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Case No. 2020-0505-MTZ

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE MATCH GROUP, INC. DERIVATIVE LITIGATION

CONSOLIDATED
C.A. No. 2020-0505-MTZ

PUBLIC INSPECTION VERSION
FILED NOVEMBER 9, 2021

AMENDED AND SUPPLEMENTED VERIFIED CONSOLIDATED STOCKHOLDER CLASS ACTION AND DERIVATIVE COMPLAINT

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Dated: November 2, 2021

Plaintiffs Construction Industry and Laborers Joint Pension Trust for Southern Nevada Plan A ("Nevada") and Hallandale Beach Police Officers' and Firefighters' Personnel Retirement Trust ("Hallandale" and with Nevada, "Plaintiffs"), by and through their attorneys, bring this Amended and Supplemented Verified Consolidated Stockholder Class Action and Derivative Complaint (the "Complaint") on their own behalf and on behalf of a class of all holders of Match Group, Inc. ("Match" or the "Company") Class A common stock, other than Defendants (defined below) and their affiliates (the "Class"), and derivatively on behalf of nominal defendant Match, against Match's Board of Directors ("Match Board" or the "Board") and the Company's controlling stockholder, IAC/InterActiveCorp ("IAC") and IAC's Chairman, Senior Executive and controlling stockholder Barry Diller ("Diller") for breaching their respective fiduciary duties through a series of transactions by which IAC shed its controlling interest in Match (the "Separation").

The allegations of the Complaint are based on: (1) books and records that Match produced in response to a demand made by Nevada pursuant to 8 *Del. C.* § 220 (the "Books and Records"); (2) representations in Match's Schedule 14A filed with the U.S. Securities and Exchange Commission (the "SEC") on April 30, 2020

(the "Proxy"); (3) representations in certain other SEC filings of Match and IAC; and (4) other investigation of counsel.[1]

NATURE AND SUMMARY OF THE ACTION

1. As Neil Sedaka famously observed, sometimes breaking up is hard to do. Such was the case with IAC's 2020 separation of Match from its other businesses (the "Separation"). This stockholder class and derivative action (the "Action") asserts claims relating to the Separation, including a series of transactions pursuant to a December 19, 2019 Transaction Agreement between Match and IAC, as amended on April 28, 2020 (the "Transaction Agreement") and a related series of agreements. In effecting the Separation, by which IAC purported to effect a "reverse spinoff" of Match with the goal of extracting as much value from that profitable enterprise as possible. In reality, the Separation resulted in (1) one new public corporation, IAC Holdings, Inc. (referred to herein as "New IAC"), which was re-named "IAC/InterActiveCorp" and took ownership of IAC's businesses other than Match, and (2) a public corporation called "Match Group, Inc." (referred to herein as "New Match"), which was actually the renamed original IAC ("Old IAC" and is

[1] As detailed herein, numerous representations in the Proxy and other SEC filings are materially incomplete, misleading and/or inaccurate. Accordingly, Plaintiffs do not warrant the completeness, accuracy or veracity of the representations in the Proxy or the other SEC filings.

also referred herein as "Old IAC/New Match"), which retained the existing businesses of Match as well as certain IAC financing subsidiaries.

2. Match is a company specializing in dating and relationships through its collection of well-known electronic dating platforms such as Tinder®, Match®, and OkCupid®. By 2019 Match had grown to control many of the biggest names in online dating. But Match's own relationship with IAC was drawing to a close. After years of tight IAC control over Match's Board and all facets of its operations, IAC was experiencing an identity crisis. The market had come to associate IAC so closely with Match that the businesses were losing their distinct identities. In the words of Match's Board Chairman, Joseph "Joey" Levin ("Levin"), Match's size and profile were "casting a shadow" over IAC. A breakup was coming.

3. But IAC, never one to be tied down in long-term relationships, had contemplated a separation from Match for some time. Diller has often touted IAC's business model as one centered on the acquisition and finance of digital businesses that can be spun off to eventually run on their own, even highly successful businesses like Match.

4. In November 2015, IAC took Match public through an initial public offering ("IPO") that raised over $400 million. The IPO resulted in two key changes to IAC's relationship with Match. First, although IAC retained over 98% of the

voting power of Match's stock, primarily through its sole ownership of super-voting Class B shares, Match ended up with 38.3 million shares of publicly traded Class A common stock. Second, IAC exerted control over its new public subsidiary not only through its voting power and a Match Board made up of IAC-affiliated directors, but also through a series of agreements between IAC and Match that would set the ground rules for IAC's relationship with Match going forward. Among these agreements was a Master Transaction Agreement that set the terms under which Match assumed the assets and liabilities of the businesses IAC contributed to it, an Employee Matters Agreement that provided for, among other things, a transition of certain IAC employees and their benefits and equity awards to Match, and a Tax Matters Agreement, which, among other things, required Match to take all necessary steps to maintain tax consolidation with IAC in anticipation of an eventual tax-free spin-off of IAC's interest in Match (the "2015 Agreements").

5. As stated in the 2015 Agreements, if Match and IAC were to separate through a distribution of Match's stock to IAC's stockholders, Match was required to maintain tax consolidation between Match and IAC for a period of two years to make the distribution tax free for IAC's stockholders, the primary beneficiary of which would be Diller. But during the two-year period, Match would be forced to

operate under tight restrictions. As Match explained in its Annual Report on Form 10-K, filed with the SEC on February 27, 2020:

> To preserve the tax-free treatment of any potential future spin-off by IAC of its interest in us, and in addition to our indemnity obligation described above, the [2015 Agreements] will restrict us, for the two-year period following any such spin-off, except in specific circumstances, from: (i) entering into any transaction pursuant to which all or a portion of shares of our stock would be acquired, whether by merger or otherwise, (ii) issuing equity securities beyond certain thresholds, (iii) repurchasing our shares other than in certain open-market transactions, (iv) ceasing to actively conduct our businesses or (v) taking or failing to take any other action that prevents the distribution and related transactions from qualifying as a transaction that is generally tax-free, for U.S. federal income tax purposes, under Section 368(a)(1)(D) and/or Section 355 of the Code.[2]

6. But the Proxy failed to disclose that the transaction IAC proposed to Match was not a distribution of Match stock to IAC stockholders as addressed in the 2015 Agreements. It was a transaction to which the restrictive provisions of the 2015 Agreements did not apply. As the Separation was structured, the pre-Separation stockholders of Match (other than IAC) and IAC became the owners of a new series of Class M shares in Old IAC/New Match, which were subsequently converted into a single class of "one share, one vote" common stock in Old IAC/New Match. The Separation resulted in a New IAC that was no longer Match's outright

[2] Match Group, Inc., Annual Report (Form 10-K) (Feb. 27, 2020) ("2019 Match 10-K"), at 24.

controlling stockholder, although the transactions were structured so that IAC continued to control New Match through other means.

7. Match formed a separation committee (the "Separation Committee" or "Committee") to purportedly protect the interests of Match's minority stockholders from controller IAC, but the Proxy fails to disclose why the Separation Committee agreed to apply the tax consolidation playbook from the 2015 Agreements when the Separation transaction IAC wanted to pursue was not covered by those or any other existing agreements that would have forced Match into the two-year restriction period. Instead, the Proxy describes an ineffective Separation Committee that was quick to agree to IAC's demands and that failed to extract any meaningful consideration for either the tax structure of the Separation or for the other onerous provisions of the transaction that left New IAC flush with cash and Old IAC/New Match deeply leveraged.

8. The New Match Board of Directors (the "New Match Board") continues to be dominated by Diller and IAC-affiliated individuals and appointees. The Separation also imposed various defensive amendments to New Match's articles of incorporation, including: (i) the classification of the New Match Board, (ii) the exclusive right of the New Match Board to fill director vacancies, and (iii) a prohibition against New Match's stockholders acting by written consent. Notably,

although these governance proposals were put to a binding vote of *IAC*'s stockholders, Match's stockholders were permitted only to cast "advisory" votes on these matters.

9. As a result of the Separation transactions, Match's minority stockholders received, through a merger, in exchange for each outstanding share of Match common stock, the right to receive one share of New Match common stock and, at the holder's election, either (i) $3.00 in cash or (ii) a fraction of a share of New Match common stock with a value of $3.00, calculated based on the volume-weighted average trading price of shares of Match common stock for the ten consecutive Nasdaq Global Select Market ("NASDAQ") trading days ending on the fifth NASDAQ trading day immediately before the date on which the spin-off is completed, minus $3.00.

10. The shares that Match's minority stockholders received in the Separation were in the Old IAC/ New Match that was capitalized in a vastly different way from the Old Match. The structure of the transaction allowed IAC to cause New Match to assume approximately $1.7 billion in IAC exchangeable notes. IAC also caused Match to overpay for certain IAC real estate, to pay full value for certain IAC tax attributes it was unclear that Match could ever take advantage of, and to pay a massive $850 million dividend to stockholders, with approximately $680 million of

that amount going to IAC. Following the Separation, New Match was left with virtually no cash and billions of dollars of Old IAC debt. By contrast, the post-Separation New IAC was flush with billions of dollars of cash (through the dividend payment and other aspects of the Separation) and no debt (as a result of Match's assumption of certain exchangeable notes IAC had left behind in its former corporate shell).

11. Under the exchange ratio, Match's minority stockholders received New Match shares in a different corporation with limited cash, much higher debt and defensive governance provisions. In contrast, the majority stockholder, IAC, got large amounts of cash from Match, unloaded a huge amount of debt onto New Match and transferred to its stockholders approximately 80% of New Match. The exchange ratio was blatantly unfair. Any attempt to justify the exchange ratio by claiming Match's stockholders ended up owning approximately the same percentage of New Match as they owned in Match is a misleading apples to oranges comparison. IAC did not give up its majority voting control for no consideration — it transferred its position to its stockholders, got rid of huge amounts of debt, took boat loads of cash and positioned itself to pursue new business opportunities, debt-free with capital extracted from Match. The benefits to IAC were not some side-benefits to a

corporate officer worth a few million dollars; they were the primary purpose of the transactions and involved billions of dollars.

12. The Match Board approved the Separation upon the recommendation of the three-member Separation Committee, comprised of directors Thomas J. McInerney ("McInerney"), Pamela S. Seymon ("Seymon"), and Ann L. McDaniel ("McDaniel"). These Separation Committee members were not independent from controller IAC and Diller. Additionally, the financial advisor retained to advise the Separation Committee, Goldman Sachs & Co. LLC ("Goldman Sachs"), was conflicted in that it is a counterparty on the call spreads underlying certain of the exchangeable notes that Match assumed in the Separation.

13. Just as the Match Board had marched in lockstep with IAC under the 2015 Agreements, the Separation Committee was supine in its acquiescence to controller IAC as it "negotiated" the terms of the Separation. Although the transaction IAC structured for the Separation deviated from the separation blueprint set forth in the 2015 Agreements, affording the Separation Committee substantial leverage, time after time the Separation Committee acceded to IAC's proposals without questioning them and without any attempt to protect the interests of Match's minority stockholders. IAC wanted a tax-free spin-off to transfer its interests in Match to Diller and the other IAC stockholders, offload its debt and pursue other

business opportunities. IAC could not accomplish this without Match's cooperation, in large part, because of the risk that, under various circumstances, if left unaddressed, the Separation could retroactively be taxable to IAC and its stockholders. IAC determined the economic framework for the Separation at the outset, and notwithstanding its fiduciary responsibilities to represent the interests of Match's minority stockholders, and notwithstanding the absence of any contractual obligations to accede to IAC's demands, the Separation Committee failed to make any meaningful modifications to this framework for the benefit of Match's minority stockholders.

14. Completion of the Separation was subject to, among other things, approval of a majority of Match's minority shares at a special meeting held on June 25, 2020 (the "Match Special Meeting"). Although the vote resulted in the approval of the transaction by approximately 75% of Match's minority shares, as detailed below, the Proxy contained false and misleading disclosures concerning the reasons behind and effects of certain governance changes designed to perpetuate IAC's control of New Match and protect New IAC from threats to the tax-free transaction. And perhaps most importantly, the Proxy was silent as to why the 2015 Agreements' tax consolidation scheme, which Match had previously represented to its stockholders to be a required part of IAC's eventual spin-off of its interest in Match,

was not, in fact, required in the Separation—and why the Separation Committee and Match's Board went along with the tax scheme anyway.

15. Rather than producing a New Match with "improved strategic flexibility," the Separation resulted in a company with limited options for new strategic relationships, buried under a mountain of new debt, and dominated by IAC through a series of entrenching governance provisions. Match's minority stockholders were led to believe that the Separation was a breakup of Match from IAC. The reality is that IAC is still on the scene, dominating New Match just as it did before the Separation.

PARTIES

16. Nevada beneficially owned shares of Match and New Match continuously from October 27, 2017 to July 13, 2021.

17. Hallandale has beneficially owned shares of Match and New Match continuously since October 27, 2017.

18. Nominal defendant Match is a Delaware corporation with principal executive offices located in Dallas, Texas. Match is a leading provider of online dating products. Prior to consummation of the Separation, Match had outstanding shares of (i) common stock entitled to one vote per share, and (ii) Class B common stock entitled to ten votes per share and which are convertible into shares of common

stock on a share for share basis. As of May 4, 2020, there were 74,223,779 shares of Match common stock and 209,919,402 shares of Match Class B common stock outstanding, respectively. Shares of Match's common stock traded on the NASDAQ under the ticker symbol "MTCH" until consummation of the Separation on July 1, 2020. Upon consummation of the Separation, New Match common stock shares began trading on the NASDAQ under the ticker symbol "MTCH."

19. Defendant IAC is a Delaware corporation with principal executive offices in New York, New York. IAC has outstanding shares of (i) common stock, with one vote per share, and (ii) Class B common stock, with ten votes per share and which are convertible into common stock on a share for share basis. Shares of IAC's common stock trade on the NASDAQ under the ticker symbol "IAC." As discussed below, during the relevant times alleged in this Complaint, IAC was Match's controlling stockholder and Diller was IAC's controlling stockholder.

20. Defendant Diller is IAC's controlling stockholder. As of April 15, 2020, Diller owned all of IAC's Class B common stock and 1,444,485 shares of IAC's common stock, representing 8.4% of IAC's outstanding shares of common stock and approximately 42.9% of the combined voting power of IAC. Following the Separation, Diller held shares of Class B common stock and common stock representing the same percentage of the total outstanding voting power of New IAC.

Diller has been a director and Chairman and Senior Executive of IAC since December 2010. Previously, Diller served as Chief Executive Officer ("CEO") of IAC from August 1995 to November 2010, and in various directorial and executive capacities at IAC's predecessors dating back to 1992. As discussed below, Diller installed IAC executives, loyalists and other individuals affiliated with him on the Match Board, New Match Board, and IAC's board of directors (the "IAC Board").

21. Defendant Sharmistha Dubey ("Dubey") has been a member of the Match board of directors since September 2019 and pursuant to Section 7.18 of the Transaction Agreement was contractually assured she would continue as a member of the New Match Board following consummation of the Separation. Dubey has served as CEO of Match since March 2020 and she continued as CEO at New Match following consummation of the Separation. Previously, Dubey served as President of Match from January 2018 to March 2020, Chief Operating Officer ("COO") of Tinder from February 2017 to January 2018, President of Match Affinity Brands from December 2015 to January 2018, Chief Product Officer of The Princeton Review and Tutor.com from July 2014 to December 2015, Executive Vice President of Tutor.com from April 2013 to July 2014, Chief Product Officer of Match.com from January 2013 through April 2013 and Senior Vice President, Match.com and Chemistry.com from September 2008 through December 2012. In March 2020, the

Match Board determined that Dubey was not independent under the NASDAQ's listing standards.[3] Dubey made nearly $20 million in compensation in 2018 and 2019 in her roles as Match's President and CEO.[4] In addition, at the same time the Separation was being structured, Dubey was negotiating a new employment agreement with Match. On February 13, 2020, Match gave Dubey a new employment agreement, effective March 1, 2020, renewable annually. The employment agreement includes an annual base salary of $750,000 plus annual bonuses and equity awards and a severance package that provides for twelve months' severance, acceleration of equity award vesting, and health care coverage in the event her employment is terminated without cause. Dubey was granted 123,411 restricted stock units five days later on February 18, 2020. In 2020 Dubey was paid $729,508 in salary, $3.5 million in bonus, $9,465,624 in stock awards and an additional $10,000 in other compensation for total compensation of $13,705,132 from Match and New Match.

22. Defendant Amanda Ginsberg ("Ginsberg") served as Match's CEO and a member of Match's Board from December 2017 until March 1, 2020. In February

[3] Match Group, Inc., Amendment No. 1 to Annual Report (Form 10-K/A) (Apr. 29, 2020) (the "2019 Match 10-K/A"), at 26.

[4] *Id*. at 12.

2019, the Match Board determined Ginsberg was not independent.[5] Prior to becoming Match's CEO, Ginsberg served as the CEO of Match Group Americas from December 2015 until December 2017. Previously, Ginsberg served in numerous roles within Match, including: CEO of Match-owned business The Princeton Review from July 2014 to December 2015; CEO of Match entity Tutor.com from April 2013 to December 2015; CEO from October 2012 to March 2013 and Senior Vice President and General Manager from September 2008 to October 2012 of Match.com; and Vice President and General Manager from March 2006 to September 2008 of Chemistry.com. From 2017 through 2019 Ginsberg received over $17.5 million in compensation from Match.

23. Defendant Levin has served as Chairman of the Match Board since December 2017 and a member of Match's Board since October 2015. When the Match Board made independence determinations in February 2019 and March 2020, Levin did not qualify as independent under NASDAQ's listing standards.[6] Levin has served as CEO of IAC, and as a member of the IAC Board since June 2015. Prior to his appointment as CEO of IAC, Levin served as CEO of IAC's Search &

[5] Match Group, Inc., Definitive Proxy Statement (Schedule 14A) (Apr. 30, 2019) (the "2019 Annual Meeting Proxy"), at 9.

[6] 2019 Annual Meeting Proxy at 9; 2019 Match 10-K/A at 26.

Applications segment since 2012. Levin served as CEO of Mindspark Interactive Network, an IAC subsidiary, from November 2009 to January 2012. Levin started with IAC in 2003, working in various capacities in strategic planning, mergers and acquisitions, and finance. Levin has served as the Chairman of the board of directors of ANGI Homeservices Inc. ("ANGI") since June 2015. From 2015 to 2019, Levin received nearly $56 million in compensation from IAC. In connection with the Separation, IAC appointed Levin to serve as a director of New IAC and its CEO, and under Section 7.18 of the Transaction Agreement was contractually assured of continuing as a director designated by IAC becoming Executive Chairman on the New Match Board. The Separation enabled Levin to receive compensation from New Match and he was paid $65,000 in cash and $249,928 in stock awards in 2020, for total compensation of $314,983.

24. Defendant McDaniel was a member of, and received $50,000 for serving on, the Separation Committee that negotiated the Separation of Match and IAC. McDaniel has been a director on the Match Board since December 2015 and pursuant to Section 7.18 of the Transaction Agreement was contractually assured of continuing as a member of the New Match Board following consummation of the Separation. McDaniel has served as a consultant to Graham Holdings Company ("GHC") (formerly The Washington Post Company) since 2016, and prior to that,

served as Senior Vice President of GHC from June 2008 to April 2015 and Vice President-Human Resources of GHC from September 2001. Diller served as a director of GHC from September 2000 to January 2017. McDaniel also served as the Managing Director of Newsweek, Inc. from January 2008 until its sale to IAC-owned The Daily Beast in September 2010. From 2015 to 2019 McDaniel received over $1.5 million in compensation in connection with her membership on the Board. In 2020, she received from Match and New Match $125,000 in cash and $249,928 in stock awards for total compensation of $374,928.

25. Defendant McInerney was also appointed to the Separation Committee and was paid $50,000 as a member. McInerney has been a director on the Match Board since November 2015, but his affiliation with IAC goes back more than two decades. McInerney joined IAC's affiliate Ticketmaster Online-City Search in 1999 as Executive Vice President & Chief Financial Officer ("CFO") and he served as the CEO of the Retailing Division of IAC from January 2003 through December 2005. McInerney served as Executive Vice President and CFO of IAC from January 2005 to March 2012. From 2003 to 2012, McInerney received nearly $55 million in compensation from IAC. McInerney has served on the boards of various IAC affiliates before and after departing as IAC's CFO in 2012. McInerney served on the board of directors of Interval Leisure Group, Inc. ("ILG") from May 2008 to

September 2018 and HSN, Inc. ("HSN") from August 2008 to December 2017. McInerney received over $3 million in compensation from serving on these IAC-affiliated boards. Pursuant to Section 7.18 of the Transaction Agreement, McInerney continued as a member of the New Match Board following the consummation of the Separation. In 2020 he received from Match and New Match $110,000 in cash and $249,928 in stock awards for total compensation of $359,928.

26. Defendant Seymon was the third member of the Separation Committee, also receiving $50,000. Seymon has been a director of Match since November 2015. Seymon was a partner at Wachtell, Lipton, Rosen & Katz ("WLRK") from January 1989 to January 2011, and an associate at WLRK from 1982. WLRK has served as Diller's and IAC's outside counsel continuously since 1994, and, as discussed below, Seymon personally served as counsel to Diller and IAC during her tenure at the firm. Ms. Seymon was placed on the Match Board by Diller and IAC when IAC took Match public in November, 2015. WLRK, like many law firms, places lawyers formerly at the firm as directors and officers of corporate clients in order to maintain its position as outside corporate counsel. The November 13, 2015 Prospectus for Match's initial public offering, Match Proxy statements dated May 11, 2016, May 1, 2017, April 30, 2018 and April 30, 2019 and the April 30, 2021 proxy statement for New Match ("2021 Proxy") tout Ms. Seymon's service as a lawyer at WLRK,

asserting that her WLRK experience is her primary qualification for serving as a director. Indeed, there are multiple descriptions of why she is on the Board that Match/New Match do not mention including any other employment, directorships, or other professional activities before her time at WLRK or since she departed from WLRK. Thus, service as a Match and New Match director has been her sole source of professional and business income for the last decade. In 2020, Seymon received $105,000 in cash fees and stock awards of $249,928 for total compensation of $354,928. From 2015 to 2019 Seymon received over $1.5 million in director fee compensation. Pursuant to Section 7.18 of the Transaction Agreement, Seymon continued as a member of the new Match Board following the Merger. In addition, Seymon's husband Robert Schumer serves as a Partner at the law firm of Paul, Weiss, Rifkind, Wharton & Garrison LLP ("Paul Weiss") where he is a member of the Mergers & Acquisitions department, chair of the Corporate Department and member of the firm's Management Committee. According to the Books and Records, Paul Weiss has served as Match's outside legal counsel since 2017.[7] In addition, Paul Weiss has served as legal advisor to Diller, IAC and their affiliates in myriad other transactions and activities since that time.[8]

[7] MATCH-0000483.

[8] Such representations include, but are not limited to, serving as legal advisor to the special committee of the board of directors of Expedia, Inc. ("Expedia") in its July

27. Defendant Glenn Schiffman ("Schiffman") has been a director of Match since September 2016. When the Match Board made independence determinations in February 2019 and 2020, Schiffman did not qualify as independent.[9] Schiffman has served as Executive Vice President and CFO of IAC since April 2016 and served as CFO of ANGI from September 2017 to March 2019. Schiffman has served on the board of directors of ANGI since June 2017. From 2016 to 2019 Schiffman received nearly $29 million in compensation from IAC. In connection with the Separation, and pursuant to Section 7.18 of the Transaction Agreement, Schiffman was appointed to serve as a director of the New Match Board. He also continued as an executive officer of New IAC.

28. Defendant Alan G. Spoon ("Spoon") has been a director of Match since November 2015. A recent law review article named Diller and Spoon as one of the five most-entangled "Controller-Independent Director Pairings."[10] The article notes Diller's and Spoon's ties on Ticketmaster (1997-2002), The HealthCentral Network (2005-2011), IAC (2003-Present), and Match (2015-Present).[11] Spoon served as

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2019 acquisition of Liberty Expedia Holdings, Inc., where Schumer personally represented the committee and touts on his profile as a "high-profile transaction[.]"

[9] 2019 Annual Meeting Proxy at 9; 2019 Match 10-K/A at 26.

[10] Da Lin, *Beyond Beholden*, 44 J. Corp. L. 515, 541 (2019).

[11] *Id*.

General Partner and Partner Emeritus of Polaris Partners from 2011 to 2018. Spoon previously served as the Managing General Partner of Polaris Partners from 2000 to 2010. Since at least 2011, IAC has co-invested with Polaris or compensated Polaris for services provided by Polaris to IAC.[12] Prior to joining Polaris, Spoon was the COO and director of GHC (then named The Washington Post Company) from March 1991 through May 2000 and served as President from September 1993 through May 2000. Spoon also served as the President of Newsweek from September 1989 to May 1991. Spoon has served on the IAC Board since February 2003, and served on the Board of Diller-affiliated Ticketmaster from 1997 to 2002. From 2015 to 2019 Spoon received over $1.5 million in compensation from Match and in the last ten years (2009-2019) he has received over $3.6 million in compensation from IAC. Upon consummation of the Separation, Spoon continued

[12] *See*, *e.g.*, IAC/InterActiveCorp, Definitive Proxy Statement (Schedule 14A) (Apr. 29, 2011), at 12 (noting "a co-investment by IAC in an entity in which Polaris Venture Partners was an existing equity investor, as well as payments for services between the Company and certain Polaris Venture Partners portfolio companies"); IAC/InterActiveCorp, Definitive Proxy Statement (Schedule 14A) (Apr. 27, 2012), at 12 (same); IAC/InterActiveCorp, Definitive Proxy Statement (Schedule 14A) (Apr. 30, 2013), at 12 (same); IAC/InterActiveCorp, Definitive Proxy Statement (Schedule 14A) (Apr. 30, 2014), at 11; IAC/InterActiveCorp, Definitive Proxy Statement (Schedule 14A) (Apr. 30, 2015), at 11; IAC/InterActiveCorp, Definitive Proxy Statement (Schedule 14A) (Nov. 7, 2016), at 13.

as a member of the New Match Board. In 2020 he received as a director $80,000 in cash plus a $249,928 stock award for total compensation of $329,928.

29. Defendant Mark Stein ("Stein") was a director of Match from November 2015 until the consummation of the Separation. When the Match Board made independence determinations in February 2019 and 2020, Stein was not independent.[13] Stein has served as Executive Vice President and Chief Strategy Officer of IAC since January 2016, and prior to that served as Senior Vice President and Chief Strategy Officer of IAC from September 2015. Previously, Stein served as both the Senior Vice President of Corporate Development at IAC from January 2008 and Chief Strategy Officer of IAC Search & Applications from November 2012. Prior to that, Stein served as the Chief Strategy Officer of IAC's Mindspark Interactive Network from 2009 to 2012 and as Executive Vice President of Corporate and Business Development of IAC Search & Media from 2004 to 2008. Stein has served on the board of directors of ANGI since September 2017. From 2016 to 2019 Stein received over $16 million in compensation from IAC.

30. Defendant Gregg Winiarski ("Winiarski") was a director of Match from October 2015 until the consummation of the Separation. When the Match Board made independence determinations in February 2019 and 2020, Winiarski was not

[13] 2019 Annual Meeting Proxy at 9; 2019 Match 10-K/A at 26.

independent.[14] Winiarski has served as Executive Vice President, General Counsel and Secretary of IAC since February 2014 and previously as Senior Vice President, General Counsel and Secretary of IAC from February 2009 to February 2014. Prior to that, Winiarski served as Associate General Counsel of IAC from February 2005, with primary responsibility for all legal aspects of IAC's mergers and acquisitions and other transactional work. Winiarski has served on the board of directors of ANGI since June 2017. In the last ten years (2009 to 2019), Winiarski has received over $36 million in compensation from IAC.

31. By ensuring that almost all the Match Board would continue as New Match directors, the Transaction Agreement essentially granted those directors a $250,000 annuity, particularly since the staggered board, elimination of consents and other certificate provisions put in as part of the Separation would make it highly unlikely that any incumbent Match directors would be required to leave the New Match Board involuntarily any time in the near future. Basically, those Match directors were guaranteed at least a million dollars and probably a lot more if the Separation succeeded.

32. In October 2020 the New Match Compensation Committee with McDaniel as Chairperson and Seymon as a member, approved an amendment to the

[14] 2019 Annual Meeting Proxy at 9; 2019 Match 10-K/A at 26.

New Match non-employee director compensation program allowing non-employee directors who are not independent to receive compensation and awarding an $80,000 cash retention for the Chairperson of the Board effective as of the Separation. Thus, Levin, who had resigned as Executive Chairperson to become Chairperson now will annually get $80,000 as Chairperson, $50,000 as a director, and a $250,000 Director RSU award and Schiffman will receive $50,000 annually as a director fee and an annual cash award of $250,000 in RSUs.

33. The defendants identified in paragraphs 21 through 30 are referred to collectively herein as the "Director Defendants."

34. The defendants identified in paragraphs 18 through 30 are referred to collectively herein as "Defendants."

FACTUAL ALLEGATIONS

I. IAC's Control of Match

35. Match describes itself as "a leading provider of dating products available globally."[15] The Company's "portfolio of brands includes Tinder®, Match®, Meetic®, OkCupid®, Hinge®, Pairs™, PlentyOfFish®, and OurTime®, as

[15] 2019 Match 10-K at 3.

well as a number of other brands, each designed to increase users' likelihood of finding a meaningful connection."[16] At all relevant times, IAC has controlled Match.

A. History of IAC

36. IAC is a media and Internet company. As IAC has described itself:

> IAC, initially a hybrid media/electronic retailing company, was incorporated in 1986 in Delaware under the name Silver King Broadcasting Company, Inc. After several name changes (first to HSN, Inc., then to USA Networks, Inc., USA Interactive and InterActiveCorp, and finally, to IAC/InterActiveCorp) and the completion of a number of significant corporate transactions over the years, the Company transformed itself into a leading media and Internet company.[17]

37. IAC has long been controlled by its Chairman and Senior Executive, Diller. As of April 15, 2020, Diller and his family collectively held shares of Class B common stock and common stock that represented approximately 42.4% of the total outstanding voting power of IAC.

38. Diller exerted considerable control over IAC's operations, just as he controls the operations of New IAC. As IAC acknowledged, Diller and his family "are, collectively, currently in a position to influence, subject to our organizational documents and Delaware law, the composition of IAC's Board of Directors and the

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[16] *Id.*

[17] IAC/InterActiveCorp, Annual Report (Form 10-K) (Feb. 28, 2020) ("2019 IAC 10-K"), at 2.

outcome of corporate actions requiring shareholder approval, such as mergers, business combinations and dispositions of assets, among other corporate transactions[.]"[18] Diller has also used this voting power to stack the eleven-member IAC Board with corporate insiders and other loyalists, including (1) himself, (2) his stepson, (3) Levin, (4) long-time IAC director and executive Victor Kaufman ("Kaufman"), (5) Michael Eisner ("Eisner"), (6) Bonnie Hammer ("Hammer"), (7) Chelsea Clinton ("Clinton"), and (8) Bryan Lourd ("Lourd"). Public court filings show that Eisner, Hammer, Clinton, and Lourd all have close ties to Diller.[19]

39. IAC's business model is predicated on acquiring businesses, growing them, and then spinning off or separating them from IAC. IAC describes its history of acquisitions and spin-offs as follows:

(a) "From 1997 to 2005, we acquired a number of e-commerce companies, including Ticketmaster Group, Hotel Reservations Network (later renamed Hotels.com), Expedia.com, Match.com, LendingTree, Hotwire, TripAdvisor and AskJeeves."[20]

[18] 2019 IAC 10-K at 4; *see also id.* at 26 (risk factor noting that Diller and his family are in a "position to influence . . . the composition of IAC's Board of Directors").

[19] *See, e.g.*, Verified Complaint, *Cal. Public Emps.' Ret. Sys. v. IAC/InterActiveCorp, et al.*, C.A. No. 12975-VCL (Del. Ch. Dec. 12, 2016) (Trans. ID 59941621), ¶¶ 57-64, 67-68.

[20] 2019 IAC 10-K at 2.

(b) "In 2005, we completed the separation of our travel and travel-related businesses and investments into an independent public company called Expedia, Inc. (now known as Expedia Group, Inc.)."[21]

(c) "In 2008, we separated into five independent, publicly traded companies: IAC, HSN, Inc. (now part of Qurate Retail, Inc.), Interval Leisure Group, Inc. (now part of Marriott Vacations Worldwide Corporation), Ticketmaster (now part of Live Nation, Inc.) and Tree.com, Inc."[22]

(d) "From 2008 to 2014, we continued to invest in and acquire e-commerce companies, including Meetic, About.com (now known as Dotdash), Dictionary.com and Investopedia."[23]

(e) "In 2015, we acquired Plentyoffish Media Inc. and completed the initial public offering of Match Group, Inc."[24]

(f) "In 2017: (i) we completed the combination of the businesses in our former HomeAdvisor segment with those of Angie's List, Inc. under a new publicly traded holding company that we control, ANGI . . . ."[25]

40. Diller touts his "unique business model" for IAC, which is to "[b]uy digital businesses, fold them into a conglomerate and then spin [them] out . . . ."[26] Diller runs IAC as a "sort of 'central flywheel' to create, buy and finance companies

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[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] Andrew Ross Sorkin, *Barry Diller's Business Model Bears Fruit*, THE NEW YORK TIMES (Nov. 23, 2015), https://www.nytimes.com/2015/11/24/business/dealbook/barry-dillers-business-model-bears-fruit.html.

to later be spun out."[27] IAC has been "a minifactory of spinoffs. 'I'm really an anti-conglomerateur,' Mr. Diller said."[28] Diller repeated his "anti-conglomerate" moniker in connection with the Separation.[29]

B. History of Match

41. In 1999, IAC acquired *Match.com*, an Internet dating website. Between that time and 2015, IAC expanded its portfolio of dating brands by acquiring and starting a number of other dating products. In 2009, IAC incorporated Match and other dating brands owned by IAC and grew Match into one of the biggest providers of online dating services in the world.

42. In November 2015, IAC began the process of separating Match from IAC when it sold approximately 38.3 million shares of Match common stock to public investors in the IPO. But while Match became a public company, IAC retained tight control over the subsidiary through: (1) IAC's ownership of all of Match's super-voting Class B common stock, constituting approximately 84.6% of Match's outstanding equity and approximately 98.2% of the Company's total voting

[27] *Id.*

[28] *Id.*

[29] *IAC and Match Group Announce Agreement to Separate Match Group From IAC*, IAC PRNEWSWIRE (Dec. 19, 2019), https://www.prnewswire.com/news-releases/iac-and-match-group-announce-agreement-to-separate-match-group-from-iac-300977485.html.

power; (2) IAC's hand-picked appointees to Match's Board; and (3) the stringent requirements of the 2015 Agreements.

43. IAC continuously held a majority of Match's outstanding equity and voting power following the IPO, and Match openly acknowledged IAC's control. In Match's Annual Report on Form 10-K for 2019, the Company acknowledged that "[a]s a result of IAC owning more than 50% of the combined voting power of our share capital, we are currently a 'controlled company' under the Marketplace Rules of the NASDAQ Stock Market[.]"[30] As of April 15, 2020, IAC retained control of approximately 97.4% of the combined voting power of Match's outstanding capital stock through its ownership of all of Match's super-voting Class B common stock and 18,461,879 shares of Match common stock. IAC's holdings collectively represented approximately 80.4% of Match's outstanding shares of capital stock.

44. IAC and Diller have used IAC's voting control to fill the Match Board with current and former IAC executives (i.e., Levin, McInerney, Schiffman, Stein, and Winiarski), IAC directors (i.e., Levin and Spoon) and/or IAC/Diller loyalists (i.e., Seymon and McDaniel). Levin, McInerney, Seymon, Spoon, Stein, and

[30] 2019 Match 10-K at 23; *see also id.* (noting that, "[w]hile we are controlled by IAC, we may not have the leverage to negotiate amendments to the[] agreements [governing Match and IAC's relationship]").

Winiarski have all served on the Match Board since the IPO and were all appointed to serve in directorial capacities by IAC and Diller.

45. However, it was the 2015 Agreements that IAC caused Match to enter into at the time of the IPO that provided a roadmap for IAC's domination of Match's operations and the eventual separation process. The 2015 Agreements include the: (a) Master Transaction Agreement; (b) Employee Matters Agreement; (c) Investor Rights Agreement; and (d) Tax Sharing Agreement.[31]

46. As described in the 2019 Match 10-K, the Master Transaction Agreement "set[] forth the agreements between IAC and the Company regarding the principal transactions necessary to separate [Match] from IAC, as well as govern[ed] certain aspects of [Match's] relationship with IAC post IPO."[32] Under the Master Transaction Agreement:

[31] The 2015 Agreements also included a Services Agreement and an IAC Subordinated Loan Facility. According to the 2019 Match 10-K, the Services Agreement "govern[ed] services that IAC provid[ed] to the Company including, among others: (i) assistance with certain legal, finance, internal audit, treasury, information technology support, insurance and tax matters, including assistance with certain public company reporting obligations; (ii) payroll processing services; (iii) tax compliance services; and (iv) such other services as to which IAC and the Company may agree." 2019 Match 10-K at 100. The IAC Subordinated Loan Facility "allowed the Company to make one or more requests to IAC to borrow funds" following the IPO. *Id.* at 101.

[32] *Id.* at 99.

> "the Company agree[d] to assume all of the assets and liabilities related to its business and agree[d] to indemnify IAC against any losses arising out of any breach by the Company of the master transaction agreement or the other transaction related agreements described below. IAC also agree[d] to indemnify the Company against losses arising out of any breach by IAC of the master transaction agreement or any of the other transaction related agreements."[33]

The Master Transaction Agreement also contained the definitions for terms used throughout the rest of the 2015 Agreements.

47. The Employee Matters Agreement addressed a wide range of compensation and benefit issues related to the allocation of liabilities associated with: (i) employment or termination of employment; (ii) employee benefit plans; and (iii) equity awards. As explained in the 2019 Match 10-K:

> "Under the employee matters agreement, the Company's employees participate in IAC's U.S. health and welfare plans, 401(k) plan and flexible benefits plan and the Company reimburses IAC for the costs of such participation. In the event IAC no longer retains shares representing at least 80% of the aggregate voting power of shares entitled to vote in the election of the Company's Board of Directors, Match Group will no longer participate in IAC's employee benefit plans, but will establish its own employee benefit plans that will be substantially similar to the plans sponsored by IAC."[34]

The Employee Matters Agreement also required Match to reimburse IAC for the cost of any IAC equity awards held by Match's employees and former employees

[33] *Id.*

[34] *Id.* at 100.

and that IAC may elect to receive payment either in cash or Company common stock. With respect to equity awards originally denominated in shares of the Company's subsidiaries, IAC was entitled to require those awards to be settled in either shares of IAC's common stock or in shares of Match's common stock and, to the extent shares of IAC common stock were issued in settlement, Match was to reimburse IAC for the cost of those shares by issuing to IAC additional shares of the Company's common stock.

48. In the 2015 Investor Rights Agreement, Match provided IAC with "(i) specified registration and other rights relating to its shares of our common stock and (ii) anti-dilution rights."[35] However, although not mentioned in the Proxy or in any of the Books and Records, the Investor Rights Agreement also required Match's cooperation with IAC with respect to "Future Transactions." Specifically, Section 3.1 of the Investor Rights Agreement stated that "At any time after the [2015 IPO transaction's] Effective Date, if IAC advises Match that IAC intends dispose of all or a portion of its interest in Match (including by way of a distribution to IAC's shareholders), Match agrees to cooperate and take all action reasonably requested by IAC to facilitate such a transaction."[36] Whether and to what extent Match and

[35] *Id.*

[36] Match Group, Inc., Current Report (Form 8-K) (Nov. 24, 2015), at Ex. 4.1.

the Separation Committee purported to act further to this contract provision in 2019 in accepting IAC's terms for the Separation has never been disclosed.

49. The 2019 Match 10-K described the Tax Sharing Agreement as follows:

> The tax sharing agreement governs the rights, responsibilities, and obligations of the Company and IAC with respect to tax liabilities and benefits, entitlements to refunds, preparation of tax returns, tax contests and other tax matters regarding U.S. federal, state, local and foreign income taxes. Under the tax sharing agreement, the Company is generally responsible and required to indemnify IAC for: (i) all taxes imposed with respect to any consolidated, combined or unitary tax return of IAC or one of its subsidiaries that includes the Company or any of its subsidiaries to the extent attributable to the Company or any of its subsidiaries, as determined under the tax sharing agreement, and (ii) all taxes imposed with respect to any of the Company's subsidiaries' consolidated, combined, unitary or separate tax returns.[37]

50. But importantly, the Tax Sharing Agreement was intended to ensure that IAC retained a threshold level of control of IAC such that a future distribution of Match stock to IAC stockholders (including, most notably, Diller) would be tax-free. The Prospectus Match filed on Form 424(b)4 with the SEC on November 20, 2015 in connection with the IPO explained:

> IAC must retain beneficial ownership of at least 80% of the combined voting power and 80% of each class of nonvoting capital stock, if any is outstanding, in order to effect a tax-free distribution of our shares held by IAC to its stockholders. IAC has advised us that it does not have any present intention or plans to undertake such a tax-free distribution.

[37] 2019 Match 10-K at 100.

> However, IAC currently intends to use its majority voting interest to retain its ability to engage in such a transaction. This intention may cause IAC to not support transactions we wish to pursue that involve issuing shares of our common stock, including for capital raising purposes, as consideration for an acquisition or as equity incentives to our employees.[38]

51. To ensure that Match complied with the IAC's tax-free distribution scheme, Section 4(a) of the 2015 Tax Sharing Agreement contained a series of covenants purporting to ensure that Match cooperated with any IAC plan to divest itself of its interest in Match through a distribution of its Match stock to IAC's stockholders. Among those covenants were agreements that:

- "Match shall (and shall cause each member of the Match Group to) take any action reasonably requested by [IAC] in order to consummate a Distribution";[39]
- "Match shall not take or fail to take any action (and it shall cause the members of the Match Group not to take or fail to take any action) which action or failure to act could reasonably be expected to prevent [IAC] from consummating a Distribution";[40]
- "Match agrees that, without [IAC]'s prior written consent, it will not take (and will cause each member of the Match Group not to take) any action that could reasonably be expected to (1) cause [IAC] to cease to have "control" (within the meaning of Section 368(c) of the Code) of Match or (2) result in a Deconsolidation Event, in each case, prior to the Distribution Date";[41] and

[38] Match Group, Inc., Prospectus (Form 424(b)4) (Nov. 20, 2015), at 29.

[39] Match Group, Inc., Current Report (Form 8-K) (Nov. 24, 2015), at Ex. 10.3.

[40] *Id.*

[41] *Id.*

- In the event of a Distribution, from and after the Distribution Date, Match shall not (A) take any action or permit any member of the Match Group to take any action, and Match shall not fail to take any action or permit any member of the Match Group to fail to take any action, in each case, unless such action or failure to act could not reasonably be expected to (1) cause the Distribution to fail to have Tax-Free Status or (2) require [IAC] or Match to reflect a liability or reserve for Income Taxes with respect to the Distribution in its financial statements.[42]

52. The Proxy is silent about these 2015 Tax Sharing Agreement covenants. Nowhere does it explain if and how they applied to the Separation. Nor is there any mention of the extent to which they were considered by Match and the Separation Committee in evaluating the Separation terms proposed by IAC, terms that resulted in a deal structure that preserved tax consolidation between the entities for two years following the transaction, thereby ensuring favorable tax treatment for IAC and its stockholders, but restricting Match for the two year period from entering into strategic transactions involving an acquisition of Match's stock, issuing equity securities beyond certain thresholds, or repurchasing Match's shares other than in certain open-market transactions.

53. IAC and the Separation Committee both approached and negotiated the Separation as though Match was obligated to agree to a deal structure that afforded IAC a tax-free spin-off. The Separation Committee neither bargained for

[42] *Id.*

a deal structure that was more favorable to Match's stockholders nor obtained any concessions for agreeing to the two-year period of restrictions. But, as is discussed below, the Separation transaction IAC proposed and the Separation Committee and the Board accepted was not a "Distribution" as defined in 2015 Agreements and Match was under no obligation to cooperate with IAC's tax consolidation scheme.

II. Background of the Separation

A. IAC Discloses It Is Considering a Potential Separation Transaction Involving Match

54. On August 7, 2019, in connection with the announcement of IAC's second quarter 2019 results, Levin disclosed in a letter from IAC to its shareholders that IAC was "considering spinning our two large publicly traded subsidiaries, [Match] and ANGI."[43] Levin stated that "[w]e don't yet know where that process will lead—there's lots of work to be done and details to consider—and we may ultimately choose to spin off both, one or neither."[44] Levin stated that IAC "expect[ed] to reach a conclusion in the coming months."[45]

55. The following day, IAC held a conference call to discuss its second quarter 2019 results. On the call, Levin stated that, "anything is possible from here

[43] *IAC Q2 2019 Shareholder Letter*, IAC (Aug. 7, 2019), https://ir.iac.com/static-files/e612047a-5337-47f8-840b-4dee270c2b40 at 1.
[44] *Id.*
[45] *Id.* at 7.

. . . I think Match was perhaps the original catalyst and is probably the more obvious candidate on typical metrics that one might consider."[46] Earlier in the call, Levin stated that "I think we always say that there's not one particular formula, there's not one particular moment," but that "I think one thing that has historically been a catalyst among others and is relevant now is the size of Match relative to IAC, that one starts to look like a proxy for the other, and in a very good and healthy way, casts a shadow over the rest of IAC, and that really was sort of the starting point of our recent thinking . . . ."[47]

56. The following day, Levin appeared on CNBC's Squawk Box to discuss the potential of a Match or ANGI spin-off.[48] Levin reiterated that Match was "consum[ing] the entire IAC story," and "casting a shadow" over IAC, and that "now may be a good time [to spin-off Match]."[49] Levin also stated that "the most obvious candidate for a spin is Match. Match is much further along in its life, its development

[46] ANGI Homeservices, Inc., *FQ2 2019 Earnings Call Transcript*, S&P Global Market Intelligence (Aug. 8, 2019, 12:30 PM).

[47] On the call, Schiffman said that IAC's interest in Match represented approximately $240 of an IAC share, and that ANGI represented $50 per share.

[48] *IAC CEO on the possible Match and Angie's List spin-off*, CNBC (Aug. 8, 2019, 8:25 AM), https://www.cnbc.com/video/2019/08/08/iac-ceo-joey-levin-q2-earnings-squawk-box.html.

[49] *Id.*

and its size and its scale relative to the rest of IAC. ANGI is still developing some things."[50]

57. Levin made clear that IAC would not consider a sale of Match to a third-party. In response to a question about whether IAC would consider a sale, Levin said "I suppose that's possible. I think that's unlikely. It's not tax efficient. . . . We don't typically sell assets. We typically give them to our shareholders. That's what we have done historically. I suppose anything is possible, but I'd say not likely."[51]

58. On August 9, 2019, IAC filed with the SEC a Schedule 13D/A with respect to its interest in Match. The filing disclosed that, "[o]n August 7, 2019, IAC announced its intention to explore the possibility of a distribution of its interest in Match Group to IAC's shareholders. No decisions have been made as to the details of, or whether to pursue or consummate, such transaction."[52]

[50] *Id.*

[51] *Id.*

[52] Match Group, Inc., Beneficial Owner Report (Schedule 13D/A) (Aug. 9, 2019).

B. Match Waits to Form a Separation Committee; In the Interim, the Conflicted Match Board Squanders Immensely Valuable Negotiating Leverage

59. Notwithstanding Levin's proclamations that Match was an "obvious" candidate for a spin-off, the Match Board did not take any action to protect the Company's bargaining power in connection with a potential separation transaction with IAC. Rather, the IAC-dominated Match Board squandered its leverage.

60. In order for any potential spin-off of Match to be tax free to IAC and its stockholders (including, most notably, Diller) and to maintain tax consolidation between the two companies, it was imperative that IAC's ownership of Match did not fall below 80% under various metrics. The Books and Records indicate that Match anticipated that a potential separation would be a distribution of Match's shares of a type addressed in the Tax Sharing Agreement. On August 28, 2019, Match Chief Legal Officer and Secretary Jared Sine sent an email to the Match Board and Match management (including Dubey and Match CFO Gary Swidler) stating:

[redacted][53]

61. The proposed share repurchase plan requested Match Board approval for a 10 million share increase from 1.3 million to 11.3 million.[54] The 10b5-1 plan consisted of two components: (1) [redacted] and (2) [redacted][55] An accompanying presentation noted that [redacted][56]

62. Upon Sine's request, the Board promptly approved the repurchase plan increase on August 30, 2019 via unanimous consent.[57] On August 30, 2019, Match filed a Form 8-K with the SEC disclosing that the Board authorized the repurchase

[53] MATCH-0000018.

[54] MATCH-0000019.

[55] *Id.*

[56] MATCH-0000021.

[57] MATCH-0000004-6.

increase earlier that day. The Match Board accepted the 10b5-1 plan without question, with the only inquiry from an unnamed director who inquired as to Match's ability to fund the increased repurchases.[58]

63. The Separation Committee, for its part, would give short shrift to these issues as well. The next time IAC and the Separation Committee addressed the issues was on November 11, 2019 when IAC submitted a counterproposal that "was premised on an agreement by Match to continue to make repurchases of Match common stock as needed to maintain tax consolidation with IAC[.]"[59] The Separation Committee caved to Levin's request eleven days later.[60] For reasons that the Proxy never explains, the Separation Committee was content to accommodate IAC on the key tax issue even though the Tax Sharing Agreement was inapplicable to the Separation.

C. The Match Board Forms a Conflicted Separation Committee

64. On September 18, 2019, the Match Board held a meeting, at which time the Board resolved to form the Separation Committee comprised of McInerney,

[58] MATCH-0000018.

[59] Proxy at 147-48.

[60] *Id.* at 149 (noting that Levin and McInerney "reached a preliminary agreement" whereby, among other things, "[t]he Match separation committee would also accept IAC's previous proposal with respect to repurchases of Match common stock during the pendency of the transaction").

Seymon, and McDaniel to structure, review, evaluate, negotiate and propose the terms of a separation of Match and IAC.

65. The Separation Committee was not empowered to consider alternative transactions, but it was empowered to reject a potential separation with IAC. The resolutions establishing the Separation Committee state in pertinent part:

> [T]hat the Separation Committee is hereby authorized to structure, review, evaluate, negotiate and propose the terms and conditions of a Separation Transaction (or any offer or indication of interest therefor) including (1) establishing, approving, modifying monitoring and directing the process and procedures related to the review and evaluation of a Separation Transaction, including the authority to determine not to proceed with any such process, procedures, review or evaluation . . . (3) negotiating with any of the IAC Parties or any other party with respect to the terms and conditions of a Separation Transaction, and, if the Separation Committee deems it appropriate and in its sole discretion, disapproving a Separation Transaction . . . .[61]

66. Notwithstanding its authority to say "no," the Separation Committee barely considered this power. Rather, the closest the Committee came to doing so was at its November 7, 2019 meeting with a brief discussion of "the potential impact to the Company if a separation transaction were not to take place."[62]

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[61] MATCH-0000015.

[62] MATCH-0001765. According to the Proxy, the Separation Committee also "determined to propose a collar on Match's common stock price relating to the exchangeable notes," and "instructed Goldman Sachs to prepare a response for IAC based on the discussions at the meeting," Proxy at 147, but no such information is found in the minutes for this meeting.

67. Each member of the Separation Committee lacks independence from Diller and/or IAC. McInerney began working for Diller and IAC in May 1999, at the age of 35, when he joined Ticketmaster as its Executive Vice President and Chief Financial Officer. In January 2003, Diller and IAC named McInerney CEO of IAC's HSN and Electronic Retailing Group from January 2003 through December 2005, and in November 2004, Diller and IAC announced that they had appointed McInerney to succeed Dara Khosrowshahi as IAC's CFO, effective January 2005. McInerney also served in the Office of the Chairman under Diller. McInerney served in these positions until March 2012, when McInerney was 48 years of age. All told, McInerney earned over $55 million while working for Diller and IAC.

68. In an IAC press release announcing McInerney's departure, McInerney said that he was "more than grateful to Barry Diller for the opportunities he and IAC have given me . . . ."[63] Diller, meanwhile, stated that:

> I wish I could stand in his way, as his value to IAC has been incomparable, but it is with total respect for his ability, trustworthiness, and decency that I, Greg Blatt and everyone else at the Company cheer Tom on as his desire to move beyond his current position becomes a reality . . . . No one has played a fuller role than Tom in contributing to

[63] *Thomas J. McInerney to Step Down as IAC CFO*, PRNEWSWIRE (Aug. 11, 2011, 8:00 AM), https://www.prnewswire.com/news-releases/thomas-j-mcinerney-to-step-down-as-iac-cfo-127514003.html.

> the sustained growth of IAC and whatever and whoever he is associated with in the future will be lucky indeed.[64]

69. McInerney has served on the boards of directors of various IAC affiliates before and after leaving IAC in 2012. In May 2008, McInerney was appointed to the board of directors of ILG, where he served until September 2018. In August 2008, McInerney joined the board of directors of HSN, where he served until December 2017. In November 2015, McInerney joined the Match Board. After leaving IAC, McInerney was a "personal investor" from 2012 to 2017. McInerney has earned over $4.5 million in compensation from his service on IAC-affiliated board of directors. These fees constituted 73% of the total compensation McInerney received for his service on the boards of directors of public companies.

70. McInerney was the lead negotiator for the Separation Committee in connection with the Separation and has a close relationship with IAC's lead negotiator, Levin. Levin served under, and reported to, McInerney while the latter was serving as CFO of IAC.[65]

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[64] *Id.*

[65] *IAC Appoints Joey Levin CEO of Mindspark Interactive Network*, IAC PRNEWSWIRE (Aug. 8, 2009), https://www.iac.com/media-room/press-releases/iac-appoints-joey-levin-ceo-mindspark-interactive-network.

71. Seymon also lacks independence from Diller and IAC. For at least two decades, Seymon served as Diller's and IAC's legal advisor until her departure from WLRK in 2012. Seymon and WLRK's relationship with Diller and IAC is well-known. In April 2008, *The American Lawyer* published an article stating:

> Barry Diller has vision, no doubt, but it changes frequently. Buy this company, sell that one. Get into one business, get out of the other. Nobody could be happier to serve Diller's deal addiction than Wachtell, Lipton, Rosen & Katz, particularly Martin Lipton and Pamela Seymon, who have handled many of the deals. The firm has been representing the media mogul and his many companies for more than 15 years, and more work appears to be on the way.[66]

72. In February 2009, *The Am Law Daily* published an article reporting on Live Nation's takeover of Ticketmaster. The article noted that:

> Pamela Seymon, the lead Wachtell corporate partner representing Ticketmaster, did not immediately return a call seeking comment. Seymon has long represented Barry Diller, the media mogul who owns (among other things) Ticketmaster parent IAC, an Internet conglomerate that also includes Expedia and the Ask.com search engine (formerly Ask Jeeves). Seymon advised Diller and IAC during a buying spree in 2002 and 2003 that included the acquisition of Ticketmaster.[67]

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[66] *Hand in Hand, Down the Primrose Path*, THE AMERICAN LAWYER (Apr. 1, 2008, 12:00 AM), https://www.law.com/americanlawyer/almID/900005507787/?slreturn=20201107153648.

[67] Zach Lowe, *Latham, Wachtell on Controversial Ticketmaster-Live Nation Deal*, THE AMLAW DAILY, (Feb. 10, 2009, 2:18 PM), https://amlawdaily.typepad.com/amlawdaily/2009/02/latham-wachtell-on-controversial-ticketmasterlive-nation-deal.html.

73. In December 2010, *The AmLaw Daily* published an article reporting on a transaction between IAC and Liberty Media Corp. ("Liberty Media") in which IAC agreed to give $220 million and websites Evite and Gifts.com to Liberty Media in exchange for Liberty Media's 12.8 million shares in IAC. The article stated that: "It was Wachtell that advised IAC on its latest transaction with Liberty Media. Corporate partner Pamela Seymon led a team from the firm on the matter . . . ."[68]

74. Seymon also testified on behalf of Diller and IAC in the Delaware Court of Chancery in 2008 in connection with a high-profile dispute between IAC and Liberty Media. The dispute involved testimony from Seymon who was responsible for drafting a 2001 addendum to an agreement between IAC and Liberty Media. As noted by the Court, "Pamela Seymon, of Wachtell, Lipton, Rosen & Katz, LLP, IAC's primary outside law firm, w[as] the lead partner on the IAC engagement since 1995."[69]

75. Seymon and WLRK have continuously served as Diller's legal counsel and since at least 1994 (i.e., the earliest year available for searching electronic SEC filings) until her departure from the firm in 2012, Seymon advised IAC and its

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[68] Brian Baxter, *Wachtell Alum New CEO at IAC, As $220 Million Deal Sees Media Titans Parts Ways*, THE AMLAW DAILY (Dec. 2, 2010, 6:11 PM), https://amlawdaily.typepad.com/amlawdaily/2010/12/greg-blatt-iac-wachtell.html.

[69] *In re IAC/InterActive Corp.*, 948 A.2d 471, 500 (Del. Ch. 2008).

affiliates on numerous engagements. Further impugning Seymon's ability to serve on the Separation Committee is that her former law firm partner, Andrew Nussbaum ("Nussbaum"), represented IAC in connection with the IPO, the preparation of the 2015 Agreements, and with the Separation. Seymon worked closely with Nussbaum during her time at WLRK, including in connection with the Liberty Media/IAC trial. Seymon's numerous engagements with IAC and Diller and Nussbaum during her time at WLRK include, but are not limited to, the following:

Year	Engagement
1994	Represented QVC in connection with proposal to acquire Paramount Communications
	Represented QVC in Stock Option Agreement between QVC, Cox Enterprises, Inc., Advance Publication, Inc. and Bellsouth Corporation
	Represented QVC in connection with merger agreement among QVC, Comcast Corporation, Liberty Media Corporation and Comcast Qmerger, Inc.
1995	Represented Silver and Silver Co. in connection with Exchange Agreement between Silver King Communications, Inc. and Silver Management Company, and merger agreement among Silver Management Company, Liberty Program Investments, Inc. and Liberty HSN, Inc.
1996	Represented Silver King Communications, Inc. in connection with merger agreement between Silver King, Home Shopping Network, Inc., and Liberty HSN, Inc.
	Represented Silver King Communications, Inc. in Exchange Agreement between Silver King and Liberty HSN, Inc.
1997	Represented HSN in connection with Stock Exchange Agreement between Paul G. Allen and HSN

1998	Represented HSN in connection with Investment Agreement between Universal Studios, Inc., HSN and Liberty Media Corporation
	Represented USA Networks in connection with merger agreement between USA Networks, Inc., Brick Acquisition Corp. and Ticketmaster Group, Inc.
	Represented HSN/USA Networks in connection with Exchange Agreement between HSN, Universal Studios, Inc. and Liberty Media Corporation
	Represented HSN in connection with Investment Agreement between Universal Studios, Inc., HSN and Liberty Media Corporation
1999	With Nussbaum, represented USA Networks, Inc. in connection with reorganization agreement between USA Networks, Ticketmaster and other entities
2000	Represented USA Networks and Ticketmaster in connection with Contribution Agreement between USA and Ticketmaster
2001	With Nussbaum, represented USA Networks, Inc. in connection with its acquisition of controlling interest in Expedia, Inc.
	Represented Expedia in connection warrants offering
	With Nussbaum, represented Diller and USA Networks in connection with Amended and Restated Governance Agreement and Stockholders Agreement
2002	Represented Expedia in connection with warrants offering
	Represented USA Networks in connection with stock offering
	Represented USA Networks in connection with Stock Purchase Agreement between USA Networks and Expedia
	With Nussbaum, represented USA Networks and Diller in connection with Amended and Restated LLLP agreement for Vivendi Universal Entertainment LLLP
	Represented USA Networks in connection with Registration Rights Agreement
	Represented USA Interactive in connection with Agreement and Plan of Merger between USA Interactive, T Merger Corp. and Ticketmaster

2003	With Nussbaum, represented USA Interactive in connection with Agreement and Plan of Merger between USA Interactive, Equinox Merger Corp. and Expedia
	Represented USA Interactive in connection with stock issuance
	Represented IAC in connection with Purchase Agreement between IAC and Vivendi Universal, S.A.
	Represented IAC in connection with stock issuance
2005	Represented IAC in connection with spin-off of Expedia
	With Nussbaum, represented Diller and IAC in connection with Amended and Restated Governance Agreement and Stockholders Agreement
2006	Represented Expedia in connection with tender offer to acquire its common stock
2007	Represented IAC in connection with negotiation of McInerney's employment agreement
	Represented Expedia in connection with tender offer to acquire its common stock
2008	Represented IAC in connection with SpinCo Agreement between IAC and Liberty Media Corporation
	Represented IAC in connection with comment letter from SEC in connection with conversion of IAC stock
	Represented IAC in connection with spin-off of HSN, Inc., Interval Leisure Group, Inc., Ticketmaster and Tree.com
	Represented Ticketmaster in connection with Stock Purchase Agreement between a Ticketmaster subsidiary and MM Investment, Inc. and WMG Church Street Limited
2009	Represented Ticketmaster in connection with Agreement and Plan of Merger between Ticketmaster and Live Nation, Inc.
	Represented IAC in connection with negotiation of McInerney's amended employment agreement

2010	Represented IAC in connection with Kaufman's amended employment agreement

76. WLRK maintains a strong relationship with Diller and IAC. WLRK continues to serve as Diller's and IAC's legal counsel and concurrently represents IAC and Match in pending litigation. In fact, as recently as November 2020, Bloomberg Law published an article entitled "Barry Diller's IAC Deepens Wachtell Bond with New Legal Chief."[70] The article noted that Kendall Handler, a former Wachtell alumni of more than a half-dozen years, was announced as the new general counsel of IAC, beginning in January 2021. The article stated that the "ties between billionaire Barry Diller and [WLRK] grew stronger" with the announcement, as the new general counsel "is among a number of top lawyers and executives at Diller-controlled entities [who] previously worked at Wachtell." The article specifically names Seymon among the list of individuals named as Diller's "Wachtell Connections."

[70] Brian Baxter, *Barry Diller's IAC Deepens Wachtell Bond with New Legal Chief*, Bloomberg Law, (Nov. 24, 2020, 7:05 PM), https://www.bloomberglaw.com/bloomberglawnews/business-and-practice/XAEBRR7C000000?bna_news_filter=business-and-practice#jcite.

77. Lastly, McDaniel lacks independence. McDaniel worked at GHC for several decades and Diller was a member of GHC's board of directors for a significant amount of that time.

D. The Conflicted Separation Committee Hires a Conflicted Financial Advisor

78. The Separation Committee failed to conduct an extensive search for a financial advisor. In fact, the Separation Committee considered only three potential financial advisors. At a single meeting held on October 3, 2019, it discussed the three candidates: [redacted] and Goldman Sachs.[71] The Separation Committee ultimately retained Goldman Sachs.

79. But Goldman Sachs was conflicted. Goldman Sachs disclosed at the October 3, 2019 meeting that it was a counterparty to IAC on call spreads on two of the convertible notes (the "Exchangeables"): (1) the 0.875% Exchangeable Senior Notes due 2022 (the "2022 Exchangeables") (where Goldman Sachs has 25% of that call spread), and (2) the 0.875% Exchangeable Senior Notes due 2026 (the "2026 Exchangeables") (where Goldman Sachs has 20% of that call spread).[72]

[71] MATCH-00001730-33.

[72] MATCH-00001732.

80. Goldman Sachs noted that, notwithstanding its conflict of interest, "[t]he Match [Separation] Committee will need to negotiate with IAC around the valuation of the [E]xchangeables and the call spreads being transferred and the impact to IAC's ownership in Match as a result[.]"[73] Goldman Sachs noted that "[t]ransferring the call spreads from IAC to Match may result in the ability for the call spread counterparties [including Goldman Sachs] to make fair value adjustments based on a variety of factors, including but not limited to market dynamics, volatility, trading liquidity, hedge unwind costs, etc."[74] Goldman Sachs recommended "that the inputs to the warrant adjustments are agreed prior to signing in order to be able to value the warrants appropriately[.]"[75]

81. [redacted]

[73] MATCH-00002243.

[74] *Id.*

[75] *Id.* [redacted] MATCH-0002258 (emphasis added).

[redacted]

[redacted]

82. [redacted]

[redacted]

76 MATCH-0001885 (emphasis added).

4816-4116-2233, v. 1

[redacted]

83. [redacted]

[redacted]

84. On October 9, 2019, the Separation Committee held another meeting at which time the Separation Committee determined to proceed with the utilization of Goldman Sachs as its financial advisor.[79]

E. IAC Makes Its Initial Proposal to the Separation Committee

85. On October 10, 2019, WLRK, on behalf of the IAC Board and IAC management, conveyed to the Separation Committee's legal advisor, Debevoise & Plimpton LLP ("Debevoise"), a preliminary proposal for a separation transaction. The proposal consisted of the following components:

(a) A reverse spin-off of non-Match assets in a "New IAC" to IAC shareholders, followed by the merger of Match with IAC, which would result in a "New Match" with a single class of voting stock owned by IAC shareholders and public shareholders of Match;

(b) A $2 billion dividend to be paid by Match pro rata to its stockholders (including IAC) prior to the spin-off, which would be financed with $1.8 billion of new debt;

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[77] MATCH-0002208.

[78] MATCH-0001893 (emphasis added).

[79] MATCH-0001736.

(c) New Match's retention of IAC's obligations under the Exchangeables with compensation to Match via adjustment to an exchange ratio;

(d) New Match's retention of corporate offices at 8800 and 8833 Sunset Blvd. in West Hollywood, California with compensation to IAC via an adjustment to the exchange ratio;

(e) New Match's retention of IAC tax attributes generated by non-Match entities with compensation to IAC via adjustment to the exchange ratio;

(f) The issuances of IAC/New Match stock with the proceeds going to New IAC and compensation to IAC via adjustment to the exchange ratio;

(g) The use of volume weighted average pricing ("VWAP") for purposes of determining the net number of New Match shares to be effectively surrendered by IAC in connection with the reshuffling of assets and liabilities between Match and IAC, and the valuation of the Exchangeables using the average value leading up to the Separation;

(h) Splitting IAC options into New IAC and New Match options based on relative value (as of immediately prior to the Separation) with *no adjustment* to the exchange ratio;

(i) Various governance conditions, including that (i) the New Match Board consists of all preexisting Match Board members, except that two IAC board members and one member of the Match management team will resign and be replaced with two directors; (ii) Levin will remain Chairman of the New Match Board; (iii) the New Match Board will adopt a shareholder rights plan; and (iv) the New Match Board will be classified.

(j) Negotiation of the Tax Sharing Agreement, Transition Services Agreement, Employee Matters Agreement and other ancillary agreements; and

(k) Closing condition requiring approval by majority of the shares held by disinterested stockholders of Match (i.e., a majority-of-the-minority condition).[80]

86. Later that day, the Separation Committee held a meeting at which time Debevoise relayed certain aspects of IAC's initial proposal. At the conclusion of the meeting, Debevoise noted that WLRK had proposed a meeting with IAC and WLRK at IAC's offices on October 14, 2019 to review IAC's proposal in detail.[81] The Separation Committee chose not to attend, but instead requested that Goldman Sachs accompany Debevoise.[82]

87. On October 11, 2019, IAC issued a press release and filed a Schedule 13D/A disclosing the initial proposal. In the press release, Levin stated that "IAC is confident that the proposal communicated to the Match Group special committee provides strong footing for Match Group to begin its journey as a thriving, independent company."[83] Levin also disclosed that IAC had determined to place its consideration of an ANGI spin-off on hold until the Match separation had concluded.

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[80] *See* MATCH-0002122; MATCH-0001738; Proxy at 142-43.

[81] MATCH-0001671.

[82] *Id.*

[83] *IAC Makes Preliminary Proposal for Match Group Separation*, IAC PRNEWSWIRE (Oct. 11, 2019), https://www.prnewswire.com/news-releases/iac-makes-preliminary-proposal-for-match-group-separation-300937133.html.

88. On this news, shares of Match common stock fell 2.4% from $75.92 to $74.10 that day.

89. On October 14, 2019, IAC, WLRK, Debevoise, and Goldman Sachs met as planned. According to the Proxy, "[t]opics of discussion included, among other things, the proposed transaction steps, treatment of outstanding IAC equity awards, and the method of determining the value of the adjustment related to the exchangeable notes and the associated hedging instruments."[84] Neither the Books and Records nor the Proxy explain why the Separation Committee decided not to attend this meeting, particularly in light of the fact that the attendees (including Goldman Sachs) discussed the treatment of adjustments related to the Exchangeables to which Goldman Sachs was counterparty and acting as principal.

F. Diller Declares the Separation To Be *Fait Accompli*

90. On October 16, 2019, just days after IAC purportedly made its initial proposal, Fox Business aired an interview with Diller addressing, among other things, IAC's potential separation of Match.[85]

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[84] Proxy at 144.

[85] *Media mogul Barry Diller: Match is in a ridiculous phase of growth*, FOX BUSINESS (Oct. 16, 2019), https://video.foxbusiness.com/v/6095233349001/#sp=show-clips.

91. During the interview, Diller noted that Match formed a Separation Committee of purportedly independent directors "because all of the other directors are IAC."[86] Diller said that IAC had "formally made them a proposal," "now discussions will start," and in a clear vote of confidence, stated that "within months, they will be on their own."[87]

92. In response to a question regarding concerns about the leverage that would encumber Match in a potential separation, Diller said that "we would not cause indebtedness at Match to be beyond any type of rational threshold," and that "of course that'll be an issue, but it'll get solved."[88]

93. Diller's appearance on Fox Business followed an October 2, 2019 feature on him in *Forbes*.[89] In that article, which included commentary from Diller from early September 2019, Diller stated that: "All of [IAC's] transmutations have been about renewal . . . . Spinning off Match is a process of renewal in that IAC the

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[86] *Id.*

[87] *Id.*

[88] *Id.*

[89] Antoine Gara, *Who Needs Moonshots? How Former Hollywood Mogul Barry Diller Built A $4.2 Billion Tech Fortune Out Of Underdog Assets*, FORBES (Oct. 2, 2019, 6:40 AM), https://www.forbes.com/sites/antoinegara/2019/10/02/who-needs-moonshots-how-former-hollywood-mogul-barry-diller-built-a-42-billion-tech-fortune-out-of-underdog-assets/#26584bda368e.

company gets to start inventing again. We are . . . shrinking in order to grow again . . . shrinking with $5 billion or so of cash."[90]

G. The Separation Committee Fails to Protect the Interests of Match's Minority Stockholders

94. The Separation Committee next met on October 23, 2019. During that meeting, [redacted][91]

95. At that meeting, Debevoise discussed tax considerations of the potential separation. Among other things, Debevoise discussed that [redacted]

[90] *Id.*

[91] MATCH-0001741.

[92] MATCH-0001742.

[redacted][93] The Separation Committee never considered utilizing these representations or commitments as negotiating leverage with IAC, even though the covenants contained in the 2015 Tax Sharing Agreement were not applicable to the transaction IAC had proposed.

96. The covenants of Section 4(a) of the 2015 Tax Sharing Agreement, and their imposition of a two-year "Restriction Period" intended to maintain tax consolidation between IAC and Match, applied only in the event of a "Distribution." "Distribution" was a defined term in Section 1 of the Tax Sharing Agreement:

> "Distribution" shall mean a distribution, however effected (including by way of a reclassification or split-off), ***of Match Capital Stock to holders of [IAC] capital stock*** in a transaction intended to qualify as tax-free for federal Income Tax purposes pursuant to Section 368(a)(1)(D) and/or Section 355 of the Code.[94]

97. The term "Match Capital Stock" is not defined in the Tax Sharing Agreement. For such capitalized terms, Section 1 of that agreement incorporates the definitions found in the 2015 Master Transaction Agreement. Section 1.01 of the Master Transaction Agreement provides the following definition of Match Capital Stock:

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[93] *Id.*

[94] Match Group, Inc., Current Report (Form 8-K) (Nov. 24, 2015), at Ex. 10.3 (emphasis added).

> "Match Capital Stock" means Match Common Stock, Match Class B Common Stock and Match Class C Common Stock.[95]

98. The transaction proposed by IAC, and considered by the Separation Committee, ***was not a Distribution*** as contemplated by the Tax Sharing Agreement. The Separation transaction IAC devised involved (1) the conversion of all classes of Match's common stock, including the Match Class B Common and the Match Class C Common, into stock of the entity that had been IAC, but which was to be New Match, and (2) the issuance of new Class M shares of IAC stock to IAC's stockholders which, pursuant to the Separation, were then converted into newly issued shares of New Match. Importantly, no "Match Capital Stock" was distributed to IAC's stockholders in the transaction. The interest that IAC's stockholders received in the Separation was in New Match, in the form of newly issued shares of the new entity. The Separation was not a Distribution as contemplated by the Tax Sharing Agreement, and Match was under no obligation to accept the restrictive terms of the Tax Sharing Agreement covenants.

99. At the October 23, 2019 meeting, Debevoise also suggested different methods of valuing the IAC tax attributes to be allocated to New Match—(1) New Match could require indemnification from New IAC to the extent the tax attributes

[95] *Id.*, at Ex. 10.1.

are not utilized; and (2) the Company could pay New IAC as it utilizes the attributes.[96]

100. [redacted][97] Goldman Sachs also recommended that the Exchangeables [redacted][98]

101. Thereafter, the Separation Committee directed Debevoise and Goldman Sachs to prepare a term sheet and supporting materials to respond to IAC's proposal "early the following week."[99]

[96] MATCH-0001742.

[97] *Id.*

[98] MATCH-0001743.

[99] *Id.*

102. The Separation Committee met the following day with Match management. The meeting touched upon many of the same issues that the Separation Committee and its advisors discussed the day before.

103. Goldman Sachs' presentation again highlighted the exorbitant leverage Match would undertake in connection with a potential separation. [redacted][100]

104. [redacted]

[100] MATCH-0001805. [redacted]

[101] MATCH-0001808.

[redacted][105]

105. [redacted]

[redacted]

[102] *Id.*

[103] *Id.*

[104] *Id.*

[105] *Id.*

[106] MATCH-0001814.

[107] *Id.*

[redacted][108]

106. The Separation Committee met on October 28, 2019 to discuss a draft term sheet and supporting materials prepared as a potential response to IAC's initial proposal. According to the Proxy, the term sheet reflected the following positions of the Separation Committee:

(a) "[A]ccepting IAC's proposed transaction structure, subject to agreement on the allocation of pre-closing non-Match liabilities";[109]

(b) "[A] counterproposal for a dividend of $1.50 per share of Match capital stock (approximately $420 million in total) funded by incremental debt and cash on hand";[110]

(c) "[C]onfirmation that New Match would have the ability to make post-closing share issuances under the contemplated tax matters agreement between New Match and New IAC";[111]

(d) "[A] revised valuation metric for the exchangeable notes and call spreads";[112]

(e) "IAC stockholders bearing the full cost of IAC options converted into New Match options through an adjustment in the exchange ratio";[113]

[108] MATCH-0001821.

[109] Proxy at 144.

[110] *Id.*

[111] *Id.* at 144-45.

[112] *Id.* at 145.

[113] *Id.*

(f) "[R]ejecting the proposal that the New Match board of directors adopt a shareholder rights plan";[114]

(g) "[R]ejecting IAC's right to unilaterally terminate the transaction agreement";[115]

(h) "New IAC indemnifying New Match for all pre-closing non-Match IAC liabilities and for any impairment of the tax attributes of the IAC group expected to be available to the New Match group";[116] and

(i) "[D]elivery of certain opinions by IAC's outside counsel relating to the U.S. federal income tax treatment of the transactions."[117]

According to the Proxy, the Separation Committee directed Debevoise and Goldman Sachs to deliver the responses in the term sheet to IAC at a meeting scheduled the next day.[118]

107. An accompanying presentation from Goldman Sachs reiterated the concerns from stockholders and analysts about the amount of leverage that Match would face as a result of a potential separation transaction, the impact that such leverage would have on the Company's operating performance and competitive abilities, and potential ratings downgrades from the transaction.[119]

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[114] *Id.*

[115] *Id.*

[116] *Id.*

[117] *Id.*

[118] *Id.*

[119] MATCH-0001840-41.

108. Goldman Sachs' presentation noted material differences in Match's and IAC's valuations of the Exchangeables. Goldman Sachs reiterated that the Exchangeables and their corresponding call spreads [redacted][120] These adjustments resulted in a total discrepancy of almost $125 million in Match's and IAC's valuation of the Exchangeables.[121]

109. According to the Proxy, the Separation Committee met later on October 28, 2019 to "discuss certain litigation claims."[122]

110. The Separation Committee next met on the morning of October 29, 2019. Among other things, the Committee again discussed the "limitations on future M&A activity involving issuances of stock by the Company that would be required to maintain the tax-free treatment of the spinoff transaction, and the representations

[120] MATCH-0001844.

[121] *Id*.

[122] Proxy at 145.

that would need to be delivered for purposes of WLRK's tax opinions"[123] without even considering to use these representations as negotiating leverage.

111. At the conclusion of the meeting, Goldman Sachs and Debevoise stated that they would be meeting with IAC and WLRK later that day to deliver the Committee's responses to IAC's proposal.

112. Later that day on October 29, 2019, Debevoise and Goldman Sachs met with IAC and WLRK. According to the Proxy, Goldman Sachs and Debevoise "conveyed to IAC and its advisors the Match separation committee's view that the proposed transaction structure was generally attractive."[124] Per the Proxy, Goldman Sachs and Debevoise expressed concern about Match's leverage, stating its belief that "the largest appropriate dividend for Match to pay in connection with a separation was approximately $420 million."[125] According to the Proxy, "Goldman Sachs and Debevoise conveyed the additional views of the Match [S]eparation [C]ommittee," including that "IAC should bear the full cost of IAC options to be converted into New Match options (through an adjustment to the exchange ratio)," and the Committee's "unwilling[ness] to agree to a transaction in which IAC had a

[123] MATCH-0001754.

[124] Proxy at 145.

[125] *Id.*

unilateral right to terminate the transaction[.]"[126] Goldman Sachs and Debevoise did not respond to IAC's governance proposals, and requested further information on IAC's proposed equity raise.[127]

113. The Separation Committee received a debriefing on October 30, 2019. At the meeting, [redacted][128] At the meeting, an unidentified member of the Committee [redacted][129]

114. According to the Proxy, McInerney and Levin spoke by telephone later that day. The Proxy states that "McInerney communicated that the Match separation committee was focused on ensuring that New Match would have a sustainable capital structure with appropriate leverage levels, and consequently believed that the proposed $420 million dividend was appropriate" while "Levin stated that IAC was similarly focused on ensuring that New IAC would have an appropriate amount of

[126] *Id.*

[127] *See id.*

[128] MATCH-0001758.

[129] *Id.*

cash to reflect its financial profile and capital needs, and that . . . he did not expect that IAC would be interested in proceeding at a dividend level below approximately $1.3 billion."[130]

115. During the call, "Levin also proposed that New Match and New IAC would share the cost of the IAC options equally," and "stated that IAC's right to terminate the transaction at any time protected IAC against, among other things, the possibility of a significant decrease in Match's stock price before the proposed separation transaction is consummated."[131] " Levin and . . . McInerney discussed possibly conditioning IAC's termination right on an agreed significant threshold decrease in Match's stock price," and "the possibility of structuring the transaction to include a pre-closing contribution of the Los Angeles properties to Match in exchange for newly issued Match shares, which would permit IAC to maintain its targeted ownership level at Match without the need for Match to repurchase its shares in the market in accordance with prior practice."[132]

116. During the call, "McInerney also raised the possibility of New IAC assuming a portion of any potential liability arising from certain litigation claims

[130] Proxy at 145-46.

[131] *Id.* at 146.

[132] *Id.*

involving Match and IAC, for which Match is currently obligated to indemnify IAC, but . . . Levin indicated that this would not be acceptable to IAC. "[133]

117. Earlier that day, Diller made another appearance on CNBC's Squawk Box. Again, Diller implied that the separation was *fait accompli*. Diller stated that, "[w]hen we complete Match we'll probably have $4 billion or so in cash . . . and we'll have no debt . . . ."[134]

118. The Separation Committee next met on October 31, 2019. McInerney summarized his phone call with Levin from the prior day, adding, among other things, "Levin suggested that the IAC equity issuance could raise $1 billion," and that "McInerney discussed with . . . Levin an equity issuance of more than $1 billion that could potentially reduce the amount of the special dividend and incremental debt at the Company."[135] In other words, Levin and McInerney were seeking to dilute Match's stockholders in order to ensure that IAC received the cash proceeds it desired.

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[133] *Id.*

[134] Interview with Barry Diller, CNBC (Oct. 30, 2019, 10:17 AM), https://www.cnbc.com/video/2019/10/30/watch-cnbcs-full-interview-with-media-mogul-barry-diller.html.

[135] MATCH-0001762.

119. The Separation Committee asked Goldman Sachs to model different sources of cash for a special dividend. Goldman Sachs provided those materials later that day, which reflected "an overview of cash flow levers as well as 2022 [E]xchangeables retirement considerations."[136] [redacted][137]

120. Goldman Sachs' presentation described the mechanics of a retirement or "flushdown" of the 2022 Exchangeables. That is, in lieu of using cash to eliminate the exchangeable liability, IAC or Match could choose to "flushdown" the exchangeable and maintain balance sheet flexibility by issuing shares equal to the underlying share value of the exchangeable or anticipated short position that investors have at the time of execution and use cash to pay for residual value owed in excess.[138]

[136] MATCH-0001857.

[137] MATCH-0001861.

[138] MATCH-0001865.

121. According to the Proxy, McInerney and Levin spoke by telephone later that day to discuss IAC's governance proposals.[139] The Proxy generally states that "Levin described to . . . McInerney IAC's reasoning behind its original proposal on these matters."[140] The Proxy also states that McInerney and Levin discussed "alternatives for selecting any new independent directors to join the New Match board of directors if a separation transaction was completed."[141]

122. On November 4, 2019, Goldman Sachs and the Separation Committee finalized Goldman Sachs' engagement letter.

123. The Separation Committee next met on November 7, 2019. At that meeting, Goldman Sachs again discussed ways in which Match could reduce its leverage. Goldman Sachs noted, however, that Match could also "acquire the transaction real estate assets . . . from IAC in exchange for MTCH equity[.]"[142] The Committee also discussed "IAC's potential response to a proposal that IAC retire 50% of the 2022 exchangeable notes."[143] In addition, the Committee discussed "the

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[139] Proxy at 146.

[140] *Id.*

[141] *Id.*

[142] MATCH-0001765.

[143] *Id.*

potential impact to the Company if a separation transaction were not to take place."[144]

124. An accompanying presentation from Goldman Sachs summarized the state of negotiations. Despite acknowledging that the Exchangeables should be valued based solely on Match *pro forma* for the transaction, the Separation Committee rolled-over on IAC's proposal that such valuation be based on market prices over a pre-closing averaging period.[145]

125. Goldman Sachs also noted that a [redacted] million discrepancy existed between the parties on the valuation of the call spreads accompanying the Exchangeables.[146] [redacted]

[144] *Id.* According to the Proxy, the Separation Committee also "determined to propose a collar on Match's common stock price relating to the exchangeable notes," and "instructed Goldman Sachs to prepare a response for IAC based on the discussions at the meeting," Proxy at 147, but no such information is found in the minutes for this meeting.

[145] MATCH-0002114.

[146] *Id.*

[redacted][147].

126. [redacted]

[147] *Id.*

[148] MATCH-0002117.

[149] *Id.*

[150] *Id.*

127. Goldman Sachs also discussed the "flushdown" of the 2022 Exchangeables. Goldman Sachs said that it was [redacted][151]

128. Goldman Sachs also presented a potential response framework. Goldman Sachs noted that the dividend had "[p]otential to increase to [redacted] [leverage] at close and [redacted] by 2021 assuming IAC flushes [redacted] of the exchangeables[.]"[152] Goldman Sachs proposed [redacted][153] Goldman Sachs also proposed agreeing [redacted][154]

129. According to the Proxy, on November 8, 2019, Goldman Sachs conveyed a revised proposal from the Separation Committee to IAC.[155] The proposal contemplated the following:

(a) "[A] cash dividend to all of [Match's] shareholders of approximately $740 million, which amount would potentially be increased by $100 million if IAC and Match were able to agree on terms for Match to acquire the Los Angeles properties prior to closing of the transaction

[151] MATCH-0002118.

[152] MATCH-0002121.

[153] *Id.*

[154] *Id.*

[155] Proxy at 147.

in exchange for newly issued shares of Match common stock, and were able to agree that the issuance of such shares would eliminate any requirement for Match to otherwise repurchase shares of its outstanding common stock in order to maintain tax consolidation with IAC. The proposal further indicated that the dividend amount would be increased proportionately for the face value of any exchangeable notes exchanged into IAC common stock prior to the closing, and that IAC would be required to agree to encourage or incentivize such exchanges."[156]

(b) "Match would be supportive of an issuance of New Match equity for proceeds to be contributed to New IAC of up to $1.5 billion[.]"[157]

(c) "IAC stockholders and Match stockholders (other than IAC) would each bear 50% of the cost of IAC options to be converted into New Match options (with the cost borne by IAC stockholders to be reflected in an adjustment to the exchange ratio); and New Match being allocated the tax benefits for any IAC options that it assumed under the tax matters agreement[.]"[158]

(d) "[A]ccepted that there would be no post-closing compensation for certain impairments of the tax attributes (subject to the parties reaching agreement on their assumed value at closing)[.]"[159]

(e) "[P]roposed specific methodologies for valuing the exchangeable notes and associated hedging instruments, including the imposition of a maximum 25% variance during the measurement period (with Match to have the right to elect to waive the application of the collar if the "floor" would otherwise apply, and IAC having the right to terminate the agreement if Match failed to exercise such right, and corresponding rights of IAC and Match if the "cap" would otherwise apply)."[160]

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[156] *Id.*

[157] *Id.*

[158] *Id.*

[159] *Id.*

[160] *Id.*

130. According to the Proxy, on November 11, 2019, Levin and Schiffman spoke by telephone with McInerney to provide "IAC's current views" on the Separation Committee's counterproposal.[161] Per the Proxy, Levin indicated that:

(a) "Match pay a [debt-financed[162]] $1 billion dividend to its stockholders (including IAC), in connection with the closing."[163]

(b) "IAC was willing to agree to Match acquiring the Los Angeles properties prior to the closing in exchange for shares of Match common stock (based on the appraised fair market value of the properties), subject to the agreement to enter into leases with IAC and Expedia which would permit their continued use of space in the Los Angeles properties for a period of no less than three years, and IAC receiving a right of first refusal in the event that one of the Los Angeles properties was sold by Match within five years. This proposal was premised on an agreement by Match to continue to make repurchases of Match common stock as needed to maintain tax consolidation with IAC, with an agreed cushion to IAC's ownership percentage."[164]

(c) "[T]he proposal to retire the exchangeable notes was not actionable, and also made certain counterproposals to the adjustments to the valuation of the call spreads for the exchangeable notes."[165]

(d) "In light of the reduced size of dividend proposed, Mr. Levin stated that IAC's position would remain consistent with its original proposal and that there would be no compensation to Match stockholders (other than

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[161] *Id.*

[162] MATCH-0001767.

[163] Proxy at 147.

[164] *Id.* at 147-48.

[165] *Id.* at 148.

IAC) in respect of IAC options to be converted into New Match options or any corresponding tax benefits."[166]

(e) "IAC was willing to agree to the Match separation committee's proposed terms with respect to the size of the New Match equity offering, the treatment of the tax attributes (subject to agreement on valuation of such attributes) and the structure of the 25% collar and associated termination rights relating to the exchangeable notes."[167]

131. According to the Proxy, Levin and McInerney had another telephone call later that day to "discuss[] certain governance matters relating to the New Match board of directors if a separation transaction were completed."[168]

132. On November 12, 2019, the Separation Committee held a meeting, at which time McInerney updated the Committee on his discussion with Levin. In addition to the terms disclosed in the Proxy, McInerney stated that IAC's counterproposal entailed "valuing the bond hedges and warrants for the exchangeable notes to be assumed by New Match at the fair market value of such hedges and warrants if dealers do not agree to pre-closing adjustments[.]"[169]

133. According to the Proxy, on November 19, 2019, McInerney and Levin spoke again on the telephone. Per the Proxy, McInerney and Levin "discussed,

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[166] *Id.*

[167] *Id.*

[168] *Id.*

[169] MATCH-0001767.

subject to agreement on the cash amount of the proposed dividend, the possibility of an alternative mechanism for making such agreed amount available to Match's public stockholders, both in order to structure the transaction as efficiently as possible and in order to seek to offer public holders of Match common stock the choice whether to receive cash or additional shares of New Match."[170] The Proxy states that "[t]he parties and their advisors spoke on multiple occasions in the following days regarding potential paths to implement this structure and to resolve the remaining open transaction issues."[171]

134. The Separation Committee next met on November 21, 2019, wherein McInerney reported on his discussion with Levin. At that meeting, the Separation Committee "determined to propose a dividend amount of $3.00 per share [(or approximately $850 million) dividend to Match's stockholders (including IAC)], and consider a cash/stock election merger mechanism in lieu of a dividend."[172] The Separation Committee "also discussed IAC's proposal that New Match bear the entire cost of the IAC options to be assumed by New Match, with the benefit of the

[170] Proxy at 148.

[171] *Id.*

[172] Proxy at 148. The Books and Records do not reflect this authorization, but rather [redacted] MATCH-0001770.

accompanying tax deduction accruing to New IAC."[173] Purportedly, [redacted][174] The Separation Committee agreed to try to shift some of the cost of the options onto IAC.[175]

135. While not reflected in the Proxy, the Separation Committee also discussed the Los Angeles real estate.[176] At the meeting, the Committee agreed to provide New IAC with a right of first refusal, and also discussed the lease terms for IAC and Expedia at 8800 Sunset Boulevard.[177] [redacted][178]

136. While also not reflected in the Books and Records, the Proxy states that the Separation Committee "discussed whether there was any likelihood that IAC

[173] Proxy at 148.

[174] MATCH-0001771; *see also* Proxy at 148.

[175] *See id.*

[176] MATCH-0001770-1771.

[177] MATCH-0001771; *See also* Proxy at 148.

[178] MATCH-0001875-78.

would agree to the assumption by New IAC of any potential liabilities relating to certain litigation claims."[179]

137. According to the Proxy, McInerney and Levin spoke by telephone later that day, at which time McInerney conveyed the Separation Committee's counterproposal.[180] Levin said that IAC would respond, "but he did not believe a 50/50 cost allocation for the IAC options would be acceptable."[181]

138. According to the Proxy, McInerney and Levin spoke by telephone on November 22, 2019 and "reached a preliminary agreement on the remaining open key transaction terms[.]"[182] Per the Proxy, those terms included:

(a) "[T]he transaction would include an election feature permitting holders of Match common stock to receive $3.00 in cash or an additional $3.00 worth of New Match shares, with the cash payment to be funded by a loan from Match to IAC. IAC would also receive $3.00 in cash in the transaction for each share of Match capital stock owned by IAC, and an additional $3.00 in cash for each share of Match common stock that was subject to a stock election, with an adjustment to the exchange ratio to reflect the additional cash received by IAC in respect of the stock electing shares."[183]

(b) "IAC would bear 25% of the pre-tax cost of the intrinsic value of New Match options issued in respect of IAC option awards held by

[179] Proxy at 148.

[180] *Id.*

[181] *Id.*

[182] *Id.* at 149.

[183] *Id.*

individuals other than Match employees, and IAC would compensate Match through an adjustment to the exchange ratio, for the notional tax benefit associated with the unreimbursed portion of the option cost and New IAC would be allocated the tax benefits for such options under the tax matters agreement. In addition, Match would compensate IAC for the intrinsic value of any New IAC options issued to Match employees in respect of their IAC options."[184]

(c) "Match would . . . acquire the Los Angeles properties from IAC prior to the closing of the separation, in exchange for $120 million of Match stock issued to IAC."[185]

(d) "Match would retain (as New Match) all potential liability associated with certain litigation claims for which Match was obligated to indemnify IAC under the existing agreements between Match and IAC."[186]

(e) "The Match separation committee would also accept IAC's previous proposal with respect to repurchases of Match common stock during the pendency of the transaction[.]"[187]

(f) "New Match would, subject to receipt of the requisite stockholder approval, implement a classified board in connection with the closing."[188]

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[184] *Id.*

[185] *Id.*; According to assumptions utilized by Goldman Sachs, the Separation Committee agreed to a $20 million increase in the purchase price for these properties. [redacted]

[186] Proxy at 149.

[187] *Id.*

[188] *Id.*

139. According to the Proxy, "Mr. McInerney indicated that the Match separation committee intended to provide further information about its view on the appropriate post-closing governance for New Match in the near term," and "[t]he parties agreed to allow their advisors to continue to discuss the methodology for valuing the adjustment related to the exchangeable notes and the associated hedging instruments."[189]

140. Thereafter, McInerney and Levin "agreed that [WLRK] and Debevoise should begin drafting and negotiating definitive documentation to reflect the transactions."[190]

141. While not reflected in the Books and Records, the Proxy states that on December 5, 2019, McDaniel and Seymon met with Levin in order:

> to discuss certain governance-related matters related to New Match following completion of a separation transaction and preliminarily agreed, subject to reaching agreement on the remainder of the transaction terms, that the New Match board of directors would initially consist of the members of the pre-closing Match board of directors, except that two of the four directors who also serve as executives of IAC would resign, and three new independent directors designated by IAC prior to the closing (subject to the reasonable consent of the Match separation committee) would join the New Match board of directors.[191]

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[189] *Id.*

[190] *Id.*

[191] *Id.*

142. The Separation Committee next met on December 9, 2019. At that meeting, [redacted][192] Yet just four days later, Goldman Sachs sent an email to the Separation Committee and Match management noting that the Company had a "[redacted] funding need" for the separation.[193]

143. In the ensuing days, the parties and their advisors continued to negotiate the terms of the separation as reflected in the draft transaction agreement and ancillary agreements governing the proposed separation including, but not limited to, the valuation methodology for the Exchangeables and related hedging instruments. While not reflected in the Books and Records, the Proxy states that, on December 14, 2019, IAC, JPMorgan Securities LLC, and Goldman Sachs met to discuss this issue.[194]

[192] MATCH-0001774.

[193] MATCH-0001879.

[194] Proxy at 150.

144. The parties also failed to reach an agreement on governance terms. Indeed, on December 18, 2019, IAC made an 11th hour request for Levin to serve as executive chairman of the New Match board of directors. Despite "consider[ing] whether it should delay approval of the proposed separation . . . in order to assess this proposal," the Committee instead determined to "discuss the proposal with Mandy Ginsberg[.]"[195]

145. Meanwhile, Goldman Sachs rendered its opinion on the fairness of the proposed separation. Goldman Sachs' presentation disclosed that the key transaction terms including, among other things, an agreement for [redacted][196] And notwithstanding the fact that the Separation Committee was purportedly contemplating Levin's service as executive chairman, Goldman Sachs' presentation stated that the New Match Board would consist of eleven members, be

[195] MATCH-0001789.

[196] MATCH-0001901.

classified, include the addition of three new directors, and that Levin would continue as Chairman and Schiffman would remain on the Board.[197]

146. Goldman Sachs' financial analyses valued the potential separation at the very low end of its various financial analyses:[198]

[197] *Id.*

[198] MATCH-0001914-15.

147. The Separation Committee met again later that day. At that time, "[t]he Committee reported that Mandy Ginsberg . . . believed that the proposed separation transaction was in the best interests of the Company and that no purpose would be served by delaying it."[199] Thereafter, the Committee adopted resolutions approving the Separation.

148. Late in the evening, the Match Board met, at which time the Separation Committee recommended that the full Match Board approve the Separation. At the conclusion of the meeting, the Match Board adopted resolutions doing so. Levin,

[199] MATCH-0001792.

who attended the meeting, "thanked the Committee and its advisors for their efforts in negotiating the [Separation]."[200]

149. On April 28, 2020, the parties entered into a letter agreement (the "Amendment") amending the Transaction Agreement. The Amendment revises the method of calculating the $1.5 billion limitation on the size of the equity offering (the "Equity Offering") to provide for the calculation of such limit by reference to the closing price of Match common stock on the NASDAQ on the date that IAC may enter into any sale or commitment to sell shares pursuant to the IAC Class M Equity Offering, reduced by $3.00 per share (instead of the five-day VWAP before the closing of the spin-off, reduced by $3.00). The Amendment also provided that (i) there would be ten (not eleven) members of the board of directors of New Match immediately following the consummation of the spin-off and (ii) if any of the three individuals designated by IAC, with the reasonable consent of the Separation Committee, as an independent director to the New Match board is appointed to the Match board prior to the consummation of the Separation, then the number of additional independent directors to be designated by IAC to the New Match board upon consummation of the Separation would be correspondingly reduced.

[200] MATCH-0000143.

150. On April 30, 2020, Match and IAC issued a joint proxy statement and prospectus with respect to the spin-off (previously defined as the "Proxy").

151. On June 9, 2020, IAC conducted the Equity Offering, selling 17,339,035 shares of New Match common stock at $82.00 per share for net proceeds of $1.4 billion.

152. On June 22, 2020, the parties entered into a second letter agreement (the "Second Amendment") amending the Transaction Agreement. The Second Amendment revises the treatment of fractional shares that would otherwise be issuable to record holders of Match common stock in the spin-off to provide that such holders will receive cash in lieu of fractional shares.

153. On June 25, 2020, IAC and Match held respective special meetings of stockholders to vote on the spin-off. The stockholders of Match and IAC voted to approve the Transaction Agreement.

154. On June 30, 2020, the parties consummated the Merger. Following the Merger, the parties consummated the Separation.

155. On July 1, 2020, Match issued a press release disclosing that it had named four new directors—Stephen Bailey ("Bailey"), Melissa Brenner ("Brenner"), Wendi Murdoch ("Murdoch"), and Ryan Reynolds ("Reynolds")—to the Match Board. Defendants Stein and Winiarski stepped down. According to a

Form 8-K filed by Match on July 2, 2020, the Match Board determined to expand its size from ten to eleven members and appointed Bailey to fill the vacancy created by that new Board seat. The 2020 10-K at pages 31, 87 and 89 discloses that:

> In July 2020, in connection with the Separation, the sale of 17.3 million newly issued shares of Match Group common stock was completed by AIC. The proceeds of $1.4 billion, net of associated fees, were transferred directly to AIC pursuant to the terms of the Transaction Agreement.

156. Since the announcement of the Transaction Agreement, the stock prices of Match and New Match have been affected by various factors unrelated to the transactions pursuant to the Transaction Agreement, including the extraordinary rise in the stock markets, increased income for investment resulting from the pandemic and related relief and other programs and economic factors. In that period the NASDAQ Stock Market has risen over 70%. Consequently, it cannot be assumed that stock price increases for Match or New Match are attributable to the challenged transactions.

III. The Separation Was Not Entirely Fair to Match and Its Minority Stockholders

A. The Separation Was the Product of An Unfair Process

157. The Separation Committee and the Board could not independently evaluate the Separation transaction due to their conflicted ties to IAC and Diller. In particular, as detailed above, McInerney and Seymon enjoyed deep professional and

financial ties to IAC and Diller that go back decades. Over the period, McInerney made tens of millions of dollars through his employment with IAC and subsequent service on IAC-affiliated boards. He owed a deep debt of gratitude to IAC and Diller for his personal success which rendered him incapable of acting impartially in negotiations with IAC owing to Diller's 8.5% economic interest in the controller entity.

158. Seymon was likewise incapable of acting impartially to represent the interests of Match and its minority stockholders against IAC and Diller. On information and belief, Seymon's two decades of working for Diller and IAC were a material contributing factor to the success of her legal career and resulted in tens of millions of dollars paid to her through her law firm, WLRK, which continues to represent IAC and Diller and with which Seymon retains close ties. Diller's deep professional and financial ties to Seymon led him to nurture her professional career by causing IAC to enlist her legal services in substantial transactions on a nearly constant basis for many years, and led to her eventual appointment to Match's board.

159. The Separation Committee failed in its duty of care and loyalty in negotiating the financial terms of the Separation, and those breaches resulted in material harm to Match, and to an exchange ratio for Match's unaffiliated shares that was grossly unfair to the minority stockholders. Having worked for so long within

the framework of the IAC-dominated Board and the strictures of the 2015 Agreements, the Separation Committee appears to have been incapable of proposing any changes to the basic structure of IAC's initial October 10 proposal for the Separation. The Separation Committee's very first draft term sheet in response to IAC's initial Separation proposal accepted "IAC's proposed transaction structure, subject to agreement on the allocation of pre-closing non-Match liabilities."[201] The Separation Committee made no attempt to condition acceptance of the deal structure on other terms that would have a substantial impact on the exchange ratio and the value that IAC allowed to remain in Match, including the size of the dividend Match was compelled to pay and the valuation metric for the Exchangeables and the accompanying call spreads.

160. Neither the Proxy nor the Books and Records show any attempt by the Separation Committee to challenge IAC's tax consolidation scheme with its two-year lockup period. Instead, Seymon, McInerney, and McDaniel breached their duty of care and loyalty by, without apparent hesitation, choosing to accommodate the interests of Diller and IAC in avoiding tens of millions of dollars in taxes that would otherwise be payable in the transaction, and sidestepping the single most potent

[201] Proxy at 144.

leverage available to Match to prevent the Company from being stripped of its cash through the massive dividend and saddled with a mountain of IAC debt.

161. The Proxy is silent about any pre-existing contractual obligation Match had to agree to continued tax consolidation and the two-year post separation lockup period. That is because Match had no such contractual obligation that was applicable to the deal IAC was proposing. Yet the Separation Committee conceded this key deal term from the outset and effectively removed it from negotiation of the transaction's material financial terms.

162. Having served the interests of Diller and IAC both before and during their tenure on the Match Board, when it was their time to advocate for the interests of Match and its minority stockholders in the negotiations, the Separation Committee appeared to be incapable of separating the interests of Match from those of IAC. As Diller's confident series of public comments demonstrated, neither IAC nor the Match Board showed any sign of doubt that a separation transaction would occur, and as the Separation Committee's negotiations with IAC proceeded, with guidance from the Committee's conflicted financial advisor, Goldman Sachs, the result was one concession to IAC's superior bargaining position after another.

163. The Separation Committee acceded to onerous corporate governance provisions proposed by IAC, including continued IAC domination of a newly

classified Match Board, nearly as quickly as it had fallen into step with the tax consolidation scheme. It would subsequently agree to the appointment of Levin as the Executive Chairman of Match's Board, that IAC could appoint three new members to the Board, and that new Board vacancies would be filled by the IAC-dominated Board. As much as IAC and Match would later tout the voting power that Match's minority stockholders achieved in the transaction, the level of control that IAC retained over Match rendered that voting power next to meaningless in the near term.

164. The Separation Committee's other attempts to gain concessions from IAC were either unsuccessful or produced a result that skewed heavily in IAC's favor. The Separation Committee:

- Agreed to assume substantial IAC debt in the form of the approximately $1.7 billion of Exchangeables;
- Failed in its attempt to get IAC to assume any portion of the potential liability for the litigation claims involving Match and IAC;
- Agreed to pay out a massive $850 million dividend to Match's stockholders, $680 million of which was paid to IAC;

- Agreed to the full-price acquisition of IAC tax attributes that were of questionable value to Match, but which would not be indemnified by New IAC;
- Agreed to support IAC's issuance of up to $1.5 billion of Class M shares to investors that were convertible into shares of New Match, with New IAC retaining the proceeds; and
- Failed to get IAC to bear more than 40% of the pre-tax cost of the intrinsic value of outstanding IAC stock options.

B. The Proxy Is Materially False and Misleading and Omits Material Information

165. Match's Board failed to give a full, fair, and accurate account of the events leading up to the Separation. The Board's failure to fully inform Match's minority stockholders in connection with their vote on the Separation is further evidence that the Separation was not entirely fair.

166. The Proxy's disclosures regarding the new governance provisions that were imposed on Match by the transaction are materially misleading and incomplete. As a threshold matter, New Match is unable to do any of a broad array of transactions for two years that may jeopardize the tax-free treatment for IAC, which includes (i) mergers or consolidations, (ii) certain transactions involving the acquisition, issuance, repurchase, redemption or change of ownership of its capital stock, or (iii)

amendments to its certificate or other documents that effect the voting rights. New Match must also indemnify New IAC if New Match does anything that causes New IAC to incur a tax liability.

167. Diller and IAC maintained control of the New Match Board with entrenching governance provisions. Match's nine-member Board was expanded to ten members in the transaction and then eleven members on June 30, 2020. IAC's Stein and Winiarski will not be directors, but IAC was given the right to appoint the three new members, who joined current and former IAC directors and officers Levin, McInerney, Schiffman, and Spoon on the New Match Board. Diller's longtime counsel Seymon will also remain on the New Match Board. Further governance provisions include:

(a) creating a classified board;

(b) granting the classified board the exclusive right to fill any director vacancies;

(c) a waiver of liability for any breach of fiduciary duties by New Match directors and officers who also serve as directors and officers of New IAC and directs corporate opportunities to New IAC instead of New Match; and

(d) elimination of stockholders' ability to act by written consent.

168. The Proxy's disclosure concerning these governance changes admitted the provisions were set by IAC:

> The IAC board of directors has determined that, as a result of the Separation and Match ceasing to be a controlled company, New Match may be more vulnerable than in the past to the possibility of a hostile takeover at a price which does not provide full value to New Match's stockholders. Accordingly, the IAC board of directors believes that it is prudent for IAC stockholders to give the New Match board of directors a stronger position to negotiate with a potential acquiror, should one appear, by providing for additional safeguards to the composition of the New Match board of directors following the Separation. As a consequence of the proposed amendments, at least two stockholders' annual meetings, instead of one, would generally be required for stockholders to effect a change in majority control of the New Match board of directors. The IAC board of directors believes that a longer period of time being required to elect a majority of the directors will help mitigate the increased susceptibility to unsolicited takeover activity.[202]

These disclosures, however, were false and misleading because the purpose of the governance provisions was not to protect New Match stockholders, but rather was to protect New IAC from a transaction that threatened the tax-free treatment.

169. Match's minority stockholders received no benefits in the spin-off, and the Proxy's descriptions of the illusory benefits used to justify the deal are materially misleading and incomplete. Most of the $850 million in cash dividends that Match paid to IAC were funded by debt and Match's cash on hand. Thus, while minority

[202] Proxy at 81; *see also id.* at 82 (IAC Board recommendation for proposal prohibiting action by written consent).

stockholders will receive $3.00 in cash, the equity value of their shares declines by at least $3.00, which assumes Match will be able to service all the new debt. Furthermore, the dividend was not designed to benefit minority stockholders, but rather to give Diller cash to fund opportunistic acquisitions that will benefit New IAC, not Match minority stockholders.

170. The Proxy told stockholders the Separation will give Match the "improved strategic flexibility on the part of New Match by creating a single class of 'one share-one vote' common stock . . . and no longer having a controlling stockholder."[203] This is misleading and incomplete. Match minority stockholders did not obtain control because control was spun-off to IAC's stockholders and New Match's Board is still controlled by IAC.

171. The Proxy's disclosure that New Match will have "improved strategic flexibility" is wrong and misleading. IAC still controls the New Match Board and the entrenching governance provisions ensure it maintains its control. The mountain of debt New Match assumed in the deal requires New Match to focus on deleveraging so it will not have "strategic flexibility." Finally, there is no "strategic flexibility" because New Match is prohibited from doing any mergers, acquisitions,

[203] Proxy at xx.

repurchases or other necessary or value maximizing transactions for two years solely to protect the tax-free treatment for IAC.

172. The Proxy's disclosure that the transaction will provide "increased trading liquidity for New Match common stock and the potential for future eligibility for inclusion in stock market indexes, such as the S&P 500 Index" is also materially misleading and incomplete.[204] The Proxy does not disclose any valuation of these purported benefits or whether anyone even obtained such a valuation. Moreover, there is no guarantee that New Match will be included in the S&P 500 Index, which cannot occur for at least twelve months anyway.

173. Additionally, the Proxy fails to disclose the Separation Committee's disabling conflicts with respect to Diller and IAC, particularly the deep and decades-long professional and financial ties of McInerney and Seymon to Diller and IAC.

174. The Proxy's disclosures regarding the 2015 Investor Rights Agreement are also materially misleading and incomplete in several ways. First, the Investor Rights Agreement required Match to cooperate with IAC in the event that IAC decided to dispose of its interest in Match. The Proxy, however, does not disclose whether this provision affected the negotiation and structure of the Separation, and if it did, how it affected the negotiation and structure of the Separation. A reasonable

[204] *Id.*

stockholder would find it material to know if the Separation was caused or at least affected by Defendants' belief that Match was obligated to "cooperate" once IAC decided to dispose of its Match interest.

175. Second, the Proxy contains no discussion of the covenants in paragraph 4(a) of the 2015 Tax Sharing Agreement. As discussed above, the Separation Committee agreed to impose on Match many of same restrictions in the Separation that would have been applicable if IAC had instead pursued a "Distribution" as defined in the Tax Sharing Agreement. The Tax Sharing Agreement also required Match to indemnify IAC for the loss of any tax-free treatment Match caused in the event of a "Distribution."

176. Match's previous 10-K filings did describe these restrictions imposed by the Tax Sharing Agreement in general terms. The 2019 Match 10-K, which the Proxy incorporated by reference, represented that any "future spin-off by IAC of its interest" in Match would implicate the Tax Sharing Agreement's restrictions, including the two-year restriction period. That representation was materially incomplete and misleading. Incorporated as it was by reference in the Proxy, Match had the obligation to disclose that the Separation's transactions ***were not*** restricted by the Tax Sharing Agreement because they were not a Distribution of Match's stock to IAC stockholders.

177. Additionally, the 2019 Match 10-K further described the consequences (i.e., remaining subject to the Tax Sharing Agreement) if the Separation were not consummated. These consequences were discussed at a Separation Committee meeting on October 23, 2019, but there is no mention of them in the Proxy.

178. Complete and accurate disclosure regarding this part of the Tax Sharing Agreement in the Proxy would have (i) provided stockholders with an understanding of the restrictions that would remain in place if the Separation were not consummated and (ii) revealed that even though the Separation was not a "Distribution" under the Tax Sharing Agreement, the Board still treated it as such and granted IAC substantial benefits while severely restricting New Match's ability to do any significant transaction for two years and without obtaining any consideration for minority stockholders.

C. The Price is Unfair

179. In the Separation, each minority stockholder was entitled to consideration for its shares of the right to receive one share of New Match common stock and, at the holder's election, either (i) $3.00 in cash or (ii) a fraction of a share of New Match common stock with a value of $3.00. Because of the ineffective negotiations by the conflicted Separation Committee discussed above, Match massively overcompensated IAC and its stockholders, most particularly Diller, for

divesting IAC's interest in the Company, leaving it deeply leveraged and impacting the exchange ratio greatly to IAC's benefit. Although on paper Match's minority stockholders may have ended up with a slightly higher percentage of ownership of Match following the Separation, perhaps 2% more, New Match is a deeply leveraged company with significant potential litigation liabilities and tight limitations on its governance and its ability to enter into strategic transactions. Put succinctly, Match's minority stockholders were left with a slightly larger piece of a much less substantial pie.

CLASS ACTION ALLEGATIONS

180. Plaintiffs bring their claims (i) individually and (ii) on behalf of a class of stockholders who held Match common stock from December 19, 2019 through consummation of the Separation.

181. Excluded from the Class are the Defendants herein and any person(s), firm, trust, corporation, or other entity related to or affiliated with them and their successors in interest.

182. Plaintiffs were both stockholders of Match and became stockholders of New Match as a result of the Separation. Plaintiffs were stockholders of Match and New Match at the time of the wrongdoing alleged herein. Plaintiffs have been

stockholders of Match and New Match continuously from December 19, 2019 through consummation of the Separation.

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

184. The Class is so numerous that joinder of all members is impracticable. Match has hundreds (if not thousands) of stockholders who are scattered throughout the United States. As of May 4, 2020, there were 74,223,779 shares of Match common stock issued and outstanding.

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

(a) The Director Defendants breached their fiduciary duties in connection with the Separation;

(b) Diller and IAC breached their fiduciary duties as the controlling stockholders of Match in connection with the Separation; and

(c) Plaintiffs and the other members of the Class were injured by the wrongful conduct alleged herein and, if so, what is the proper measure of damages.

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

187. Plaintiffs will adequately and fairly represent the interests of the Company and its stockholders in enforcing and prosecuting their rights.

DERIVATIVE ALLEGATIONS

188. Hallandale was a stockholder of Match and then a stockholder of New Match while Defendants were committing acts of wrongdoing complained of herein.

Standing as a Match Stockholder

189. Hallandale has standing to assert derivative claims as to Match because the Separation was deliberately structured to eliminate derivative claims. In seeking dismissal of this action, the Match Defendants asserted at page 52 of their brief that the structure of the Separation precludes assertion of any derivative claims by Match stockholders as to both Old Match and New Match:

> Plaintiff challenges conduct relating to Old Match, but Plaintiff is no longer a stockholder of Old Match. And, at the time of the Transactions, Plaintiff was not a stockholder of New Match. Therefore, Plaintiff cannot satisfy the continuous or contemporaneous ownership requirements and lacks standing to pursue derivative claims regarding the challenged transactions.

The IAC Defendants repeated this no derivative claim theory at page 33 of their brief.

190. When the Separation was being structured there was derivative litigation pending against the Match directors. In structuring the Separation, Match, IAC and their respective directors, officers and advisors wanted to eliminate the

existing derivative claims and to prevent derivative claims challenging the Separation. To achieve this goal, the Separation was structured to include the Merger terminating the existence of Match and enabling the corporations and their directors and officers to assert that Match stockholders did not have standing to assert derivative claims, either as Match stockholders before the Merger or as New Match stockholders after the Merger.

191. Defendants also intended the structure by which Match merged into Valentine, LLC, which was subsequently renamed Match Group Holdings II, LLC ("Match LLC") to prevent Match stockholders from bringing a double-derivative action as New Match stockholders. If Match had been the surviving corporation in the Merger, such a double-derivative suit would plainly be possible under Delaware law. However, it appears to be an unsettled question as to whether a double-derivative suit can be maintained when Match was merged into Match LLC so that New Match owns 100% of Match LLC, not Match. Plaintiffs and other stockholders who became New Match stockholders as a result of the Merger never owned Match LLC membership interests.

192. From the initial IAC December 20, 2019 8-K announcing the Separation, it was expressly stated that the purpose and effect of the Separation was that "the businesses of Match will be separated from the remaining business of

[IAC]." Thus, as Defendant Levin stated on a February 5, 2020 IAC earnings call, the business enterprise of IAC was severely altered by, "separating from Match Group, which is the bulk of our current enterprise value and cash flow," causing IAC "to become a much smaller company." However, as IAC recognized in telling its stockholders (who would become New Match stockholders) in a February 5, 2020 quarterly letter that they could "get the full story from MTCH's latest filings," Match's business would remain the same ("MTCH has a timeless mission, a simple business model, and global opportunities for market expansion").

193. The Separation could have been structured differently. For example, given that the principal businesses were conducted by Match, the Separation could have been structured as a spin-off of Match or the Merger could have been structured with Match as the surviving corporation with its existing stock remaining outstanding. Even a Merger in which Match was the surviving corporation but Match shares were converted into New Match shares may have made a double derivative suit possible. However, because such structures would have permitted the Match stockholders to assert derivative claims with respect to the Separation, Defendants used the unusual reverse spin-off structure eliminating Match to, in their view, make derivative claims impossible to maintain.

194. Hallandale also has standing to assert derivative claims because the Merger was a reorganization that did not affect Hallandale's ownership of Match's business enterprise. The Transaction Agreement and Proxy state that the Merger is intended to qualify as a tax-free reorganization. The Proxy (p. 2) and Match's April 28, 2020 8-K announcing the first amendment of the Transaction Agreement state that New Match "will own the businesses of Match," and only hold certain IAC funding subsidiaries. Other SEC filings acknowledged that New Match "retained the businesses of Old Match[.]" On August 4, 2020, New Match announced results for the second quarter of 2020 ending June 30, 2020 presenting the results of Match as the results of New Match and acknowledging that New Match "consists of the businesses of Former Match Group" and certain financing subsidiaries. *See also* New Match 10-K for year ended December 31, 2020 filed with the SEC on February 25, 2021 at pages 4, 55.

195. The Separation did not involve two unrelated corporations, but two affiliated corporations IAC considered parts of its overall portfolio of businesses. The purpose of the Separation was not for Match to alter Match's business enterprise, but as Match and IAC repeatedly recognized in SEC filings and public statements, for IAC to achieve the Separation of IAC's other business from its interest in Match, which was transferred to IAC's stockholders. Match's business

enterprise remained intact at New Match while IAC's businesses were shifted to IAC Holdings in the Separation. Following the Separation, New Match was operating the same businesses it was operating before the Separation. Thus, Hallandale retained its economic interest in Match's business enterprise.

Standing as a New Match Stockholder

196. Hallandale has standing to assert derivative claims as a stockholder of New Match because its New Match shares devolved upon it by operation of law through the Merger. Under 8 *Del. C.* § 327 a complaint need only allege that plaintiff was a stockholder at the time of the transaction of which he complains "or that his shares … thereafter devolved on him by operation of law." Hallandale did not cause or even vote for the Separation. Rather, pursuant to the Separation, the Merger caused Hallandale's Match shares to become New Match shares by operation of the Delaware merger statute. Section 2.03(d) of the Transaction Agreement provided for Hallandale's Match shares to convert to New Match shares at the effective time of the Merger "by virtue of the Match Merger and without any action on the part of any holder of any shares of capital stock of Match."

197. Hallandale also has standing to assert derivative claims as a stockholder of New Match because it became a New Match stockholder before the Separation contemplated by the Transaction Agreement was completed. The Certificate of

Merger merging Match into an IAC subsidiary became effective on June 30, 2020. The Certificate of Merger stated that the surviving corporation would provide on request the Transaction Agreement to "any former stockholder" of Match. Thus, the Merger converting Match shares into New Match shares by operation of law was effective on June 30, 2020 and Hallandale became a New Match stockholder at that time.

198. Section 2.04 of the Transaction Agreement is entitled "Post-Merger Amendments to the New Match Charter." Thus, the agreement acknowledges that after the Merger, the rights of the New Match stock would be altered as part of the Separation. Section 7.18 of the Transaction Agreement is entitled "Post-Closing New Match Governance" and includes provisions on board size, composition and structure, by-laws and officers of New Match after the Merger.

199. The separation of IAC's businesses from Match's business, which was the point of the Separation, did not occur until after Hallandale was a stockholder of New Match. The Proxy and other SEC filings and public statements repeatedly recognized that the separation of the businesses was the purpose of the transaction. As a result of the Separation, assets (*i.e.* IAC's businesses) were stripped out of New Match while debt-laden IAC financing subsidiaries were left behind. Moreover, the

sale of 17.3 million newly issued Match shares by IAC, which was part of the Separation, occurred in July 2020 (2020 10-K at 31).

200. As a result of the facts set forth herein, Hallandale has not made any demand on the New Match Board to institute this Action. Plaintiffs have asserted individual and class claims to which the demand requirement is inapplicable. Hallandale has also asserted derivative claims. A demand with respect to Hallandale's derivative claims would be a futile and useless act because the New Match Board has already repeatedly and publicly stated that the claims in this action are without merit. On February 25, 2021, New Match filed with the SEC its 10-K for the fiscal year ended December 31, 2020 (the "2020 10-K"). The 2020 10-K is signed by each director of New Match. On page 29, the 2020 10-K describes this litigation and states:

> We believe that the allegations in this lawsuit are without merit and will defend vigorously against it.

The New Match directors having signed on to the 2020 10-K's representation that this lawsuit is "without merit" means a demand on that board would be futile. The "without merit" assessment of this action has also appeared in multiple 10-Qs, including most recently, New Match's 10-Q for the quarter ended June 30, 2021 filed with the SEC on August 6, 2021 (p. 46). The New Match Board, which largely consists of the same directors as the Match Board, is incapable of making an

independent and disinterested decision to institute and vigorously prosecute this Action. In addition, the Match Board's approval of the Separation was not a valid exercise of business judgment and constituted disloyal and bad faith misconduct.

201. The New Match Board currently consists of eleven directors. The New Match Board consists of: Levin, Dubey, Bailey, Brenner, McDaniel, McInerney, Murdoch, Reynolds, Schiffman, Seymon, and Spoon. Demand is futile because eight of the eleven New Match directors are interested in the transaction and/or lack independence from IAC and Diller.

I. Levin Cannot Disinterestedly and Independently Consider a Demand

202. Defendant Levin cannot disinterestedly and independently consider a demand because he stood on both sides of the Separation. Levin currently serves as IAC's CEO, he served as New Match's Executive Chairman until May 31, 2021 and remains on the New Match board. Levin negotiated against the Separation Committee on behalf of IAC. In addition, the Match Board determined Levin was not independent in March 2020.[205]

203. Further, Levin cannot disinterestedly and independently consider a demand due to his 17-year relationship with Diller. Levin joined IAC when "Barry

[205] 2019 Match 10-K/A at 26.

Diller brought him over to IAC/Interactive Corp. in 2003[.]"[206] When asked what has made the partnership with Diller work so well, Levin said that: "It's really two things: trust and transparency. I trust him completely, he trusts me completely, and we have absolute transparency on what we're doing. There's no daylight between information I know and what Barry knows, and that allows us to work seamlessly together. That can only happen with absolute trust."[207] Further, Levin said, "Barry believes in giving internal people chances, and that has been great for me."[208] Indeed, in the last three years, Levin has received nearly $35 million in compensation from IAC.

204. For all of these reasons, Levin cannot disinterestedly and independently consider a demand to prosecute the claims alleged herein.

II. Dubey Cannot Disinterestedly and Independently Consider a Demand

205. Defendant Dubey is unable to disinterestedly and independently consider a demand on the Match Board because she is the CEO of New Match.

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[206] Erik Schatzker, *Joey Levin, Online Dating Guru*, BLOOMBERG (Dec. 4, 2019, 6:34 AM), https://www.bloomberg.com/news/articles/2019-12-04/match-group-s-mtch-joey-levin-is-the-online-dating-guru.

[207] *Driven by Curiosity: An Interview with Joey Levin, Chief Executive Officer, IAC*, LEADERS MAGAZINE (Oct. 4, 2017), http://www.leadersmag.com/issues/2017.4_Oct/New%20York%20City/LEADERS-Joey-Levin-IAC.html.

[208] *Id.*

Dubey joined Match in 2006 and has worked in various roles since. In addition, when the Separation was being structured, Dubey was negotiating a new employment agreement with Match. On February 13, 2020, Match gave Dubey a new employment agreement, effective March 1, 2020, that is renewable annually. The employment agreement includes an annual base salary of $750,000 plus annual bonuses and equity awards and a severance package that provides for twelve months' severance, acceleration of equity award vesting, and health care coverage in the event her employment is terminated without cause.

206. Dubey made nearly $20 million in 2018 and 2019, serving in the roles of Match's President and CEO. In March 2020, the Match Board determined Dubey was not independent.[209]

207. For these reasons, Dubey cannot disinterestedly and independently consider a demand to prosecute the claims alleged herein.

III. McDaniel Cannot Disinterestedly and Independently Consider a Demand

208. Defendant McDaniel is unable to disinterestedly and independently consider a demand on the Match Board due to her approximately 15-year affiliation with Diller. McDaniel served as Senior Vice President of GHC from June 2008 to

[209] 2019 Match 10-K/A at 26.

April 2015 and Vice President-Human Resources of GHC from September 2001. Diller served as director of GHC from 2000 to 2017. McDaniel also served as the Managing Director of Newsweek from January 2008 until its sale in September 2010 to Diller's The Daily Beast.

209. For these reasons, McDaniel cannot disinterestedly and independently consider a demand to prosecute the claims alleged herein.

IV. McInerney Cannot Disinterestedly and Independently Consider a Demand

210. Defendant McInerney is unable to disinterestedly and independently consider a demand on the Match Board due to his longtime employment with IAC. McInerney served as the Executive Vice President and CFO of IAC from January 2005 to March 2012. During his time at IAC, McInerney also served in the Office of the Chairman, which included Diller.[210]

211. McInerney first joined IAC and its affiliates in 1999, where IAC/Diller placed McInerney in his first executive role, for which McInerney has expressed his gratitude and affection towards Diller. Upon stepping down as IAC's CFO in 2012, McInerney stated: "I am more than grateful to Barry Diller for the opportunities he

[210] *Thomas J. McInerney to Step Down as IAC CFO*, IAC PRNEWSWIRE (Aug. 11, 2011, 8:00 AM), https://www.prnewswire.com/news-releases/thomas-j-mcinerney-to-step-down-as-iac-cfo-127514003.html.

and IAC have given me[.]"[211] Further, Diller stated: "No one has played a fuller role than Tom in contributing to the sustained growth of IAC and whatever and whoever he is associated with in the future will be lucky indeed." From 2003 to 2012, McInerney made nearly $55 million in compensation.

212. For all of these reasons, McInerney cannot disinterestedly and independently consider a demand to prosecute the claims alleged herein.

V. Schiffman Cannot Disinterestedly and Independently Consider a Demand

213. Defendant Schiffman is unable to disinterestedly and independently consider a demand on the Match Board due to his current executive position at IAC and relationship with Diller. Schiffman has served as Executive Vice President and CFO of IAC since April 2016. Prior to that, Schiffman served as CFO of IAC's majority-owned ANGI from September 2017 to March 2019, and Schiffman currently sits on the board of ANGI. In the past three years alone, Schiffman has earned $23.4 million in compensation from IAC.

[211] *Id.*

214. Schiffman's connection to IAC and CEO Levin predates his employment with IAC. Upon joining IAC in 2016, IAC CEO Levin stated that "I've known Glenn for over 10 years . . . I was thrilled when he agreed to join us[.]"[212]

215. In addition, in March 2020, the Match Board made director independence determinations and determined Schiffman was not independent.[213]

216. For all of these reasons, Schiffman cannot disinterestedly and independently consider a demand to prosecute the claims alleged herein.

VI. Seymon Cannot Disinterestedly and Independently Consider a Demand

217. Defendant Seymon is unable to disinterestedly and independently consider a demand on the Match Board due to her past employment at and affiliation with IAC's and Diller's longtime counsel, WLRK, and her husband's employment at and affiliation with Match's current outside counsel Paul Weiss. Seymon worked at WLRK from 1989 to 2011 as an associate and then as a partner. WLRK has been Diller's longtime counsel, and WLRK served as legal counsel for IAC in connection with the Separation. In fact, while at WLRK, Seymon personally represented Diller and his affiliates (including IAC) on numerous occasions from at least 1994 to

[212] *IAC Appoints Glenn H. Schiffman as Chief Financial Officer*, IAC PRNEWSWIRE (Apr. 7, 2016, 1:30 PM), https://www.iac.com/media-room/press-releases/iac-appoints-glenn-h-schiffman-chief-financial-officer.

[213] 2019 Match 10-K/A at 26.

2011.[214] On many of those representations, Seymon worked with WLRK partner Nussbaum, who personally represented IAC in the Separation.[215] Seymon's husband is a Partner at Paul Weiss and has worked on matters involving Diller and his portfolio companies.

218. For all of these reasons, Seymon cannot disinterestedly and independently consider a demand to prosecute the claims alleged herein.

VII. Spoon Cannot Disinterestedly and Independently Consider a Demand

219. Defendant Spoon is unable to disinterestedly and independently consider a demand on the Match Board due to his connections and financial ties with Match and IAC. Spoon served as General Partner and Partner Emeritus of Polaris Partners, a private investment firm that provides venture capital and management assistance to development stage information technology and life sciences companies, from 2011 to 2018. Spoon served as the Managing General Partner of

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[214] *See, e.g.*, Brian Baxter, *Wachtell Alum New CEO at IAC, As $220 Million Deal Sees Media Titans Part Ways*, THE AM LAW DAILY (Dec. 2, 2010, 6:11 PM), https://amlawdaily.typepad.com/amlawdaily/2010/12/greg-blatt-iac-wachtell.html.

[215] *See, e.g.*, Ticketmaster Entertainment LLC, Registration Statement (Form S-1) (Sept. 30, 1998); Lycos Inc., Current Report (Form 8-K) (Feb. 26, 1999); Expedia Inc., Registration Statement (Form S-4) (Aug. 22, 2001); IAC/InterActiveCorp, Current Report (Form 8-K) (May 17, 1999); IAC/InterActiveCorp, Registration Statement (Form S-4) (Aug. 22, 2001); IAC/InterActiveCorp, Registration Statement (Form S-3) (May 22, 2002); Hotels.com, Current Report (Form 8-K) (April 10, 2003).

Polaris Partners from 2000 to 2010. IAC's SEC filings going as far back as 2011 reveal that IAC has made payments for unspecified services to certain Polaris Partners portfolio companies and IAC invested in an entity in which Polaris Partners was an existing equity investor. Similarly, Match's SEC filings starting in 2017 reveal that Match also made payments for unspecified services to certain Polaris portfolio companies. Further, Spoon has served on the IAC Board since February 2003.

220. In addition, a recent law review article named Diller and Spoon as one of the five most-entangled "Controller-Independent Director Pairings."[216] The article notes Diller's and Spoon's ties on Ticketmaster (1997-2002), The HealthCentral Network (2005-2011), IAC (2003-Present), and Match (2015-Present).[217]

221. For all of these reasons, Spoon cannot disinterestedly and independently consider a demand to prosecute the claims alleged herein.

[216] Da Lin, *Beyond Beholden*, 44 J. Corp. L. 515, 541 (2019).

[217] *Id.*

VIII. Murdoch Cannot Disinterestedly and Independently Consider a Demand

222. Murdoch cannot disinterestedly and independently consider a demand against the Match Board due to her deep social ties to Diller and Diller's wife, Diane von Furstenberg ("von Furstenberg"). First, Murdoch was formerly married to billionaire media mogul Rupert Murdoch for fourteen years, spanning from 1999-2013. Diller served as the Chairman and CEO of Fox Inc., from 1984-1992. Diller reported to Rupert Murdoch, the Chairman of Fox's parent company, News Corp. Ltd.[218] Second, Murdoch holds a close personal friendship with Diller's wife, von Furstenberg. Von Furstenberg has been called Murdoch's "longtime friend,"[219] and

[218] Kim Masters & Paul Farhi, *Fox Chairman Barry Diller Resigns*, THE WASHINGTON POST (Feb. 25, 1992),

https://www.washingtonpost.com/archive/politics/1992/02/25/fox-chairman-barry-diller-resigns/e23a38e0-9306-4854-9d20-4b8d0933587c/.

[219] Amy Chozick, *Declaration of Independence*, THE NEW YORK TIMES (June 15, 2012),

https://www.nytimes.com/2012/06/17/fashion/wendi-murdoch-is-creating-a-career-of-her-own.html.

one of Murdoch's "loyal friends."[220] Following her close friend's divorce, von Furstenberg said: "When she separated, I felt it was my duty to protect her."[221]

223. Further, Diller, von Furstenberg, and Murdoch have vacationed together on Diller's yacht as recently as 2017.[222]

224. Throughout their many years of friendship, Diller, von Furstenberg and Murdoch have attended numerous events and parties together, often appearing at each other's events in support of one another. For example, in 2008, Diller hosted a party on the ground floor of IAC's building for the DNA testing company 23andMe, a company that received financial backing from Murdoch.[223] In 2011, von Furstenberg co-hosted a screening and after-party for Murdoch's movie "Snow

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[220] Peter Lattman & Amy Chozick, *Murdoch Divorce Said to Be Almost Final*, THE NEW YORK TIMES (Nov. 19, 2013),

https://www.nytimes.com/2013/11/20/business/media/murdoch-divorce-said-to-be-almost-final.html.

[221] Rob Haskell, *Wendi Murdoch Is Nothing Less Than a Force of Nature*, VOGUE (July 20, 2016),

https://www.vogue.com/article/businesswoman-wendi-murdoch-career-profile.

[222] Chris Spargo, *Two Tickets to Paradise: Wendi Deng whisks her boytoy off on tropical vacation to Tahiti and Mo'orea on Barry Diller's $200M yacht so will they meet the Obama's*, DAILYMAIL (April 17, 2017),

https://www.dailymail.co.uk/news/article-4419742/Wendi-Deng-whisks-boytoy-tropical-vacation.html.

[223] Allen Salkin, *When in Doubt, Spit it Out*, THE NEW YORK TIMES (Sept. 12, 2008),

https://www.nytimes.com/2008/09/14/fashion/14spit.html.

Flower and the Secret Fan," and in 2016 co-hosted a screening of Murdoch's documentary "Sky Ladder."[224] Murdoch has sat front row at von Furstenberg's fashion shows and has attended multiple of von Furstenberg's DVF Awards ceremonies.

225. For all of these reasons, Murdoch is unable to disinterestedly and independently consider a demand to prosecute the claims alleged herein.

[224] Alessandra Codinha, *Cinema Society Screens 'Snow Flower and the Secret Fan,'* WWD (July 15, 2011), https://wwd.com/eye/parties/cinema-society-screens-snow-flower-and-the-secret-fan-3721581/; Alessandra Codinha, *Wendi Murdoch, Diane von Furstenberg, and Jean Pigozzi Host the New York Premiere of Sky Ladder*, VOGUE (Nov. 21, 2016), https://www.vogue.com/article/sky-ladder-new-york-premiere-party-wendi-murdoch-kevin-macdonald.

COUNT I
Breach of Fiduciary Duty
(Individual and Class Claim Against IAC and Diller)

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

227. As the controller of Match, IAC and its controller, Diller, owed fiduciary duties to the minority stockholders of Match.

228. The collection of transactions to facilitate and effect the Separation resulted in an unfair and improper transfer of economic value from the Company's minority stockholders to IAC and its stockholders, in particular, Diller. The Match minority stockholders received stock in New Match conferring approximately the same interest in Match's business, but cash had been siphoned out and their economic interest in the ongoing business was now buried under a mountain of debt. New Match was subject to severe business and governance restrictions and unfavorable agreements and was still subject to the dominating hand of Diller, Levin and the directors and officers they installed. Diller and IAC got the Separation they wanted in the way and on the terms they wanted. They received billions in benefits that excluded and came at the expense of the Match minority, including cash, tax advantages, business opportunities and other benefits described herein.

229. IAC and Diller breached their fiduciary duty of loyalty by putting their own interests ahead of the interests of Match's minority stockholders by unfairly extracting economic value from Match, by imposing unfair corporate governance and other restrictions on Match designed to perpetuate IAC's domination of Match's Board, and by causing Match to be subject to a two-year restriction period that virtually eliminates its ability to enter into strategic transactions.

230. IAC and Diller deliberately advanced their own interests to the detriment and expense of the Company's minority stockholders, in breach of their fiduciary duties.

231. The Separation was unfair to Match's minority stockholders and harmed their investments.

232. As a result of IAC's and Diller's actions, Plaintiffs and other members of the Class have incurred loss and damages for which Plaintiffs have no adequate remedy at law.

COUNT II
Breach of Fiduciary Duty
(Derivative Claim Against IAC and Diller)

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

234. As the controllers of Match, IAC and Diller owed fiduciary duties to the Company and its minority stockholders, including the duty to ensure that any transactions between IAC and the Company were entirely fair to the Company and its minority stockholders.

235. IAC and Diller violated their fiduciary duty of loyalty by putting their own interests ahead of the interests of Match, by forcing Match to enter into the Separation on unfair terms. IAC and Diller forced the Separation because they wanted to exit their investment in Match while extracting as much of the Company's value as possible while at the same time unloading IAC's substantial debts.

236. The Separation was not entirely fair to Match.

237. As a result of IAC's and Diller's breaches of fiduciary duty, Match has been harmed and continues to be harmed.

238. Hallandale has no adequate remedy at law.

COUNT III
Breach of Fiduciary Duty
(Individual and Class Claim Against the Director Defendants)

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

240. The Match Board owed Match's public stockholders fiduciary duties of loyalty and care.

241. The Board breached their fiduciary duties of loyalty and care by, *inter alia*, allowing the conflicted Separation Committee to negotiate the Separation with IAC, failing to advocate for the interests of Match and its minority stockholders, and entering into the Separation transactions, which have harmed Match's minority stockholders.

242. The Match Board accepted an unfair Separation that forced Match's minority stockholders into a transaction that effectively took their Match stock in exchange for shares of a deeply leveraged Match that remained dominated by IAC and is subject to a two-year restriction period that virtually eliminates its ability to enter into strategic transactions.

243. The Board further breached their fiduciary duties by issuing a materially misleading and incomplete Proxy at a critical time when Match's minority stockholders were deciding whether or not to vote to approve the Separation.

244. The Separation was unfair to Match's minority stockholders.

245. Plaintiffs have no adequate remedy at law.

COUNT IV
Breach of Fiduciary Duty
(Derivative Claim Against the Director Defendants)

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

247. The Match Board owed and continues to owe fiduciary duties to Match. The Board permitted a Separation of Match from IAC that served only the controllers' interests in extracting maximum value from Match in a tax-free transaction.

248. The Match Board, including its Separation Committee, lacked independence from IAC and Diller and ultimately capitulated to their transaction structure, governance and financial demands. As a result, Match is now deeply leveraged, subject to a two-year restriction period that virtually eliminates its ability to enter into strategic transactions, and continues to be dominated by an entrenched Board made up of a majority of IAC-affiliated directors.

249. The Separation Committee owed Match fiduciary duties of loyalty and care. Rather than use the negotiating leverage available to it to preserve the value of Match, the Separation Committee members allowed their professional and financial connections with IAC and Diller to override their responsibility to Match to retain maximum value in the Separation, in breach of their fiduciary duties.

250. The Separation was not entirely fair to Match.

251. As a result of the Board's breaches of fiduciary duty, Match has been harmed and continues to be harmed.

252. Hallandale has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment in their favor and in favor of the Class and against all Defendants as follows:

A. Declaring that demand on the Board is excused as futile;

B. Declaring that this Action is properly maintainable as a class action, and certifying Nevada and Hallandale as co-Class representatives and Plaintiffs' co-counsel as Class counsel;

C. Declaring that IAC, Diller and the Board have breached their fiduciary duties of loyalty and care;

D. Awarding appropriate equitable relief to remedy Defendants' breaches of fiduciary duty;

E. Awarding the Class damages as a result of Defendants' breaches of fiduciary duty, including pre-judgment and post-judgment interest;

F. Awarding Match damages as a result of Defendants' breaches of fiduciary duty, including pre-judgment and post-judgment interest;

G. Awarding Plaintiffs the costs and disbursements of this Action including reasonable attorneys' and experts' fees; and

H. Granting such other and further equitable relief as the Court may deem just, proper and equitable.

DATED: November 2, 2021

PRICKETT, JONES & ELLIOTT, P.A.

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I, Jason W. Rigby, hereby certify that on November 9, 2021 true and correct copies of the foregoing documents were served via File and Serve*Xpress* upon the following counsel:

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