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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 INSPECTION VERSION FILED JANUARY 22, 2020

VERIFIED AMENDED 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 Amended Class Action Complaint (the "Amended 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 Amended

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 violating the Standstill by pressuring the Pandora Board to sell the Company to Sirius. Instead of enforcing the Standstill to allow the Company to continue operating consistent with its strategic plan designed to maximize stockholder value, the Board caved to Sirius's unlawful (and unsolicited) acquisition attempt. Sirius was aided in its unfair acquisition of Pandora by investment bank LionTree LLC ("LionTree"), which the Pandora Board inexplicably selected to advise on the Merger. Aryeh Bourkoff

("Bourkoff"), LionTree's founder and principal banker on the Merger, is a longtime friend of—and owes a substantial portion of his professional success to—John Malone ("Malone"), Sirius's controlling stockholder. Indeed, entities affiliated with Malone were—and continue to be—LionTree's largest source of revenue. Following a fatally flawed and conflicted 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 rejected as inadequate in the period before the Merger.

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 (i) purchase $480 million in Pandora convertible preferred stock and (ii) 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. Investment Agreement §3.03(c). The Investment Agreement imposed broad standstill restrictions on Sirius intended to protect Pandora's non-Sirius stockholders by curbing Sirius's ability to acquire Pandora or influence the Board, particularly in connection with a potential sale.

4. Section 5.07 of the Investment Agreement provides that for an eighteen-month period after the June 9, 2017 execution of the Investment Agreement (the "Standstill Period") Sirius would not, directly or indirectly, ***without the prior written approval of the Board***:

(i) "acquire, offer or seek to acquire, agree to acquire or make a proposal to acquire, by purchase or otherwise, any securities or direct or indirect rights to acquire any equity securities of the Company … or substantially all of the assets or property of the Company …" Investment Agreement §5.07(a), (the "No Additional Securities Provision");

(ii) "make any public announcement with respect to or offer, seek, propose or indicate an interest in (in each case with or without conditions), any merger, consolidation, business combination, tender or exchange offer, recapitalization, reorganization or purchase of all or substantially all of the assets of the Company … or any other extraordinary transaction involving the Company," provided that Sirius could make certain confidential proposals to the Board "so long as such proposals would not reasonably be expected to require any public disclosure by the Company," *id*. §5.07(c), (the "No Merger Provision");

(iii) "make any proposal or statement of inquiry or disclose any intention, plan or arrangement" inconsistent with Section 5.07, *id*. §5.07(e) (the "No Proposal Provision"); or

(iv) "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 Purchaser Director)" *id.* §5.07(d), (the "No Influence Provision").

Collectively, the terms of Section 5.07 of the Investment Agreement are referred to herein as the "Standstill."

5. The Standstill thus prohibited Sirius from, among other things, seeking or proposing to acquire any additional Pandora securities without prior written approval of the Board and baiting the Company into a sale through undue influence on Pandora's Board or management until December 9, 2018, at the earliest.

6. As detailed herein, Sirius violated the Standstill by, among other actions, (i) presenting numerous proposals to the Board and negotiating the specific terms of a stock-for-stock merger transaction with various directors without prior written approval of the Board; (ii) pressuring Pandora's Board to complete its operating model so that the Company could negotiate a sale to Sirius, and (iii) threatening Pandora's Board that Sirius would liquidate its investment or have Sirius's Board designees resign if the Company refused to engage regarding a sale of Pandora to Sirius. The Director Defendants failed to enforce the Standstill in the Investment Agreement, which should have been deployed for the benefit of and to protect Pandora's stockholders.

7. Sirius's 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 Sirius satisfied one of the conditions of Section 203(a), which Sirius did not do.

Specifically, (i) 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); (ii) 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 (iii) 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 by Sirius in connection with the Merger was wrongful and constituted an unlawful conversion of their property.

8. 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 having already engaged Centerview Partners LLC ("Centerview"), and despite an obligation to pay Morgan Stanley & Co. Incorporated ("Morgan Stanley") [redacted] whether or not the investment bank performed any work, the Board also retained heavily conflicted 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 of Bourkoff's close personal and professional relationship with Sirius's controller Malone and recognition that [redacted]

9. Moreover, the Board rushed into a sale to Sirius despite knowing that (i) Pandora management—led by the Company's new Chief Executive Officer ("CEO")—was in the process of executing a strategy that would build stockholder value independent of a sale; and (ii) the most likely suitors for the Company, other than Sirius, were [redacted] for the next twelve to eighteen months. [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 paid by Sirius.

10. On December 20, 2018, Pandora filed its definitive proxy statement (the "Proxy") with the U.S. Securities and Exchange Commission ("SEC") in connection with soliciting stockholder support for the Merger. The Proxy failed to disclose or adequately describe a host of material information, including (i) Sirius's

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

violations of the Standstill, (ii) the extent of Bourkoff and LionTree's allegiances to Sirius and/or Malone, (iii) Morgan Stanley's passive role and the fees paid to it by Pandora in connection with the Merger, and (iv) Centerview's advice that the mid-to-late 2018 time period was an inopportune time to pursue a sale of the Company because potential buyers were likely [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.

11. Plaintiff brings this Action to recover for: (i) Sirius and Pandora's breaches of the Investment Agreement, (ii) the Director Defendants' breaches of fiduciary duty, (iii) Sirius's aiding and abetting of the Director Defendants' breaches of fiduciary duty, (iv) Sirius's unjust enrichment, and (v) Sirius's unlawful conversion of Plaintiff and the Class's Pandora stock.

PARTIES

12. Plaintiff was a stockholder of Pandora at all material times alleged in the Amended Complaint.

13. Defendant Gregory B. Maffei ("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 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.[2] For example, as CEO of Liberty Media, Maffei received approximately $20 million in compensation in both 2017 and 2018. The Proxy 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." Proxy at 79.

14. Defendant James E. Meyer ("Meyer") served as a director of Pandora from September 2017 until the Closing. Meyer also has served as Sirius's CEO since December 2012, a role in which Meyer has received and continues to receive substantial monetary compensation. Specifically, in 2017 and 2018, Meyer received

[2] 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).

$9,663,811 and $17,633,953incompensation, respectively. Prior to serving as Sirius's CEO, Meyer served as Sirius's President of Operations and Sales from May 2004 until December 2012, earning millions of dollars more in compensation from Sirius. 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." *Id*.

15. 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, in compensation, respectively. As with 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." *Id*.

16. Defendant Roger J. Lynch ("Lynch") served as a director and CEO of Pandora from September 2017 until the Closing.

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

18. Defendant Roger Faxon ("Faxon") served as a director of Pandora from June 2015 until the Closing.

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

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

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

22. Defendant Sirius is a publicly traded Delaware corporation. Its principal executive offices are located in New York, New York. 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.

23. The Defendants described in paragraphs 13 through 22 are collectively referred to herein as the "Director Defendants."

RELEVANT NON-PARTIES

24. Malone is the controlling stockholder and Chairman of Liberty Media and Liberty Broadband Corporation ("Liberty Broadband"). 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

25. 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.

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

27. 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 2017, Pandora had achieved almost $1.4 billion in annual revenue and the Company's monthly active user base had grown to approximately 81 million users.

B. Background on Sirius

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

29. 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. Sirius's 2018 proxy statement, filed with the SEC on April 23, 2018, indicates that Liberty Media owned approximately the same amount of shares on February 28, 2018, which at that time represented approximately 70.6% of Sirius's then-outstanding shares of common stock.

30. 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).

31. 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.

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

33. Maffei, Malone's son Evan Malone, Liberty Media's CFO Mark Carleton and former Liberty Media executive Carl E. Vogel each serve on the Sirius board of directors.

C. Sirius Proposes to Acquire Pandora

34. 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 and "strengthen its balance sheet in anticipation of further investments and financial

commitments in connection with the launch of a new on-demand service," Pandora raised $345 million in convertible debt. Proxy at 38.

35. 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.

36. 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.

37. By 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." Pandora's user base also continued to grow in 2016, making Pandora the "most streamed music service" in the United States according to industry experts.[3]

38. 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

[3] 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).

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." Proxy at 38. The Board then rejected Sirius's $15.00 per share offer as inadequate in favor of continuing to execute on the Company's strategic plan.

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

39. By the end of 2016, Pandora needed additional capital to continue executing on its 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.

40. 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. The Company had experienced consistent and significant growth in revenue and subscriptions and was well-positioned to execute on its long-term strategic plan. In the first quarter of 2017 the Company achieved approximately 20% year-over-year gains in both subscriptions and subscription revenues, and it launched Pandora Premium, which Pandora's then-CEO described as "a major leap forward for the company . . . ." Pandora Form 8-K, filed with the SEC on May 8, 2017, at Ex. 99.1.

41. After rejecting Sirius's offers, the Board determined to pursue a convertible preferred investment to address Pandora's need for liquidity. 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").

42. After news of the KKR Investment became public, Sirius and Pandora held a series of meetings over the following weeks. Pandora remained such an attractive investment that Sirius offered Pandora the Convertible Preferred Investment for more capital but at a lower cumulative dividend rate than the KKR Investment. The Convertible Preferred Investment would provide Sirius sufficient

influence over the Board to allow Sirius eventually to acquire Pandora at an unfair price.

43. 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 the Investment Agreement with Sirius. On June 9, 2017, Pandora entered into the Investment Agreement to sell 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. Pandora issued the Series A Convertible Preferred Stock in two rounds: (i) 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 (ii) 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.

E. Sirius Agrees to the Standstill in Exchange for the Section 203 Waiver

44. The Investment Agreement bestowed upon Sirius various benefits, including a Section 203 waiver. According to Section 3.03(c) of the Investment Agreement, the Board adopted a resolution under 8 *Del. C.* § 203(a)(1) for the purpose of "approving the acquisition of the Series A Preferred Stock" by Sirius and

defined this as the "Section 203 Waiver." The Investment Agreement also granted Sirius the right to designate three directors to Pandora's Board. Thus, Sirius installed Maffei as Board Chairman and designated Frear and Meyer to serve as Pandora directors effective September 22, 2017.

45. In exchange for these valuable benefits, Sirius agreed to the Standstill, which was intended as a replacement for non-Sirius stockholders' rights pursuant to Section 203. The Standstill was also intended to benefit Pandora's non-Sirius stockholders by preventing Sirius from abusing its significant power to influence Pandora and acquire the Company in a manner that would adversely impact Pandora's non-Sirius stockholders.

46. As described below, Sirius breached the terms of the Standstill. The Director Defendants were aware of the breach, but did nothing to protect the Company's non-Sirius stockholders.

F. Pandora Sets and Executes On Its Strategic Plan And Experiences Steady Growth

47. In the summer of 2017, Pandora's Board and management were setting strategic goals to realize the Company's value, with a particular focus on monetizing audio ads and adding paid subscriptions. Under Sirius's influence, the Company also committed to changes to the Board and Pandora's management team. Among other changes, immediately after Sirius's Preferred Convertible Investment, Sirius pushed Pandora's management transition, firing then-CEO Tim Westergren

("Westergren")—whom Maffei had criticized for his "inability to execute Pandora's business model"—and replacing him with Lynch shortly thereafter.[4] In the Company's second quarter earnings announcement, Pandora CFO and then-interim CEO Naveen Chopra stated:

> We have taken a number of steps to hone the company's strategy and position Pandora to continue to build audience and extend monetization through a combination of advertising and subscription revenue streams. In addition to exceeding our revenue expectations this quarter, we also announced several important strategic moves including a $480 million investment from Sirius XM, the sale of Ticketfly, and changes to our board and management team[.]

Pandora Form 8-K, filed with the SEC on July 31, 2017, at Ex. 99.1.

48. Pandora continued its steady growth through 2017 and 2018, with year-over-year gains in revenue and subscriptions in both the third and fourth quarters of 2017, and the first quarter of 2018. In February 2018, Lynch noted that "[d]igital audio is on the verge of massive growth - music consumption is increasing, podcasts are gaining popularity and voice-activated devices are quickly becoming mainstream . . . . Pandora's scale, listener engagement and data position us well to capitalize on these trends[.]" Pandora Form 8-K, filed with the SEC on Feb. 21, 2018, at Ex. 99.1. Lynch also stated:

[4] Leon Lazaroth, *Pandora Executive Shakeout Airs Weeks After SiriusXM Investment*, TheStreet, June 27, 2017, available at https://www.thestreet.com/investing/stocks/sirius-in-charge-pandora-ceo-tim-westergren-departs-radio-internet-company-14198302.

> From launching on-demand for our ad-supported listeners to expanding multiple device partnerships in the last quarter alone, we're building a strong foundation for audience growth and improved monetization. These efforts will enable us to strengthen business fundamentals and reinvigorate Pandora in 2018.

Id.

49. In May 2018, the Company's vision for realizing value by monetizing audio ads took another leap forward when Pandora acquired 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."[5] On May 3, 2018, Lynch stated that the Company had "accelerated [its] ad-tech roadmap with the acquisition of AdsWizz, and launched exciting new product features like personalized playlists. Looking ahead, Pandora is exactly where we want to be: at the center of a growing market with huge potential." Pandora Form 8-K, filed with the SEC on May 3, 2018, at Ex. 99.1.

50. 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) and new partnerships with renowned brands, the Board

[5] *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).

expressed confidence in Pandora management's ability to execute the Company's plans to monetize the Pandora platform. For example, in the Company's second quarter 2018 earnings announcement Lynch stated:

> We made continued progress against our strategy with total revenue growing 12%, subscription revenue up 67% and ad hour trends improving for the third straight quarter . . . . New partnerships with top brands like Snap and AT&T, as well as enhancements to our ad tech and programmatic offerings, position us to further accelerate growth and ownership of the expanding digital audio marketplace.

Pandora Form 8-K, filed with the SEC on July 31, 2018, at Ex. 99.1.

51. The financial markets shared the Board's confidence in Pandora's management. For example, at the July 19, 2018 Board meeting, [redacted] the Board [redacted]

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

52. As discussed above, the terms of the Standstill imposed certain restrictions on Sirius. 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.

53. Sirius's overture was met with a cool reception from Pandora's directors not affiliated with Sirius. However, on June 8, 2018, Frear again called Faxon to express Sirius's interest in acquiring Pandora. Faxon rebuffed the idea of selling the Company, recognizing that it was "premature" because the Company was in the midst of several strategic initiatives, including 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." Proxy at 42. Moreover, at that time, Lynch, Pandora's third CEO in less than two years, was making substantial progress by executing on the Company's strategic plan but had been on the job for only seven months when Sirius reinitiated its acquisition campaign—and before Pandora could realize fully its potential.

54. Frear acknowledged that Pandora was in period of strategic growth, and Sirius might defer further exploration of a transaction "until its standstill obligations under the investment agreement expired." *Id.* Sirius's patience, however, was short-lived. A week later, on June 15, 2018, Frear again contacted 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 to discuss an acquisition proposal from Sirius. *Id.*

55. These interactions between Sirius and Pandora violated the No Influence Provision. Investment Agreement § 5.07(d). Sirius, through Frear, sought to influence Pandora's Board and management by soliciting their views on the value of Pandora and pressing for a valuation of the Company. These demands were intended to pressure the Pandora Board to engage in acquisition discussions, even though such discussions were prohibited because the Board had not agreed in writing that Sirius could make any confidential proposal to the Board to acquire Pandora. *Id*. § 5.07 (c).

56. Frear's renewed efforts to press for an acquisition prompted Centerview, one of Pandora's financial advisors, to [redacted]

[redacted]

57. The Standstill should have substantially mitigated these anticipated pressure tactics. Each of the No Additional Securities, No Merger, No Influence and No Proposal Provisions of the Investment Agreement identify conduct that is impermissible "without prior written approval of the Board." Thus, during the Standstill Period, these provisions ensured the Pandora Board could (i) dictate the timing, parameters and disclosure of any approach by Sirius regarding a potential transaction; and (ii) counter any premature or opportunistically timed negotiations. Specifically, with respect to the No Merger Provision, the Board could end discussion of any confidential acquisition proposal before it began simply by refusing to provide Sirius written approval to make such a proposal.

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

58. On June 28, 2018, the Board held a meeting to discuss, among other things, [redacted] Aware that Sirius's recent efforts to influence Pandora's Board and management violated the Standstill, Sidley Austin LLP ("Sidley Austin"), Pandora's legal counsel, [redacted] During the meeting, the Board [redacted] *Id.*

59. Pandora's CEO Lynch also invited boutique investment banking firm LionTree to present at the meeting regarding the Company's prospects and opportunities. The Proxy claims that, during the June 28, 2018 meeting, the Board "considered the fact that LionTree had extensive prior dealings representing companies in which the Chairman of the Board of Liberty Media [*i.e.*, Malone] owns or has owned a large voting position, including Liberty Global plc and other related entities in which it has a significant direct or indirect interest." However, there is no

reference to any such discussion in the June 28, 2018 minutes produced by the Company in response to Plaintiff's Section 220 Demand.

60. Little more than a month later, the Board determined to formally engage LionTree as a co-advisor along with Centerview on the sale process despite the fact that [redacted]

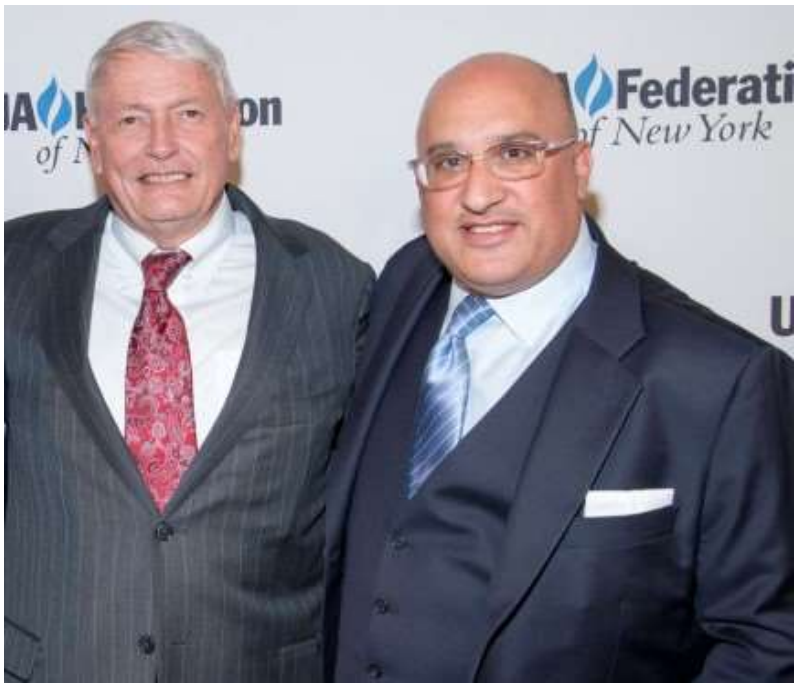
61. LionTree's affinity for Malone was well known within the media industry. According to a December 17, 2017 *New York Times* article entitled "A Rainmaker Seeks to Grow His Firm at a Time of Big Media and Tech Deals," "[a]mong LionTree's most prized clients is Liberty [Media] and Mr. Malone, who have 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."

62. Bourkoff's personal and professional relationship with Malone and Liberty entities spans decades. While at Smith Barney in 1995, Bourkoff's first bond deal was for United International Holdings, Australia, currently the Australian

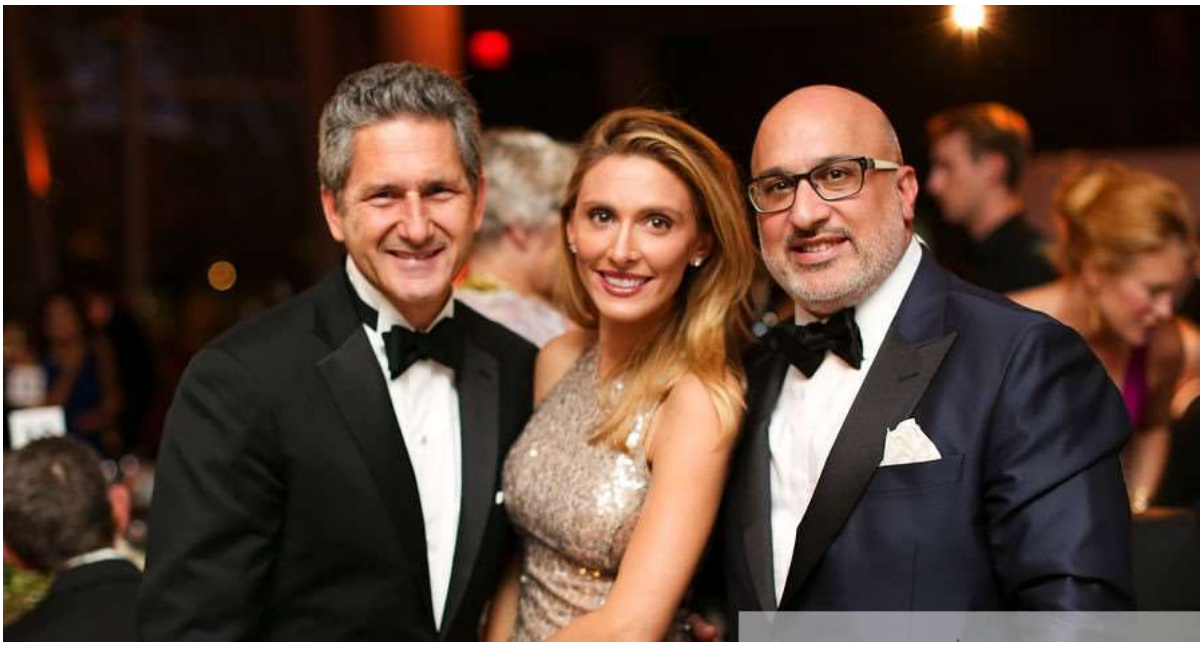
division of Liberty Global. In connection with that deal, Bourkoff developed his decades-long relationship with Mike Fries ("Fries"), who would become Liberty Global's CEO in 2005 (and remains in that position), and who also serves as a member of Liberty Global's two-person Executive Committee along with Malone. Bourkoff considers Fries a "great friend[]."[6]

63. Bourkoff has a similar relationship with Malone, who Bourkoff considers his mentor, and with whom Bourkoff regularly socializes, including regularly flying on Malone's private jet. Of his plane trips with Malone, Bourkoff stated: "And I have found in my career that plane time with John is extraordinary. Because you have time to go deep, to go broad, to discuss technologies, to discuss deals, and it's one of the best experiences of my life frankly."[7] The following pictures depict (1) Malone (left) with Bourkoff (right), and (2) Fries (left) and Fries's wife (middle) with Bourkoff (right):

[6] Interview with Aryeh Bourkoff, The Cable Center Oral History Project, Dec. 11, 2017, available at https://www.cablecenter.org/programs/the-hauser-oral-history-project/b-listings/bj-bz/aryeh-bourkoff.html.
[7] *Id.*



(Source: Claire Atkinson, *Liberty Media's John Malone shares laughs with media moguls*, NY Post, May 21, 2016, available at https://nypost.com/2016/05/21/liberty-medias-john-malone-shares-laughs-with-media-moguls/.)



(Source: Photo from September 26, 2017, Royal Academy of America Gala, available at https://bfa.com/home/photo/2638108?people=aryeh-bourkoff)

64. Bourkoff owes a substantial portion of his professional success to his relationships with Malone, Fries and Liberty entities. For example, during his 14-year tenure at UBS Group AG ("UBS"), Bourkoff advised Liberty entities on multiple engagements, including advising (i) Liberty Media on its 2008 restructuring and (ii) "Liberty Global on its $530 million rescue of U.S. satellite broadcaster Sirius XM Holdings, a deal that would reap $12 billion for Malone."[8] Bourkoff's relationships with Malone, Fries and Liberty entities allowed Bourkoff to leave UBS and found LionTree. Specifically, Bourkoff stated of founding LionTree: "I really felt that after now twenty years of doing it, the relationships would be there for me and I would be there for them. And I thought that was a lot to hang my hat on to start a company."[9] Indeed, the December 17, 2017 *New York Times* article detailed the importance of Malone-related engagements to LionTree's success, especially during its infancy.

65. CCH I, LLC's Form Merger Proxy, filed with the SEC on June 25, 2015, highlights at page 127 the extensive relationship between LionTree and Malone-related entities stating: "Because LionTree advised the Charter board of directors that they had a ***substantial*** historic and ongoing relationship with Liberty,

[8] David Rothnie, *LionTree Advisors CEO Aryeh Bourkoff Rides the TMT Merger Boom, Institutional Investor*, Sep. 30, 2015, available at https://www.institutionalinvestor.com/article/b14z9xwh3wkyvn/liontree-advisors-ceo-aryeh-bourkoff-rides-the-tmt-merger-boom.

[9] Dec. 11, 2017 Cable Center interview.

the independent directors of the Charter board of directors negotiated and considered the transactions with Liberty without the participation of LionTree." (emphasis added).

66. 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.

67. Moreover, LionTree was also advising Fries and Malone-controlled Liberty Global at the same time it was engaged by the Board to advise on the Merger. Specifically, in 2018 through early 2019, LionTree advised Liberty Global in its $6.4 billion sale of its subsidiary UPC Switzerland, which Liberty Global announced in February 2019.[10] LionTree's approval of the Merger at a price favorable to Sirius bolstered LionTree's relationship with Malone and Fries, leading to new lucrative engagements with Liberty entities. For example, in 2019 (i) Liberty Global hired LionTree to establish a joint venture focused on building full-fibre networks in the United Kingdom, and (ii) Malone-controlled Liberty Latin America hired LionTree to advise on its $1.95 billion acquisition of AT&T's operations in Puerto Rico and the US Virgin Islands.

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

[10] Manuel Baigorri, et al., "Liberty Is Said To Hold Talks With Sunrise For Swiss Venture," Bloomberg, Mar. 20, 2018, https://www.bloomberg.com/news/articles/2018-03-20/liberty-is-said-to-hold-talks-with-sunrise-for-swiss-partnership (last accessed Jan. 8, 2020); Ed Hammond, "Liberty CEO Sees Sunrise As Possible Swiss Partner," Sept. 24, 2018, https://www.bloomberg.com/news/articles/2018-09-24/liberty-global-s-fries-sees-sunrise-as-possible-swiss-partner (last accessed Jan. 8, 2020).

69. Around the time that the Board retained LionTree, the Board decided to terminate Morgan Stanley, the advisor that had previously recommended that the Board reject Sirius's numerous prior offers as inadequate. Rather than take Morgan Stanley's advice—which may have risked Morgan Stanley not approving a future offer from Sirius—the Board terminated Morgan Stanley and was forced to pay the bank [redacted] even though Morgan Stanley did not perform ***any*** work in connection with the Merger.

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

70. On July 9, 2018, Frear called Faxon again to discuss a potential transaction. This time Frear was armed with Board materials concerning Pandora's long-term operating model that he received from Pandora's CFO following the June 28, 2018 Board meeting. Frear took the opportunity to advocate for a more favorable exchange ratio for Sirius, claiming "Pandora's current stock price did not adequately reflect the risk that Pandora would not achieve long term results consistent with Pandora management's projections." Proxy at 43. Again, Frear breached the No Influence Provision by seeking to influence the Board's deliberations regarding the merits of a transaction with Sirius.

71. Frear and Faxon continued their discussion on July 13, 2018. Frear again sought to influence the Board and violated the No Influence Provision by pressing Faxon for the Board's views on Pandora's value. Recognizing that Sirius

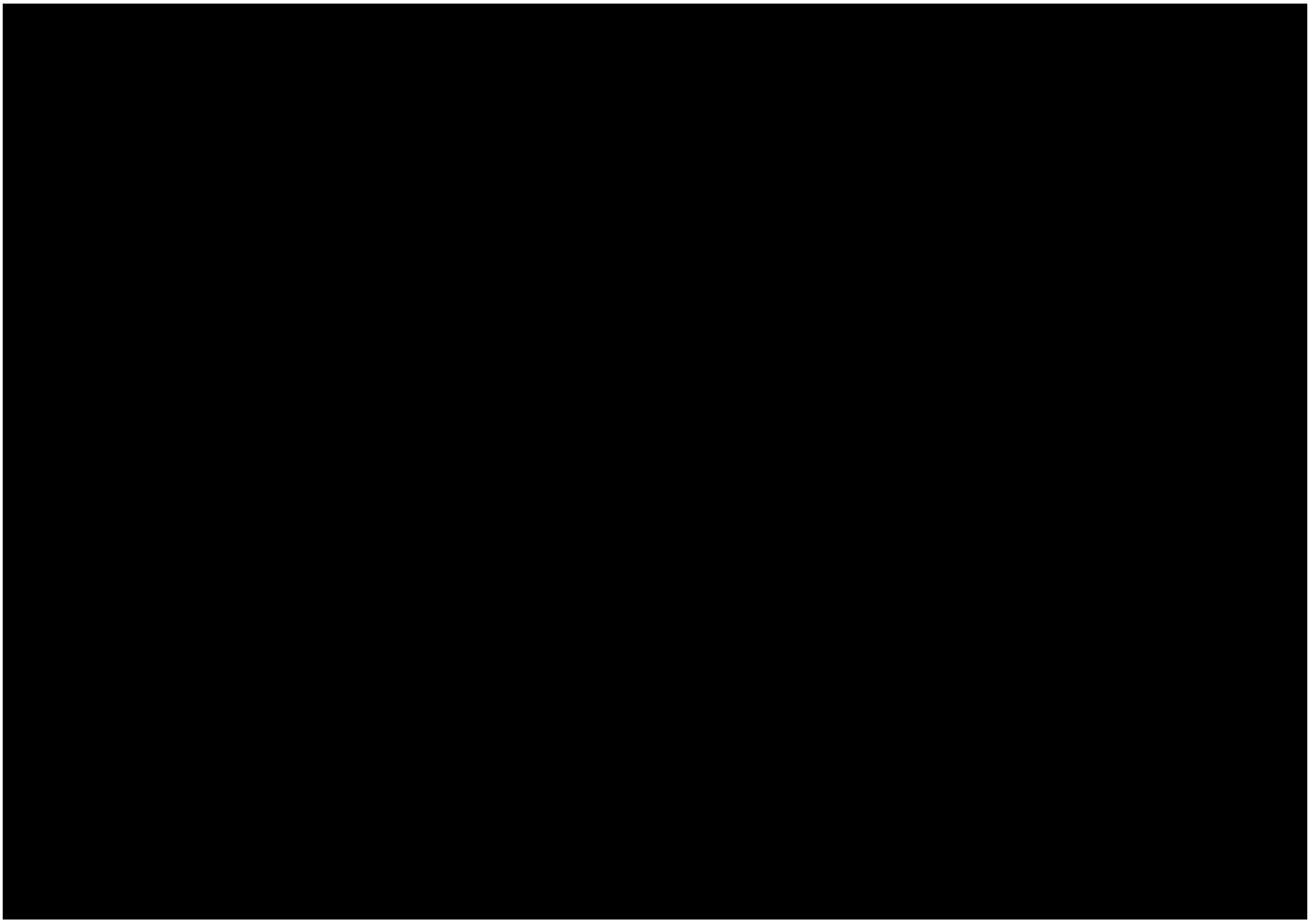
breached the Standstill, the Proxy admits that Frear and Faxon discussed Sirius's Standstill obligations on this call. *Id.*

72. Undeterred, Sirius ramped up pressure on the Board and began price negotiations under the guise of exploratory discussions, violating at least the No Merger and No Influence Provisions of the Standstill. The Sirius director appointees took a divide and conquer approach, singling out Pandora directors to negotiate an implied price for Pandora stock in a stock-for-stock exchange. *See, e.g.*, [redacted] On July 18, 2018, Meyer approached Leiwecke and discussed a price for Pandora stock in excess of $10.00 per share. Proxy at 44; [redacted] The next day, Meyer approached Lynch and argued that $9.00 per Pandora share would be an appropriate price. Proxy at 44; [redacted] Lynch countered that the price for Pandora's stock would need to be substantially in excess of $10.00 with appropriate protective terms. *Id.* Also on July 19, 2018, Frear approached Lynton to discuss a transaction in which Pandora's stockholders would own approximately 8% of the combined company. *Id.* Lynton countered [redacted]

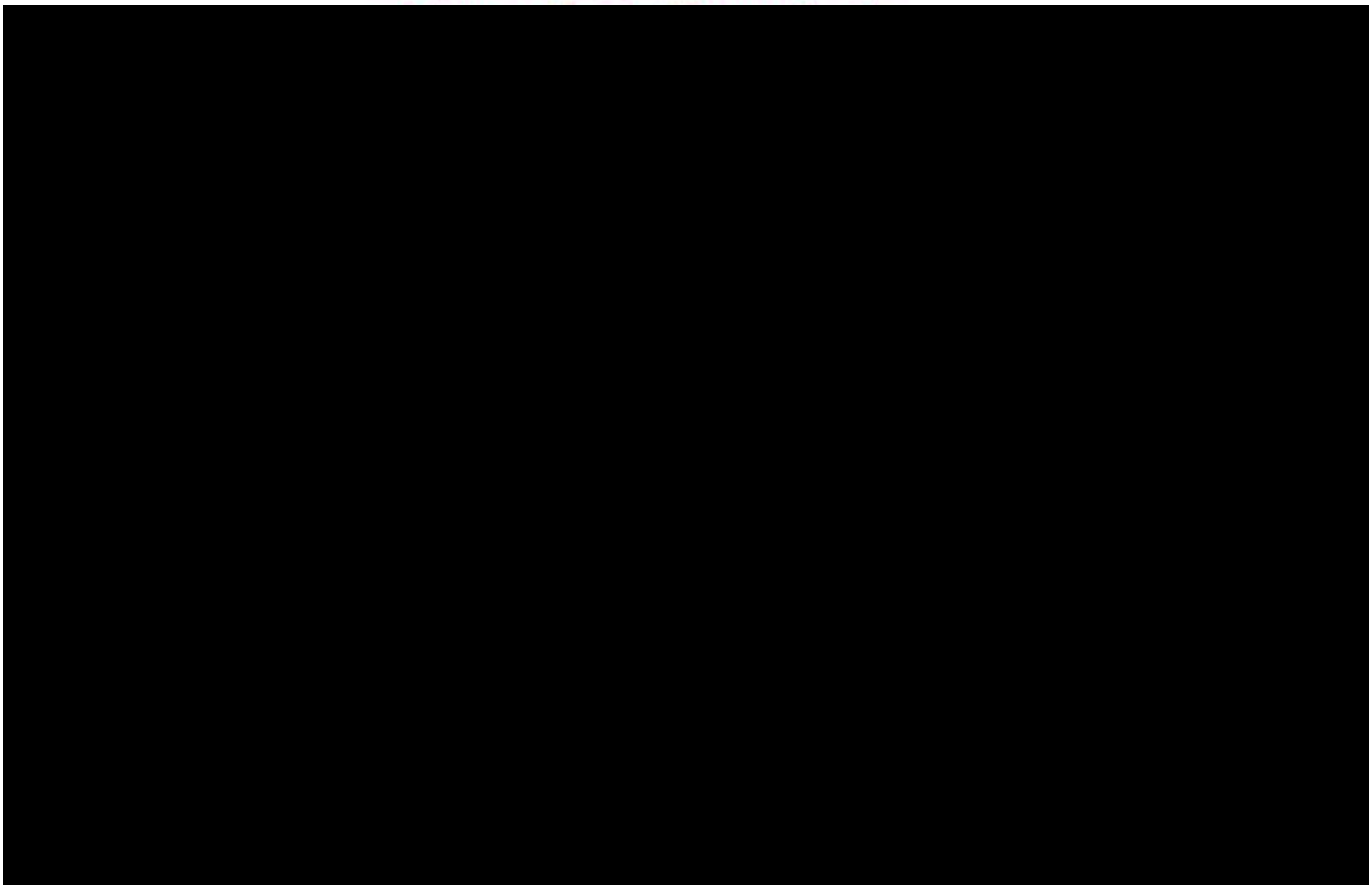
[redacted] *Id*. Each of these discussions violated the No Merger and No Influence Provisions, as each one included an unsolicited proposal concerning the price Sirius might pay to acquire Pandora and, Sirius sought to use these discussions to influence the Board's deliberations and determination regarding such an acquisition.

73. The Proxy claims that, on June 8 and July 9, 2018, Faxon told Frear that the Board would consider any proposal Sirius wished to make but neither the Proxy nor the documents the Company produced in response to the Section 220 Demand reflects a written approval by the Board permitting Sirius to make a confidential proposal as was required by the Standstill.

74. On July 19, 2018, the Board held its next meeting and [redacted]



75. [redacted]



76. After reviewing the forecasts, Centerview recommended to the Board that [redacted] (emphasis added). Centerview [redacted] *Id.*

77. The Board also [redacted]

78. On July 27, 2019, the Board met again to discuss a possible transaction with Sirius and to permit LionTree, which the Board had not yet engaged, to espouse its views on the Company. [redacted]

79. On August 1, 2018, the Board convened for another meeting and determined to engage LionTree despite its apparent conflicts. [redacted] Yet

again, Sirius violated the No Merger and No Influence Provisions by presenting a proposal for a stock-for-stock merger to the Board without written approval to do so and seeking to influence the Board's deliberations regarding a potential transaction.

80. [redacted] By the end of the meeting, the Board believed that [redacted] Consistent with these views, the Board gave Pruzan specific instructions to inform Maffei that the Company was [redacted]

81. Maffei determined not to retreat and, in violation of the No Merger and No Influence Provisions, conveyed at least two more unauthorized proposals to acquire Pandora stock at an implied price of $9.25 and $9.75, respectively.

82. After the Company declined to counter Maffei's unsolicited proposals, Maffei modified 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]

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

[redacted]

84. Maffei's threat blatantly violated the No Influence Provision. Sirius's ever-increasing pressure on the Board to sell Pandora had peaked. Yet, the Board did nothing to enforce the terms of the Standstill. Instead, the Board [redacted] When conveying the Board's message to

Maffei, Pruzan omitted [redacted] and instead indicated that a price in "excess" of $10.00 per share would suffice. Proxy at 46.

85. Sirius's threats to Pandora were not surprising given Centerview's early guidance to the Board and Malone's documented history of resorting to coercion and undue influence to achieve his desired result. For example, in *In re IAC/Interactive Corp.*, 948 A.2d 471, 487 (Del. Ch. 2008), media titan Barry Diller ("Diller") had a disagreement with Malone as to how to design the voting structure of certain spin-off companies of IAC/Interactive Corp. ("IAC"). When Malone did not get his way, Malone, through Maffei, made comments to the *Wall Street Journal* that the status of Diller's irrevocable proxy that Malone had granted to him, "depended on whether ***'a bus gets Mr. Diller***.'" *Id.* at 487 (emphasis added). "Diller testified that, combined with Malone's previous comments about IAC and its management, the article was nothing short of an outright attack on his abilities, ***and a thinly veiled threat that Liberty would not fairly negotiate a break-up of IAC***. More specifically, Diller testified that he thought ***Liberty was attempting to use the threat of revoking his proxy as leverage*** in the swap transactions." *Id.* (emphasis added).

86. More recently, in *Sciabacucchi v. Liberty Broadband Corp.*, 2018 WL 3599997, (Del. Ch. July 26, 2018), this Court found it reasonably conceivable that Charter Communications, Inc. ("Charter"), a company of which Malone's Liberty Broadband was the largest stockholder, wrongfully coerced stockholders into

approving an equity issuance to Malone-controlled Liberty Broadband so that Charter could finance the acquisition of two entities in the communication media space. *Id*. at *20-24. As the Court explained, Charter structured the transactions so that "in order to receive the benefit that the Director Defendants had obtained by negotiating the Acquisitions, Charter stockholders had to vote for a transaction [*i.e.*, the equity issuance] allegedly transferring wealth from Charter to Liberty Broadband, and approve an alleged concentration of voting power in Liberty Broadband. Charter stockholders could vote against these allegedly-inequitable transfers to Liberty Broadband, but they would have to give up the value the directors had achieved via the Acquisitions." *Id.* at *22.

J. After Sirius Threatens Pandora, The Board Proceeds To Negotiate An Unfair Sale

87. Despite informing Sirius on multiple occasions that a sale was "premature" in light of Pandora's future prospects and never providing any written approval for submission of an acquisition proposal, following Sirius's threats, the Board proceeded to negotiate an underpriced sale of Pandora.

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

[redacted]

89. Even though the offer was far from "[redacted]" the Board agreed to negotiate at this price and caved on other material terms. For instance, with respect to [redacted] The Board [redacted] and [redacted]

90. In light of Pandora's 90% year-to-date stock price increase and favorable debt capital market conditions, the Board [redacted] As CFO Chopra stated during his discussion with the Pandora Board, [redacted] However, [redacted]

[redacted]

91. At another meeting of the Board on September 22, 2018, Sidley Austin and Centerview [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]

92. 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] As demonstrated below, [redacted]

[redacted]

93. 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, the Board [redacted] The Board determined

that [redacted]

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

95. 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 having terminated its retention of Morgan Stanley, 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 . . . ." *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).

K. The Merger Provides Pandora Stockholders With Inadequate Consideration

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

97. *First*, the $10.14 implied per share consideration is more than 40% below Sirius's previous $15.00 per share offer that the Board 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]

98. *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 (i) Pandora management's

history of hitting its financial projections, (ii) Pandora's recent acquisitions and consistent growth, and (iii) Pandora management's new business plan.

99. In assisting Centerview with its fairness analysis, Pandora management created three sets of projections: Scenario 1 (*i.e.*, an extremely conservative case), Scenario 2 (*i.e.*, a moderate case) and Scenario 3 (*i.e.*, a more positive case). Centerview's discounted cash flow ("DCF") analysis for Scenario 2 yielded an implied value per share ranging from $8.50 to $11.75. During the Board's deliberations and meetings, the Board concluded that Pandora's new management

100. Given

101. As Pandora's own documents reveal,

[redacted]

102. As the largest music streaming service in the United States, Pandora's acquisition of ad tech company AdsWizz was considered a highly synergistic 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.

103. 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."[11] 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."[12]

[11] John Tinker, Pandora Media Research Report, G. Research, LLC, Gabelli Securities, Sept. 25, 2018, at 1.

[12] 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.

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

105. [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).

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

107. As discussed further below *infra* Section M, Pandora's post-Merger performance confirms that Sirius's acquisition was opportunistically timed and underpriced. In addition, as of the date of this filing, Sirius's stock price is up 15% from February 1, 2019, the date the Merger closed.

108. The Company's improved performance is consistent with the Company's recent consistent growth 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 detriment of Pandora's non-Sirius stockholders, was unjustly enriched by the Company's realization of the Board's strategic plan.

109. *Third*, due to the significant drop in Sirius's stock price following the announcement of the Merger, the Merger consideration that Pandora stockholders

received was worth considerably less than the advertised and already significantly unfair $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. 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."[13] 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 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.

[13] *See supra* note 12.

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

110. 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.

111. However, the Go-Shop was largely meaningless because, as Centerview told the Board, many of Pandora's potential strategic acquirers were [redacted] and not in a position to make an acquisition proposal at that time:

[redacted]

112. 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 dissuaded potential topping bids.

113. Additionally, the Go-Shop was tainted and doomed not to produce a topping bid because fatally conflicted Bourkoff/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.

114. Predictably, when the 30-day Go-Shop period expired on October 24, 2018, Pandora did not receive any acquisition proposals from third parties.

M. Pandora Posts "All-Time High" Revenue And Record Subscriber Rates Post-Merger

115. Pandora's continuing success post-Merger reinforces that Sirius opportunistically timed and underpriced the Merger. On July 30, 2019, Sirius reported its second quarter 2019 financials, the first full quarter that Sirius owned Pandora.[14] Sirius released myriad positive information regarding Pandora, including but not limited to the following: (i) Pandora's advertising revenue grew 13% to $306 million, which was primarily attributed to the Company's AdsWizz acquisition; (ii) Pandora's subscriber revenue grew 18% to approximately $135 million; (iii) Pandora added 64,000 new self-pay subscribers; and (iv) in total, Pandora's revenue grew 15% to $441 million. *Id*. In commenting on Sirius's second quarter 2019 results, Meyer, stated that he was "pleased by the quick progress [Sirius] made in integrating Pandora[,] [r]evenues and adjusted EBITDA ***each reached records*** in the period." *Id.* (emphasis added). In covering Pandora's post-Merger success, Forbes acknowledged that "[A]s a stream of financial results shows cord cutting

[14] SiriusXM.com, *SiriusXM Reports Second Quarter 2019 Results*, July 30, 2019, http://investor.siriusxm.com/investor-overview/press-releases/press-release-details/2019/SiriusXM-Reports-Second-Quarter-2019-Results/ (last accessed Dec. 8, 2019).

shaving subscribers from tradition video, audio giant SiriusXM logged a solid jump in new subs plus fresh ad revenue and star deals – from a comedy channel with Netflix to a partnership with Drake – in its first full quarter owning Pandora."[15]

116. Three months later, Sirius released its third quarter 2019 financial results, which further highlight Pandora's growth and positive financial performance post-Merger. Specifically, on October 31, 2019, Sirius (again) reported increasing revenue and subscriber rates for Pandora, including: (i) "All-Time High" advertising revenue of $315 million, (ii) a 7% increase to Pandora's total revenue resulting in $447 million and (iii) a 1% increase to Pandora's gross profit resulting in $278 million. SiriusXM.com, "SiriusXM Reports Third Quarter 2019 Results," Oct. 31, 2019, http://investor.siriusxm.com/investor-overview/press-releases/press-release-details/2019/SiriusXM-Reports-Third-Quarter-2019-Results/ (last accessed Dec. 8, 2019). Moreover, Sirius's acquisition of Pandora "boosted" Sirius's revenue by 37% year over year and allowed Sirius to "increase[e] its [2019] guidance for pro forma revenue, adjusted EBITDA and free cash flow . . . ."

[15] 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/#27457b6d2b68 (last accessed Jan. 5, 2020).

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

117. On December 20, 2018, Pandora filed the Proxy. The Proxy failed to disclose or adequately describe no less than five material facts relating to the Merger, including (i) Sirius's repeated violations of the Standstill, (ii) the extent of Bourkoff/LionTree's allegiances to Sirius and/or Liberty and Malone, (iii) Morgan Stanley's passive role and fee in connection with the Merger, and (iv) Centerview's advice that the mid-to-late 2018 time period was an inopportune time to pursue a sale of the Company because potential buyers were [redacted] The Company filed a supplement to the Proxy with the SEC on January 18, 2019, but it did not contain any of the material information that Plaintiff alleges was omitted from the Proxy.

Sirius's Violation of the Investment Agreement's Standstill

118. The Proxy's discussion of the Standstill is materially misleading and incomplete. The Proxy neither attaches nor incorporates by reference a copy of the Investment Agreement. 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 and engaging in activities aimed at influencing the strategy or governance of Pandora other than through membership on the Pandora board of directors." Proxy at 40. The only way that a reasonable stockholder would have

been able to learn of the specific terms of the Standstill would have been to search through a year and a half's worth of SEC filings and track down a copy of the Investment Agreement that Pandora filed with the SEC on June 9, 2017.

119. The Proxy describes actions by Sirius that breached the Standstill but does not include sufficient information that a reasonable stockholder could have used to determine that those actions amounted to a breach. For example, the Proxy discloses that Frear delivered Sirius's initial overture to Pandora director Faxon in March 2018, claiming Sirius was undertaking a strategic review of its investment in Pandora. Proxy at 41. The Proxy further discloses that, on June 8, 2018, Frear called Faxon to express Sirius's interest in acquiring Pandora, and, a week later, on June 15, 2018, Frear again contacted 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 to discuss an acquisition proposal from Sirius. *Id*. at 42. As set forth above, these interactions between Sirius and Pandora violated the No Influence Provision because they constituted pressure on the Pandora Board to engage in acquisition discussions, even though such discussions were prohibited. However, this is not evident from the Proxy because the Proxy does not include the complete Standstill provision or a fair description thereof. The Proxy's partial disclosure created the misleading impression that Sirius's conduct was permissible under the terms of the Investment Agreement.

120. The Proxy also discloses that on numerous occasions throughout July, August and September of 2018, Maffei, Meyer and Frear approached various members of the Board and Centerview with acquisition proposals and specific pricing terms and sought to influence the Board's deliberations regarding a potential acquisition in breach of the Standstill. However, the Proxy does not disclose that Sirius was prohibited from taking these actions.

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

> On September 17, 2018, Sidley Austin and Simpson Thacher [& Bartlett LLP] 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.

Proxy at 48. This disclosure is misleading and incomplete because it does not disclose that Sirius was not permitted to even approach the Board with a confidential proposal concerning a merger, acquisition or otherwise without prior written approval of the Board. The disclosure also does not reference any of the various other ways identified herein that Sirius's conduct violated the Standstill.

122. Given the Proxy's description of the above conduct by Sirius that violated the terms of the Standstill, a reasonable stockholder in 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 ways in which Sirius violated it.

LionTree's Conflicts of Interest

123. 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." Proxy at 43. 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]

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

[redacted]

125. Additionally, the Proxy failed to disclose that Bourkoff—LionTree's founder and principal banker, who advised the Board on the Merger—had longstanding personal and professional relationships with Malone and Liberty Global's Fries. Bourkoff's relationship with Fries spans almost 25 years and Bourkoff considers Fries a "great friend[]." Bourkoff has a similarly close relationship with Malone, with whom Bourkoff regularly socializes and who Bourkoff considers his mentor. Bourkoff owes much of his professional success to his relationships with Fries and Malone and has been engaged by Liberty entities for over two decades.

126. The Proxy further misled stockholders on the LionTree-Malone/Fries relationship by concealing the fact that LionTree was advising Malone-controlled Liberty Global ***at the exact same time*** it was (i) advising Pandora in negotiations against Malone-controlled Sirius and (ii) running the Go-Shop despite the Board's decision to appoint Centerview as [redacted] Disclosure of this information would be material to Pandora stockholders, including in the stockholders' assessment of how much weight to put on LionTree's fairness opinion.

127. 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) Malone constituted LionTree's single largest source of revenue; (ii) LionTree's founder Bourkoff, attributes much of the firm's success to LionTree's relationship with Malone; (iii) [redacted] (iv) Bourkoff is a longtime close friend of both Malone and Fries, and (v) LionTree was concurrently representing Pandora and Liberty Global were all material to reasonable Pandora stockholders. These facts were necessary for a reasonable stockholder to evaluate the credibility and objectivity of LionTree's financial advice and fairness opinion. 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.

Morgan Stanley's Passive Role And Its Fees

128. 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." Proxy at 39. 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, the Company terminated Morgan Stanley's engagement and then sought [redacted] Ultimately, Pandora paid Morgan Stanley [redacted] a lower fee than what the Company originally agreed to pay, in exchange for a misleading "public" disclosure that Morgan Stanley advised the Pandora Board on the Merger when in reality Morgan Stanley played no role in the Merger process.

129. The Proxy is false and misleading because it (i) falsely states that Morgan Stanley advised the Board in connection with the Merger and (ii) omits that Pandora paid Morgan Stanley [redacted] in exchange for a public disclosure that Morgan Stanley did advise the Board in connection with the Merger.

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

130. 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 Centerview expressly warned the Board that the most logical buyers for the Company other than Sirius would be [redacted] for the next 12 to 18 months. This omission was

material because it left reasonable stockholders with the distorted view that (i) the Board believed there would be a meaningful opportunity to attract alternative buyers for the Company during the Go-Shop and (ii) the Go-Shop would legitimately help ferret out whether the Merger was the best alternative reasonably available for Pandora's stockholders.

131. A reasonable stockholder would have wanted to know when evaluating the effectiveness of the Go-Shop process that the most logical potential buyers for the Company were unlikely to make a proposal for at least another year. 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.

CLASS ACTION ALLEGATIONS

132. 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").

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

134. 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.[16] Thus, upon information and belief, there were thousands of Pandora stockholders scattered throughout the United States.

135. 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.

136. Plaintiff is committed to prosecuting this Action and has retained competent counsel experienced in litigation of this nature. Plaintiff's claims are

[16] 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.

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.

137. 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

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

139. 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, without prior written approval of the Board, (i) seeking to acquire any additional Pandora securities, (ii) making inquiries of interest in an effort to bait the Company into a sale, or (iii) otherwise seeking to influence Pandora's Board with respect to a sale. Investment Agreement § 5.07. The intent to benefit Pandora's stockholders by protecting them from various actions 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.

140. As shown above, Sirius breached the Investment Agreement, including the Standstill. The Director Defendants who were aware of those breaches never enforced the Standstill to protect Pandora's non-Sirius stockholders. These 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 enforced.

141. 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.

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

COUNT II

DIRECT CLAIM FOR BREACH OF FIDUCIARY DUTY AGAINST THE DIRECTOR DEFENDANTS

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

144. 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: (i) use their ability to control and manage Pandora in a fair, just, and equitable manner, and (ii) act in furtherance of the best interests of Pandora and ***all*** of its stockholders.

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

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 (vi) violating Section 203.

146. The Director Defendants further breached their fiduciary duties by waiving Pandora's non-Sirius stockholders' statutory rights under Section 203 and their ability to challenge that Section 203 waiver. The Director Defendants secured nothing of value for Pandora's non-Sirius stockholders in exchange for these waivers. Instead, they agreed to a Standstill, the terms of which, they never enforced.

147. More specifically, according to Section 3.03(c) of the Investment Agreement, the Board adopted a resolution under Section 203(a)(1) of the DGCL, thereby waiving the protective provisions of Section 203 that would have benefitted the non-Sirius Pandora stockholders. Acting in a fiduciary capacity, the Board accepted the Standstill in Section 5.07 of the Investment Agreement as a substitute for Section 203's statutory protections. The Director Defendants then permitted repeated violations of, and never enforced, the Standstill.

148. This contractual and fiduciary misconduct directly harmed Pandora's non-Sirius stockholders. Yet, Defendants now contend that Pandora's non-Sirius Stockholders have no standing to challenge these actions and further claim their conduct is immune from judicial review because Section 8.05(b) of the Investment Agreement and New York law prohibit Plaintiff from prosecuting a claim for breach

of the Investment Agreement. Defendants' Opening Brief in Support of Their Motions to Dismiss the Verified Class Action Complaint ("Defendants' Opening Dismissal Brief") at 31-34. Section 8.05 of the Investment Agreement provides that "[n]o provision of this Agreement shall confer upon any Person other than the parties hereto and their permitted assigns any rights or remedies hereunder." The Investment Agreement further specifies in Section 8.06 that the Investment Agreement is governed by New York law. Thus, Defendants claim: "Under New York law, even when a contract mentions or confers a benefit to a third party, a no third-party beneficiary clause precludes a finding of intended third-party beneficiaries." Defendants' Opening Dismissal Brief at 33.

149. The Board's decisions to waive Section 203 and to waive the Pandora stockholders' right to challenge that waiver of Section 203 is subject to the fiduciary duties of care and loyalty. The Director Defendants breached their fiduciary duties by purporting to waive these important stockholder rights. Pandora's non-Sirius stockholders never received any prior notice of the waiver of their rights, did not receive any consideration or value in exchange for the waiver of their rights and did not assent to such a waiver of their rights, either directly or through approval of the Investment Agreement.

150. Moreover, the Director Defendants' decision to waive the protections afforded to Pandora's non-Sirius stockholders under Section 203 and waive

stockholder claims related thereto without a stockholder vote to approve an amendment to the Company's charter electing not to be governed by Section 203 further contravened 8 *Del. C.* § 219.

151. 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.

152. 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.

153. 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

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

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

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

157. 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.

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

COUNT IV

DIRECT CLAIM AGAINST SIRIUS FOR UNJUST ENRICHMENT

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

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

161. 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.

162. 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

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

164. 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.

165. Plaintiff and the Class are entitled to equitable relief including a continuing equity interest in Pandora and/or issuance of additional Sirius stock to Plaintiff and the Class, 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 Sirius 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: January 14, 2020

PRICKETT, JONES & ELLIOTT, P.A.

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