



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

DOMINGO MIHOVILOVIC, NADAV
LAVY, URI BEN-DOR and RAJIV TANEJA,
as Trustee of the TANEJA 2004 FAMILY
TRUST, on behalf of themselves and all other
similarly situated holders of common stock of
EXABEAM, INC.,

Plaintiffs,

v.

EXABEAM, INC., ADAM GELLER,
THERESIA GOUW, MATTHEW HOWARD,
MARK JENSEN, RAVI MHATRE, JEB
MILLER, NIR POLAK, PRAVIN VAZIRANI,
ASPECT VENTURES, LP, ASPECT
VENTURES I-A, L.P., ASPECT VENTURES
II, L.P., ASPECT VENTURES II-A, L.P.,
ACREW DCF EXABEAM SPV, L.P.,
ACREW DCF EXABEAM AGGREGATOR,
L.P., ACREW DIVERSIFY CAPITAL FUND,
L.P., NORWEST VENTURE PARTNERS
XII, L.P., ICON VENTURES V, L.P.,
LIGHTSPEED VENTURE PARTNERS
SELECT III, L.P, LIGHTSPEED VENTURE
PARTNERS SELECT II, L.P., LIGHTSPEED
STRATEGIC PARTNERS I, L.P., LSVP XB-
F, LLC, XA SPV, LLC, BLUE OWL
OPPORTUNISTIC LENDING I (H) LP,
BLUE OWL TECHNOLOGY FINANCE
CORP., BLUE OWL OPPORTUNISTIC
LENDING MASTER FUND II LP, and BLUE
OWL OPPORTUNISTIC LENDING DL (C)
LP,

Defendants.

C.A. No. 2024-0976-MTZ
PUBLIC VERSION FILED:
September 24, 2024

VERIFIED CLASS ACTION COMPLAINT

Plaintiffs Domingo Mihovilovic, Nadav Lavy, Uri Ben-Dor and Rajiv Taneja, in his capacity as Trustee of the Taneja 2004 Family Trust (collectively, “Plaintiffs”), by and through their undersigned counsel, upon knowledge as to themselves and upon information and belief as to all other matters, allege as follows:

INTRODUCTION

1. This is a stockholder class action arising from the sale of a venture capital (“VC”) backed “unicorn”—a privately held company with a valuation in excess of \$1 billion—effected by its preferred stockholders (*i.e.*, VC investors) and their board designees in a transaction that favors the interests of preferred stockholders over the interests of common stockholders.

2. This fact pattern is now familiar to the Court,¹ which has examined how the interests of preferred stockholders can diverge from those of common stockholders in the context of a company sale, particularly with respect to the decision of whether to sell now or remain independent.²

3. The unicorn in this case—Exabeam, Inc. (“Exabeam” or the “Company”)—garnered a \$2.65 billion post-money valuation in a Series F-1

¹ *E.g., In re Good Tech. Corp. S’holder Litig.*, 2017 Del. Ch. LEXIS 109 (Del. Ch. May 12, 2017).

² *E.g., In re Trados Inc. S’holder Litig.*, 73 A.3d 17, 47-52 (Del. Ch. 2013).

financing by its VC investors in May 2023. Just one year later, however, the VC investors and their board designees caused Exabeam to be sold on July 2, 2024 to affiliates of Thoma Bravo, L.P. (“Thoma Bravo”) for only ~\$500 million in a private stock-for-stock transaction (the “Merger”) that combined Exabeam with a competitor and Thoma Bravo portfolio company, LogRhythm, Inc. (“LogRhythm”).

4. Because the VC investors’ aggregate liquidation preference (~\$615 million) exceeded the Merger price, Exabeam’s common stockholders received *nothing* for their shares in the Merger. By contrast, the VC investors secured for themselves, among other things, equity interests in the combined company and the repayment of debts owed to them by Exabeam. One VC investor also seized the opportunity to provide debt financing to the buyer, its counterparty in the Merger.

5. The Merger thus allowed the VC investors to recoup a portion of their investments in cash and, more importantly, preserved their ability to participate in the upside of a future exit. Notably, the Merger-related agreements expressly contemplate a future exit, which is unsurprising given that Thoma Bravo has already exceeded its average holding period (of 3.3 years) on its investment in LogRhythm, which it acquired in 2018.

6. The Merger was a conflict-of-interest transaction. Seven of the eight members of Exabeam’s board of directors (the “Board”) were interested in the Merger. Five directors were dual-fiduciaries who served as designees of the VC

investors. Another director—Exabeam’s Chairman, co-founder and former CEO—likewise received equity in the combined company. So, too, did one other director—Exabeam’s then-CEO—who served at the discretion of the VC investors and was also was eligible to receive a “transaction bonus” payable after closing and an “exit bonus” payable upon a change in control of the combined company. The Board unanimously adopted and approved the Merger on May 4, 2024.

7. Despite the pervasive conflicts, the Board made no apparent effort to protect the interests of Exabeam’s common stockholders. The Board did not establish a special committee composed of independent, disinterested directors. The Board did not obtain a fairness opinion, even though it had retained J.P. Morgan Securities LLC (“J.P. Morgan”) to advise the Company in connection with the Merger. J.P. Morgan, for its part, was also hopelessly conflicted, having received hundreds of millions of dollars in advisory fees from Thoma Bravo in the years preceding the Merger, including a \$35.8 million fee from an undisclosed concurrent representation of a Thoma Bravo portfolio company in a separate transaction. Nor did the Board condition the Merger on the approval of Exabeam’s disinterested common stockholders.

8. To the contrary, the VC investors, who collectively held the requisite voting power to approve the Merger and reject any alternatives thereto, approved the Merger by written consent (the “Written Consent”) on May 4, 2024.

9. The Board then waited until June 18, 2024 (*i.e.*, 45 days later) to notify common stockholders of the Written Consent—in violation of the “prompt notice” requirement of 8 *Del. C.* § 228 (“Section 228”)³—by sending an information statement (the “Information Statement”) requesting that stockholders approve the Merger and waive their appraisal rights.⁴

10. The Information Statement, however, was so devoid of detail that it could not have been the product of a good-faith effort by the Board to fulfill its duty of disclosure. Aside from its provision of Exabeam’s audited financial statements for the fiscal years ending January 31, 2023 and January 31, 2024, the Information Statement entirely lacked the sort of information customarily provided to stockholders tasked with deciding whether to demand appraisal. For example:

- The “Background of [the] Transaction” spans only one-and-a-quarter pages and includes just a few paragraphs summarizing—without any meaningful detail—the events culminating in the Merger.⁵
- The Merger price, a “headline” fact in any merger, is not disclosed anywhere in the body or narrative sections of the Information Statement. Instead,

³ *Mehta v. Mobile Posse, Inc.*, 2019 Del. Ch. LEXIS 160 (Del. Ch. May 8, 2019).

⁴ The Information Statement is attached hereto as Exhibit A.

⁵ Ex. A at 4-5.

indications of the Merger price are buried more than 100 pages deep into the Information Statement, in the definitions section of an appended copy of the Merger Agreement, where a stockholder would need to cross reference several definitions in order to venture an educated guess as to what the Merger price may be.

- The Information Statement does not include any valuation of Exabeam and provides no qualitative disclosure about how the Board valued Exabeam in determining that the Merger was in the best interests of the Company and its stockholders.
- The Information Statement does not include Exabeam’s financial projections or any substantive disclosure of Exabeam’s business plans.
- The Information Statement summarily states that the Board considered “possible alternatives to the Merger (including the possibility of continuing to operate the Company as an independent entity and pursuing additional rounds of financing), [and] the range of possible benefits to the Stockholders of such alternatives,” without any accompanying disclosure of the Board’s analyses or deliberations respecting alternatives.⁶

⁶ Ex. A at 5.

11. Moreover, the Information Statement does not fairly disclose the conflicts pervading the transaction. Indeed, it includes only a passing reference to the fact that one VC investor “may participate in the Debt Financing” of the Merger, without disclosing any information whatsoever about the financing, such as the amount of the debt commitment or the fees the VC investor stood to earn. The complete absence of disclosure deprived common stockholders of the ability to evaluate a significant conflict involving what appears to be the largest holder of the Company’s seniormost preferred stock.

12. The Information Statement also obscures conflicts by failing to specify that the VC investors held preferred (as opposed to common) stock, let alone the series and number of preferred shares each held. It describes the VC investors as “holder[s] of Company Capital Stock” that “will receive proceeds in such capacity as a result of the Merger.” The term “Company Capital Stock” is defined in the Merger Agreement to mean the issued and outstanding shares of Exabeam *common and preferred* stock.⁷ The generality of the disclosure renders it meaningless and obscures the primary source of the VC investors’ conflicts. Nor does the Information Statement quantify the implied value of the consideration and other financial benefits that seven of the eight Board members (or their affiliates) received in the

⁷ Ex. A at 50 (Merger Agreement § 4.5, p. 13). The Information Statement adopts the definition from the Merger Agreement.

Merger, thus depriving stockholders of the ability to understand the magnitude of their fiduciaries' conflicts.

13. Further, the Information Statement misrepresents the legal requirements for stockholder approval of the Merger. It states:

Applicable provisions of the General Corporation Law of the State of Delaware (“DGCL”) and the terms of the Company’s Certificate of Incorporation require that the Merger Agreement be adopted and the Merger and the other transactions contemplated by the Merger Agreement be approved by the holders of . . . (c) ***a majority of the issued and outstanding shares of Company Common Stock*** (other than those issued or issuable upon conversion of the shares of Company Preferred Stock) ***held by the stockholders who are then providing services to the Company as officers, employees or consultants, . . .*** and (e) ***a majority of Company Common Stock then held by founders of the Company who are then providing services to the Company as officers or employees***

No such voting requirements exist in the DGCL or under the terms of the Company’s Amended and Restated Certificate of Incorporation, dated as of May 2, 2024 (the “Charter”).⁸ The emphasized text in the quoted passage appears to reference the fact that Exabeam’s Chairman and co-founder—who owned an unspecified number of shares of common stock and was the only one of Exabeam’s three co-founders still serving as an officer of Exabeam—signed the Written Consent approving the Merger. It fails to mention, however, that Exabeam’s Chairman also apparently

⁸ The Amended and Restated Charter, dated as of May 2, 2024, is attached hereto as Exhibit B.

owned preferred stock, as evidenced by his receipt of “proceeds” in the Merger, which only preferred stockholders received. By misrepresenting the voting requirements and omitting those qualifying facts, the Information Statement misleadingly suggests that the so-described officer and founder common stockholders had leverage to, and presumably did, faithfully negotiate on behalf of common stockholders before approving the Merger.

14. The absence of legitimate disclosure is especially problematic in the context of this private-company Merger. Exabeam did not make any normal-course or periodic reports to common stockholders about the results of its operations or the Company’s business plans or prospects. As far as Plaintiffs are aware, Exabeam has never held an annual meeting of stockholders. Common stockholders had no alternative means to obtain the information the Board was duty-bound to provide in the first instance, except by demanding books and records pursuant to 8 *Del. C.* § 220.

15. After waiting 45 days to provide notice of the Written Consent to stockholders, the Board proceeded to close the Merger on July 2, 2024, just 14 calendar days (or nine business days) later, thereby extinguishing common stockholders’ right to inspect Exabeam’s books and records. Indeed, Exabeam

refused one stockholder's July 4, 2024 inspection demand sent by Plaintiffs' counsel on that basis.⁹

16. The Board knew it did not report to stockholders in the normal course of business. And the Board's experienced legal counsel must have advised the directors as to their litigation exposure from approving a conflict transaction—without employing any procedural protections—that zeroed out common stockholders. The Board likewise must have been advised as to the Company's exposure in a statutory appraisal, in which the fair value of its common shares would be determined without regard to the VC investors' liquidation preference.¹⁰

17. The circumstances suggest that the Board sought to exploit common stockholders' informational disadvantage to further their defense of anticipated stockholder claims by unduly withholding notice of the Merger, knowingly providing inadequate disclosure when it finally did provide such notice, and then

⁹ See Ex. C (Letter from R. Stottmann dated July 10, 2024).

¹⁰ See *In re Appraisal of Orchard Enters., Inc.*, 2012 Del. Ch. LEXIS 165, at 26 (Del. Ch. July 18, 2012) (Strine, V.C.) (“*Cavalier Oil* makes clear that in an appraisal action, the petitioners are entitled to their ‘proportionate interest in a going concern.’ Importantly, this means that the value of the company under appraisal is not determined on a liquidated basis, and the company must be valued ‘without regard to post-merger events or other possible business combinations.’ In other words, the duty of this court in an appraisal is . . . to make a determination of [the company’s] value as a going concern, without reference to the merger giving rise to the appraisal rights or speculative events. Allocating the value of the liquidation preference to Orchard’s preferred stockholders would be tantamount to valuing the company on a liquidation basis or presuming a sale of the company, because it is only in those circumstances that the preference would be triggered.”).

moving quickly to close the Merger before stockholders could exercise their inspection rights.

18. Despite the Information Statement’s obvious deficiencies, it reveals that, by the second half of 2023, the Board had determined that Exabeam likely would run out of cash in 2024, yet the Board made no apparent effort to obtain additional financing and, instead, singularly focused on selling the Company as the “solution.” With the Company in desperate need of cash, the Board had no leverage to negotiate a fair price.¹¹

19. The end result was a fire sale that left common stockholders with nothing, while the VC investors recouped most of the cost of their investment by virtue of their liquidation preference and, more importantly, retained upside in the form of equity in the combined company.

20. The core concern of *Trados* and its progeny is that VC-preferred stockholders may choose to sell an otherwise viable company for less than its intrinsic value, in a transaction entitling them to their liquidation preference, so that the VCs can focus their time and resources on higher-value investments. As proof of the legitimacy of that concern, the VC investors agreed to receive less equity

¹¹ See, e.g., Brian B. Broughman & Jesse M. Fried, *Do VCs Use Inside Rounds to Dilute Founders? Some Evidence From Silicon Valley*, 18 J. Corp. Fin. 1104 (2012) (“[S]elling the [VC-backed] firm takes time, and is less likely to yield a high price if the firm is seen as running out of funds and desperate for a savior.”).

consideration in the buyer than the relative valuations of Exabeam and LogRhythm may otherwise dictate, apparently to ensure they would receive their liquidation preference. Indeed, the Charter excludes from its definition of “Liquidation Event” any “merger or consolidation in which the holders of capital stock of this corporation immediately prior to such merger or consolidation continue to hold a majority of the voting power of the capital stock of this corporation or the surviving or acquiring entity.” Presumably to ensure the Merger triggered their liquidation preference, the VC investors capped their equity percentage in the buyer at 49.9% in the Merger Agreement’s definition of “Consideration,” which expressly acknowledges the relative valuations of Exabeam and LogRhythm may entitle Exabeam’s stockholders to a greater than 50% interest in the buyer.

21. To be sure, and as a result, the Merger price does not reflect Exabeam’s fair value as a leader within the Security Information and Event Management (“SIEM”) market. Gartner analysts have rated Exabeam a “Leader” in SIEM five separate times in its highly influential “Magic Quadrant” ratings, including in its most recent ratings published in July 2024:

Figure 1: Magic Quadrant for Security Information and Event Management



22. Recent acquisitions of Exabeam's SIEM peers reveal the inadequacy of the Merger price here:

Company	Date (announcement)	Acquisition Price (mm)	LTM Revenue (mm)	Price/LTM Rev.
Splunk	Sept. 2023	\$28,000	3,843	7.3x
Sumo Logic	Feb. 2023	\$1,7000	\$287	5.9x

23. Applying these acquisition multiples to Exabeam's total revenue of \$155.5 million for the fiscal year ending January 31, 2024 implies an enterprise value for Exabeam ranging from \$917 million to \$1.14 billion.

24. Loyal fiduciaries would have obtained a price within that range after addressing the Company’s cash needs rather than selling Exabeam at a time when it “[was] seen as running out of funds and desperate for a savior,” when the Board had no leverage to negotiate a fair price.¹²

25. Plaintiffs bring this action on behalf of Exabeam’s common stockholders to redress the Board’s breaches of fiduciary duty in connection with the Merger and the VC investors’ aiding and abetting thereof. Plaintiffs likewise assert a claim against Exabeam for violating the “prompt notice” requirement of Section 228(e).

SUBJECT MATTER JURISDICTION

26. The Court has jurisdiction over the subject matter of this action under 10 *Del. C.* § 341.

THE PARTIES

I. Plaintiffs

27. Plaintiff Domingo Mihovilovic co-founded Exabeam in 2013 with Defendant Nir Polak and non-party Sylvain Gil. Mihovilovic served as Exabeam’s Chief Technology Officer from Exabeam’s inception until October 2021. Mihovilovic was a holder of Exabeam common stock at all times relevant hereto.

¹² *Id.*

At the time of the Merger, Mihovilovic held 1,356,594 shares of Exabeam common stock, of which he owned 856,594 shares directly and held the remaining 500,000 shares in trusts for the benefit of his children.

28. Plaintiffs Uri Ben-Dor and Nadav Lavy were holders of Exabeam common stock at all times relevant hereto. Ben-Dor and Lavy co-founded SkyFormation, a cloud security company that Exabeam acquired in 2019. In the acquisition, Ben-Dor was issued 309,917 shares of Exabeam common stock; Lavy was issued 242,629 shares of Exabeam common stock. They each held their shares continuously through the effective time of the Merger.

29. Plaintiff Rajiv Taneja, in his capacity as Trustee of the Taneja 2004 Family Trust, was a holder of Exabeam common stock at all times relevant hereto. Taneja held 249,637 shares of Exabeam common stock at the effective time of the Merger.

30. Plaintiffs collectively held 2,158,777 shares of Exabeam common stock, comprising nearly 17% of the issued and outstanding shares of Exabeam common stock at the time of the Merger.

II. Defendants

31. Exabeam is a Delaware corporation with its principal place of business located in Foster City, California. Exabeam is a “global cybersecurity leader” and

“one of the first [companies] to put AI and machine learning in its products to deliver behavioral analytics on top of security information and event management (SIEM).”

32. Defendant Nir Polak was at all relevant times Chairman of the Board. Polak co-founded Exabeam and served as its CEO until 2021. The Information Statement identifies trusts affiliated with Polak as “holder[s] of Company Capital Stock [that] will receive proceeds in such capacity as a result of the Merger.” Because only Exabeam preferred stockholders received proceeds in the Merger, Polak inferably held an unspecified number and series of shares of Exabeam preferred stock. Polak also held an unspecified number of shares of Exabeam common stock.¹³ The Information Statement does not quantify Polak’s interests in the Merger or his interests in Exabeam.

33. Polak is currently a Venture Partner at SignalFire, a role he has held since February 2022. Shortly after the announcement of the Merger, Polak announced that he co-founded Whiterabbit, “a venture studio assisting dreamers in turning ideas into industry-leading companies,” with a mission “to actively create and build cybersecurity companies from the ground up, not just invest in them.”

34. Defendant Adam Geller served as the Company’s CEO and as a member of the Board since 2023. Geller served as CEO at the discretion of the VC

¹³ See Ex. A at 142 (“Nir Polak, as a holder of Common Stock who is providing services to the Company as an officer . . .”).

Defendants, who controlled the Company. Prior to being promoted to CEO, Geller served as the Company's Chief Product Officer. In connection with the Merger, Geller was eligible to receive a transaction bonus, a future transaction bonus upon a change of control of the combined company, and partnership interests in the combined company. The Information Statement does not quantify Geller's interests in the Merger.

35. Defendant Theresia Gouw served on the Board at all relevant times as a designee of VC firms Aspect Ventures and Acrew Capital. Gouw was a founding partner of Aspect Ventures. Aspect Ventures participated in Exabeam's Series A, Series B, Series C and Series D financings, through which it inferably acquired shares of the corresponding series of Exabeam preferred stock. The Information Statement identifies each of Defendants Aspect Ventures, LP, Aspect Ventures I-A, L.P., Aspect Ventures II, L.P. and Aspect Ventures II-A, L.P. (together, "Aspect") as "a holder of Company Capital Stock and/or a lender to the Company [that] will receive proceeds in such capacity as a result of the Merger." The Information Statement does not quantify Aspect's interests in the Merger or its interests in Exabeam.

36. Gouw later co-founded Acrew Capital in 2019, where she serves as a founding partner. Acrew Capital participated in Exabeam's Series F and Series F-1 financings, through which it inferably acquired Exabeam Series F and Series F-1

preferred stock. The Information Statement identifies each of Defendants Acrew DCF Exabeam SPV, L.P., Acrew DCF Exabeam Aggregator, L.P. and Acrew Diversify Capital Fund, L.P. (together, “Acrew”) as “a holder of Company Capital Stock and/or a lender to the Company [that] will receive proceeds in such capacity as a result of the Merger.” The Information Statement does not quantify Acrew’s interests in the Merger or its interests in Exabeam.

37. Defendant Howard is a General Partner of VC firm Norwest Venture Partners and served on Exabeam’s Board as its designee. Norwest Venture Partners participated in Exabeam’s Series A, Series B, Series C, Series D, Series F and Series F-1 financings, through which it inferably acquired shares of the corresponding series of Exabeam preferred stock. The Information Statement identifies Defendant Norwest Venture Partners XII (“Norwest”) as “a holder of Company Capital Stock and a lender to the Company [that] will receive proceeds in such capacity as a result of the Merger.” The Information Statement does not quantify Norwest’s interests in the Merger or its interests in Exabeam.

38. Norwest Venture Partners and Thoma Bravo have worked closely together in connection with their simultaneous investment in software company Cority.¹⁴

¹⁴ <https://www.thomabravo.com/press-releases/cority-announces-new-growth-investment-with-thoma-bravo-as-majority-investor>.

39. Defendant Ravi Mhatre is the managing partner and co-founder of VC firm Lightspeed Venture Partners and served on Exabeam’s Board as its designee. Lightspeed Venture Partners participated in Exabeam’s Series C, Series D, Series E, Series F and Series F-1 financings, through which it inferably acquired shares of the corresponding series of Exabeam preferred stock. The Information Statement identifies each of Defendants LSVP XB-F, LLC, Lightspeed Venture Partners Select III, L.P., Lightspeed Venture Partners Select II, L.P., Lightspeed Strategic Partners I, L.P. and XA SPV, LLC (together, “Lightspeed”) as “a holder of Company Capital Stock and a lender to the Company [that] will receive proceeds in such capacity as a result of the Merger.” The Information Statement does not quantify Lightspeed’s interests in the Merger or its interests in Exabeam.

40. According to recent reports, Lightspeed’s investors had “pressure[d]” Lightspeed “to return more capital to investors.”¹⁵

41. Defendant Jeb Miller is a general partner of VC firm Icon Ventures and served on Exabeam’s Board as its designee. Icon Ventures participated in Exabeam’s Series B, Series C, Series D and Series F-1 financings, through which it inferably acquired shares of the corresponding series of Exabeam preferred stock.

¹⁵ *Silicon Valley’s Lightspeed shifts focus to secondary markets*, FINANCIAL TIMES, Jun. 14, 2024, <https://www.ft.com/content/81ecfd39-ae5b-44af-9a13-a92c40f38a2f>. In early 2024, Lightspeed launched a continuation fund to sell stakes in 10 investments worth approximately \$1 billion to free up cash to return to investors.

The Information Statement identifies Defendant Icon Ventures V, L.P. (“Icon”) as “a holder of Company Capital Stock and a lender to the Company [that] will receive proceeds in such capacity as a result of the Merger.” The Information Statement does not quantify Icon’s interests in the Merger or its interests in Exabeam.

42. Defendant Pravin Vazirani is a Managing Director and Co-Head of Tech Investing at Blue Owl Capital and served on Exabeam’s Board as its designee. Before he joined Blue Owl Capital in 2018, Vazirani was a Managing Director of VC firm Menlo Ventures, where he worked for 17 years. Blue Owl Capital led Exabeam’s Series F and Series F-1 financings, through which it acquired shares of Exabeam’s Series F and Series F-1 preferred stock. The Information Statement provides that each of Defendants Blue Owl Opportunistic Lending I (H) LP, Blue Owl Technology Finance Corp., Blue Owl Opportunistic Lending Master Fund II LP and Blue Owl Opportunistic Lending DL (C) LP (together, “Blue Owl”) is “a holder of Company Capital Stock and a lender to the Company [that] will receive proceeds in such capacity as a result of the Merger . . . and may participate in the Debt Financing” of the Merger. The Information Statement does not quantify Blue Owl’s interests in the Merger or its interests in Exabeam.

43. Defendant Blue Owl Technology Finance Corp., however, is publicly traded. Its Form 10-Q for the quarter ending March 31, 2024 provides that Blue Owl owned 3,340,668 shares of Exabeam Series F-1 preferred stock, constituting nearly

40% of the outstanding shares of Exabeam Series F-1 preferred stock at the time of the Merger.¹⁶

44. Blue Owl is affiliated with Owl Rock Capital Advisors (“Owl Rock”), which has a recent history of supporting Thoma Bravo acquisitions.¹⁷

45. Defendant Mark Jensen has served on the Board since 2022. The Information Statement does not identify Jensen as an Exabeam stockholder or as having any interest in the Merger. Jensen previously served alongside Gouw on the Forescout Technologies, Inc. board of directors. He previously was the U.S. Managing Partner of the Venture Capital Services Group at Deloitte LLP and, before that, was the Managing Partner of the Silicon Valley Office of Arthur Andersen LLP.

46. Jensen describes himself on his LinkedIn profile as “an active investor in private technology companies and [as] a member of the board of directors for various early stage privately held companies.” Jensen’s continued ability to invest in, and to serve on the boards of, private technology companies inferably depends on his ability to maintain goodwill with the VC firms who dominate that space.

¹⁶ <https://www.sec.gov/ix?doc=/Archives/edgar/data/0001747777/000174777724000009/ortfc-20240331.htm>.

¹⁷ Owl Rock, a division of Blue Owl, supported Thoma Bravo’s (i) 2022 \$10.4 billion acquisition of Anaplan, Inc., (ii) 2021 \$3.75 billion acquisition of Calypso Technology, and (iii) 2022 \$6.9 billion acquisition of SailPoint Technologies Holdings, Inc., a Lightspeed portfolio company and Exabeam Partner. Owl Rock recently changed its name and ticker symbol to conform to Blue Owl branding.

Trados addresses the issue of nominally independent directors who, like Jensen, serve on the boards of private companies at the pleasure of VC investors:

Because of the web of interrelationships that characterizes the Silicon Valley startup community, scholars have argued that “so-called ‘independent directors’” on VC-backed startup boards “are often not truly independent of the VCs.” *Agency Costs, supra*, at 988. “Many of these directors are chosen by the VCs, who tend to have much larger professional networks than the entrepreneurs or other common shareholders.” *Id.* If there is a “conflict of interest” between the VCs and common stockholders, the “independent directors” have incentives to side with the VCs. *Id.* at 989.

Many of these outside directors have—or can expect to have—long-term professional and business ties with the VCs, who are more likely to be repeat players than are most of the common shareholders. Cooperative outside directors can expect to be recommended for other board seats or even invited to join the VC fund as a “venture partner.” *Id.*; *accord id.* at 989 n.63 (noting that “conversations with local VCs confirm” that “independent directors” have incentives to side with VCs); *Exit Structure, supra*, at 320 (“[I]n the event of conflict between the venture capitalist and the entrepreneur, such outside directors may have a natural inclination to side with the venture capitalist.”); *Downside, supra*, at 921 (arguing outside directors are “highly susceptible to the influence of the VC”).

Trados, 73 A.3d at 55.

47. Defendants Polak, Geller, Gouw, Howard, Jensen, Mahtre, Miller and Vazirani comprised the Exabeam Board and are referred to herein as the “Individual Defendants.” Defendants Acrew, Aspect, Norwest, Icon, Lightspeed and Blue Owl comprised Exabeam’s VC investors and are referred to herein as the “VC

Defendants.” The Individual Defendants and the VC Defendants, together with the Company, are referred to collectively herein as “Defendants.”

III. Relevant Non-Parties

48. LogRhythm is a cybersecurity intelligence company that specializes in SIEM, log management, network monitoring, user behavior, and security analytics. LogRhythm has been a portfolio company of Thoma Bravo since July 2018.

49. Excalibur CombineCo., L.P., a Delaware limited partnership, is defined as the “Buyer” in the Merger Agreement.

50. Excalibur Aggregation L.P., a Delaware limited partnership, is defined as the “Aggregator” in the Merger Agreement.

51. Excalibur Merger Sub, Inc. (“Merger Sub”) is a Delaware corporation and a wholly owned subsidiary of the Aggregator.

52. LogRhythm Parent, LP (“LogRhythm Parent”), a Delaware limited partnership, is the direct parent entity of Buyer and the Aggregator, and the indirect parent of Merger Sub and LogRhythm.

53. Thoma Bravo is a private equity firm based in Chicago, Illinois.

SUBSTANTIVE ALLEGATIONS

I. The Series F-1 Financing

54. In May 2023, Exabeam completed a Series F-1 financing. Exabeam did not publicly disclose the details of this financing and did not otherwise provide

them to Exabeam’s common stockholders. Ace Management Partners—an investment manager specializing in private technology company investments¹⁸—reported that Exabeam raised \$250 million in the Series F-1 financing at a post-money valuation of \$2.65 billion.¹⁹

55. As to the Series F-1 financing, the Information Statement provides that, “[i]n May 2023, the Company issued \$105.8 million aggregate principal amount of convertible debt (the ‘Debt’) to the Company’s current investors.” The Debt was secured by substantially all of the Company’s assets and was convertible into any subsequent equity (or equity-linked) financing of the Company at the election of each lender.

56. According to the Information Statement:

Pursuant to the debt agreement and by virtue of their preexisting preferred or common stock positions in the Company, the lenders exchanged \$2.44 worth of shares of the Company’s preferred and common stock for every \$1.00 invested in the Debt (assuming the value of each share of such preferred and common stock is equal to \$29.1865) on a one share-to-one share basis for the issuance of shares of the Company’s Series F-1 preferred stock to such lenders.

¹⁸ Ace Management Partners describes itself as “dedicated to transforming the private markets into a more investor-friendly and inclusive environment. Our mission is to provide retail and accredited investors around the world with unparalleled access to world-class startup pre-IPO companies, ensuring that everyone has the opportunity to participate in the growth and success of tomorrow’s leading enterprises.”

¹⁹ <https://www.aceventurefunds.com/exabeam>. This report is directionally consistent with Exabeam’s publicly disclosed Series F financing completed in June 2021, in which Exabeam raised \$200 million at a valuation of \$2.4 billion.

57. The VC Defendants exchanged certain portions of their preexisting shares for Series F-1 preferred stock. The preexisting shares exchanged were retired. In connection with this retirement and exchange, the Company issued 8,838,214 million shares of Series F-1 preferred stock as follows:

	Number of shares	Number of Shares Authorized
Series A Preferred Stock exchanged and retired	(41,800)	8,000,000
Series A-1 Preferred Stock exchanged and retired	(247,298)	9,189,489
Series B Preferred Stock exchanged and retired	(125,400)	6,506,928
Series E Preferred Stock exchanged and retired	(254,117)	5,939,038
Series F Preferred Stock exchanged and retired	(4,104,676)	10,678,258
Common Stock exchanged and retired	(4,064,923)	103,500,000
Series F-1 Preferred Stock issued in lieu of retired stock	8,838,214	8,840,000

58. The Series F-1 financing thus appears to have been a “pay-to-play” convertible-debt round in which each of the VC Defendants contributed, in addition to cash proceeds, some portion of their then-existing holdings of preferred and/or common shares in exchange for shares of Series F-1 preferred stock. The Series F-1 financing was Exabeam’s last round of funding before the Merger. With the Series F-1 financing, Exabeam’s Series F-1 preferred stock became senior to all other classes and series of stock.

II. Exabeam's Capitalization Structure

59. The Merger Agreement, attached as an exhibit to the Information Statement, provides that the Company had the following capitalization structure as of the date of the Merger Agreement:

Section 4.5 Company Capitalization.

(a) Capital Stock. The authorized capital stock of the Company consists of (i) 103,500,000 shares of Company Common Stock, (ii) 8,000,000 shares of Company Series A Preferred Stock, (iii) 9,189,489 shares of Company Series A-1 Preferred Stock, (iv) 6,506,928 shares of Company Series B Preferred Stock, (v) 5,431,355 shares of Company Series C Preferred Stock, (vi) 4,669,864 shares of Company Series D Preferred Stock, (vii) 5,939,038 shares of Company Series E Preferred Stock, (viii) 10,678,258 shares of Company Series F Preferred Stock and (ix) 8,840,000 shares of Company Series F-1 Preferred Stock. As of the date hereof, (A) 12,925,042 shares of Company Common Stock, (B) 7,958,200 shares of Company Series A Preferred Stock, (C) 8,942,191 shares of Company Series A-1 Preferred Stock, (D) 6,381,528 shares of Company Series B Preferred Stock, (E) 5,431,355 shares of Company Series C Preferred Stock, (F) 4,669,864 shares of Company Series D Preferred Stock, (G) 5,684,921 shares of Company Series E Preferred Stock, (H) 6,057,631 shares of Company Series F Preferred Stock and (I) 8,838,214 shares of Company Series F-1 Preferred Stock (collectively, the “***Company Capital Stock***”) are issued and outstanding. ***All outstanding shares of Company Capital Stock are held beneficially and of record by the Persons set forth on Section 4.5(a) of the Company Disclosure Schedule*** (without giving effect of the F-1 Contribution), free and clear of any Encumbrances (other than any restrictions imposed thereon by applicable securities Laws), validly issued, fully paid, nonassessable and free of any preemptive rights.

60. Defendants excised the “Company Disclosure Schedule” from the copy of the Merger Agreement attached to the Information Statement, and did not

elsewhere provide in the Information Statement the specific holdings of “Company Capital Stock” by each of the Individual Defendants or the VC Defendants.

61. The Charter provides that Exabeam’s preferred stock generally had the right to vote on an as-converted basis with the common stock, voting together as a single class:

(a) General Voting Rights. The holder of each share of Preferred Stock shall have the right to one vote for each share of Common Stock into which such Preferred Stock could then be converted, and with respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the Bylaws of this corporation, and except as provided by law or in Section B.5(b) below with respect to the election of directors by the separate class vote of the holders of Common Stock, shall be entitled to vote, together with holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote.²⁰

Because 53,963,904 shares of preferred stock, and only 12,925,042 shares of common stock, were issued and outstanding at the time of the Merger, Exabeam’s preferred stockholders generally had the voting power to approve or reject any actions of the Company requiring stockholder approval. The discrepancy in voting power is even more stark when accounting for the preferred stock on an as-converted basis.

²⁰ Ex. B, Art. IV § 5(a).

62. The Charter did not confer any special rights, privileges or protections on the common stock, except for the right to elect two directors to the Board. As far as Plaintiffs are aware, however, Exabeam never held an annual meeting during their time as common stockholders. As such, there is no indication that Exabeam's common stockholders ever exercised their right (or had the opportunity to exercise their right) to elect any directors to the Board.

63. The Charter entitled Exabeam's preferred stockholders to elect six directors to the Board.²¹ It also entitled the preferred stock to, among other things, dividend and liquidation preferences, with the attendant right to participate on an as-converted basis with the common stock as to any dividends, distributions or liquidation proceeds exceeding the preferential amounts.²² The Series F-1 preferred stock was senior to all other series of preferred stock.

64. The Charter, of course, entitled the preferred stock to a "Liquidation Preference" in the event of a "Liquidation Event":

2. Liquidation Preference.

In the event of any Liquidation Event (as defined below), either voluntary or involuntary, the holders of Series F-1 Preferred Stock shall be entitled to receive out of the assets of the corporation available for distribution to its stockholders, on a *pari passu* basis among them and prior and in preference to any distribution of the proceeds of such

²¹ *Id.* § B.5(b)(1).

²² *Id.* §§ B.1-B.2.

Liquidation Event (the “Proceeds”) to the holders of Junior Stock by reason of their ownership thereof, an amount per share equal to the sum of the applicable Original Issue Price (as defined below) for such Series F-1 Preferred Stock, plus declared but unpaid dividends on such share. If, upon the occurrence of such event, the Proceeds thus distributed among the holders of the Series F-1 Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire Proceeds legally available for distribution shall be distributed ratably among the holders of the Series F-1 Preferred Stock in proportion to the full preferential amount that each such holder is otherwise entitled to receive under this Section B.2(a). In the event of any Liquidation Event, either voluntary or involuntary, the holders of each series of Junior Preferred Stock shall be entitled to receive out of the assets of the corporation available for distribution to its stockholders, on a *pari passu* basis among them after payment in full of the portion of the Proceeds payable to the Series F-1 Preferred Stock but prior and in preference to any distribution of the Proceeds to the holders of Common Stock by reason of their ownership hereof, an amount per share equal to the sum of the applicable Original Issue Price (as defined below) for such series of Junior Preferred Stock, plus declared but unpaid dividends on such share. If, upon the occurrence of such event, after the holders of Series F-1 Preferred Stock have received payment of the full preferential amount of the portion of the Proceeds in respect of such Series F-1 Preferred Stock, any remaining Proceeds thus distributed among the holders of the Junior Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire amount of Proceeds remaining and legally available for distribution shall be distributed ratably among the holders of the Junior Preferred Stock in proportion to the full preferential amount that each such holder is otherwise entitled to receive under this Section B.2(a).²³

65. The Charter defined “Liquidation Event” as follows:

[A] “Liquidation Event” shall include (A) the closing of the sale, transfer or other disposition of all or substantially all of this corporation’s assets . . . , (B) the consummation of the merger or

²³ *Id.* § B.2(a)

consolidation of this corporation with or into another entity (*except a merger or consolidation in which the holders of capital stock of this corporation immediately prior to such merger or consolidation continue to hold a majority of the voting power of the capital stock of this corporation or the surviving or acquiring entity*), (C) the closing of the transfer (whether by merger, consolidation or otherwise), in one transaction or a series of related transactions, to a person or group of affiliated persons (other than an underwriter of this Corporation's securities), of this corporation's securities if, after such closing, such person or group of affiliated persons would hold 50% or more of the outstanding voting stock of this corporation (or the surviving or acquiring entity)) or (D) a liquidation, dissolution or winding up of this corporation; provided, however, that a transaction shall not constitute a Liquidation Event if its sole purpose is to change the state of this corporation's incorporation or to create a holding company that will be owned in substantially the same proportions by the persons who held this corporation's securities immediately prior to such transaction.

66. Thus, with certain specified exceptions, preferred stockholders would be entitled to receive their Liquidation Preference in any qualifying asset sale, merger, stock transfer or liquidation of the Company.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

68. Additionally, the Charter included protective provisions for the preferred stock prohibiting certain actions from being taken without the prior approval of a majority of the outstanding shares of preferred stock, including “consummat[ing] a Liquidation Event or any other acquisition transaction” and issuing equity securities with voting, dividend, liquidation or other rights or preferences senior to, or on parity with, those of any outstanding series of preferred stock.²⁴

69. The Charter likewise included protective provisions specifically for the Series F-1 preferred stock, prohibiting certain actions from being taken without the prior approval of a majority of the outstanding shares of Series F-1 preferred stock, including (i) issuing equity securities with voting, dividend, liquidation or other rights or preferences senior to, or pari passu with, those of the Series F-1 preferred stock, (ii) incurring convertible debt in excess of \$500,000, or (iii) incurring non-convertible debt (*i.e.*, “straight debt”) in excess of \$100 million, with certain exceptions.²⁵

70. The Charter also included “Specified Holder Protective Provisions” prohibiting the issuance of equity securities with voting, dividend, liquidation or

²⁴ *Id.* § B.6.

²⁵ *Id.* § B.8.

other rights or preferences senior to the “Junior Preferred Stock”²⁶ without the prior approval of at least four of the five VC Defendants.²⁷

III. Corporate Background and Events Leading to the Merger

A. The Company is an Industry Leader

71. Exabeam’s Security Operations Platform applies artificial intelligence (“AI”) and automation to cyber-security operations to combat cyberthreats by providing accurate threat detection, investigation, and response (“TDIR”). At a high level, Exabeam’s product has three components: (a) its core technology, User and Entity Behavior Analytics (“UEBA”), an intelligence component that enables monitoring of user and machine behavior to identify potential threats; (b) storage of log data for analysis and forensic investigation; and (c) automated incident response when a threat is detected.

72. Since 2018, the Company has consistently been recognized as an industry leader in SIEM, including by Gartner in its highly influential Magic Quadrant ratings. Gartner has rated Exabeam a “Leader” in SIEM five times in its annual Magic Quadrant ratings. Gartner provides the following explanation of its ratings terminology:

²⁶ The Charter defines “Junior Preferred Stock” as shares of preferred stock other than the Series F-1 preferred stock. *Id.* § B.1.(a).

²⁷ *Id.* § B.9.

Leaders provide products that are a strong functional match for the market's general requirements. These vendors have been the most successful at building an installed base and revenue stream in the SIEM market. In addition to providing technology that is a good match for current customer requirements, Leaders show evidence of superior vision and execution for emerging and anticipated requirements. They typically have a relatively high market share and/or strong revenue growth and receive positive customer feedback about their SIEM capabilities and related service and support.

73. As shown in the diagram below, Exabeam climbed Gartner's Magic Quadrant ratings from 2017 through 2021, when Exabeam was not only rated a "Leader" in SIEM, but *the* "Leader" in SIEM.



74. From approximately 2019-2021, the Company transitioned its product from an on-premise model to a cloud-based Software-as-a-Service (“SaaS”) model. Since then, the Company has transitioned customers to its cloud-based solutions and product offerings.

75. The Company initially launched an interim cloud-based product in 2019 and ceased selling its on-premise product in 2020. This interim product generated poor margins. The Company’s products and solutions nevertheless continued to be highly rated (as indicated above), and Exabeam’s future seemed bright.

76. For example, in connection with the Company’s 2021 \$200 million Series F growth round—at a valuation of \$2.4 billion—Defendant Gouw (of Acrew) touted Exabeam’s success, remarking that “Exabeam is a leading security player in a high-demand, high-stakes market . . . [and] continues to execute exceedingly well, and last year, the company was the fastest private security management company to hit \$100 million in ARR.”

77. Exabeam’s interim cloud-based product’s poor margins, however, prompted the Company to develop a fully cloud-native solution tied to Google Cloud Services. Development was slow and costly. Indeed, the Company incurred research and development expenses of [REDACTED] during the fiscal years ending January 31, 2023 and 2024, respectively. Google Cloud Services are

not cheap, either. In June 2023, the Company amended a contract with a reseller that the Company uses to purchase Google Cloud Services. Under the amended contract, [REDACTED]

[REDACTED]

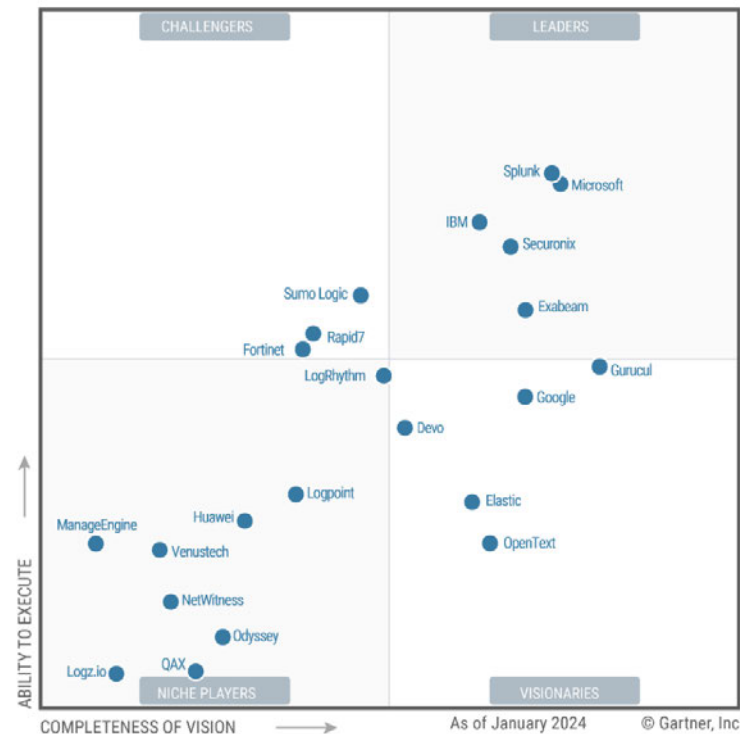
78. The Google-Cloud-based product, however, has been a success. The Company began selling the product in calendar year 2023. By 2024, the product was generating margins of 60% for the Company, according to Defendant Polak.

79. Indeed, in 2023 and 2024, the Company was named a Google Cloud Technology Partner of the Year for Security – Analytics.²⁸

80. And, as indicated above, Gartner once again rated Exabeam a Leader in SIEM in its Magic Quadrant ratings published in July 2024:

²⁸ *Exabeam Named Google Cloud Technology Partner of the Year for Security – Analytics for the Second Year in a Row*, Exabeam Press Release, Apr. 8, 2024, <https://www.exabeam.com/press-releases/exabeam-named-google-cloud-technology-partner-of-the-year-for-security-analytics-for-the-second-year-in-a-row/>

Figure 1: Magic Quadrant for Security Information and Event Management



Gartner

81. By all accounts, Exabeam appeared to be poised for success on the back of its new product offerings tied to Google Cloud.

82. To be sure, in February 2024, the Company debuted what it described as “one of the most significant releases Exabeam ha[d] offered to date,” the “pioneering cybersecurity features, Threat Center and Exabeam Copilot.”²⁹

²⁹ *The AI-Driven Exabeam Security Operations Platform: Revolutionizing Threat Detection, Investigation, and Response*, Exabeam Blog, Feb. 27, 2024, <https://www.exabeam.com/blog/infosec-trends/the-ai-driven-exabeam-security-operations-platform-revolutionizing-threat-detection-investigation-and-response/>; *What’s New in Exabeam Product Development — February 2024*, Exabeam Blog, Mar. 4, 2024,

According to the press release, “[t]hese new features amp[ed] up the value of [Exabeam’s] AI-driven security operations platform.”³⁰ As it turns out, however, Plaintiffs and their fellow common stockholders would not get to share in Exabeam’s success.

B. Defendants Pursue a Sale

83. In 2023, the SIEM market began to trend toward consolidation. In February 2023, Sumo Logic—rated a “Challenger” in SIEM—announced its agreement to be acquired by private equity firm Francisco Partners for \$1.7 billion. And, in September 2023, Cisco announced its agreement to acquire Splunk—an Exabeam peer also rated a “Leader” in SIEM—for \$28 billion.

84. Around that same time, Exabeam began to receive inbound inquiries about a potential acquisition. According to the Information Statement’s eight-paragraph “Background of [the] Transaction” section, “[d]uring the second half of 2023, the Company received several inbound inquiries about potential acquisition proposals.” Exabeam’s receipt of acquisition interest apparently prompted the

<https://www.exabeam.com/blog/security-operations-center/whats-new-in-exabeam-product-development-february-2024/>.

³⁰ *Exabeam Introduces Transformative Unified Workbench for Security Analysts with Generative AI Assistance*, Exabeam Press Release, Feb. 27, 2024, <https://www.exabeam.com/press-releases/exabeam-introduces-transformative-unified-workbench-for-security-analysts-with-generative-ai-assistance/>.

Board to assess the Company’s financial situation and outlook, leading the Board to conclude “that there was substantial doubt about the Company’s ability to continue to operate as a going concern and that it was likely that the Company’s financial situation in 2024 would necessitate a *transaction or financing* with respect to the Company.”³¹

85. Despite the Board’s sudden, post-interest acknowledgement that the Company would likely run out of cash in 2024 and that the Company’s survival depended on completing a “transaction or financing,” the Board singularly focused on selling the Company (*i.e.*, a “transaction”). Indeed, the Information Statement makes no mention whatsoever of any efforts the Board made to obtain additional financing.

86. The reasons for the VC Defendants’ exclusive focus on selling Exabeam are not entirely clear. Existing VC investors are often averse to “down round” financings, which may have been the only form of equity financing available to Exabeam in 2024 given that it completed its Series F financing—at a \$2.4 billion valuation—at the height of the tech boom in 2021.³² Down-round financings often

³¹ Ex. A at 4. The Information Statement uses the general term “transaction” to refer to mergers and acquisitions, whereas it uses the specific term “financing” to refer to financing transactions.

³² *E.g.*, Krystal Hu, *U.S. VC Funding Cools from 2021 Record as Investors Keep Their Powder Dry*, Reuters (January 6, 2023), <https://www.reuters.com/markets/us/us-vc->

portend the negotiated dilution of existing investors' interests or the potential negotiated reduction of their liquidation preferences. That is true even where, as here, the existing investors' preferred stock carries anti-dilution rights.³³ VC aversion to down rounds is also a function of the VC business model. VCs periodically report the value of the fund's investments to their limited partners. A down round would require the VC to write down the value of the fund's investment, which could impact the VC's future fundraising efforts with its limited partners and may also reduce the fees and distributions from the fund to the VC sponsor.³⁴ As to the possibility of seeking "straight debt," the VC Defendants may have been averse to subordinating their position as Exabeam's senior creditors by virtue of the Series F-1 financing, which any prospective lender would require. Whatever the precise reasons for their aversion to seeking additional financing on a dual-track with the sale process, it is clear that the VC Defendants were acting in furtherance of their own personal interests, not the best interests of the Company, whose continued viability required a cash infusion.

[funding-cools-2021-record-investors-keep-their-powder-dry-2023-01-06/](#); see also Alon Y. Kappen, *Navigating the Downside: The Rise of Down Rounds in 2024 VC Deals*, June 10, 2024 (hereinafter "*Downside*").

³³ *Downside*, *supra*.

³⁴ *Id.*

87. “[O]n December 22, 2023, the Company engaged J.P. Morgan Securities LLC (‘J.P. Morgan’) to assist the Company in evaluating potential transactions.” The Information Statement further provided that “J.P. Morgan and the Company had initial discussions with 39 parties regarding potential transactions . . . [which] resulted in multiple potential partners emerging that, at the Board’s direction, the Company and J.P. Morgan engaged with regarding more detailed negotiations with respect to potential proposed deal terms.”

88. According to the Information Statement, “[a]t no point did any of such discussions involve a valuation of the Company that, after paying off the Company’s existing debt obligations, would be or result in equal to or greater than the Company’s existing liquidation preferences owed with respect to the [Preferred Shareholders].” No further details regarding these discussions or the proposals were included in the Information Statement.

89. At some point, Thoma Bravo, a familiar partner for several Defendants, “emerged as the most attractive opportunity based on strategic fit, valuation and closing certainty.”

90. According to the Information Statement, shortly thereafter, in March 2024, Defendants and Thoma Bravo agreed to “significant [undisclosed] improvements from [the undisclosed] initial offer, including (i) agreeing to pay off the Company’s existing debt obligations, (ii) agreeing to provide funds for the

Company's and LogRhythm Inc.'s near term working capital needs following the Closing and (iii) increasing the total consideration to be received by the [VC] Stockholders by approximately 39%."

91. The Information Statement did not provide any further information with respect to these negotiations, the "initial offer," the Company's debt obligations with respect to the various funds affiliated with certain Individual Defendants (or the VC Defendants), or the "total consideration to be received by the Stockholders."

92. Nevertheless, following these "improved terms," the Board unanimously authorized the Company to enter into a term sheet (the "Equity Term Sheet") and an exclusivity agreement with LogRhythm Parent.

93. According to the Information Statement, "[f]ollowing the execution of the Equity Term Sheet and the exclusivity agreement, the parties engaged in discussions and negotiations of the Merger Agreement and other Transaction Documents."

94. On May 2, 2024, "the Company and certain [*unidentified*] Stockholders" entered into a "certain Amended and Restated First Refusal and Co-Sale Agreement, by and among the Company and each of the other [*undisclosed*] parties thereto" (the "ROFR and Co-Sale Agreement"). In connection with the Stockholder Consent, each unidentified Stockholder waived any right of first refusal with respect to the Merger.

95. On May 4, 2024, the Board unanimously (i) approved the Merger, the Merger Agreement and the other transactions contemplated by the Merger Agreement, (ii) declared the Merger, upon the terms and subject to the conditions set forth in the Merger Agreement, advisable and in the best interests of the Company and its Stockholders, and (iii) recommended that the Stockholders adopt the Merger Agreement and approve the Merger and the other transactions contemplated by the Merger Agreement.

96. After all parties executed the Merger Agreement, “Stockholders sufficient to satisfy the approval requirements of the DGCL and the Company’s Organizational Documents adopted the Merger Agreement and executed and delivered the Stockholder Consent pursuant to Section 228 of the DGCL (i) authorizing, adopting and approving the Merger Agreement, the Merger and the other transactions contemplated by the Merger Agreement and (ii) approving or ratifying various other matters related to the Merger Agreement, the Merger and the other transactions contemplated by the Merger Agreement.”

97. On the same day that the Board approved the Merger Agreement, the Board also approved a “Management Carve-Out Plan,” pursuant to which certain eligible employees would be entitled to receive a Transaction Bonus following the closing of the Merger, *and* an opportunity to receive a *future* transaction bonus upon

a change of control of Buyer (the “Future Exit Bonus”). The Information Statement provided no further detail about the Management Carve-Out Plan.

98. The Merger Agreement provided,

immediately prior to the Effective Time, (i) LogRhythm Parent will contribute all of its equity interests in LogRhythm Intermediate to Buyer in exchange for the LR Parent Buyer A Units and the LR Parent Buyer B Units (collectively, the “LR Contribution”) pursuant to a contribution agreement that has been executed by LogRhythm Parent and delivered to Buyer and the Company concurrently with the execution and delivery of the Merger Agreement and **(ii) each of the F-1 Investors will contribute all of the Company Series F-1 Preferred Stock to Buyer in exchange for certain Buyer Class A Units (the “F-1 Contribution”) pursuant to a contribution agreement to be executed and delivered by each F-1 Investor.**^[35]

99. At the Effective Time, Merger Sub merged with and into the Company, with the Company continuing as the “Surviving Company” and as a wholly owned subsidiary of the Aggregator. Then, immediately following the Merger, the Aggregator transferred all of the issued and outstanding shares of the Surviving Company to Buyer, resulting in Buyer becoming the sole shareholder of the Surviving Company.

100. With respect to the Aggregator, according to the Information Statement:

³⁵ The Merger Agreement defines “F-1 Investors” to mean the holders of all of the issued and outstanding shares of Company Series F-1 Preferred Stock.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

103. It was expected that, following closing, Buyer would be governed by a ten-member Board of Managers, and that Aggregator would be entitled to designate one member to the Board of Managers.

104. Indeed, as stated above and in addition to the Buyer Class A Units, Buyer Class B Units, Aggregator Preferred Units, transaction bonuses, and/or other financial benefits the Individual Defendants and VC Defendants will receive (and of which the Information Statement fails to disclose a proper accounting and quantification), Vazirani (of Blue Owl) and a representative of Light Speed Venture Partners (another significant shareholder of the Company represented on the Board by Mhatre) were expected to be appointed to Buyer's Board of Managers in connection with the Merger, while CEO Geller secured partnership interests in the

Aggregator entity. Blue Owl was also expected to participate in the Debt Financing of the Merger.

* * *

105. In sum, the Merger was the result of an insider-driven and conflicted sales process designed to benefit the Defendants at the expense of non-insider common stockholders, who received *nothing* in the Merger.

106. The Merger was completed on or about July 2, 2024.

III. The Merger Undervalued the Company

107. The Merger price does not reflect Exabeam's fair value as a leader within the SIEM market. As noted above, Gartner analysts have rated Exabeam a "Leader" in SIEM five separate times in its annual "Magic Quadrant" ratings, including in its most recent ratings published in July 2024:

Figure 1: Magic Quadrant for Security Information and Event Management



Gartner

108. Exabeam reported total revenues of \$141.8 million and \$155.5 million for 2023 and 2024.

109. Recent acquisitions of Exabeam's SIEM peers reveal the inadequacy of the Merger price here:

Company	Date (announcement)	Acquisition Price (mm)	LTM Revenue (mm)	Price/LTM Rev.
Splunk	Sept. 2023	\$28,000	3,843	7.3x
Sumo Logic	Feb. 2023	\$1,7000	\$287	5.9x

110. Applying these acquisition multiples to Exabeam's total revenue of \$155.5 million for the fiscal year ended January 31, 2024 implies an enterprise value for Exabeam ranging from \$917 million to \$1.14 billion. Loyal fiduciaries would

have obtained a price within that range after addressing the Company’s liquidity needs.

IV. The Individual Defendants Violated Their Duty of Disclosure

111. The Individual Defendants breached their fiduciary duties by disseminating an Information Statement so devoid of detail that it could not have been the product of a good-faith effort to fulfill their duty of disclosure.

112. The Information Statement omits even the most basic details about the Merger. Aside from its provision of audited financial statements for the fiscal years ending January 31, 2023 and January 31, 2024, the Information Statement entirely lacked the sort of information customarily provided to stockholders tasked with deciding whether to demand appraisal. For example:

- The “Background of [the] Transaction” spans only one-and-a-quarter pages and includes just a few paragraphs summarizing—without any meaningful detail—the events culminating in the Merger.³⁶
- The Merger price, a “headline” fact in any merger, is not disclosed anywhere in the body or narrative sections of the Information Statement. Instead, indications of the Merger price are buried more than 100 pages deep into the Information Statement, in the definitions section of an appended copy of the

³⁶ Ex. A at 4-5.

Merger Agreement, where a stockholder would need to cross reference several definitions in order to venture an educated guess as to what the Merger price may be.

- The Information Statement does not include any valuation of Exabeam and provides no qualitative disclosure about how the Board valued Exabeam in determining that the Merger was in the best interests of the Company and its stockholders.
- The Information Statement does not include Exabeam’s financial projections or any substantive disclosure of Exabeam’s business plans.

113. The Information Statement likewise fails to disclose the value that the Board ascribed to LogRhythm in the Merger or any qualitative disclosure describing how the Board determined that value. Importantly, the Charter provides that the Board “shall” determine the “fair market value” of any private securities (*i.e.*, those that do not trade in an active market) that the Company receives as proceeds in any “Liquidation Event.”³⁷

114. The Information Statement summarily states that the Board considered “possible alternatives to the Merger (including the possibility of continuing to operate the Company as an independent entity and pursuing additional rounds of

³⁷ Ex. B, Art. IV § B.2.(d)(ii).

financing), [and] the range of possible benefits to the Stockholders of such alternatives,” without any accompanying disclosure of the Board’s analyses or deliberations respecting alternatives.³⁸

115. The Information Statement does not fairly disclose the interests of Exabeam’s fiduciaries in the Merger. It neither quantifies their interests in Exabeam nor the interests they will receive in the Merger. Instead, it merely states that each of the VC directors is an affiliate of a VC Defendant, and that each of the VC Defendants is a “holder of Company Capital Stock” and/or a “lender to the Company” that “will receive proceeds in such capacity as a result of the Merger pursuant to and in accordance with the terms of the Merger Agreement.” This tells stockholders nothing about the conflicts under which their fiduciaries labored in negotiating and approving an end-stage transaction in which those same fiduciaries received unique benefits, while common stockholders received nothing. Every Exabeam stockholder is a “holder of Company Capital Stock.” The conflicts of the VC Defendants and their affiliated directors vis-à-vis common stockholders derive from the different class (*i.e.*, preferred) and series of stock the VC Defendants held. By failing to specify the class, series and the number of shares each VC Defendant held, as well as the quantity and implied value of the equity interests that each

³⁸ Ex. A at 5.

received in the Merger, the Board deprived common stockholders of the opportunity to fairly assess the conflicts of the VC-affiliated directors.

116. Moreover, the Information Statement omits significant detail respecting the conflicts of one particular VC Defendant, Blue Owl. Based on Blue Owl's public filings with the SEC, Blue Owl was seemingly the Company's largest lender and largest holder of Exabeam's seniormost series of preferred stock (*i.e.*, Series F-1), giving Blue Owl the greatest influence of any single investor in the Company. The Information Statement summarily disclosed that Blue Owl "may participate in the Debt Financing" of the Merger. The use of the qualifier "may" is misleading, as the Merger Agreement indicates that Thoma Bravo had already delivered debt commitment letters from its financing sources to Exabeam. In any event, this passing mention that Blue Owl may provide financing to Exabeam's counterparty in the Merger, without any accompanying detail about the prospective financing and without any information from which stockholders could infer the significance of Blue Owl's position within Exabeam, whitewashes the significance of this conflict.

117. The Information Statement also touts the Board's retention of "J.P. Morgan to act as its financial advisor based on J.P. Morgan's qualifications, expertise, reputation and knowledge of the Company's business and affairs and the industry in which it operates," but fails to disclose J.P. Morgan's conflicts of interest. J.P. Morgan has received hundreds of millions of dollars in advisory fees from

Thoma Bravo since 2019, including a \$38.5 million fee from its undisclosed *concurrent* representation of Thoma Bravo portfolio company, Instructure Holdings, Inc. (“Instructure”), in its pending acquisition by affiliates of KKR.³⁹ The Instructure Proxy provides that, since just July 2022, Thoma Bravo and its controlled portfolio companies have paid J.P. Morgan \$54.4 million in fees, exclusive of the \$38.5 million fee J.P. Morgan earned in the Instructure deal.⁴⁰ A similar conflicts disclosure made in connection with an earlier transaction reveals that Thoma Bravo and its affiliates had paid J.P. Morgan approximately \$96 million in fees during the period from July 2019 through July 2021.⁴¹

118. The Information Statement attaches an *unsigned* copy of the Written Consent, without its exhibits and other key documents it references, thus concealing the identities of all but two stockholders who approved the Merger.

119. The Information Statement attaches a copy of the Merger Agreement but omits the disclosure schedules, exhibits and other key documents it references.

³⁹ See Instructure Holdings, Inc., Schedule 14C, dated Sep. 5, 2024, at 41 (the “Instructure Proxy”), https://www.sec.gov/Archives/edgar/data/1841804/000119312524214196/d886442ddefm14c.htm#tx886442_26.

⁴⁰ *Id.* at 42.

⁴¹ See Stamps.com, Inc., Schedule 14A, dated Aug. 30, 2021, at 40, https://www.sec.gov/Archives/edgar/data/1082923/000114036121029754/ny20000063x4_defm14a.htm#tTM7.

120. The Information Statement makes several references to an Aggregator Capitalization Table, which would reveal the equity interests the Defendants received in the Merger, but omits the Aggregator Capitalization Table from its contents.

121. The Information Statement does not include copies of the Company's organizational documents, including the Bylaws, which the Information Statement specifically references and which are not publicly available.

122. Further, the Information Statement misrepresents the legal requirements for stockholder approval of the Merger. It states:

Applicable provisions of the General Corporation Law of the State of Delaware ("DGCL") and the terms of the Company's Certificate of Incorporation require that the Merger Agreement be adopted and the Merger and the other transactions contemplated by the Merger Agreement be approved by the holders of . . . (c) ***a majority of the issued and outstanding shares of Company Common Stock*** (other than those issued or issuable upon conversion of the shares of Company Preferred Stock) ***held by the stockholders who are then providing services to the Company as officers, employees or consultants, . . .*** and (e) ***a majority of Company Common Stock then held by founders of the Company who are then providing services to the Company as officers or employees . . .***

No such voting requirements exist in the DGCL or under the terms of the Company's Charter. The emphasized text in the quoted passage appears to reference the fact that Defendant Polak—who owned an unspecified number of shares of common stock and was the only one of Exabeam's three co-founders still serving as an officer of

Exabeam—signed the Written Consent approving the Merger. It fails to mention, however, that Polak also apparently owned preferred stock, as evidenced by his receipt of “proceeds” in the Merger, which only preferred stockholders received. By misrepresenting the voting requirements and omitting those qualifying facts, the Information Statement misleadingly suggests that the so-described (but unidentified) common stockholders had leverage to, and presumably did, faithfully negotiate on behalf of common stockholders before approving the Merger.

V. Defendants Violated 8 Del. C. § 228

123. “Delaware courts require ‘strict compliance’ with statutory requirements governing fundamental transactions like mergers.” *AP-Fonden v. Activision Blizzard, Inc.*, No. 2022-1001-KSJM, 2024 Del. Ch. LEXIS 63, at *11 (Ch. Feb. 29, 2024) (“Section 251 governing mergers is mandatory”); *Mehta v. Mobile Posse, Inc.*, No. 2018-0355-KSJM, 2019 Del. Ch. LEXIS 160, at *1 (Ch. May 8, 2019) (“In completing the merger, [the Company] and its board had to satisfy basic requirements imposed by Delaware law.”).

124. As noted above, on May 4, 2024, the Company executed the Merger Agreement. On the same day, the Company obtained the Requisite Stockholder Approval to approve the Merger via certain stockholder written consent (the “Stockholder Consent”).

125. The Information Statement purports to “constitute notice pursuant to Section 228(e) of the DGCL[.]”

126. Section 228(e) provides:

If an action by consent under subsections (a) or (b) of this section has been taken by stockholders or members by less than unanimous consent, **prompt notice** of the taking of the action by consent **shall be given** to those stockholders or members as of the record date for the action by consent who have not consented and who would have been entitled to notice of the meeting if the action had been taken at a meeting and the record date for the notice of the meeting were the record date for the action by consent.

127. The Information Statement was sent to the Company’s stockholders on June 18, 2024, **45 days after the execution of the Merger Agreement and receipt of the Requisite Stockholder Approval.**

128. “Prompt notice to the minority stockholders is of critical importance” to “ensure[] some level of transparency for non-consenting stockholders” and “maintain the accountability of boards of directors,” and a more than “two-week delay” in sending the notice “[is] not in fact prompt” and violates Section 228. *See Mehta v. Mobile Posse, Inc.*, No. 2018-0355-KSJM, 2019 Del. Ch. LEXIS 160 (Ch. May 8, 2019).

CLASS ACTION ALLEGATIONS

129. Plaintiffs bring this action on behalf of themselves and as a class action pursuant to Court of Chancery Rule 23, on behalf of all holders of Exabeam common

stock who were harmed by Defendants' actions described herein (the "Class"). Excluded from the Class are Defendants and any person, firm, trust, corporation, or other entity related to or affiliated with any Defendants.

130. This action is properly maintainable as a class action because:

A. The Class is so numerous that joinder of all members is impracticable.

As of the Record Date of May 4, 2024, there were approximately 12,925,042 shares of Exabeam common stock issued and outstanding, presumably held by dozens of shareholders. The actual number of public shareholders of Redbox common stock will be ascertained through discovery.

B. There are questions of law and fact which are common to the Class, and which predominate over any questions affecting only individual members, including, *inter alia*, the following:

- i. Whether the Individual Defendants breached their fiduciary duties as directors and officers with respect to Plaintiffs and the Class in connection with the Merger;
- ii. Whether the VC Defendants aided and abetted the Individual Defendants' breaches of fiduciary duties with respect to Plaintiffs and the Class in connection with the Merger;

- iii. Whether Defendants breached their fiduciary duties to ensure that the Merger was entirely fair to Plaintiff and the Class; and
- iv. Whether Plaintiffs and the Class are entitled to damages as a result of the Defendants' wrongful conduct.

131. Plaintiffs' claims are typical of the claims of the other members of the Class, and Plaintiff does not have any interests adverse to the Class.

132. Plaintiffs are adequate representatives of the Class and will fairly and adequately protect the interests of the Class. Plaintiffs are committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature.

133. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for Defendants, or adjudications with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications, or substantially impair or impede their ability to protect their interests.

134. Defendants have acted on grounds generally applicable to the Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole.

135. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

COUNT I
(Against the Individual Defendants for Breach of Fiduciary Duty in Their Capacities as Directors)

136. Plaintiffs repeat and reallege the foregoing paragraphs as if fully set forth herein.

137. Each of the Individual Defendants owed to the Company's common stockholders the fiduciary duties of care and loyalty, which the Individual Defendants breached in connection with the Merger. Each of the Individual Defendants were interested in the Merger and related transactions or lacked independence from persons interested in the Merger. As such, the Individual Defendants' bear the burden to establish the entire fairness of all the transactions relating to the Merger. They cannot do so.

138. There is no indication whatsoever that the initiation, negotiation, structure, timing, Board approval or stockholder approval of the Merger and related transactions involved a fair process. Indeed, it does not appear the Individual Defendants adopted any procedural safeguards to ensure that the interests of the Company's non-insider common stockholders were protected.

139. As such, despite the Company's \$2.4 billion valuation just three years ago and a \$2.65 billion valuation just one year ago, common stockholders will

receive no consideration for their shares. This complete disregard for the Company's common stockholders constitutes a breach of the Individual Defendants' duty of loyalty.

140. Moreover, the Individual Defendants caused Exabeam to violate the "prompt notice" requirement of Section 228(e) by unduly withholding notice of the Written Consent for 45 days. The Individual Defendants likewise breached their fiduciary duties by disseminating a materially omissive and misleading Information Statement.

141. As a result of the actions of the Individual Defendants, Plaintiffs and the Class suffered damages in that they did not receive fair value for their equity interest in Exabeam. Therefore, Plaintiffs seek damages on behalf of themselves and the Class, in an amount to be determined at trial, and which damages may include, but are not limited to, disgorgement of all benefits received in connection with the Merger and the quasi-appraisal remedy.

COUNT II

(Against Geller for Breach of Fiduciary Duty in His Capacity as an Officer)

142. Plaintiffs repeat and reallege the foregoing paragraphs as if fully set forth herein.

143. As the most senior officer of Exabeam, Geller owed Plaintiffs and the Class the utmost fiduciary duties of care and loyalty, which include an obligation to

act in good faith, with candor, and to provide accurate material disclosures to Exabeam stockholders.

144. As outlined above, throughout the process that resulted in the Merger and the disseminating of the Information Statement, Geller acted in his capacity as an officer with full knowledge of the facts averred in the Information Statement.

145. Geller's conduct as an officer during the sales process and Information Statement dissemination constituted a breach of his fiduciary duties to Exabeam's common stockholders, in that he was intricately involved in a process to sell Exabeam for a per-share price that he knew did not adequately reflect the Company's true, inherent, standalone value; played a significant role in facilitating Exabeam's sale despite the glaring conflicts of interest discussed above; failed to enact protections or take the necessary steps to guard against such conflicts; acquiesced to the sale of Exabeam at a price that was insufficient; and failed to obtain fair value for the common stockholders of Exabeam.

146. What is more, as an officer, Geller owed a duty of candor to stockholders to ensure the Information Statement disclosed all material information. Nevertheless, he allowed the Information Statement to present false narratives and omit the above-referenced material facts and details regarding the conflicts of interest that permeated the sales process and the non-disclosures that resulted in

stockholders' deprivation of the opportunity to make an informed decision respecting whether to demand appraisal.

147. As a result of the actions of Geller, Plaintiffs and the Class suffered damages in that they did not receive fair value for their equity interest in Exabeam. Therefore, Plaintiffs seek damages on behalf of themselves and the Class, in an amount to be determined at trial, and which damages may include, but are not limited to, disgorgement of all benefits received in connection with the Merger and the quasi-appraisal remedy.

COUNT III
(Against the VC Defendants for Aiding and Abetting the Individual Defendants' Breaches of Fiduciary Duty)

148. Plaintiffs repeat and reallege the foregoing paragraphs as if fully set forth herein.

149. In the alternative, the VC Defendants were aware of the Individual Defendants' fiduciary duties, as set forth above, which required that such Defendants ensure that the Merger was entirely fair to Plaintiffs and other common shareholders and that they not disseminate materially false and misleading information to stockholders.

150. The knowledge of and participation in the breaches of fiduciary duty by each of the Individual Defendants that are affiliated with each of the respective VC Defendants is imputed to each such affiliated VC Defendant.

151. The VC Defendants knowingly participated in the other Defendants' breaches of their duties, in that they knew that the Individual Defendants were conflicted and failed to secure fair value for the common stockholders and that the Information Statement was materially omissive and misleading.

152. As a result of the actions of the VC Defendants, Plaintiffs and the Class suffered damages in that they did not receive fair value for their equity interest in Exabeam. Therefore, Plaintiffs seek damages on behalf of themselves and the Class, in an amount to be determined at trial, and which damages may include, but are not limited to, disgorgement of all benefits received in connection with the Merger and the quasi-appraisal remedy.

COUNT IV
(Violation of Section 228)

153. Plaintiffs repeat and reallege the foregoing paragraphs as if fully set forth herein.

154. The Company failed to provide "prompt notice" under 8 *Del C.* § 228.

155. 8 *Del C.* § 228(e) provides:

If an action by consent under subsections (a) or (b) of this section has been taken by stockholders or members by less than unanimous consent, **prompt notice** of the taking of the action by consent **shall be given** to those stockholders or members as of the record date for the action by consent who have not consented and who would have been entitled to notice of the meeting if the action had been taken at a meeting and the record date for the notice of the meeting were the record date for the action by consent.

156. The June 18, 2024 Information Statement, which purported to “constitute[] notice pursuant to Section 228,” did not constitute “prompt notice” under the statute. *See, e.g., Mehta v. Mobile Posse, Inc.*, No. 2018-0355-KSJM, 2019 Del. Ch. LEXIS 160 (Del. Ch. May 8, 2019).

157. Further, the Information Statement is materially deficient and fails to disclose material facts relating to the Board’s evaluation and negotiation of the Merger Agreement, including with respect to the Individual Defendants’ relationships and interests in connection with the Merger, and the benefits they each expect to receive in connection with the Merger.

158. Plaintiffs have no adequate remedy at law.

PRAYER FOR RELIEF

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

A. Declaring that this action is properly maintainable as a class action and certifying Plaintiffs as Class representatives and the undersigned counsel as Class counsel;

B. Declaring that Defendants breached their fiduciary duties and engaged in knowing violations of law, entitling Plaintiffs and the Class to a damages,

including by way of disgorgement and quasi-appraisal and a “fair value” determination of their shares;

C. Awarding Plaintiffs and the Class all damages suffered as a result of the wrongdoing, including pre and post-judgment interest;

D. Declaring that the Written Consent violated 8 *Del. C.* § 228(e);

E. Awarding Plaintiffs the costs and disbursements of this action, including reasonable attorneys’ and experts’ fees; and

F. Granting such other and further equitable relief as this Court may deem just and proper.

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Dated: September 19, 2024