuation of Dell Class C Stock was vastly inflated. Indeed, this figure valued Dell's core business at an EV/EBITDA multiple of approximately 9.0x, when comparable (and, given Dell's debts, likely better-positioned) companies like Hewlett Packard Enterprise traded at EBITDA multiples around 6.0x.

137. 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.

[37] Dell Technologies Inc., Proxy Statement at 50-51 (Schedule 14A) (May 15, 2018), https://www.sec.gov/Archives/edgar/data/1571996/000157199618000013/proxystatementforfy2218.htm.

138. A week after Dell announced the Initial Proposal, *The Wall Street Journal* reported that several large Class V Stockholders opposed the Initial Proposal and were unsatisfied with the deal:

> Holders of at least 10% of DVMT shares, which track Dell's controlling stake in VMware Inc., are disappointed with terms of the deal announced last week and may oppose it …. The holders include several teams at investing giant BlackRock Inc., as well as Farallon Capital Management LLC and Canyon Capital Advisors LLC.[38]

139. In August, the *New York Post* reported that one of the largest Class V Stockholders was lobbying fellow stockholders to oppose the deal.[39] The same article noted that the prominent activist investor Carl Icahn ("Icahn") was also against the deal. In October, Icahn—whose funds had amassed a stake in excess of 8%—actively began waging a proxy campaign against the Initial Proposal. In an open letter to Class V Stockholders, filed with the SEC on October 15, 2018, Icahn stated:

> [I]t is unquestionable … that the independent directors breached their fiduciary duties to the DVMT stockholders. How else can one explain an

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[38] Cara Lombardo, *BlackRock, Other Big Investors Have Misgivings About Dell Offer*, THE WALL STREET JOURNAL (July 10, 2018), https://www.wsj.com/articles/blackrock-other-big-investors-have-misgivings-about-dell-offer-1531245609 (last accessed Apr. 17, 2019).

[39] Josh Kosman & Carleton English, *Paul Singer's hedge fund lobbies against Dell's $22B deal*, THE NEW YORK POST, August 24, 2018, https://nypost.com/2018/08/24/paul-singers-hedge-fund-lobbies-against-dells-22b-deal/ (last accessed Apr. 17, 2019).

> agreement that so obviously transfers $11 billion in value to the controlling stockholders at the expense of the minority stockholders?

Icahn also noted that Dell "has some of the worst corporate governance in America …."[40]

140. Internal Company documents reveal [redacted] During a September 27, 2018 meeting of the full Dell Board, [redacted]

[40] Carl Icahn, "Carl C. Icahn Releases Open Letter To Stockholders Of Dell's DVMT Tracking Stock" (Oct. 15, 2018), https://carlicahn.com/carl-c-icahn-releases-open-letter-to-stockholders-of-dells-dvmt-tracking-stock/ (last accessed Apr. 17, 2019).

141. [redacted]

142. [redacted]

F. The Special Committee Abandons Its Duties And Fails To Negotiate For Additional Consideration

143. 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. To save their desired transaction, Michael Dell and Silver Lake pursued a two-pronged approach.

144. *First*, they coerced Class V Stockholders by further threatening to pursue a traditional IPO of Class C Stock followed by a Forced Conversion. Dell's controllers again strategically leaked the threat that the Company would pursue an IPO followed by a Forced Conversion if the Initial Proposal failed. 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 Transaction (*i.e.*, a Forced Conversion). 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 holders at a smaller premium, is seen as a backup [to the Initial Proposal]."[41] Then, on October 3, 2018 Dell filed a Form 8-K with the SEC, formally disclosing that "as a potential contingency plan in the event that the

[41] Cara Lombardo & Dana Cimilluca, *Dell to Interview Banks for IPO in Lieu of Tracking-Stock Acquisition*, THE WALL STREET JOURNAL (Sept. 23, 2018), https://www.wsj.com/articles/dell-to-interview-banks-for-ipo-in-lieu-of-tracking-stock-acquisition-1537730195 (last accessed Apr. 17, 2019).

[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."[42] By framing a Forced Conversion as a "contingency" if the negotiated deal were rejected, Class V Stockholders never had a choice between the negotiated deal and the status quo, in which they kept their shares. Instead, they were forced to choose the lesser of two evils between the negotiated deal and a potential Forced Conversion.

145. In addition to Dell's selective leaks to the financial press and confirmatory SEC filings, Class V Stockholders and market participants heard ***directly from Dell*** that a "no" vote would result in a forced conversion. For example, at Dell's September 2018 "analyst day" in New York, Dell told Deutsche Bank analysts that "if the current DVMT buy-out terms are voted down …, Dell would 'return to the status quo.'" Resolving any ambiguity about what exactly Dell meant, Deutsche Bank added: "Dell indicated to us that 'status quo' in the event of a failed DVMT buy-out transaction could 'possibly' mean a reconsideration of all the options evaluated as part of its recently completed strategic review." Thus, a "return to the status quo" meant the looming threat of a

[42] Dell Technologies Inc., Current Report (Form 8-K) (Oct. 3, 2018), https://www.sec.gov/Archives/edgar/data/1571996/000119312518291390/d633285d8k.htm.

Forced Conversion. The market certainly understood it that way; Deutsche Bank noted: "Concerns of this outcome … contributed to some weakness in [Class V Stock's trading] following the analyst day."

146. The same threats were also communicated to the Special Committee. On September 27, 2018, the full Board—including Defendants Dorman and Green—met [redacted] to discuss investor feedback and sentiment on the Initial Proposal and [redacted] There, the Board considered [redacted]

147. Simply put, Michael Dell and Silver Lake's message to the Special Committee, minority stockholders, and the market was ***unequivocal***: approve this deal or face a worse outcome through a Forced Conversion conducted and manipulated by Dell's controllers.

148. *Second*, Dell commenced a series of meetings with select large Class V Stockholders. In the process, Dell bypassed the paper tiger Special Committee it had purportedly empowered to negotiate on behalf of all Class V Stockholders. At these meetings, Dell signaled its willingness to modestly improve the proposed deal consideration and attempted to discern the minimum consideration large stockholders would accept, unfair as it might be, in lieu of voting down the deal and facing a Forced Conversion. However, unlike the Special Committee, whose role it was to negotiate on behalf of ***all*** Class V Stockholders, those stockholders potentially harbored unique interests not shared with the rest of the Class V Stockholders. Moreover, Dell's direct-to-stockholder negotiations took place against the backdrop of the Special Committee's deficient review and negotiations and the inadequate work of the Committee's conflicted and unqualified financial advisors. Thus, by the time these select Class V Stockholders were left to fend for themselves, Dell's controllers—in concert with the Special Committee—had already established a field of play where Class V Stockholders were forced to fight a steep uphill battle.

149. Michael Dell and Silver Lake likewise made the coercive threat of an IPO followed by a Forced Conversion directly to the Class V Stockholders they had chosen to approach. For example, Icahn reported that "Goldman Sachs, one of Dell's advisors, has been telling stockholders that (and I paraphrase) 'the IPO

could be for a small number of shares and who knows how that will trade ….'"[43] In effect, Dell explicitly exploited the inherent collective-action problem facing minority stockholders in the context of a controlling-stockholder transaction.

150. Following these meetings, Dell ultimately agreed to a modestly improved transaction price that, when combined with the coercive threat of the Forced Conversion, was sufficient to secure the approval of at least some of the stockholders Dell had elected to approach. This was, of course, against the backdrop of the unfair Initial Proposal the ineffective Special Committee had already accepted.

151. On November 15, 2018, Dell announced the revised Transaction. Dell advertised the revised Transaction as offering a combination of cash and Class C Stock valued at $120 per share of Class V Stock, and the addition of one minority-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 Class C Stock. 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—

[43] Dell Technologies Inc., Schedule 13D/A Ex. 1 at 6 (Oct. 15, 2018), https://www.sec.gov/Archives/edgar/data/921669/000114420418053722/tv504782_ex-1.htm.

the date set for a vote on the Transaction. Stockholders representing approximately 17% of the total outstanding Class V Stock signed voting agreements binding them to support the Transaction.

152. Notably, Michael Dell and Silver Lake refused to work through the Special Committee and instead negotiated the terms of the Transaction with select stockholders directly. Not surprisingly, the inert Special Committee was content to sit on the sidelines, in bad-faith dereliction of its affirmative duty to act in the best interests of Class V Stockholders.

153. In the midst of the uproar in response to the Initial Proposal, the Special Committee continued to go through the motions of conducting formal meetings. At such meetings, [redacted] In the face of its affirmative duty to act as the minority's negotiating agent, the Special Committee failed to involve itself in the negotiations or otherwise advocate meaningfully for greater consideration for the Class V Stockholders it ostensibly represented.

154. The first such meeting was on July 10, 2018, during which [redacted]

[redacted]

155. On September 27, 2018, [redacted]

[redacted]

156. The Special Committee did not meet again until October 15, 2018, after the full Board had received Goldman Sachs's dire forecasts. At that meeting, the Special Committee discussed [redacted] The Committee discussed [redacted] The Special Committee also discussed [redacted] The minutes reflect only that the Special Committee discussed [redacted]

[redacted]

157. The Special Committee next discussed the Transaction at an October 27, 2018 meeting. By this time, the Company's counsel, Simpson Thacher & Bartlett LLP, had informed the Special Committee's legal advisors that Michael Dell and Silver Lake were [redacted] The minutes state that [redacted]

158. The Special Committee met again with its advisors on November 2, 2018, still having failed to involve itself in the second round of negotiations. At that meeting, the Special Committee heard from its advisors that Dell was still considering whether to increase the cash component of the deal and, if so, by what amount. [redacted] The minutes reflect

that the Special Committee discussed [redacted]

159. The Special Committee next met a few days later, on November 6, 2018, at which time Evercore reported, based on conversations with Goldman Sachs, that [redacted] Evercore further reported that [redacted] Once again, Latham [redacted]

[redacted]

160. It was not until November 8, 2018 that the Special Committee finally involved itself at all in the ongoing negotiations, albeit in a limited and ineffective manner. On that day, the Special Committee held yet another meeting with its advisors at which it received another general update on Dell's negotiations with Class V Stockholders, [redacted] At the conclusion of the meeting, the

Special Committee determined to have a phone call with Defendant Durban of Silver Lake to propose an increase in the proposed deal consideration.

161. Later that same day, the members of the Special Committee had that call with Defendant Durban, which would prove to be the Committee's sole involvement in substantive negotiations after the Initial Proposal. Contemporaneous evidence produced pursuant to the 220 Demands reveals [redacted] The Committee never made a counter to or even had a meeting with Michael Dell, who personally controlled any vote of Dell's Board.

162. Moreover, contemporaneous evidence from Dell's Section 220 productions further reveals that [redacted]

163. The very next day, on November 9, 2018—again with no further involvement by the Special Committee—the Company and certain institutional Class V Stockholders agreed in principle on revised transaction terms that contemplated a valuation of the Company at $48.4 billion, 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. This deal was the result of negotiations between certain Class V Stockholders and Dell ***without the involvement of the Special Committee***. [redacted] However, even after Dell struck its coercive deal after direct-to-stockholder negotiations, there was additional value on the table to be realized for Class V Stockholders.

164. [redacted]

165. [redacted] This chronology makes plain that the Special Committee was not actively working to get the best possible deal for Class V Stockholders. Rather—like Michael Dell and Silver Lake—the Special Committee sought to find the ***minimum*** price at which a deal could "get done" with the support of a bare majority of Class V Stockholders.[45] [redacted] is evidence of the Special Committee's reckless, bad-faith actions throughout the negotiation and renegotiation of the Class V Transaction.

166. 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, with a slight top-off to reflect Class V Stock's trading

45 [redacted]

before the Transaction closed. With these changes, Dell believed it had cobbled together a majority of the Class V voting base.

167. [redacted] At that full Board meeting, resolutions were adopted approving the Class V Transaction in its final form. The next day, November 15, 2018, Dell publicly announced the Class V Transaction.[46]

[46] On November 15, 2018, Icahn withdrew his proxy fight, noting that the deal remained extremely unfair to Class V Stockholders. In a public statement issued in response to press inquiries, Icahn stated that Michael Dell and Silver Lake's revised deal "reduc[ed] the value being diverted from Class V [S]tockholders from over $11 billion to $8 billion" and "***a far better deal could have been obtained***." Carl Icahn, "Carl C. Icahn Issues Statement in Response to Press Inquiries Regarding Amended Dell Deal" (Nov. 15, 2018), https://carlicahn.com/carl-c-icahn-issues-statement-in-response-to-press-inquiries-regarding-amended-dell-deal/ (emphasis added).

G. The Special Committee Failed To Carry Out Its Fiduciary Duties With Due Care And In Good Faith

168. The Special Committee ultimately approved the Class V Transaction and recommended it to Class V Stockholders. The process that led them to sanction the Transaction was flawed from the start. Throughout the negotiations with Michael Dell and Silver Lake, the Special Committee and its advisors repeatedly failed to investigate obvious red flags and to use the leverage they possessed to extract value for their Class V Stockholder constituents.

1. The Special Committee Hired Conflicted And Unqualified Advisors

169. While Michael Dell and Silver Lake employed Goldman Sachs as their financial advisor in connection with the Class V Transaction, the Special Committee engaged conflicted and unqualified advisors.

a. Evercore's Lack Of Independence

170. Evercore was not an independent financial advisor. The Committee was (or should have been) aware of numerous reasons to question the impartiality of Evercore's advice, including: (i) Evercore's contemporaneous representation of a Silver Lake portfolio company; (ii) Evercore's reputation in the technology industry as a "banker for the deal" rather than its client; (iii) the contingent nature of Evercore's compensation arrangement with the Committee; and (iv) Evercore's prior work on the EMC Merger. At a minimum, these facts should have raised red flags for the Committee when Evercore provided advice that contradicted

Evercore's own recent work on the EMC Merger and was, at the same time, highly favorable to Dell's controllers.

171. Evercore's business ties to Silver Lake throughout the negotiation and renegotiation of the Class V Transaction compromised its ability to provide impartial advice to the Committee and Class V Stockholders. During this period, Evercore represented SolarWinds Corporation ("SolarWinds"), a Silver Lake portfolio company, in connection with its IPO. Beyond SolarWinds, Evercore had a long-standing business relationship with Silver Lake, earning more than $8 million in fees from Silver Lake and its affiliates in the two years prior to the Class V Transaction.[47] Ordinarily, such obvious conflicts of interest would have been identified at the outset so the Committee could interview and retain another, non-conflicted advisor. [redacted]

[47] Evercore also advised Silver Lake on the sale of IPC Systems in 2014.

172. In addition, Evercore—and particularly its lead banker for the Class V Transaction—have a well-established reputation as pliant financial advisors willing to overlook a client's best interests to close a deal. Stuart Francis ("Francis"), Evercore's lead investment banker on the Transaction, started at Evercore in the summer of 2014. At the time, Evercore was "new in the tech sector," and Francis was hired as the firm's "first tech sector person" who could help "establish a presence in tech" for Evercore.[48] In the three years leading up to the Committee's retention of Evercore, Francis and the Evercore team were still considered "new entrant[s] in the Silicon Valley market."[49] But Francis and Evercore quickly established a reputation in the technology industry as a "banker for the deal" itself, rather than "acting as a banker for [their actual client]."[50] In other words, Francis was more interested in "getting the deal done" than in zealously advocating for his actual client's best interests.[51]

173. Moreover, the terms of Evercore's contingency-fee retention by the Special Committee created a structural conflict of interest in favor of Dell and

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[48] *Verition Partners Master Fund Ltd. v. Aruba Networks, Inc.*, 2018 WL 922139, at *15 & n.146 (Del. Ch. Feb. 15, 2018).

[49] *Id.* at *43.

[50] *Id.* at *20.

[51] *See id.* at *15 (quoting Aruba Networks' lead independent director, who noted: "Evercore is new in the tech sector, so they may be willing to do a deal … just to get the deal done that they can brag about publicly" (quotations omitted)).

against Class V Stockholders. Evercore was entitled to receive a fee of "up to $20 million" in connection with the Class V Transaction, of which "$13 million was payable upon the public announcement of Dell Technologies' entry into a definitive agreement for a transaction subject to approval of the Special Committee."[52] The remaining $7 million was only payable "subject to the approval of the Special Committee … following the public announcement of such transaction."[53] Thus, ***100%*** of Evercore's $20 million fee was contingent on the parties getting a deal done.[54] This gave Evercore massive financial incentive to ensure a transaction closed, regardless of its fairness to Class V Stockholders.

174. Furthermore, Evercore's prior work in the course of the EMC Merger compounded its conflicts of interest. Evercore had previously advised a different Dell special committee during the MBO.[55] But despite its business relationship with Dell, Evercore found itself representing EMC's special committee during the

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[52] Initial Proxy at 190 (emphasis added).

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

[54] While Evercore was also reimbursed for "reasonable out-of-pocket expenses (including legal fees, expenses and disbursements)," those expenses were paid by Dell, rather than the Special Committee. *Id.*

[55] Michael J. de la Merced, *Legions of Advisers for Dell-EMC Deal*, N.Y. TIMES, (Oct. 12, 2015), https://www.nytimes.com/2015/10/13/business/dealbook/legions-of-advisers-for-dell-emc-deal.html (last accessed Apr. 17, 2019).

negotiation of the EMC Merger.[56] Evercore ultimately delivered a fairness opinion in connection with the Merger, which was completed in October 2015. As an advisor to the Special Committee in connection with the Class V Transaction, Evercore sat in judgment of its prior work on behalf of EMC's special committee by having to: (i) evaluate its own prior valuations of EMC and EMC's former portfolio companies, including VMware, Pivotal, and SecureWorks; (ii) challenge its prior valuations of Dell's other core enterprises; and (iii) reevaluate its assessment of the Class V Stock, which was issued to pay for the Dell-EMC merger. Class V Stock was touted at the time of the merger as what would be "the highest quality tracker in the history of trackers," and Evercore sold EMC's board on a 0-to-10% discount to VMware's unaffected share price as an "appropriate illustrative" range.[57] Evercore was proven dead wrong: the discount quickly

[56] *Id.* Evercore's experience opposite the table from Michael Dell in both the take-private transaction and the Dell-EMC merger made it an ideal choice for Dell's controllers, rather than Class V Stockholders. Having captured the lion's share of the benefits in both prior transactions despite Evercore's supposedly impartial guidance, Dell's controllers had to like the odds of the same occurring in connection with the Class V Transaction.

[57] Brooke Sutherland, *Dell's Buyout Math Doesn't Quite Compute*, BLOOMBERG, (July 17, 2018), https://www.bloomberg.com/opinion/articles/2018-07-17/dell-dvmt-vmw-buyout-math-doesn-t-compute (last accessed Apr. 17, 2019).

ballooned to historically high percentages, exceeding 40% at times.[58] But now, Evercore had to review its own work, compromising its ability to provide impartial advice to the Special Committee and Class V Stockholders.

175. As a result of Evercore's financial ties to Silver Lake throughout the negotiations, "banker for the deal" reputation, questionable contingency-fee arrangement with the Special Committee, and prior work on the EMC Merger, Evercore lacked the independence necessary to (and ultimately failed to) protect the interests of Class V Stockholders. All of this was known to the Committee.

b. Discern's Lack Of Qualifications And Independence

176. To assist Evercore and the Special Committee in their analysis of Dell's financial projections and related valuation, the Special Committee could have hired any number of well-known, highly regarded advisors. Instead, upon the recommendation of Evercore's Stuart Francis, the Committee retained the little-known DISCERN Analytics, Inc. (defined earlier as "Discern") to "perform an independent analysis of certain forecasts and other financial and operating data of Dell"—*i.e.*, Dell's suddenly improved unaudited financial projections revealed in

[58] Indeed, Deutsche Bank noted: "It may not be an exaggeration to describe DVMT shares as among the worst trading tracking stocks, as the DVMT-VMW discount never fell below 25%."

May 2018 —which was listed among the five steps the Special Committee took in reaching its determination.[59]

177. Discern was essentially just one person—Harry Blount ("Blount"), a colleague of Francis dating back to their time together at Lehman Brothers. Blount operated Discern out of his home and used a business address of a P.O. Box at a local UPS store.[60] Discern apparently was a financially distressed one-man shop unable to afford its own small office space: one Discern predecessor company "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]."[61] Furthermore, Discern had only three employees other than Blount, all of whom worked for Discern on a part-time, "contract-by-contract basis while balancing other jobs."[62] Thus, Discern was essentially a one-man band

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[59] 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 Apr. 17, 2019) ("Blount … first got involved on the deal after a phone call from an ex-coworker at Lehman, J. Stuart Francis ….").

[60] *See id.*

[61] *Id.*

[62] *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 technology 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

playing a critical advisory role in connection with one of the largest corporate transactions in recent years.

178. Discern also had no relevant experience. 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."[63] The Special Committee's retention of Discern was questioned by both the media and corporate governance experts. For example, an August 2018 article published by Bloomberg raises serious questions about 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."[64] Here, the Special Committee apparently wanted none of that, but instead decided to buy a rubber stamp.

179. Just ***eleven days*** after the Special Committee hired Discern, at the June 15, 2018 Special Committee meeting, Blount presented his rushed analysis of

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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.

[63] *Id.* (emphasis added). Indeed, the only experience currently listed on Discern's website is its engagement with Dell on the Class V Transaction. *See* Discern, http://www.discern.com/ (last accessed Apr. 17, 2019).

[64] *Id.*

Dell's unrealistic financial forecasts.[65] Blount unsurprisingly supported the Class C valuation in the Initial Proposal and [redacted]

180. Discern then quickly reaffirmed its earlier findings when asked to do so at the eleventh hour for the revised Class V Transaction. Before ultimately approving the final Class V Transaction, Evercore conducted a call with Discern on November 10, 2018, during which Discern again stood behind the findings from its June 26, 2018 report to the Special Committee on the reasonableness of the Company's inflated financial forecasts.

181. Notably, neither Discern's nor Evercore's findings changed, despite the fact that Dell had financed $5 billion of the increased cash consideration for the revised Transaction by adding further debt to its over-encumbered balance sheet.[66] Dell—an already overleveraged company—took on ***billions of dollars in additional debt*** in the revised Transaction, but Discern and Evercore did not consider whether these additional debts affected their prior conclusions. The

[65] Initial Proxy at 159.

[66] *See* Final Proxy at S-8, S-9.

Special Committee likewise ignored this glaring red flag in recklessly rushing to get the deal done irrespective of its fairness to Class V Stockholders.[67]

182. In addition, as discussed in Section G.2, *infra*, the Special Committee never questioned Evercore's and Discern's failure to reconsider their analysis of Dell's value despite Dell taking on new multi-billion dollar debts to finance the increase in Transaction consideration.

2. The Special Committee Failed To Diligently Investigate And Extract Value For Class V Stockholders

183. Throughout the negotiation and renegotiation of the Class V Transaction, the Special Committee left considerable value on the table because it failed to exercise due care, opting for willful blindness rather than the thorough investigation necessary to adequately protect the interests of Class V Stockholders.

184. *First*, the Special Committee failed to investigate the cause of the Class V Stock's historically large tracking-stock discount. Critical to the Special Committee's negotiations with Dell's controllers was the Committee's understanding of the fair value of the Class V Stock being redeemed in any proposed transaction. That required an investigation of Class V's fair value as well

[67] While the Special Committee and its advisors failed to notice this obvious red flag, the market did not. Indeed, Gabelli & Co. noted in an analyst report that Dell was already "highly levered," and that "[t]he $5 billion in additional debt required to consume the DVMT transaction has further increased leverage," which in turn "pushe[d] out the company's objective to become investment grade by roughly another 6-9 months."

as an investigation of VMware's fair value, since the Class V Stock was supposed to track VMware's common stock on a one-to-one basis. But, as discussed in greater detail in Section B.3, *supra*, Class V Stock traded at a massive discount to VMware's common stock. That discount averaged 35% and sometimes exceeded 40%. The Committee and Evercore were aware of and did investigate the ***size*** of the Class V discount. That put them on notice of the problem. However, to ascertain the fair value of the Class V Stock, the Committee needed to understand the ***cause*** of the discount—which required ascertaining the "unaffected" value of both VMware and Class V Stock—and control for any improprieties. It failed to do any of those things.

185. Because it failed to investigate the cause and scope of Class V Stock's "Dell Discount," the Committee approached its negotiations with Dell's controllers at a tremendous disadvantage. Had the Committee conducted an adequate investigation, it would have learned that the market values of Class V Stock ***and*** VMware stock were consistently depressed due to fears that Michael Dell and Silver Lake would disloyally misappropriate the value of VMware from Class V Stockholders. Accordingly, the fair value of Class V Stockholders' interests was not reflected in the market price for the security.

186. The Committee should have recognized that sanctioning any proposal that relied on the market price of Class V Stock and failed to eliminate the "Dell

Discount," would effectively bake the impact of the controllers' coercion into the deal itself, and thus ***reward*** such coercion. However, because the Committee never investigated the cause of the discount, its negotiations with Michael Dell and Silver Lake were premised on the market price of Class V Stock and VMware, rather than fair, "unaffected" prices that controlled for the threat of coercion by Dell's controllers. Thus, while the Committee claimed it had negotiated a "premium" for Class V Stockholders, in reality it allowed Dell to cash in on Class V Stock's persistent, historically large tracker discount.

187. *Second*, the Special Committee repeatedly failed to respond to the glaring red flags in Dell's self-serving overvaluation. Dorman and Green were aware of the Company's December 2017 valuation at just $33.17 per share of Class C Stock, which corresponded to a $19.5 billion valuation of Dell's core enterprises. They were also aware of a May 2018 proxy statement that relied on that same $33.17-per-share valuation.[68] After all, Dorman and Green signed off on each.

[68] *See* Dell Technologies Inc., Proxy Statement at 50-51 (Schedule 14A) (May 15, 2018), https://www.sec.gov/Archives/edgar/data/1571996/000157199618000013/proxystatementforfy2218.htm. As noted in Section E.2, *supra*, Dell's Board also approved a per-share valuation of $49.28 for Class C Stock in April 2018, with assistance from Deloitte. Even that figure was still more than 38% less than the valuation approved in connection with the Initial and Final Proposals for the Class V Transaction.

188. However, on March 20, 2018, when Dell and Goldman Sachs told the Special Committee and Evercore to [redacted]

189. Worse still, the Special Committee ultimately approved a $48.4 billion valuation for Dell's Class C Stock in connection with the Initial Proposal in late-June 2018, ***even though they had approved a valuation less than half of that just one month earlier***. Dorman and Green stuck with that same $48.4 billion valuation through the renegotiation of the Class V Transaction as well.

190. *Third*, the Special Committee and its advisors failed to investigate the suspicious ***timing*** of Dell's $50 billion overvaluation, relative to the timing of an "improved long-term financial forecast" Dell revealed in May 2018. As discussed above, the minutes from the Special Committee's March 20, 2018 note that [redacted]

[redacted] However, that same valuation had already been presented to and rejected by VMware's special committee, which concluded that Dell was worth ***$8.5 billion less*** than its controllers claimed.[69] Dorman and Green were aware of the VMware committee's rejection, and "recogniz[ed] the alignment of interests" between the two special committees when it came to valuations.[70] Yet they did not investigate the discrepancy between the VMware committee's valuation and Dell's valuation. Instead, Dorman and Green permitted Dell's $50 billion valuation to frame their negotiations.

191. Later, in May 2018, in an attempt to bolster Goldman Sachs's outlandish $50 billion valuation, Dell's 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 [another] 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]

[69] Initial Proxy at 150.

[70] *Id.*

estimates ….”[71] Dell communicated its supposed “improved long-term financial forecast” to the Special Committee and Evercore on May 16, 2018.[72]

192. However, despite Dell’s “improved long-term financial forecast,” Goldman Sachs’s $50 billion valuation curiously ***did not change***. This raises a strong inference that the improved long-term forecast—the product of new and unaudited financial projections—was nothing more than a convenient attempt to rationalize the $50 billion valuation that Goldman Sachs had ***already presented*** to the special committees of Dell and VMware (and which the latter soundly rejected).

193. Despite these causes for concern, the Special Committee, Evercore, and Discern never challenged the legitimacy of Dell’s improved projections, ignoring clear indications that they were nothing more than a *post hoc* attempt to back into Goldman Sachs’s pre-existing valuation.

194. *Fourth*, the Special Committee failed to adequately utilize its one piece of leverage over Michael Dell and Silver Lake—Class V Stockholders’ access to public financial markets—leaving considerable value on the table in the process. The Special Committee was aware that Dell would have difficulty conducting a stand-alone IPO prior to a Class V-to-Class C Conversion because,

[71] Initial Proxy at 156 (emphasis added).

[72] *Id.*

inter alia, the Company's over-leveraged balance sheet would create difficulties in connection with the SEC's formal registration process and the attendant audits. However, given Class V Stock's publicly-traded status, Class V Stockholders held the key Dell needed to access the public markets through a "back-door" IPO. Moreover, the Committee was aware that [redacted] Rather than extracting a "market-access premium" in exchange for giving Michael Dell and Silver Lake unencumbered access to public financial markets, the Committee ceded this incredibly valuable leverage to Dell's controllers for no value whatsoever.

195. *Fifth*, the Special Committee failed to adequately investigate the appropriateness and necessity of appraisal rights for Class V Stockholders. Appraisal rights would have provided a key protection for Class V Stockholders that wanted to avoid a Forced Conversion, but who might have disagreed with the terms and valuations Michael Dell and Silver Lake imposed on the Transaction. Given the disorderly shifts in valuation of Dell's core enterprises and Class C Stock, the VMware special committee's rejection of Dell's self-serving valuations, and the "Dell Discount" that plagued the market value of Class V Stock, appraisal

rights could have provided a critical procedural protection for minority stockholders.[73]

196. [redacted]

[73] The Committee's failure to investigate Class V Stockholders' appraisal rights is particularly galling in the light of the Committee's knowledge of Dell's "long-running appraisal saga" following the MBO. *Dell, Inc. v. Magnetar Glob. Event Driven Master Fund Ltd.*, 177 A.3d 1, 5 (Del. 2017).

[redacted]

[redacted] But the Committee's goal should not have been to consummate the Transaction regardless of the terms.

197. [redacted]

198. [redacted] As a result, the as-executed Class V Transaction did not provide Class V Stockholders appraisal rights.[76]

[redacted]

[76] *See* Final Proxy at S-73. Curiously, while Class V Stockholders did not get appraisal rights, holders of Class A, B, and C Stock did.

199. Accordingly, because the Special Committee failed to adequately investigate and push for appraisal in its negotiations with Michael Dell and Silver Lake, Class V Stockholders were deprived of the opportunity to have the fair value of the Class V Stock and the Class C Stock determined in an appraisal proceeding.

200. *Sixth*, as discussed in Section G.1, *supra*, the Special Committee neither spotted nor investigated the red flag raised by Evercore's and Discern's failure to revise their analyses following Dell's $5 billion debt-laden increase to the Transaction consideration. The Special Committee was keenly aware of Dell's substantial debt burden and the impact of its debts on the Company's financial statements and projections, yet it failed to investigate the impact the additional $5 billion in debt might have on the valuation Dell used for the Class V Transaction.

3. The Special Committee Abandoned The Second Half Of The Negotiations

201. Finally, as detailed above in Section F, the Special Committee sat idly by as Dell sidelined it during the renegotiation of the Class V Transaction following the Initial Proposal. The Committee's near-complete failure to negotiate during this period was in dereliction of its fiduciary duties under Delaware law.

202. Rather than doing its job and zealously advocating on behalf of Class V Stockholders, the Special Committee permitted Dell to negotiate directly with certain individual Class V Stockholders selected by the Company, whose

particular interests may not have been identically shared with other Class V Stockholders. Instead of having an agent negotiate with the best interests of ***all*** Class V Stockholders in mind, the Special Committee ceded the interests of the whole to the interests of a few. Doing so deprived minority stockholders of a critical legal protection: "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).

203. In sum, by hiring conflicted and unqualified advisors, conducting a deficient investigation and negotiations, and abandoning the negotiations following the Initial Proposal, the conflicted Special Committee utterly failed in its duty to serve as an effective bulwark between Class V Stockholders and Dell's controllers.

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

204. On December 11, 2018, the Transaction was put to a vote of Class V Stockholders. 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.

205. In addition to facing the threat of the Forced Conversion, Class V Stockholders were also materially misinformed and/or uninformed as a result of misleading and inadequate disclosures by Dell, its controllers, and the Board. On November 26, 2018, Dell filed its supplemental, final proxy with the SEC (the

"Final Proxy").[77] The Final Proxy failed to disclose at least the following critical categories of information necessary to permit Class V Stockholders to make a fully-informed decision: (i) information concerning the Transaction's negotiations and bid history; (ii) information concerning the Special Committee members' lack of independence; (iii) information concerning the Special Committee's legal and financial advisors' lack of independence; and (iv) the Company's affirmative rationales for the structure and terms of the Class V Transaction. Individually and collectively, these disclosures rendered the stockholder vote on the Class V Transaction materially uninformed.

1. Proxy Omissions Pertaining To The Negotiations And Bid History

206. The Final Proxy contained material omissions concerning the negotiations and bid history surrounding the renegotiation of the Class V Transaction. Without these omitted data points concerning: (i) the negotiation process, (ii) the integrity of that process, and (iii) the bids offered by Dell's controllers, the Special Committee and institutional Class V Stockholders, the Class V Transaction vote was hopelessly uninformed.

207. Perhaps the most important pieces of material information missing from the Final Proxy were the omissions concerning the Special Committee's

[77] Dell Technologies Inc., Amended Proxy Statement (Rule 424(b)(3)) (Nov. 26, 2018), https://www.sec.gov/Archives/edgar/data/1571996/000119312518333956/d658927d424b3.htm.

[redacted]

[redacted] This information was material to Class V Stockholders' decision because it goes directly to the integrity of the process, the Special Committee's authority, and the adequacy of the consideration.

208. The Final Proxy 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.[78]

209. [redacted]

[redacted]

[redacted]

[redacted]

[78] Final Proxy at S-61.

210. [redacted]

211. [redacted] In the Initial Proxy, Dell disclosed the full, detailed negotiating history between Dell's

controllers and the Special Committee, revealing the following offers and counter-offers:[79]

No.	Dell's Controllers' Offers	Committee Counter-Offers
1	"$100 per share of Class V Common Stock based on a $50 billion equity value for Dell"	"$42.5 billion equity value for Dell … and $115 per share value for the Class V Common Stock"
2	"$105 … per share of Class V Common Stock based on a $50 billion equity value for Dell"	"$112.50 per share of Class V Common Stock based on a $45 billion equity value for Dell"
3	"$107 per share of Class V Common Stock based on a $50 billion equity value for Dell"	"$112.50 per share of Class V Common Stock based on a $46 billion equity value for Dell"
4	"$109 per share of Class V Common Stock based on a $48.4 billion equity value for Dell"	"$110 per share of Class V Common Stock based on a $48.4 billion equity value for Dell"
5	"$109 per share of Class V Common Stock at an equity value for Dell [] at $48.4 billion"[80]	Acceptance by the Committee.

212. However, after Dell disclosed the full negotiating history leading to the underwhelming Initial Proposal, Class V Stockholders revolted and rejected it. When Michael Dell and Silver Lake went back to the drawing board, they were

[79] *See* Initial Proxy at 159-61.

[80] The Control Group's final offer was presented to Evercore as presented to Evercore as "the highest per share valuation for Class V Common Stock which Dell [] was prepared to offer," underscoring the coercive "accept-or-else" nature of the negotiations.

apparently determined not to repeat the same mistake of disclosing details regarding the negotiations the second time around.

213. Thus, in stark contrast to the Initial Proxy's full disclosure of the negotiating history in the lead-up to the Initial Proposal, the Final Proxy only offered partial and misleading disclosures about the bidding history, [redacted] while disclosing other parts of the negotiating history ***more favorable*** to Dell, including several $118- and $120-per-share offers.[81] The inclusion of some offers, [redacted] misled investors into believing that no such higher offer existed or was ever suggested by the Special Committee.

214. Ultimately, [redacted][82]

[81] *See, e.g.*, Final Proxy at S-61, S-63, S-65.

[82] [redacted]

215. Likewise, the Final Proxy failed to disclose that [redacted]

216. Dell's failure to disclose [redacted] is particularly glaring given that the Company disclosed other details of its negotiations with Class V Stockholders and the Special Committee.

217. All told, Dell's disclosures surrounding the renegotiation of the Class V Transaction failed to result in a meaningfully informed vote of Class V Stockholders in support of the Transaction.

2. Proxy Omissions Pertaining To Special Committee Conflicts

218. As discussed in greater detail in Section C.2, *supra*, the members of the Special Committee—*i.e.*, Defendants Dorman and Green—were each hopelessly conflicted. Not only did their lack of independence compromise the integrity of the Special Committee process, but the complete lack of adequate disclosures concerning Dorman and Green's independence (or lack thereof)

rendered the eventual stockholder vote on the Class V Transaction thoroughly uninformed.

219. The Final Proxy fails to disclose the extent of Dorman's extensive connections and relationship with Michael Dell. Specifically, the Final Proxy fails to disclose that: (i) Dorman's investment firm, Centerview Capital, is the second largest investor in Dell's portfolio company SecureWorks, holding a 14.9% stake; (ii) six of Centerview Capital's nine technology investments are with companies either owned by or associated with Dell; (iii) Dorman had financial ties to Dell through his work with and investment in Infoworks; and (iv) [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 it was not.

220. In addition, the Final Proxy fails to disclose the extent of Green's strong affiliation with both Michael Dell and Mr. Dell's close friend, advisor, and self-described "brother from another mother," Joseph Tucci. The Final Proxy does not mention Green and Tucci's ties through GTY, a blank-check investment firm that trades on Green's and Tucci's ties to Michael Dell. Nowhere was it disclosed that Green and Tucci obtained millions of dollars in investor support for GTY through those relationships, or that GTY may seek to invest that money with the

help of Michael Dell's connections and clout in the industry. Likewise, the Final Proxy fails to mention Green's and Tucci's ties through BackOffice Associates and Bridge Growth Partners. Moreover, a material aspect of the Green-Tucci-Dell connection—[redacted]—was similarly absent from Dell's disclosures. Finally, the Final Proxy omits Green's dependence on Dell and its portfolio companies through his directorship with and investment in Inovalon.

221. The complete lack of disclosures concerning Dorman's and Green's conflicts of interest deprived Class V Stockholders of material information concerning the independence of the agents ostensibly entrusted with negotiating on their behalf.

3. Proxy Omissions Pertaining To The Committee's Conflicted And Unqualified Advisors

222. The Final Proxy also failed to disclose material information pertaining to Discern's utter lack of qualifications, as well as the conflicts of interest that tainted Evercore's work on behalf of Class V Stockholders.

223. The Final Proxy completely failed to provide adequate disclosures regarding Discern. As a threshold matter, virtually no background was provided on Discern or its qualifications. Nor does any such information exist in the public

domain.[83] All the Final Proxy discloses about Discern's qualifications was that it is "an independent industry expert."[84] Such vague bromides cannot and do not adequately inform stockholders of the quality of their own representation in a controlling-stockholder transaction. Not only was that disclosure inadequate, it was ***utterly misleading***.

224. Discern was anything but an "industry expert." As discussed in Section G.1.b, *supra*, investigation has failed to unearth a single reference to Discern as a consultant in another SEC filing prior to the Class V Transaction. Indeed, Discern does not appear to have ***any*** prior experience working on a similar transaction of ***any*** size. Furthermore, it appears that Discern had no full-time employees other than Blount and that he performed all the work on the Dell assignment by himself. Nevertheless, Blount somehow completed and presented

[83] 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. *DISCERN Delivers First Platform-as-a-Service for Real Estate Financial Insight*, PR NEWSWIRE (Nov. 20, 2015), https://www.prnewswire.com/news-releases/discern-delivers-first-platform-as-a-service-for-real-estate-financial-insight-300182446.html (last accessed Apr. 17, 2019). In any event, it has nothing to do with the services it purportedly provided to the Special Committee.

[84] Final Proxy at S-63; Initial Proxy at 27. In contrast to the Special Committee's hiring of the little-known Discern, VMware's special committee sought assistance from what the Proxy describes as a "nationally recognized" valuation firm.

his analysis in just ***eleven days***. Given Discern's complete lack of credentials, the only logical explanation for Discern's retention is the conflicted tie between Evercore and Discern. Specifically, Harry Blount and Stuart Francis were personally acquainted from their time at Lehman Brothers and remain friends today.[85]

225. In addition, the Final Proxy never mentions Discern's dire financial situation at the time of its retention by the Special Committee. For instance, Discern appeared to have no physical offices (its business address during the Dell assignment was a mailbox at a UPS Store) because it was ***evicted*** from its prior one for failure to pay rent. Discern also owed back taxes to the state of Delaware as recently as March 2018. Discern's shaky finances gave it further incentive to provide a rubber-stamp analysis to Evercore and the Special Committee to secure future business opportunities, but none of this material information was included in the Final Proxy.

226. Worse still, neither the Initial nor the Final Proxy provided ***any information*** concerning the terms of Discern's retention by Evercore. If, like Evercore, Discern was retained (in whole or in part) on a contingency-fee basis, it

[85] Rather than identifying Francis or Evercore as the source of connection to Discern, Dell's disclosures create the misleading impression that Latham independently identified and retained Discern. *See, e.g.*, Initial Proxy at 159.

would have been further incentivized to go along with Evercore and work solely to get the deal done, regardless of its fairness to Class V Stockholders. Despite those concerns, Class V Stockholders did not receive any material information concerning Discern's compensation, rendering their eventual vote uninformed.

227. All told, Dell's disclosures failed to provide any of this highly relevant and material information about Discern's lack of qualifications, dire financial situation, compensation terms, and conflicted ties to Evercore, each of which casts grave doubts on the accuracy and reliability of its analysis. Instead, by simply describing Discern as an "independent industry expert," the Final Proxy gave materially misleading information to Class V Stockholders. Indeed, it seems that each of those three words in reference to Discern was false.

228. Moreover, the Final Proxy fails to adequately disclose Evercore's disabling conflicts of interest. As discussed in greater detail in Section G.1, *supra*, the Final Proxy does not provide any disclosures concerning Evercore's ties to Discern through Messrs. Francis and Blount and Evercore's structural conflicts pertaining to Evercore's prior work developing the Class V Stock during the EMC Merger. Disclosure of this information would be material to Class V Stockholders, including in the stockholders' assessment of how much weight to put on Evercore's ostensibly impartial fairness opinion.

4. Proxy Omissions Pertaining To Dell's Affirmative Rationales For The Class V Transaction's Terms And Structure

229. In addition to the disclosure omissions detailed above, Dell failed to disclose its affirmative rationale for critical pieces of the Class V Transaction's terms and structure.

230. Among other failings, Dell failed to disclose its rationale for why the market price of Class V Stock was an accurate measure of the security's fair value. The Final Proxy does not disclose the reasoning behind Dell's decision to redeem the Class V Stock at a price so far below the value of the security it was designed to track: VMware's publicly traded shares. Specifically, Dell failed to disclose why it believed that the final deal price should ***incorporate***—rather than control for—the widely reported "Dell Discount," which was caused by stockholders' fears that Michael Dell and Silver Lake would disloyally appropriate their investments at an unfair value. That discount impacted the market price of both Class V Stock and VMware's common stock.

231. Dell also failed to disclose its rationale for Class C Stock's radical shifts in value from December 2017 through the close of the Class V Transaction. As detailed in Section G.2, *supra*, the Dell Board's internal valuations of Class C Stock swung wildly during that 12-month period. The only explanations Dell disclosed for those changes were based on new accounting standards and the vague, supposedly "good-faith belief of Dell['s] management"—*i.e.*, Michael Dell and

managers hand-picked by Dell's controllers.[86] Those hazy descriptions failed to explain any material methodological changes that could have justified Dell's claimed 150% increase in value in such a short time—which in turn formed the basis for Dell's valuation of the Class C consideration for the Class V Transaction.

232. Dell similarly failed to disclose any rationale for the vast discrepancy between how the VMware special committee, on one hand, and Dell and its Special Committee, on the other hand, valued Dell's Class C Stock. The Initial Proxy disclosed that the VMware special committee "had a different view" than Dell as to its inflated $48-to-52 billion valuation, and that their respective valuations were approximately ***$8.5 billion*** apart.[87] The Initial Proxy likewise disclosed that the Special Committee "recogniz[ed] the alignment of interests between it and the VMware special committee" when it came to valuations.[88] However, neither of Dell's Proxies disclosed the Dell Special Committee's rationale for siding with Dell's self-interested valuation over the VMware committee's substantially lower valuation. This left Class V Stockholders woefully uninformed about Dell's valuation of Class C Stock, which accounted for more than 40% of the consideration paid in the Transaction.

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[86] Initial Proxy at 156.

[87] Initial Proxy at 151.

[88] *Id.*

233. The Final Proxy likewise fails to provide any rationale for the absence of appraisal rights for Class V Stockholders who wanted to avoid a Forced Conversion, but who disagreed with how Dell's controllers valued the Class C and/or Class V Stock portions of the Transaction. The Final Proxy notes that Class A, B, and C Stockholders were entitled to appraisal rights, while Class V Stockholders were not.[89] But Dell never disclosed to Class V Stockholders ***why*** appraisal rights would not be made available to them compared with all other classes of Dell stockholders.[90]

234. Each of these material omissions ensured that the Class V Stockholder vote was not only coerced by the threat of the Forced Conversion, but hopelessly uninformed.

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

235. The deal closed on December 28, 2018, supported by the narrow approval of 61% of the affiliated shares of Class V Stock.

236. Not surprisingly, given Dell's overvaluation of its Class C Stock, the cash offering was oversubscribed and the $14 billion cap was reached—91.2% of

[89] *See* Final Proxy at S-73.

[90] In addition, Dell did not disclose [redacted] as described in Section G.2, *supra*).

the total outstanding shares of Class V Stock elected cash, with just 8.8% electing to receive shares. In short, virtually all Class V Stockholders recognized that receiving Dell Class C Stock was not a good deal.

237. 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 the $120-per-share valuation rested on inflated valuations of Dell and its Class C Stock.

238. On November 15, 2018 (the day Dell announced the revised Transaction) and December 28, 2018 (the day the Transaction closed), publicly-traded VMware stock closed at $157.73 per share and $158.38, respectively. 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.

239. 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 $48.4 billion valuation Dell assigned to its core business (without VMware) in the Transaction, each share of Class C Stock was ostensibly worth $79.77. That figure was grossly inflated. As described above, within the year prior to announcing the Transaction, Dell's Board (including Defendants Dorman and Green) ***twice*** used a $33.17-per-share valuation of its Class C Stock—*i.e.*, in December 2017, and again in May 2018. A third Board valuation, conducted in April 2018 [redacted] valued Class C Stock at just $49.24 per share. Each of those valuations was made with the assistance of independent valuation experts, rather than Goldman Sachs, a financially incentivized advocate for the Transaction. Thus, Dell's Board could not fairly rationalize valuing shares of Class C Stock anywhere near the $79.77 valuation ascribed to it in the Transaction.

240. In any event, the true value of Dell's Class C Stock is better reflected by its trading value in efficient markets than by self-serving valuations from Dell's controllers and Goldman Sachs.[91] The market has persistently set a value for Dell far less than the Company's internal valuations.

[91] *See, e.g.*, *Applebaum v. Avaya, Inc.*, 812 A.2d 880, 889-90 (Del. 2002) ("[O]ur jurisprudence recognizes that in many circumstances a property interest is best

241. On December 28, 2018, the first day Dell's Class C Stock returned to the public markets under the ticker "DELL" following the Transaction, Class C Stock closed at just $45.43—***well short*** of Dell's claimed $79.77-per-share valuation.

242. Furthermore, in the months since the Class V Transaction, Dell's Class C Stock—which now includes the value of the still-appreciating VMware—has ***never*** traded anywhere close to the overinflated valuation Dell ascribed to itself during the negotiation and renegotiation of the Class V Transaction. During the first few weeks after the Transaction, Dell's stock frequently traded below $50 per share. And even with a recent upswing in market value, Dell's 50-day moving average is still ***less than $58 per share***.[92]

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valued by the amount a buyer will pay for it …. [A] well-informed, liquid trading market will provide a measure of fair value superior to any estimate [a] court could impose.").

[92] *See* SeekingAlpha, "DELL Key Data: Overview," https://seekingalpha.com/symbol/DELL/overview (last accessed Apr. 16, 2019). That average was computed using trading data following the last market close before the filing of this Class Action Complaint—*i.e.* the April 16, 2019 close.

243. The chart below shows the public trading value of Class C Stock since it began trading on December 28, 2018.[93] ***Dell's asserted valuation for the Transaction does not even fit in the chart***.

244. As a result of the Class V Transaction, Michael Dell and Silver Lake appropriated billions of dollars from their own minority stockholders. The Special Committee's reckless and uninformed approval of deal terms so grossly inadequate to their minority-stockholder constituents cannot be explained on any basis other

[93] SeekingAlpha, "DELL," https://seekingalpha.com/symbol/DELL/chart (last accessed Apr. 16, 2019 at 4:45 pm). The chart is a snapshot of Dell's trading following the April 16, 2019 market close. It continually updates during trading periods.

than bad faith. Accordingly, Delaware law and traditional principles of equity entitle the Class V Stockholders to relief.

CLASS ACTION ALLEGATIONS

245. Lead Plaintiff brings 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 (previously defined as the "Class").

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

247. The Class is so numerous that joinder of all members is 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.

248. 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 Lead Plaintiff 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 Lead Plaintiff and the other members of the Class.

249. Lead Plaintiff is committed to prosecuting the action and has retained competent counsel experienced in litigation of this nature. Lead Plaintiff's claims are typical of the claims of the other members of the Class, and Lead Plaintiff has the same interests as the other members of the Class.

250. 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

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

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

253. 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, by issuing materially false and/or misleading proxy statements, and by taking or allowing for all of the other steps to be taken as described herein that resulted in the Transaction.

254. As a result of the Director Defendants' breaches of fiduciary duty, Lead Plaintiff and the Class have been harmed. Lead Plaintiff 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

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

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

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

258. The Control Group Defendants breached their fiduciary duties by causing Dell to enter the Transaction, creating two conflicted committees to negotiate on behalf of Class V Stockholders, 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.

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

RELIEF REQUESTED

WHEREFORE, Lead Plaintiff, on behalf of itself 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 Lead Plaintiff and the other members of the Class damages in an amount which may be proven at trial, together with interest thereon;

f) Awarding Lead Plaintiff 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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