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Case No. 2019-0649-AGB

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

RICHARD J. TORNETTA, On Behalf of Himself and All Other Similarly Situated Former Stockholders,

Plaintiff,

v.

GREGORY B. MAFFEI, JAMES E. MEYER, DAVID J. FREAR, ROGER J. LYNCH, JASON HIRSCHHORN, ROGER CONANT FAXON, TIMOTHY LEIWEKE, MICHAEL M. LYNTON, MICKIE ROSEN, and SIRIUS XM HOLDINGS INC.,

Defendants.

C.A. No. 2019-0649-AGB

PUBLIC VERSION

FILED: August 20, 2019

VERIFIED CLASS ACTION COMPLAINT

Plaintiff Richard J. Tornetta ("Plaintiff"), on behalf of himself and all other similarly situated former public stockholders of Pandora Media, Inc. ("Pandora" or the "Company") brings the following Verified Class Action Complaint (the "Complaint") against (i) Pandora and Sirius XM Holdings Inc. ("Sirius") for breach of contract, (ii) the members of the board of directors of Pandora (the "Pandora Board" or "Board" or "Director Defendants") for breaching their fiduciary duties, (iii) Sirius XM Holdings Inc. ("Sirius") for aiding and abetting the aforementioned breaches of fiduciary duties, (iv) Sirius for unjust enrichment, and (v) Pandora and Sirius for conversion. The allegations of the Complaint are based on the knowledge

of Plaintiff as to himself, and on information and belief, including the investigation of counsel, the review of publicly available information, and the review of certain books and records produced by the Company in response to Plaintiff's demand made under 8 *Del. C.* § 220 (the "Section 220 Demand" or "220 Demand"), as to all other matters.

NATURE OF THE ACTION

1. This action (the "Action") arises from the conflicted and unfairly priced acquisition of Pandora by the Company's largest stockholder, Sirius (the "Merger"). In connection with Sirius's 2017 convertible preferred investment in Pandora (the "Convertible Preferred Investment"), Sirius and the Company entered into an investment agreement (the "Investment Agreement"), which, among other things, waived the anti-takeover restrictions of 8 *Del. C.* § 203 (the "Section 203 Waiver"), but imposed broad restrictions on Sirius's ability to acquire Pandora until at least December 9, 2018 (the "Standstill"). In the summer of 2018, Sirius began flagrantly violating the Standstill by aggressively pressuring the Pandora Board to sell the Company to Sirius. Instead of enforcing the Standstill and allowing the Company to continue operating on its strategic plan and maximizing stockholder value, the Board caved to Sirius's unlawful (and unsolicited) acquisition attempt. Sirius was assisted along the way by, among other things, the Board's inexplicable decision to hire boutique investment bank Lion Tree LLC ("LionTree"), whose largest source

of revenue was and is from entities affiliated with John Malone ("Malone"), Sirius's indirect controlling stockholder. Following a fatally flawed process, Pandora stockholders received consideration worth only $8.61 upon the closing of the Merger (the "Closing"), dramatically less than the $15.00 per share and $11.50 per share bids from Sirius that the Pandora Board soundly rejected as inadequate during the period leading up to the Convertible Preferred Investment.

2. In 2016 and 2017, Sirius sought to acquire Pandora in its entirety, but Pandora's Board and management were bullish on the Company's prospects and only willing to entertain proposals for a minority investment. After Sirius won a bidding war against KKR & Co., Inc. ("KKR"), Pandora permitted Sirius to (a) purchase $480 million in Pandora convertible preferred stock and (b) nominate three members to the Pandora Board.

3. In connection with the Convertible Preferred Investment, Pandora and Sirius also entered into the Investment Agreement in exchange for the Section 203 Waiver.[1]

[1] *See* Investment Agreement §3.03(c) ("The Board has adopted a resolution under Section 203(a)(1) of the DGCL, approving the acquisition of the Series A Preferred Stock (including the underlying Common Stock) by the Purchaser or any Specified Affiliates pursuant to this Agreement, provided that (i) the continuing effectiveness of such resolution is dependent upon the continuing effectiveness of this Agreement, (ii) such resolution shall be automatically revoked without further action of the Board if this Agreement is terminated prior to the completion of the Additional Closing and (iii) such resolution shall be irrevocable upon the completion of the

The Investment Agreement, *inter alia*, imposed broad standstill restrictions on Sirius intended to curb Sirius's ability to acquire Pandora or influence the Board, particularly in the event of a sale.

4. Section 5.07 of the Investment Agreement provides, *inter alia*, that for an eighteen-month period after the June 9, 2017 closing of the Investment Agreement (the "Standstill Period") Sirius shall not, directly or indirectly: (a) "acquire, offer or seek to acquire, agree to acquire or make a proposal to acquire, by purchase or otherwise, any securities [of the Company]" (the "No Additional Securities Provision");[2] (b) "make any proposal or statement of inquiry or disclose any intention, plan or arrangement," or enter into any "discussions, negotiations, arrangements, understandings or agreements" concerning Sirius's interest in acquiring Pandora or any additional Pandora securities during the Standstill Period (the "No Solicitation Provision")[3] or (c) "otherwise act, alone or in concert with others, to seek to control or influence, in any manner, management or the board of directors of the Company or any of its Subsidiaries (other than in the capacity of the

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Additional Closing." (defined in the Investment Agreement as the "Section 203 Waiver")).

[2] Investment Agreement §5.07(a).

[3] *Id.* §5.07(e).

Purchaser Director)" (the "No Influence Provision,"[4] (collectively, the "Standstill")).[5]

5. The Standstill thus prohibited Sirius from, among other things, (a) seeking to acquire any additional Pandora securities, (b) making statements of inquiry in an effort to bait the Company into a sale transaction, or (c) otherwise seeking to influence Pandora's Board with respect to a sale transaction until December 9, 2018 at the earliest. As detailed *infra*, Sirius repeatedly violated the Standstill by, among other actions, (a) having David J. Frear ("Frear"), a dual fiduciary of Sirius and Pandora, make multiple calls to Pandora director Roger Conant Faxon ("Faxon") in June 2018 to "discuss" Sirius's interest in acquiring Pandora despite Faxon communicating to Frear that he thought any discussion was "premature", (b) pressuring Pandora's Board to complete its operating model so that the Company could negotiate a sale to Sirius, and (c) threatening Pandora's Board that it would liquidate its investment or have Sirius's Board designees resign if the Company continued to refuse to engage regarding a sale of the Company to Sirius. Despite knowing about Sirius's repeated violations, the Director Defendants failed to enforce the Investment Agreement's protections for the benefit of Pandora's stockholders.

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[4] *Id.* §5.07(d).
[5] *Id.*

6. Sirius's serial violations of the Standstill in the Investment Agreement vitiated the Section 203 Waiver and rendered Sirius subject to the prohibitions and restrictions of Section 203. Therefore, for a three-year period (*i.e.*, from the time it became an interested stockholder on June 9, 2017 until June 9, 2020), Sirius was not permitted to engage in a business combination with Pandora unless it satisfied one of the conditions of Section 203(a), which Sirius did not do. Specifically, (a) the Merger was not approved by the Pandora Board prior to Sirius becoming an "interested stockholder" in connection with the Convertible Preferred Investment, as required for compliance with Section 203(a)(1); (b) when Sirius became an "interested stockholder" upon consummation of the Convertible Preferred Investment, Sirius did not own at least 85% of the voting stock of Pandora, as required to satisfy Section 203(a)(2); and (c) the Merger was not conditioned on the affirmative vote of at least 66 2/3% of the Pandora voting stock not owned by Sirius, as required to satisfy Section 203(a)(3). The Merger is therefore invalid under Section 203. Because the Merger was void *ab initio*, the taking of Plaintiff's and the Class's Pandora stock in connection with the Merger was wrongful and constituted an unlawful conversion of their property.

7. The Merger was also the result of unfair dealing. The Pandora Board compounded Sirius's violations of the Standstill by engaging a fatally conflicted financial advisor. Despite already working with Centerview Partners LLC

("Centerview"), and despite an obligation to pay Morgan Stanley & Co. Incorporated ("Morgan Stanley") [redacted] whether or not the investment banking giant performed any work, the Board also retained LionTree to provide a fairness opinion and lead the post-signing "go-shop" process. The Board's retention of LionTree is inexplicable given not just the involvement of two other well-established financial advisors, but also the Board's contemporaneous knowledge and recognition that [redacted]

8. Moreover, the Board pushed forward with a sale to Sirius despite [redacted] Additionally, the Board failed to secure a collar around the consideration, which allowed the steep decline in Sirius's stock price post-announcement of the Merger—which was anticipated by the Board—to significantly reduce the value of the Merger consideration.

9. On December 20, 2018, Pandora filed its definitive proxy statement (the "Proxy") with the U.S. Securities and Exchange Commission ("SEC") in

[6] "PDRA220_," as used hereinafter, refers to documents produced by The Company in response to Plaintiff's demand under 8 *Del. C.* § 220.

connection with soliciting stockholder support for the Merger. The Proxy failed to disclose or adequately describe a host of material information, including (a) Sirius's repeated violations of the Standstill, (b) the extent of LionTree's allegiances to Sirius and/or Malone, (c) Morgan Stanley's passive role and the fees paid to it by Pandora in connection with the Merger, and (d) Centerview's advice that the [redacted] The Board also omitted from the Proxy a copy of the Investment Agreement and/or the Standstill, or even a fair summary of the terms thereof.

10. Plaintiff brings this Action to recover for: (a) Sirius and Pandora's breaches of the Investment Agreement, (b) the Director Defendants' breaches of fiduciary duty, (c) Sirius's aiding and abetting of the Director Defendants' breaches of fiduciary duty, (d) Sirius's unjust enrichment, and (e) Sirius's unlawful conversion of Plaintiff and the Class's Pandora stock.

PARTIES

11. Plaintiff was a stockholder of Pandora at all material times alleged in this Complaint.

12. Defendant Maffei served as Pandora's Chairman from September 2017 until the closing of the Merger (previously defined as the "Closing"). Maffei also serves as Chairman of Sirius's board of directors. Maffei has served as a director on

Sirius's board of directors since Liberty Media Corporation ("Liberty Media") made its initial investment in Sirius in March 2009. In addition to his role as Sirius's Chairman, Maffei is a member of the executive management team at several other media companies within the John Malone/Liberty empire. For example, Maffei has served as Chief Executive Officer ("CEO") of Liberty Media since February 2006 and as President since May 2007. He also has served as CEO of Liberty Broadband Corporation since June 2014. Maffei previously served as CEO and President of Liberty Capital Group and Qurate Retail Group, Inc. ("Qurate", formerly known as Liberty Interactive Corporation); Liberty Interactive LLC; Liberty GIC, Inc.; and Liberty Interactive, Inc. As one of Malone's most trusted business associates, Maffei is one of the most highly compensated executives in the media industry.[7] For example, as CEO of Liberty Media, Maffei received approximately $20 million in compensation in both 2017 and 2018. Pandora's Proxy issued in connection with the Merger concedes Maffei's lack of independence by disclosing that he, as well as certain other Pandora directors, have "various interests in the transactions that may be in addition to, or different from, the interests of Pandora's stockholders."[8]

[7] Paul Hodgson, *Highest Paid CEOs: #3 Gregory Maffei*, The Motley Fool, Nov. 4, 2013, https://www.fool.com/investing/general/2013/11/04/highest-paid-ceos-3-gregory-maffei.aspx (last accessed Aug. 12, 2019).
[8] Proxy at 79.

13. Defendant Meyer served as a director of Pandora from September 2017 until the Closing. Meyer also has served as Sirius's CEO since December 2012. As CEO of Sirius, Meyer has received and continues to receive substantial monetary compensation. Specifically, in 2017 and 2018, Meyer received $9,663,811 and $17,633,953, respectively, in total compensation. Prior to serving as Sirius's CEO, Meyer had served as Sirius's President of Operations and Sales from May 2004 until December 2012, earning him millions of dollars more in compensation. Meyer currently serves as a director on the board of Malone-affiliate Charter Communications, Inc. Malone nominated Meyer to Charter's board of directors in July 2018. As with Maffei, Pandora's Proxy concedes Meyer's lack of independence with respect to the Merger by disclosing that he, as well as certain other Pandora directors, have "various interests in the transactions that may be in addition to, or different from, the interests of Pandora's stockholders."[9]

14. Defendant Frear served as a director of Pandora from September 2017 until the Closing. Since June 2003, Frear has served as Sirius's Chief Financial Officer ("CFO") and also currently serves as a Senior Executive Vice President ("SVP") of Sirius. As CFO and SVP of Sirius, Frear has received and continues to receive substantial monetary compensation. Specifically, in 2017 and 2018, Frear received $3,708,100 and $15,984,206, respectively, in total compensation. As with

[9] *Id.*

Maffei and Meyer, Pandora's Proxy concedes Frear's lack of independence with respect to the Merger by disclosing that he, as well as certain other Pandora directors, have "various interests in the transactions that may be in addition to, or different from, the interests of Pandora's stockholders."[10]

15. Defendant Lynch served as a director of Pandora from June 2017 until the Closing. Prior to the Closing, Lynch was Pandora's CEO. Before becoming Pandora's CEO, Lynch founded Sling Media, Inc. ("Sling Media"), a technology company that develops solutions for set top box manufacturers. Malone, through one of his affiliates, provided seed capital for Sling Media.

16. Defendant Jason Hirschhorn ("Hirschhorn") served as a director of Pandora from June 2017 until the Closing.

17. Defendant Faxon served as a director of Pandora from June 2015 until the Closing.

18. Defendant Timothy Leiweke ("Leiweke") served as a director of Pandora from April 2015 until the Closing.

19. Defendant Michael M. Lynton ("Lynton") served as a director of Pandora from August 2017 until the Closing.

20. Defendant Mickie Rosen ("Rosen") served as a director of Pandora from September 2015 until the Closing.

[10] *Id.*

21. Defendant Sirius is a publicly traded Delaware corporation. Its principal executive offices are located at 1221 Avenue of the Americas, New York, New York 10020. Sirius is the world's largest audio entertainment company, and its stock trades publicly on the NASDAQ Stock Market under the ticker symbol "SIRI". Since January 2013, Sirius has been controlled by Liberty Media, an affiliate of Malone. According to Sirius's definitive proxy statement filed with the SEC on April 22, 2019 ("Sirius's 2019 Proxy"), Liberty Media beneficially owns approximately 67.28% of Sirius's outstanding common stock.

22. The defendants described in paragraphs 12 through 20 are collectively referred to herein as the "Director Defendants."

RELEVANT NON-PARTIES

23. Malone is the controlling stockholder and Chairman of Liberty Media and Liberty Broadband Corporation. Malone is also the Chairman of Qurate Retail Group (in which he holds approximately 39.9% of the aggregate voting power) and Liberty Global plc ("Liberty Global") (in which he holds approximately 29% of the aggregate voting power).

SUBSTANTIVE ALLEGATIONS

A. Background on Pandora

24. Pandora is a music streaming and automated music recommendation internet radio service powered by the Music Genome Project, which uses over 450 attributes to describe songs and a complex mathematical algorithm to organize them.

25. Pandora initially started as a paid service, but quickly changed to an advertiser-sponsored service to make it available for free to users.

26. In 2011, Pandora conducted an initial public offering ("IPO") on the New York Stock Exchange that valued the Company at $2.6 billion. At that time, Pandora had 30 million active users. Pandora continued to grow significantly post-IPO. By early 2017, Pandora's monthly active user base had grown to approximately 81 million users.

B. Background on Sirius

27. Sirius XM Holdings Inc. (previously defined herein as "Sirius") is the world's largest audio entertainment company.

28. Liberty Media controls Sirius. According to Sirius's 2019 Proxy, as of February 28, 2019, Liberty Media owned approximately 3.16 billion shares of Sirius

common stock, which is approximately 67.3% of Sirius's outstanding shares of common stock.[11]

29. Sirius concedes that Liberty Media controls Sirius. For example, Sirius's 2019 Proxy states:

> Liberty Media beneficially owns, directly and indirectly, approximately 68% of our outstanding common stock entitled to vote for the election of directors. ***As a result, we are considered a "controlled company"*** and are accordingly exempt from certain corporate governance requirements of The NASDAQ Global Select Market ("NASDAQ") Rules including, among other items, the requirement that our board of directors be comprised of a majority of independent directors, that we have a compensation committee comprised of independent directors and that director nominations are recommended by the independent members of the board of directors or a nominating committee composed of independent directors. We rely on these exemptions available to a controlled company with respect to the independence requirement of our compensation committee and our nominating committee.

(Emphasis added).

30. Similarly, Sirius's Form 10-Q, filed with the SEC on October 24, 2018, states:

> As of September 30, 2018, Liberty Media Corporation ("Liberty Media") beneficially owned, directly and indirectly, approximately 71% of the outstanding shares of our common stock. ***As a result, we are a "controlled company"*** for the purposes of the NASDAQ corporate governance requirements.

[11] According to Sirius's proxy statement filed with the SEC on April 23, 2018, as of February 28, 2018, Liberty Media owned approximately 3.16 billion shares of Sirius stock common, which was approximately 70.6% of Sirius's then-outstanding shares of common stock.

31. Liberty Media is a mass media company controlled by Malone, who also serves as its Chairman. Maffei serves as Liberty Media's President and CEO.

32. Maffei, Malone's son Evan Malone, and Liberty Media's CFO Mark Carleton each serve on the Sirius board of directors.

C. Sirius Proposes to Acquire Pandora

33. In 2015, Pandora explored several strategic initiatives to create multiple new lines of business. For example, in May 2015, the Company acquired Next Big Sound, a provider of online music analytics which tracks social, streaming and video data in one platform. Five months later, in October 2015, Pandora acquired ticketing platform Ticketfly in a deal worth $450 million. To help fund these initiatives, Pandora raised $345 million in convertible debt in order to "strengthen its balance sheet in anticipation of further investments and financial commitments in connection with the launch of a new on-demand service."[12]

34. In December 2015, Sirius contacted Pandora management to explore Sirius's interest in acquiring Pandora. In January 2016, the Pandora Board retained Morgan Stanley to assist the Company in evaluating a potential sale to Sirius as an alternative to continuing to execute on the Company's initiatives and strategic plan.

[12] Proxy at 38.

35. In March 2016, after requesting several indications of interest from a number of potential acquirors, Sirius offered to acquire Pandora at a price of $15.00 per Pandora share. During this time, Pandora was poised for success—the Company was on the verge of approving multi-year music license agreements with major record labels and anticipated launching its new on-demand service "Pandora Premium."

36. In 2016, Pandora's user base continued to grow, making Pandora the "most streamed music service" in the United States according to industry experts.[13] After consulting with Morgan Stanley, the Board determined that in light of Pandora's "historical operating results, its financial condition and its strategic initiatives, prospects, and projections, among other factors, as well as preliminary valuation and other advice of Morgan Stanley," the best course of action for Pandora was to "continu[e] to execute the [C]ompany's strategic plan as a stand-alone business" because doing so "offered the best prospect of creating long term stockholder value."[14] Ultimately, the Board rejected Sirius's $15.00 per share offer as inadequate in favor of continuing to execute on the Company's strategic plan.

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[13] Daniel Sanchez, *Pandora Emerges As 2016's Most Streamed Music Service*, Digital Music News, Jan. 24, 2017, https://www.digitalmusicnews.com/2017/01/24/pandora-most-streamed-service/ (last accessed August 12, 2019).

[14] Proxy at 38.

D. Pandora Raises Capital, Resulting in Sirius Becoming Pandora's Largest Stockholder

37. By the end of 2016, Pandora needed additional capital to continue executing its initiatives and strategic plan. To assist the Company with seeking additional capital, the Board retained two advisors: Morgan Stanley and Centerview. From December 2016 through 2017, Morgan Stanley and Centerview solicited interest from potential investors as well as potential buyers of Pandora and/or the Company's Ticketfly business.

38. Sirius's interest in acquiring Pandora remained strong during this time. On May 4, 2017, Sirius submitted a letter to the Pandora Board indicating that Sirius was prepared to purchase Pandora for $11.00 per share. During subsequent conversations between Sirius (and Pandora) board chairman Maffei and lead Centerview banker Robert Pruzan ("Pruzan"), Sirius increased its offer to acquire Pandora to $11.50 per share. Recognizing that Pandora was worth significantly more than $11.50 per share, the Board, pursuant to Morgan Stanley's and Centerview's advice, rejected Sirius's bids.

39. After rejecting Sirius's offers, the Board determined to pursue a convertible preferred investment, in which both KKR and Sirius expressed interest. On May 8, 2017, the Company announced that it reached an agreement pursuant to which KKR would invest $150 million in Pandora in exchange for newly-created Series A Convertible Preferred Stock that would have a conversion price of $13.50

per share and would provide KKR with the right to a cumulative dividend rate of up to 8% per annum (the "KKR Investment").

40. After receiving news about the KKR Investment, Sirius and Pandora held a series of meetings over the following weeks. Pandora remained such an attractive investment that Sirius decided to offer Pandora a convertible preferred investment for more capital but at a lower cumulative dividend rate than the KKR Investment.

41. During the Board's June 7, 2017 and June 8, 2017 meetings, the Company decided to abandon the KKR Investment and pay a $22.5 million termination fee to KKR in favor of executing an investment agreement with Sirius (previously defined as the "Investment Agreement"). On June 9, 2017, Pandora entered into the Investment Agreement to sell to Sirius 480,000 shares of Pandora Series A Convertible Preferred Stock for $480 million and the right to a cumulative dividend at a rate of 6% per annum. The Series A Convertible Preferred Stock was issued in two rounds: (a) an initial issuance of 172,500 shares for $172.5 million, which occurred upon the signing of the Investment Agreement on June 9, 2017; and (b) a subsequent issuance of 307,500 shares for $307.5 million, which occurred on September 22, 2017. According to Sirius's Schedule 13D, filed with the SEC on October 2, 2017, as a result of the closing of the transactions contemplated by the

Investment Agreement, Sirius beneficially owned 15.96% of Pandora's total outstanding common stock.

42. The Investment Agreement bestowed upon Sirius benefits that ensured Sirius could exert significant influence over Pandora. For example, the Investment Agreement granted Sirius the right to designate three directors to Pandora's Board. In exercising this right, Sirius installed Maffei as Board Chairman and designated Frear and Meyer to serve as members of the Pandora Board effective September 22, 2017.

43. In exchange for these valuable benefits, Sirius agreed to the Standstill, which was intended to directly benefit Pandora's non-Sirius stockholders by preventing Sirius from abusing its significant influence over Pandora by acquiring the Company in a manner that would adversely impact non-Sirius stockholders.

E. Sirius Agrees to A Standstill Prohibiting It From Seeking to Acquire Any Additional Pandora Stock Until December 9, 2018

44. The Investment Agreement contained broad protections for Pandora stockholders intended to curb Sirius's power to influence the Company, particularly in the event of a sale. As discussed above, Section 5.07 of the Investment Agreement provides, *inter alia*, for an eighteen-month standstill period (*i.e.*, June 9, 2017 through December 9, 2018) during which Sirius was prohibited from (a) seeking to acquire any additional Pandora securities (previously defined as the "No Additional

Securities Provision"),[15] (b) making inquiries of interest in an effort to bait the Company into a sale (previously defined as the "No Solicitation Provision"),[16] or (c) otherwise seeking to influence Pandora's Board with respect to a sale (previously defined as the "No Influence Provision").[17] As described below, Sirius repeatedly violated the Investment Agreement's Standstill. The Director Defendants knew about those breaches, but did nothing to protect the Company's unaffiliated stockholders.

F. Pandora Plants The Seeds For Future Success

45. In the summer of 2017, Pandora's Board was setting strategic goals to realize the Company's value, with a particular focus on monetizing audio ads and adding paid subscriptions. Execution of Pandora's strategic plan gained momentum in August 2017 when Lynch was appointed as CEO and a director of the Company. Prior to joining Pandora, Lynch founded Sling Media. Malone, through Liberty Media, was one of Lynch's initial seed investors in Sling Media. Lynch's affinity for Malone and Liberty Media—combined with the Investment Agreement executed

[15] Investment Agreement § 5.07(a).
[16] *Id.* § 5.07(e).
[17] *Id.* § 5.07(d).

two months prior—helped set the stage for Sirius's later acquisition of the Company.[18]

46. On May 29, 2018, the Company's vision for realizing value by monetizing audio ads took another leap forward when Pandora completed its acquisition of AdsWizz. At the time, AdsWizz was the global leader in digital audio advertising technology, and its acquisition made Pandora the world's "largest digital audio advertising ecosystem" and improved "Pandora's own monetization capabilities."[19]

47. Pandora's star continued to rise through the summer of 2018. In addition to the Company's achievement of certain strategic initiatives (*e.g.*, the AdsWizz acquisition), the Board expressed confidence in Pandora management's ability to execute the Company's plans to monetize the Pandora platform. The public financial markets shared the Board's confidence in Pandora's management. For example, at the July 19, 2018 Board meeting, [redacted]

[18] For example [redacted] *See supra* ¶ 7; PDRA220_00000013.

[19] *Pandora to Acquire Leading Digital Audio Ad Tech Firm AdsWizz*, Business Wire, March 21, 2018, https://www.businesswire.com/news/home/20180321005390/en/Pandora-Acquire-Leading-Digital-Audio-Ad-Tech (last accessed August 8, 2019).

[redacted] the Board [redacted]

[redacted]

[redacted]

[redacted]

G. In Violation of the Standstill, Sirius Begins to Aggressively Push Pandora Towards a Sale

48. During the Standstill Period, including from late March 2018 to September 23, 2018, Sirius repeatedly and deliberately violated the Investment Agreement's Standstill provision.

49. As discussed above, the terms of the Standstill imposed restrictions on Sirius, most notably the No Additional Securities, No Solicitation, and No Influence Provisions. Notwithstanding these restrictions, the Proxy admits that Sirius initiated unsolicited discussions with Pandora in late March 2018 concerning a potential acquisition of the Company by Sirius. Frear, a dual fiduciary of Sirius and Pandora, delivered Sirius's initial overture to Pandora director Faxon, claiming Sirius was undertaking a strategic review of its investment in Pandora. Thus, Sirius had formed a purpose or intention of acquiring additional securities of Pandora and engaged in conduct that violated the Standstill. Pandora's directors not affiliated with Sirius gave Sirius's overture a cool reception, including because that overture violated the Standstill.

50. On June 8, 2018, Frear again called Faxon to express Sirius's interest in acquiring Pandora. Faxon rebuffed the idea of selling the Company on the grounds that it was "premature" because the Company was in the midst of incorporating AdsWizz's advertising technology into Pandora and that "the results of Pandora's efforts in the areas of improving Pandora's advertising technology, organizational efficiency and listenership metrics were only beginning to emerge." Frear acknowledged that Pandora was in the midst of a strategic growth period, and noted that Sirius was not permitted to even make a proposal "until its standstill obligations under the investment agreement expired."

51. Sirius's patience, however, was short-lived. A week later, on June 15, 2018, Frear again violated the Standstill by contacting Faxon to "encourage" Pandora's Board to prepare a valuation of the Company in time for Pandora's July Board meeting in order to prepare the Board for an acquisition proposal from Sirius. On July 13, 2018, Frear similarly pressed Faxon on the Pandora Board's view of the Company's value, prompting Faxon, and later Pandora's counsel, to remind Frear and Sirius of the restrictions on Sirius imposed by the Standstill.

52. Sirius's interactions with the Pandora Board violated the Investment Agreement's Standstill because, *inter alia*, during the Standstill Period: (a) Sirius proposed to acquire additional securities of the Company in violation of the No Additional Securities Provision, (b) Sirius repeatedly solicited Pandora's interest in

being acquired and engaged in discussions with Pandora in violation of the No Solicitation Provision, and (c) Sirius engaged in conduct that sought to control and influence the Board's consideration of strategic alternatives, including an acquisition of the Company by Sirius, in violation of the No Influence Provision.

H. Malone Deploys His Personal Banker as Pandora's Financial Advisor

53. Pandora's CEO Lynch invited boutique investment banking firm LionTree—who Malone has described as at "the top of [his] list as an advisor"[20]—to present at the Pandora Board's June 28, 2018 meeting regarding the Company's prospects and opportunities, [redacted]

54. About one month later, the Board determined to formally engage LionTree as a co-advisor along with Centerview on the sale process[21] despite the fact that the Board was unambiguously told by Faxon at its August 1, 2018 meeting that [redacted]

[20] Michael J. de la Merced, *A Rainmaker Seeks to Grow His Firm at a Time of Big Media and Tech Deals*, New York Times, December 17, 2017, https://www.nytimes.com/2017/12/17/business/dealbook/aryeh-bourkoff-liontree.html (last accessed August 15, 2019).

[21] Around the same time that the Board decided to formally engage LionTree, LionTree founder Aryeh Bourkoff ("Bourkoff") and Malone were dining together and discussing a potential Pandora/Sirius transaction.

[redacted]

55. LionTree's affinity for Malone was well-known within the media industry. According to a December 17, 2017 *The New York Times* article entitled "A Rainmaker Seeks to Grow His Firm at a Time of Big Media and Tech Deals," "[a]mong LionTree's most prized clients is Liberty [Media] and Mr. Malone, who have retained the firm on numerous assignments." Of LionTree founder Bourkoff, Malone stated: "When people ask me, 'Who should I use,' [Bourkoff]'s sort of the top of my list as an adviser."

56. The relationship between LionTree and Malone is not a simple business relationship. Indeed, the December 17, 2017 *New York Times* article also noted that LionTree founder Bourkoff has flown on Malone's private plane and detailed the importance of Malone-related engagements to LionTree's success, especially during its infancy.

57. The Proxy references some of LionTree's numerous engagements and other connections with Malone-related entities:

> LionTree and its affiliates have provided investment banking services and capital markets services to affiliates of Sirius XM and their related entities or entities in which such affiliates or related entities have a significant direct or indirect interest, unrelated to the proposed

transactions, for which LionTree and its affiliates received, and may receive, compensation, including having acted as (a) financial advisor to Charter Communications, Inc., Liberty Global plc, Lions Gate Entertainment Corp., Live Nation Entertainment, Inc. and Starz in connection with a number of transactions and (b) co-manager in connection with certain debt offerings of such entities (including Charter Communications, Inc. and Live Nation Entertainment, Inc.). In the past two years, LionTree has received approximately $30.4 million in compensation in the aggregate for services provided to affiliates of Sirius XM and their related entities or entities in which such affiliates or related entities have a significant direct or indirect interest. LionTree and its affiliates may in the future provide such services to Pandora, Sirius XM, their respective affiliates and their related entities or entities in which they have a significant direct or indirect interest, and expect to receive fees for the rendering of these services. In addition, from time to time, John C. Malone, who has significant ownership in Liberty Media, which in turn owns approximately 72.7% of the outstanding Sirius XM common stock as of December 17, 2018, the last practicable date before the filing of this proxy statement/prospectus, and Greg Maffei, who is Chairman of Pandora and Chairman of Sirius XM, have invested in, or alongside with, investment vehicles established by one or more of LionTree's affiliates. One or more of LionTree's affiliates may establish investment vehicles in the future in which affiliates of Sirius XM may invest. In connection with the bankruptcy proceedings of iHeart Media, Inc., in which Liberty Media owns certain debt securities, LionTree and its affiliates have been engaged to act as a special financial advisor to iHeart Media, Inc. for which LionTree and its affiliates may receive compensation.[22]

[22] CCH I, LLC's Form Merger Proxy, filed with the SEC on June 25, 2015, further confirms the thick relationship between LionTree and Malone-related entities. *See id*. at 127 ("Because LionTree advised the Charter board of directors that they had a substantial historic and ongoing relationship with Liberty, the independent directors of the Charter board of directors negotiated and considered the transactions with Liberty without the participation of LionTree.").

58. The Board's decision to retain LionTree as its financial advisor on a potential transaction with Malone/Liberty/Sirius is inexplicable and, standing alone, tainted the entire process.

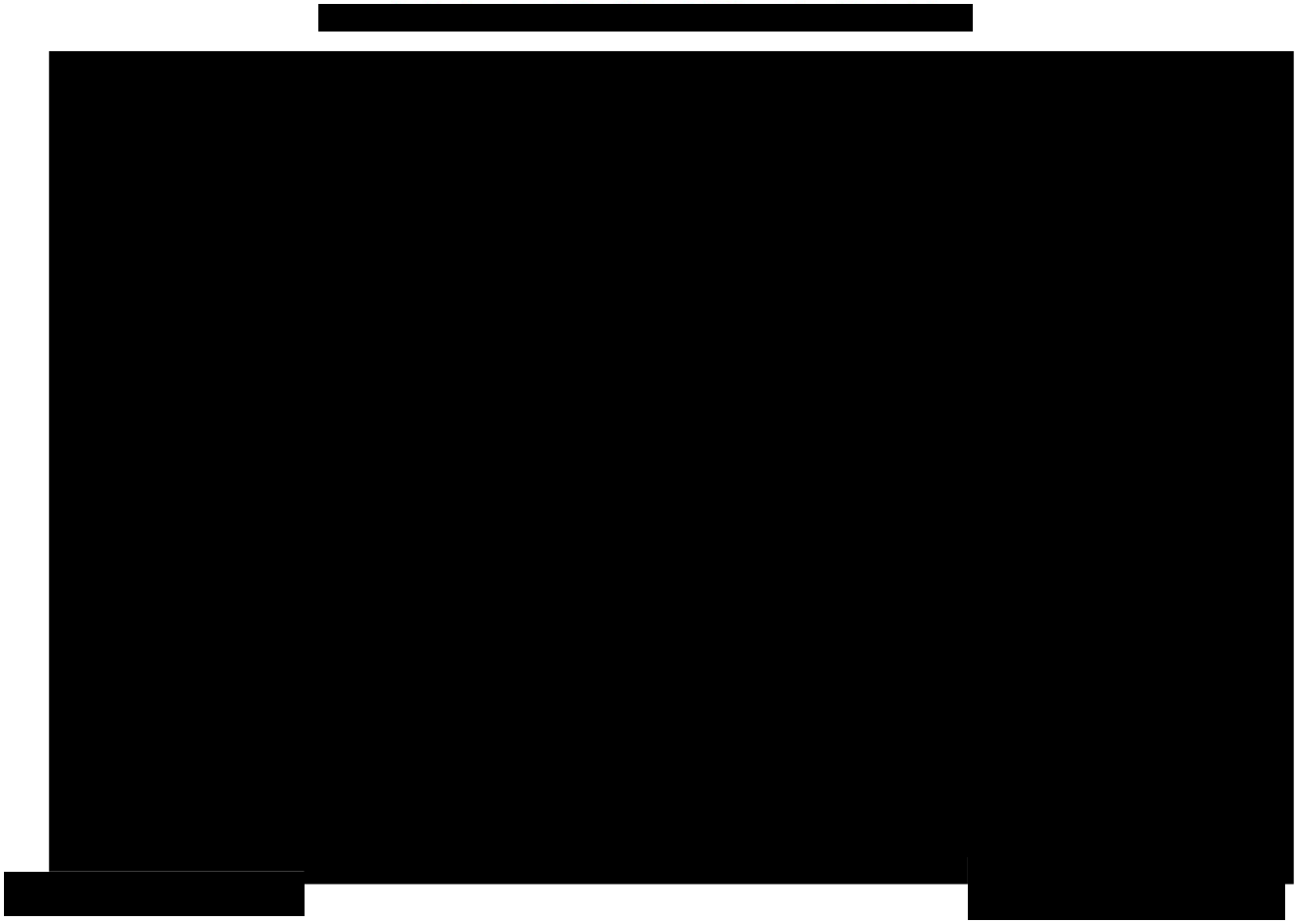
59. Around the time that the Board retained LionTree, the Board [redacted] Rather than take Morgan Stanley's advice—which may have risked Morgan Stanley not approving a future offer from Sirius—the Board [redacted]

I. Sirius Threatens Pandora's Non-Sirius Directors Into Approving the Merger

60. On June 28, 2018, the Board held a meeting to discuss, among other things, [redacted] Aware that Sirius's discussions with Pandora concerning that interest violated the Investment Agreement's Standstill, Sidley Austin LLP ("Sidley Austin"), Pandora's legal counsel, [redacted] During the meeting, the Board requested that [redacted]

[redacted] *Id.*

61. On July 19, 2018, the Board held its next meeting, at which it [redacted]



62. [redacted]

[redacted]

[redacted]

63. After reviewing the forecasts, Centerview recommended to the Board that [redacted] Centerview further [redacted] *Id.*

64. In addition to financial projections, the Board also [redacted] *Id.*

65. With respect to Sirius's interest in Pandora, Maffei, Meyer and Frear informed the Board during the meeting that Sirius was [redacted]

[redacted]

66. At the conclusion of the July 19, 2018 meeting, [redacted]

67. Over the next two months, Sirius, acting through Maffei, Meyer and Frear, made multiple offers to acquire Pandora. On July 22, 2018, the Board

reconvened to determine whether to continue to pursue a transaction with Sirius. At the meeting, [redacted] During his update, [redacted] *Id.*

68. [redacted] The Investment Agreement's Standstill restrictions were in effect at this time, yet the Board failed to enforce them on behalf of the Company's stockholders.

69. On July 27, 2019, LionTree, which the Board had not yet engaged, attended a Board meeting during which the Board discussed a possible transaction with Sirius. [redacted]

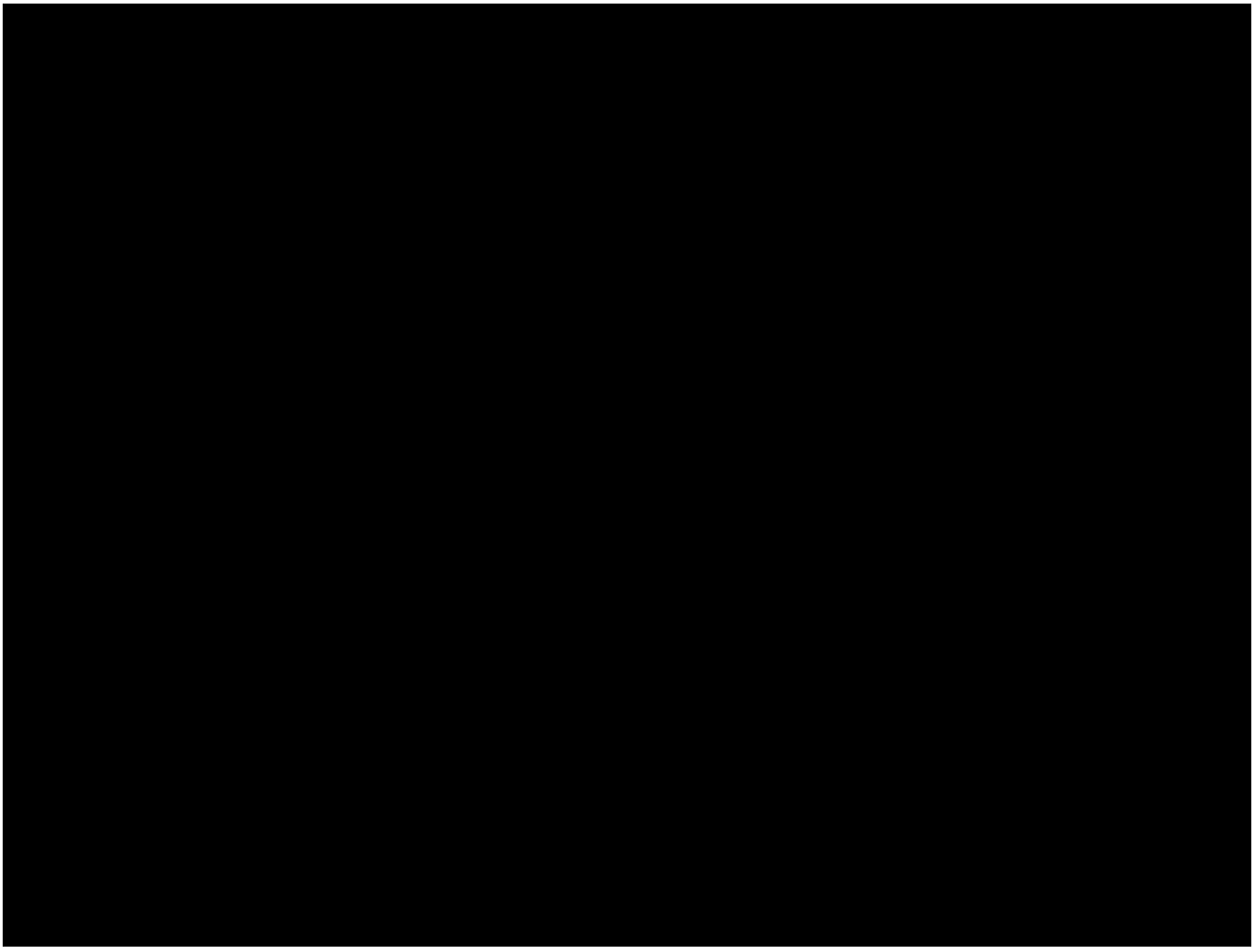
70. On August 1, 2018, the Board convened for a meeting. [redacted] By the end of the meeting, the Board believed that [redacted]

[redacted]

71. After the Company declined to counter Sirius's low-ball $9.00 per share offer, Maffei switched his negotiation strategy and threatened to take punitive measures against Pandora if the Board did not negotiate a sale of Pandora. On August 30, 2018, the Board met [redacted]

[redacted]

72. Further demonstrating the seriousness of Sirius's threat, [redacted]



73. The Board instructed [redacted] Tellingly, however, when conveying the Board's message to Maffei, Pruzan omitted

[redacted] and instead just stated the offer would just have to be in "excess" of $10.00 per share.[23]

74. At the Board's next meeting, held on September 14, 2018, [redacted]

75. Even though the offer was far from [redacted] the Board still proceeded towards negotiating a deal while caving on certain material terms. For instance, with respect to [redacted] The Board ended the discussion [redacted]

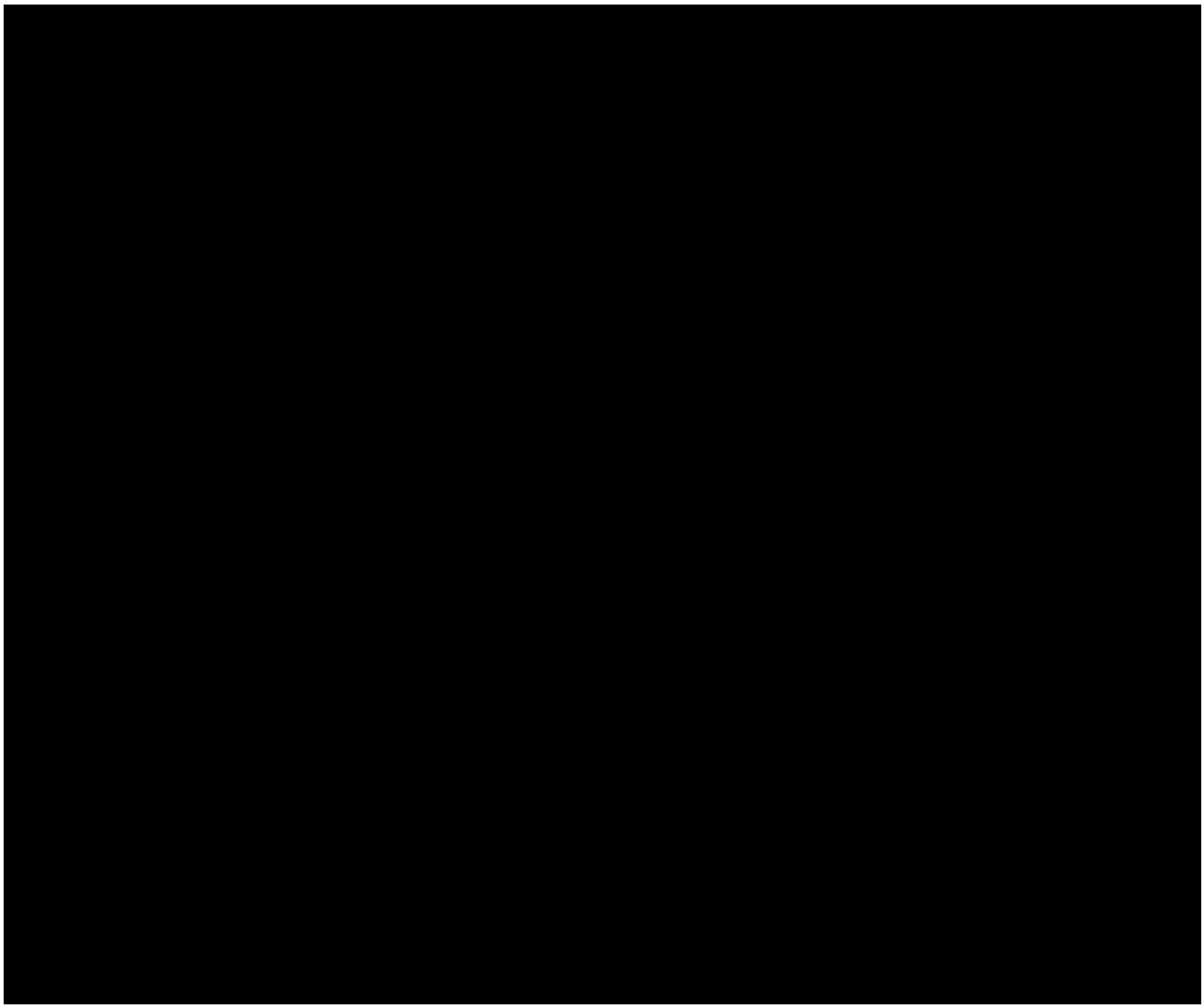
[23] Proxy at 46.

76. In light of Pandora's 90% year-to-date stock price increase and favorable debt capital market conditions, the Board [redacted] As Naveen Chopra stated during his discussion with the Pandora Board, [redacted] Tellingly, however, and as the August 30, 2018 LionTree presentation appears to reflect, [redacted]

77. At the Board's next meeting, held on September 22, 2018, Sidley Austin [redacted]

78. At the September 22, 2018 Board meeting, Sidley Austin and Centerview also discussed with the Board the fact that Sirius continued to [redacted] However, Sirius's stock price continued its decline, indicating to the Board that a collar was necessary as a minimal protection for Pandora stockholders. As Centerview explained during the meeting, [redacted]

79. Pandora's financial projections further underscored the importance of including a collar on the exchange ratio. During the Board's September 22, 2018 meeting, [redacted]



80. In addition, the Board had reason to be wary of a post-announcement drop in Sirius's stock price that would warrant the protections afforded by an exchange ratio collar. On both July 27, 2018 and September 22, 2018, [redacted] Ultimately, the Board

determined [redacted]

81. On September 23, 2018, the Board met for the last time to finalize the terms of the Merger. At the meeting, Faxon informed the Board that [redacted]

82. The next day, Pandora and Sirius issued a joint press release announcing that the parties had entered into a definitive merger agreement. The press release disclosed that pursuant to the agreement, Pandora stockholders were expected to receive a fixed exchange ratio of 1.44 newly-issued Sirius shares in exchange for each share of Pandora stock. Remarkably, despite [redacted] the joint press release expressly stated that

"Centerview Partners LLC, LionTree Advisors LLC and ***Morgan Stanley & Co. LLC are serving as financial advisors*** to Pandora . . . ."[24]

J. The Merger Provides Pandora Stockholders With Inadequate Consideration

83. The consideration Pandora's stockholders received in the Merger is unfair and undervalued Pandora.

84. *First*, the $10.14 implied per share consideration is more than 40% below the $15.00 per share consideration offered by Sirius that the Board previously rejected as too low, and also significantly below the $11.50 per share consideration previously offered by Sirius and rejected by the Board. Additionally, the implied $10.14 per share price contradicts the Board's own instruction to Centerview [redacted]

85. *Second*, in determining that the $10.14 implied consideration was purportedly fair, Centerview based its underlying valuation on a more conservative set of financial projections that failed to account for (a) Pandora management's

[24] *SiriusXM to Acquire Pandora, Creating World's Largest Audio Entertainment Company*, PRNewswire, Sept. 24, 2018, https://www.prnewswire.com/news-releases/siriusxm-to-acquire-pandora-creating-worlds-largest-audio-entertainment-company-300717442.html (last accessed August 8, 2019) (emphasis added).

history of hitting its financial projections, (b) Pandora's recent acquisitions, and (c) Pandora management's new business plan.

86. In assisting Centerview with its fairness analysis, Pandora management created three sets of projections: [redacted] During the Board's deliberations and meetings, [redacted]

87. Given [redacted]

88. As Pandora's own documents reveal, [redacted]

[redacted]

89. As the largest music streaming service in the Unites States, Pandora's acquisition of ad tech company AdsWizz was considered a highly strategic transaction with substantial upside. Exclusively dedicated to digital audio, AdsWizz is capable of enhancing the monetization capabilities of Pandora's large number of listeners by making that inventory accessible to the broader AdsWizz marketplace.

90. As Gabelli analysts reported, Pandora's "stock was up 90% YTD as the turnaround under Roger Lynch was working with AdsWizz kicking in and highlighting P[andora]'s 2/3 audio advertising share."[25] Wedbush Securities also viewed Pandora's acquisition of AdsWizz as promising, noting that "[w]e view the AdsWizz acquisition as highly strategic, as Pandora's diversification into platform solutions positions the company to benefit from the ongoing shift to programmatic audio ad placement (which we believe is still in early innings, lagging other digital formats), while extending its reach far beyond Pandora's own audience and inventory."[26]

[25] John Tinker, Pandora Media Research Report, G. Research, LLC, Gabelli Securities, Sept. 25, 2018, at 1.
[26] Michael Pachter, et al., *They Can't Be Sirius; Investor Reaction Makes Pandora's Sale To Sirius Unlikely*, Wedbush Securities, Sept. 25, 2018, at 2.

91. Documents that Plaintiff obtained in response to his Section 220 Demand further confirm that initially, [redacted]

92. [redacted] Less than two weeks after announcing the Merger, Pandora disclosed on October 3, 2018 that it had entered into the SoundCloud Partnership whereby SoundCloud granted Pandora the exclusive right to provide all of SoundCloud's advertising business in the United States. The deal also required SoundCloud to use Pandora's AdsWizz platform for its entire global operations. As the Company disclosed in a November 5, 2018 Form 8-K with the SEC, Pandora's "[p]artnership with SoundCloud will increase Pandora's U.S. ad audience reach to ***over 100 million users***." (Emphasis added).

93. Despite Pandora's extremely positive outlook, reliable history of hitting projections and recent acquisitions, the Board [redacted] and ultimately approved a deal that yielded a collarless $10.14 implied per share valuation.

94. Pandora's post-Merger performance confirms that Sirius's acquisition was opportunistically timed and underpriced. During the second quarter of 2019—*i.e.*, the first full quarter following consummation of the Merger—Pandora's advertising revenue rose 13% to $306 million, and the Company's total revenue increased by 15% to $441 million.[27] In addition, Pandora increased its number of paid subscribers by 16% to 7 million.[28] The Company's improved performance is consistent with and a result of the Board's strategic plan to monetize the Pandora platform through paid subscriptions and expansion of the Company's digital audio advertising ecosystem. Because of the unfair Merger, however, Sirius, to the

[27] Jill Goldsmith, *SiriusXM Flying High With Pandora, New Partnerships*, Forbes, July 30, 2019, https://www.forbes.com/sites/jillgoldsmith/2019/07/30/siriusxm-flying-high-with-pandora-new-partnerships/#6a0f38852b68 (last accessed August 8, 2019).
[28] *Id.*

detriment of Pandora's unaffiliated stockholders, was unjustly enriched by the Company's realization of the Board's strategic plan.

95. *Third*, due to the significant drop in Sirius's stock price following the announcement of the Merger, the Merger consideration actually received by Pandora stockholders was worth considerably less than the advertised $10.14 implied per share consideration. By the time Sirius and Pandora closed the Merger on February 1, 2019, Sirius's stock price had fallen to $5.98, a 15% decline from Sirius's 30-day volume weighted average price ("VWAP") of $7.04 per share, which was the metric used by Centerview to determine the $10.14 implied per share consideration. Indeed, analysts at investment firm Wedbush Securities found the Merger consideration so inadequate that Wedbush concluded: "We don't expect the deal as currently contemplated to receive shareholder approval given the sell-off in SiriusXM shares . . . . [W]e believe that the terms of the deal must be re-visited, or a deal may not happen at all."[29] Thus, due to the Board's failure to secure a "collar" on the consideration despite recognizing the significant risk that Sirius's stock price would continue to decline after the Merger was announced, stockholders actually received approximately $8.61 per share in consideration (*i.e.*, over $1.54 per share less than what had been negotiated by the Board) for their Pandora shares.

[29] *Id.* at 1.

K. As Centerview Forewarned In Light Of Temporary Market Dynamics, The Go-Shop Period Does Not Produce A Topping Bid

96. As noted above, the Merger Agreement provided for a 30-day "go-shop" provision (the "Go-Shop") pursuant to which the Pandora Board could solicit, receive, evaluate and potentially enter negotiations with parties that offered alternative proposals following the execution of the Merger Agreement.

97. However, the Go-Shop was largely meaningless because, as Centerview told the Board, [redacted]

98. Even if many of Pandora's logical strategic acquirers had not been [redacted] Sirius's significant equity stake, Board representation and outsized influence at Pandora served to further dissuade potential topping bids.

99. Additionally, the Go-Shop was further tainted and doomed not to produce a topping bid because fatally conflicted LionTree was leading the post-signing process, a scenario which was at odds with any attempt by the Director Defendants to cabin LionTree's conflicts.

100. Predictably, during the 30-day Go-Shop period, Pandora did not receive any acquisition proposals or drafts of acquisition proposed agreements, term sheets or letters of intent related to any acquisition from any third party, written or otherwise.

L. Pandora's Proxy Is Materially False And/Or Omissive

101. On December 20, 2018, Pandora filed the Proxy.[30] The Proxy failed to disclose or adequately describe no less than five material facts relating to the Merger, including (a) Sirius's repeated violations of the Standstill, (b) the extent of LionTree's allegiances to Sirius and/or Malone, (c) Morgan Stanley's passive role and fee in connection with the Merger, and (d) Centerview's advice that [redacted]

Sirius's Violation of the Investment Agreement's Standstill

102. The Proxy's discussion of the Standstill is materially misleading and incomplete. The Proxy discloses that Sirius engaged in discussions with Pandora with respect to a potential acquisition of the Company by Sirius. For example, the Proxy discloses that "[o]n June 8, 2018, Mr. Frear called Mr. Faxon to explore whether Pandora would be interested in considering a potential transaction once

[30] The Company filed a supplement to the Proxy with the SEC on January 18, 2019 (the "Proxy Supplement"). The Proxy Supplement did not contain any of the material information that Plaintiff alleges was omitted from the Proxy.

Sirius completed a strategic review of its investment in Pandora . . . and stated he believed Sirius XM might not decide whether it was interested in exploring a transaction [ ] until its standstill obligations under the investment agreement expired."[31]

103. The Proxy proceeds to recount Sirius's efforts to influence the agenda for the July 18, 2018 Pandora Board meeting, disclosing: "On June 15, 2018, Mr. Frear called Mr. Faxon and encouraged the board of directors to complete its work on Pandora's operating model and valuation analysis by the July board meeting so that the Pandora board of directors would be in a position to discuss whether to explore an acquisition by Sirius XM."[32] The Proxy explains that Frear followed up with Faxon on July 13, 2018 to deliver the same message.[33]

104. However, the Proxy fails to provide a fair summary of the Standstill protections afforded to the Company's stockholders under the Investment Agreement. In fact, the Proxy merely discloses the following about the Standstill: "[U]nder the terms of the Sirius XM investment Agreement, . . . Sirius XM agreed to certain 'standstill' restrictions on purchasing additional shares of Pandora stock

[31] Proxy at 42.
[32] *Id*.
[33] *Id.* at 43 ("On July 13, 2018, Mr. Frear called Mr. Faxon to ask about the status of Centerview's preliminary financial analysis of Pandora's long-term operating plans . . . . Mr. Frear and Mr. Faxon also discussed the standstill obligations of Sirius XM in the investment agreement.").

and engaging in activities aimed at influencing the strategy or governance of Pandora other than through membership on the Pandora board of directors."[34]

105. The Proxy thus does not disclose that Sirius was prohibited from taking a host of other broadly described actions, including the No Solicitation Provision's restriction on Sirius's ability to state its intention to acquire Pandora or solicit Pandora's interest in the same. This partial disclosure created the misleading impression that Sirius's conduct was permissible under the terms of the Investment Agreement.[35]

106. In fact, Sirius breached the Standstill Agreement in at least three ways. *First*, Sirius breached the No Solicitation Provision when it repeatedly contacted members of Pandora's Board and management to solicit Pandora's interest in an acquisition proposal from Sirius. *Second*, Sirius breached the No Influence Provision by, among other things, (a) pressuring the Board to prepare Company valuation materials in order for it to be prepared for an acquisition proposal from Sirius that the Company never requested in the first place, (b) pressuring the Board to continue to engage about a potential merger when "***the Board did not see value***

[34] *Id.* at 40.

[35] The Proxy did not even purport to incorporate a copy of the Investment Agreement by reference. The only way that a reasonable stockholder would be able to learn of the terms of the Standstill would be to search through a year's worth of SEC filings and track down a copy of the Investment Agreement that Pandora filed with the SEC on June 9, 2017.

engaging with Sirius regarding a potential transaction," and (c) pressuring the Board to sell the Company by threatening certain retributive actions such as divesting its interest in the Company if the Board refused a sale. Sirius's breaches of the Standstill's No Solicitation and No Influence provisions, in turn, breached the No Additional Securities provision.

107. Sirius's repeated violations of the Standstill provisions precluded arms'-length negotiations between the Company and Sirius, which was the intended effect of the protections afforded to Pandora's stockholders under the Standstill. The omission of these violations of the Standstill from the Proxy rendered the Proxy's disclosure of the Stockholder Agreement materially incomplete. The Stockholder Agreement was installed to protect stockholders, and a reasonable stockholder would consider it important to have a full and fair description of these agreements in deciding how to vote on the Merger.

108. In a similar vein, the Proxy discloses that:

> On September 17, 2018, Sidley Austin and Simpson Thacher conferred on the state of conversations between their respective clients and discussed the process for moving forward if their clients decided to pursue a transaction. As directed by Pandora, Sidley Austin reminded Simpson Thacher of the standstill obligations, including that Sirius XM was not permitted to make any public disclosure with respect thereto, without the consent of the Pandora board of directors, and the Pandora board of directors had not provided such consent at this time.[36]

[36] Proxy at 48.

109. This disclosure is misleading and incomplete because it omits reference to the other ways that Sirius's conduct violated the Standstill. Given the Proxy's description of certain conduct by Sirius that violated the terms of the Standstill, a reasonable stockholder deciding how to vote on the Merger would consider it important to have a full and fair description of (i) the Standstill and (ii) the other ways in which Sirius violated it.

110. The Stockholder Agreement replicates aspects of the anti-takeover protections of Section 203 (*e.g.*, prevention of a creeping takeover and/or improper influence from a large bloc stockholder), which provide a direct benefit to Plaintiff as a stockholder of a Delaware corporation.[37] The protections provided to Pandora's stockholders in order to prevent Sirius from acquiring the Company without the Board's consent are therefore intentional. In addition, the anti-takeover provisions facilitate the Stockholder Agreement's primary purpose.[38] Accordingly, in deciding how to vote on the Merger, a reasonable stockholder would want to consider whether Sirius violated the Standstill in pursuing the Merger and whether the Pandora directors complied with and enforced the provisions of the Investment Agreement.

LionTree's Conflicts of Interest

[37] Investment Agreement § 3.03(c).

[38] *Id.*; *see also id.* at 1 ("WHEREAS, the Company desires to issue, sell and deliver to the Purchaser, and the Purchaser desires to purchase and acquire from the Company, *pursuant to the terms and conditions in this Agreement*, up to 480,000 shares of the Company's Series A Convertible Preferred Stock . . . ." (emphasis added)).

111. The Proxy's description of LionTree's conflicts of interest was materially misleading and incomplete. The Proxy discloses that in connection with engaging LionTree as a financial advisor with respect to the Merger, the Board "considered the fact that LionTree had extensive prior dealings representing companies in which the Chairman of the Board of Liberty Media owns or has owned a large voting position."[39] This statement was materially misleading and incomplete because it omitted the fact that on August 1, 2018, the Board specifically discussed that [redacted] In addition, the Board discussed that [redacted]

112. The Proxy also failed to disclose that in July 2018, [redacted]

[39] Proxy at 43.

113. A reasonable stockholder deciding how to vote on the Merger would want to know the extent of LionTree's ties to Sirius's controller when that same financial advisor was hired by the Company to evaluate Sirius's acquisition proposal and purportedly generate interest in a transaction with Pandora from potential suitors ***other than*** Sirius/Malone. The facts that (i) [redacted] (ii) [redacted] and (iii) [redacted] These facts were necessary in order for a reasonable stockholder to evaluate the credibility and objectivity of LionTree's financial advice. The facts concerning LionTree's conflicts of interest were also necessary for a reasonable stockholder to evaluate whether LionTree's involvement in the Merger was process-enhancing.

114. The Proxy's disclosure concerning the Board's evaluation of LionTree's conflict of interest was also materially misleading because it omitted the fact that LionTree's expansive role, including LionTree's participation in the sale process and provision of a fairness opinion, which was inconsistent with the Board's original plan to cabin LionTree's conflicts. Specifically, the Board previously determined that LionTree's conflicts of interest would be [redacted]

[redacted] Yet LionTree was permitted to fully participate in—and indeed lead—the Go-Shop process, and was even asked to provide a fairness opinion. A reasonable stockholder voting on the Merger would find it important to know that LionTree's ultimate role was materially different from [redacted] The omission of this information left reasonable stockholders with the incorrect belief that LionTree's conflicts were appropriately cabined.

Morgan Stanley's Passive Role And Its Fees

115. The Proxy disclosed that "the Pandora board of directors engaged Centerview and Morgan Stanley to evaluate and pursue alternatives for raising capital and, as an alternative, a potential sale of the business."[40] Moreover, in announcing the Merger, Pandora issued a press release on September 24, 2018 that expressly stated that "Centerview Partners LLC, LionTree Advisors LLC and ***Morgan Stanley & Co. LLC are serving as financial advisors*** to Pandora" in connection with the Merger. In reality, as revealed by Pandora's own Board minutes, [redacted]

[40] Proxy at 39.

[redacted] Ultimately, Pandora paid [redacted] a lower fee than what the Company had originally agreed to pay, in exchange for a misleading "public" disclosure that [redacted]

116. The Proxy is false and misleading because it (i) [redacted] and (ii) [redacted]

The Go-Shop Process was an Illusory Post-Signing Market Check

117. The Proxy's disclosure concerning the Board's decision to justify the unfair Merger price by the existence of the Merger Agreement's Go-Shop provision is materially misleading and incomplete because it omits that [redacted] This omission was material because it left reasonable stockholders with the distorted view that (a) the Board believed there would be a meaningful opportunity to attract alternative buyers for the Company during the Go-Shop and (b) the Go-Shop would legitimately help

41 [redacted]

ferret out whether the Merger was the best alternative reasonably available for Pandora's stockholders.

118. A reasonable stockholder would have wanted to know when evaluating the effectiveness of the Go-Shop process that [redacted] Having touted to stockholders the existence of the Go-Shop as a process-enhancing device and evidence of the fairness of the Merger price, Pandora's directors were required to disclose the full story. The omission of the Board's recognition from the outset that the Go-Shop would be ineffectual given temporary market dynamics was material.

CLASS ACTION ALLEGATIONS

119. Plaintiff brings this Action pursuant to Rule 23 of the Rules of the Court of Chancery, individually and on behalf of all other holders of Pandora common stock (except Defendants herein and any persons, firm, trust, corporation or other entity related to or affiliated with them and their successors in interest) who are or will be threatened with injury arising from Defendants' wrongful actions, as more fully described herein (the "Class").

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

121. The Class is so numerous that joinder of all members is impracticable. According to Section 3.2 of the Merger Agreement, as of the close of business on September 21, 2018, there were 269,739,919 shares of Pandora common stock

issued and outstanding.[42] Thus, upon information and belief, there were thousands of Pandora stockholders scattered throughout the United States.

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

a. Sirius and Pandora violated the Investment Agreement;

b. The Director Defendants breached their fiduciary duties;

c. Sirius aided and abetted the Director Defendants' breaches of fiduciary duty;

d. The Merger unjustly enriched Sirius at the expense and to the detriment of Plaintiff and the Class;

e. Sirius and Pandora wrongfully took the Pandora stock belonging to Plaintiff and the Class; and

f. Plaintiff 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.

123. Plaintiff is committed to prosecuting this Action and has retained competent counsel experienced in litigation of this nature. Plaintiff's claims are typical of the claims of the other members of the Class, and Plaintiff has the same interests as the other members of the Class. Plaintiff is an adequate representative of the Class.

[42] As of November 30, 2018—the record date for the stockholder vote on the Merger—there were 271,394,142 shares of Pandora common stock issued and outstanding.

124. 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. Such inconsistent or varying adjudications that would establish incompatible standards of conduct for Defendants and/or with respect to individual members of the Class would, as a practical matter, be disjunctive of the interests of the other members not party to the adjudications and/or would substantially impair or impede their ability to protect their interests.

COUNT I

DIRECT CLAIM FOR BREACH OF CONTRACT AGAINST SIRIUS AND PANDORA

125. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

126. The Pandora stockholders not affiliated with Sirius were third-party beneficiaries of the Investment Agreement. The protections of Section 203 are intended to benefit stockholders. As Sections 3.03(c) and 5.07 of the Investment Agreement confirm, the provisions of the Investment Agreement were intended to benefit Pandora's stockholders as a substitute for their pre-existing Section 203 protections that were the subject of the § 203 Waiver. The Investment Agreement recites that the agreement was a condition for the Section 203 Waiver. The terms of the Investment Agreement relate to the shares of Pandora's stockholders not affiliated with Sirius, including the Standstill's restrictions, which prohibit Sirius, *inter alia*, from, directly or indirectly, (a) seeking to acquire any additional Pandora securities,[43] (b) making inquiries of interest in an effort to bait the Company into a sale,[44] or (c) otherwise seeking to influence Pandora's Board with respect to a sale.[45] The intent to benefit Pandora's stockholders by protecting them from various actions

[43] Investment Agreement § 5.07(a).
[44] *Id.* § 5.07(e).
[45] *Id.* § 5.07(d).

concerning an acquisition of the Company that Sirius might take that would be adverse to the stockholders' interest was a material part of the purpose of Pandora and Sirius entering into the Investment Agreement.

127. As shown above, Sirius and the Director Defendants breached the Investment Agreement, including the Standstill. Their breaches injured Pandora's stockholders by denying them the protections that they were supposed to receive in exchange for the limited waiver of their Section 203 protections. Indeed, Section 8.07 of the Investment Agreement provides that a breach of the agreement would cause harm sufficient to warrant equitable relief beyond remedies at law. The contractual breaches resulted in Sirius acquiring the shares of Pandora it did not already own on terms far less favorable to Pandora stockholders than if the terms of the Investment Agreement had been honored.

128. As a result of the breaches of the Investment Agreement, Plaintiff and the Class have been injured. Among other things, Plaintiff and the Class lost protections against a creeping acquisition by a large bloc holder and ultimately were deprived of Pandora's upside in a Merger for unfair consideration.

129. Plaintiff and the Class are entitled to equitable remedies, such as additional Sirius shares, and/or damages based on Pandora's and Sirius's breaches of the Investment Agreement.

COUNT II

DIRECT CLAIM FOR BREACH OF FIDUCIARY DUTY AGAINST THE DIRECTOR DEFENDANTS

130. Plaintiff repeats and realleges each and every allegation set forth herein.

131. The Director Defendants, as Pandora directors and/or officers, owed the Class the utmost fiduciary duties of care and loyalty. By virtue of their positions as directors and/or officers of Pandora and their exercise of control and ownership over the business and corporate affairs of the Company, the Director Defendants have, and at all relevant times had, the power to control and influence and did control and influence and cause the Company to engage in the practices complained of herein. The Director Defendants were required to: (a) use their ability to control and manage Pandora in a fair, just, and equitable manner, and (b) act in furtherance of the best interests of Pandora and ***all*** of its stockholders.

132. The Director Defendants breached their fiduciary duties by, among other things, (a) agreeing to the terms of the Merger, which resulted in an unfair price for the Company's public stockholders; (b) retaining LionTree as a financial advisor notwithstanding LionTree's deep ties to Sirius's controller and otherwise failing to cabin LionTree's conflicts; (c) failing to enforce the protections afforded to Pandora's stockholders under the Standstill, which precluded arms'-length negotiations concerning the Merger; (d) accepting the $10.14 implied per share Merger consideration without subjecting the consideration to a "collar"; (e) failing

to provide Pandora's stockholders with all material facts when seeking their approval of the Merger based on the materially misleading and incomplete Proxy; and (f) violating Section 203.

133. By reason of the foregoing acts, practices, and courses of conduct, the Director Defendants have failed to lawfully discharge their fiduciary obligations toward Plaintiff and the other members of the Class.

134. As a result of the Director Defendants' breaches of fiduciary duty, the Class has been harmed by virtue of receiving unfairly low consideration for their Pandora common stock.

135. Plaintiff and the Class have no adequate remedy at law.

COUNT III

DIRECT CLAIM AGAINST SIRIUS FOR AIDING AND ABETTING THE DIRECTOR DEFENDANTS' BREACHES OF FIDUCIARY DUTY

136. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

137. Sirius knowingly participated in breaches of fiduciary duty by the Director Defendants and thus are liable for aiding and abetting such breaches.

138. As explained herein, the Director Defendants breached their fiduciary duties in approving the Merger.

139. Through its representatives on the Board, and its affiliation with other directors on the Board, Sirius knowingly solicited, encouraged and/or participated in the unfair Merger.

140. Thus, through its own efforts and those of its representatives and affiliates, Sirius caused and aided the Director Defendants to breach their fiduciary duties in approving the Merger.

COUNT IV

DIRECT CLAIM AGAINST SIRIUS FOR UNJUST ENRICHMENT

141. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

142. The Merger was the product of breaches of fiduciary duty by the Director Defendants.

143. As detailed herein, the Standstill pursuant to Section 5.07 of the Investment Agreement prohibited Sirius from seeking to acquire Pandora, without Board approval, until December 9, 2018. Sirius knowingly violated Section 5.07, and, as a result, consummated the Merger.

144. By its wrongful acts, Sirius was unjustly enriched at the expense of, and to the detriment of the Class.

COUNT V

CONVERSION AGAINST SIRIUS AND PANDORA

145. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

146. Plaintiff and the Class held property interests in and had a right to possession of their Pandora stock prior to the Merger. The Merger was invalid and void *ab initio* because it was prohibited by Section 203. Therefore, the taking of the Pandora stock of Plaintiff and the Class through the Merger was wrongful and the corporate parties to the Merger (Pandora and Sirius) have exercised wrongful dominion over that stock in denial and inconsistent with the property rights of Plaintiff and the Class. Because the Merger was void, Plaintiff and the Class have a post-Merger property interest in the stock.

147. Plaintiff and the Class are entitled to equitable relief including a continuing equity interest in Pandora and/or issuance of additional Sirius stock to them, rescissory damages and to damages and other relief as a result of the wrongful taking of their Pandora stock.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment and relief in his favor and in favor of the Class, and against the Defendants as follows:

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

B. Finding that Sirius and Pandora violated the Investment Agreement;

C. Finding the Director Defendants liable for breaching their fiduciary duties owed to Plaintiff and the Class;

D. Finding Sirius liable for aiding and abetting breaches of fiduciary duty by the Director Defendants;

E. Finding the Proxy to be materially misleading and incomplete;

F. Finding Sirius liable for unjust enrichment;

G. Finding Sirius liable for the conversion of Pandora stock belonging to Plaintiff and the Class;

H. Finding that the Merger violated Section 203 and awarding equitable relief and/or damages for that violation;

I. Awarding quasi-appraisal, rescissory or other damages to Plaintiff and the Class and against all Defendants for all losses and damages suffered as a result of Defendants' wrongdoing alleged herein, in an amount to be determined at trial, together with interest thereon;

J. Directing that Plaintiff and the Class receive additional Pandora shares to remedy the unfairness of the Merger;

K. Certifying the proposed Class, and awarding the Class members damages together with pre- and post-judgment interest;

L. Awarding Plaintiff the costs, expenses, and disbursements of this Action, including all reasonable attorneys', accountants' and experts' fees; and

M. Awarding Plaintiff and the Class such other relief as this Court deems just and equitable.

Dated: August 15, 2019

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