



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

STEAMFITTERS LOCAL 449
PENSION PLAN, directly on behalf of
itself and all other similarly situated
stockholders of EXPEDIA GROUP
INC. and derivatively on behalf of
EXPEDIA GROUP INC.,

Plaintiff,

v.

BARRY DILLER, SUSAN ATHEY, A.
GEORGE BATTLE, COURTNEE
CHUN, CHELSEA CLINTON,
PAMELA COE, JONATHAN
DOLGEN, ALEX VON
FÜRSTENBERG, CRAIG
JACOBSON, VICTOR KAUFMAN,
PETER KERN, DARA
KHOSROWSHAHI, MARK
OKERSTROM, CHRISTOPHER
SHEAN, and THE DILLER –
FOUNDATION D/B/A THE DILLER –
VON FURSTENBERG
FOUNDATION,

Defendants,

-and-

EXPEDIA GROUP INC.

Nominal Defendant.

C.A. No. 2019-0571-JTL

**Public Redaction Version
Filed July 29, 2019**

VERIFIED CLASS ACTION AND DERIVATIVE COMPLAINT

Plaintiff Steamfitters Local 449 Pension Plan (“Plaintiff”), directly on behalf of itself and all other similarly situated holders of Expedia Group Inc. (“Expedia” or the “Company”) common stock and derivatively on behalf of the Company,

brings the following Verified Class Action And Derivative Complaint (the “Complaint”) against the defendants named herein for breaches of fiduciary duty in their capacities as officers, directors, and/or controlling stockholders of Expedia and unjust enrichment. The allegations of the Complaint are based on the knowledge of Plaintiff as to itself, and on information and belief, including the investigation of counsel, the review of publicly available information, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] as to all other matters.

NATURE OF THE ACTION

1. This entire fairness action arises out of Barry Diller’s latest attempt to pass his outsized voting influence over a publicly traded Delaware corporation to his unqualified stepson, Alexander von Furstenberg (“AVF”).

2. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Three years ago, Diller attempted to impose perpetual, dynastic control at IAC through a non-voting stock “reclassification.”

[REDACTED]

[REDACTED]

[REDACTED]. Diller tried and failed to implement a similar “reclassification” proposal at Expedia. [REDACTED]

[REDACTED]

[REDACTED]

3. Expedia suffers from an extreme separation of ownership and control. Diller owns approximately 4% of the economic interest in Expedia, but controls a majority of the voting power through a proxy over Class B super voting shares (the “Diller Proxy”) that are owned by Liberty Expedia Holdings, Inc. (“Liberty Holdings”). On April 16, 2019, Expedia announced that it agreed to acquire Liberty Holdings’ Class B shares through a merger with Liberty Holdings (the “Merger”). Expedia management described the Merger as a providing a “strong benefit” to the Company and its stockholders.

4. The Merger presented a unique problem for Diller. Under Delaware law, Expedia’s acquisition of Liberty Holdings’ Class B shares would extinguish the Diller Proxy. Diller solved his idiosyncratic problem by insisting on a side deal with Expedia whereby he would be allowed to convert his one-vote common shares into super voting Class B shares, even though he had no right to receive any Class B shares in connection with the Merger (the “Side Deals”).

5. Before the Side Deals, Diller held approximately 52% of Expedia’s voting power through the Diller Proxy, but that power was time- and event-limited.

The Diller Proxy was non-transferable, and it will terminate upon his death, his retirement, or in the merger between Liberty Holdings and Expedia. The occurrence of any of those events would have left Diller (or his estate) with less than a 4% voting interest.

6. After the Side Deals, however, Diller will retain control but without all of the pre-existing limitations. He will immediately receive Class B shares representing approximately 29% of Expedia's voting power (the "Original Shares"). With his domination over Expedia's Board, Diller will retain control for life with the Original Shares alone. On top of the Original Shares, Diller will get a further option to exchange low-vote common stock for additional (and far more valuable) Class B shares taking him up to 49% voting power (the "Additional Shares"). Not content with merely retaining his own control during his lifetime, Diller will also get the right to transfer the Original Class B shares to AVF, his likely future heir, who will have the added protection of Diller's vestigial, crony-filled Board. Absent the Side Deals, Diller would have only been able to transfer control of approximately 2% of the Company's voting power to AVF. In other words, Diller will own at least 49% of the voting power during his lifetime, and will be able to transfer control over approximately 29% of the voting power to AVF, solely because of the Side Deals.

7. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

8. [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] AVF has no experience running a public company. He is best known for being tabloid fodder.¹

10. [REDACTED]

[REDACTED]

¹ See, e.g., *Erratic Alex Scares Reggie*, PageSix.com, Oct. 22, 2009 (“Six-foot-seven NBA legend Reggie Miller is ‘fearing for his safety’ and has gotten a restraining order against Alex von Furstenberg, claiming the wealthy aristocrat tried to fight him and run his car off the road.”), *available at* <http://pagesix.com/2009/10/22/erratic-alex-scares-reggie/>; Jeane MacIntosh, *Hey, Sex Cells!*, N.Y. Post, Aug. 12, 2009 (“[C]ourt records show this isn’t the first time [Alex] von Furstenberg has erupted in a jealous rage over his much-younger girlfriend, whom he began dating in 2003, while he was still married to Duty Free heiress Alexandra Miller.”), *available at* <http://nypost.com/2009/08/12/hey-sex-cells/>; Nicole, Carter, *They Got Mad*, NY Daily News, Aug. 19, 2009 (“On Aug. 8, the son of legendary designer Diane von Furstenberg ordered a plane to fly a massive banner over Southern California beaches that read ‘REGGIE MILLER STOP PURSUING MARRIED WOMEN!’”), *available at* <http://www.nydailynews.com/life-style/venge-messy-public-article-1.396979>; *Diane von Furstenberg Discusses Her Son’s Sexting Scandal*, Huffington Post, May 25, 2011, *available at* http://www.huffingtonpost.com/2010/02/09/diane-von-furstenberg-dis_n_455843.html; Mara Siegler and Emily Smith, *A-listers Told To Avoid Ja Rule Music Fest Before Disaster Hit*, PageSix.com, Apr. 28, 2017 (“We hear . . . that Alex von Furstenberg rented Jerry Seinfeld’s 42-meter (138-foot) yacht Moka and is cruising around with pals.”), *available at* <http://pagesix.com/2017/04/28/a-listers-told-to-avoid-disastrous-fyre-festival-before-it-began/>.

[REDACTED]

11. Regardless of how valuable the 77-year old Diller believes he is, Expedia's stockholders should not be saddled into perpetuity with the Diller family's dynastic ambitions, and should not have been forced to accept an unfair Merger to appease Diller and his future heirs.

PARTIES

I. PLAINTIFF

12. Plaintiff Steamfitters Local 449 Pension Plan ("Plaintiff") is a stockholder of Expedia, was a stockholder of Expedia at the time of the wrongdoing alleged herein, and has been a stockholder of Expedia continuously since that time. Plaintiff is the beneficial owner of 6,400 shares of Expedia worth approximately \$882,048 at the time of filing of the Complaint.

II. NOMINAL DEFENDANT

13. Nominal Defendant Expedia Group Inc. ("Expedia" or the "Company") is a Delaware incorporated online travel company headquartered in Washington State. The Company operates several brands, including Hotels.com, trivago, Hotwire, Travelocity, orbitz, and HomeAway. As of April 30, 2019, there

were 136,102,491 shares of Expedia common stock and 12,799,999 shares of Expedia Class B common stock outstanding. Expedia stockholders are entitled to one (1) vote for each share of common stock and ten (10) votes for each share of Class B common stock outstanding. Expedia common stock is listed on NASDAQ under the ticker symbol “EXPE”.

III. THE DEFENDANTS AND THEIR CONFLICTS

14. At the time of the approval of the Merger and the Side Deals complained of herein, the Expedia Board had fourteen directors, nine of whom are admittedly not independent, and five of whom otherwise have disabling conflicts with Diller rendering them not independent (including all three Special Committee members).

A. Defendants Who Are Admittedly Not Independent of Diller and Expedia

1. Barry Diller

15. Since the consummation of the Company’s spin-off from IAC on August 9, 2005 (the “Expedia Spin-Off”), Defendant Diller has continuously served as Chairman of the Expedia Board and Senior Executive of Expedia. As a director and officer of Expedia, Diller has received approximately \$27.3 million in total compensation from 2015 to 2018. The Company admits in its April 29, 2019 10-K Amendment (“10-K/A”) that Diller is not an independent director under NASDAQ listing rules.

16. Diller has exerted control over Expedia through the Diller Proxy, which provides Diller with outsized voting control over Expedia on most subjects, while owning less than 4% of the Company's equity. Diller nominated a majority of Expedia's fourteen-member Board, and controls Expedia's day-to-day operations. The Diller Proxy will be extinguished in the event of that Expedia reacquires the Class B shares. The Diller Proxy will also terminate upon his retirement or death.

17. Diller has a reputation as a brash corporate mogul. A *Fortune* profile states that "over the years Barry Diller has been described with words like 'arrogant,' 'intimidating,' and 'bulldog.'" Diller began his career with a job in Hollywood at the William Morris Agency, "scored through family connections." John Malone, who owns a web of entities, including Liberty Holdings, directly mentored Diller.

18. In addition to Expedia, Diller has been IAC's controlling stockholder and the Chairman of its Board of Directors (and of the Board of its predecessors) since August 1995. According to *The New York Times*, Diller "does not share power easily," and "Governance Metrics asserts that IAC's executive compensation does not conform with best practices." According to a March 30, 2016 article entitled "This Is What Oligarchy Looks Like," Diller "shower[s]" his company's executives with "sky-high compensation." *Daily Finance* notes that

Diller's "crony"-filled boards were "one reason The Corporate Library gives [IAC] a near-failing 'D' grade for corporate governance."

19. Diller has had extensive ties to other Board members through his chairmanships at various companies, such as TripAdvisor, Inc. ("TripAdvisor") and Ticketmaster Entertainment, Inc. ("Ticketmaster"), where Diller also served as a senior executive, and Live Nation, Inc. ("Live Nation").

20. Diller is also a director of The Diller Foundation d/b/a/ The Diller – von Furstenberg Family Foundation (the "D/vF Family Foundation") along with his wife, Diane von Furstenberg ("DVF"), and her two children, Defendant AVF and Tatiana. Diller is also a director of the Diane von Furstenberg Studio, LLC, along with his wife and her two children.

2. Alex von Furstenberg

21. AVF has served on the Expedia Board from 2015 through the present. AVF is Barry Diller's stepson through the latter's marriage with DVF. Various news outlets allege that Diller married DVF in part to ensure that he had heirs, with AVF being first in line to inherit Diller's empire. According to *SFGate*, a family friend of the Diller's stated that Diller "really loves Alex," and wanted him as a stepson.

22. Diller provided AVF with a "career," originally lobbying for him to be hired by Allen and Company, which counts Diller as a long-time client. Since

2001, AVF has worked at Arrow Investments, Inc., a private investment office that serves his family. He also works at Arrow Capital Management, LLC (since 2003) and Ranger Global Advisors, LLC (since 2011), a “family office focused on value-based investing.”

23. Since 2008, AVF has served on IAC’s board with Barry Diller, Defendant Kaufman, and Defendant Chelsea Clinton. As one *Business Insider* article observed, “after reading about Von Furstenberg, we’d be stunned if he was really given the reins to IAC. So far, we’ve read nothing to suggest he’d be able to handle running the company.”

24. From November 2016 through April 15, 2019, AVF served as Diller’s personal designee on the Board of Liberty Holdings.

25. He also serves with Diller and DVF on the board of the Diane von Furstenberg Studio, LLC and the D/vF Family Foundation. He has authority to buy, sell, and vote the over 400,000 shares of Expedia common stock held in the Foundation.

26. [REDACTED]

[REDACTED]

[REDACTED]

27. The Company admits in its 10-K/A that AVF is not an independent director under NASDAQ listing rules. Because of his directorships at IAC,

Expedia, and Liberty Holdings, family and business relationships with Diller, interest in his incumbency as a director of Expedia, and interest in inheriting Diller's dynastic control of Expedia, AVF was not disinterested and independent with respect to the challenged transactions.

3. Victor A. Kaufman

28. Defendant Victor Kaufman ("Kaufman") is Diller's long-time lieutenant. Multiple publications have referred to Kaufman as Diller's "right hand," "number-two," "Hollywood Henchman," and "chief consigliere."

29. He has been a member of the Expedia Board since completion of the Expedia Spin-Off on August 9, 2005. He also served as Vice Chairman of Expedia, an executive position at Expedia, from the Expedia Spin-Off through June 2018, when Defendant Kern assumed that job. All told, throughout his career at Expedia, Kaufman has received \$9.9 million in total compensation.

30. Kaufman has also been a member of the board of directors of IAC and its predecessors (where Diller is Chairman of the Board and had been CEO) since December 1996, and has served as the Vice Chairman of IAC since October 1999. He has received \$58.9 million in compensation from IAC for services as an employee director. Kaufman served in the Office of the Chairman of IAC from January 1997 to November 1997 and as Chief Financial Officer of IAC from November 1997 to October 1999.

31. Kaufman's compensation for his services to the IAC Board routinely exceeds \$500,000 a year, sometimes amounting to millions a year, even though he rarely attends Board meetings. In 2018, Glass Lewis recommended that stockholders withhold their vote for Kaufman because of his failure to attend 75% or more of the board meetings held in fiscal year 2017, constituting "a failure ... to fulfill a fundamental responsibility to represent shareholders."

32. Kaufman also served as Vice Chairman of the Board of Ticketmaster, along with Defendants Diller and Dolgen, from August 2008 through January 2010. Jacobson was also added to the Ticketmaster Board in January 2009. IAC completed a spin-off of Ticketmaster in August 2008 and thus each of these directors was selected to serve on the Ticketmaster Board by Diller. In January 2010, Ticketmaster merged with Live Nation and Kaufman continued to serve as a director of Live Nation Entertainment with Diller and Dolgen from January 2010 through December 2010. Kaufman served, with Defendants Diller and Khosrowshahi, as a director of TripAdvisor from the completion of the TripAdvisor Spin-Off from Expedia in 2011 until February 2013.

33. The Company admits in its 10-K/A that Kaufman is not an independent director under NASDAQ listing rules. [REDACTED]

[REDACTED]

[REDACTED]

Because of his dual directorships at IAC and Expedia, employment at IAC, long-standing relationship with Diller, and his interest in his incumbency as a director of Expedia, Kaufman was not disinterested and independent with respect to the challenged transactions.

4. Peter M. Kern

34. Defendant Peter Kern (“Kern”) has served on Expedia’s board since 2005 and as Vice Chairman, an executive position, since June 2018. In total, Kern has received approximately \$11 million in compensation for his services at Expedia, receiving almost \$6.9 million in 2018 alone.

35. Since 2017, Kern has served as the CEO of Tribune Media Company; and has served on Tribune’s Board with Defendant Jacobson since 2016. Kern also serves on the board of Expedia subsidiary Trivago with Defendants Khosrowshahi and Okerstrom.

36. Kern’s father, Jerome Kern, was a director at Liberty Interactive Corporation (“Liberty Interactive”) and Liberty Media Corporation (“Liberty Media”). On September 22, 2011, Liberty Media split into Liberty Interactive and New Liberty Media. On April 9, 2018, Liberty Interactive changed its name to Qurate Retail, Inc. (“Qurate”). John Malone serves as a director of Qurate and as its controlling stockholder with control over 40% of the voting power of Qurate.

37. Kern's father also spent over two decades as John Malone's outside counsel, was called John Malone's "right hand man," and was involved in the November 2016 split-off of Liberty Holdings from Liberty Interactive (the "Liberty Holdings Split-Off"). Jerome Kern also advised Malone in the 2010 DIRECTV recapitalization transaction and the December 2016 Lionsgate acquisition of Starz. Jerome Kern is closely associated with Liberty Media's predecessor, Tele-Communications, Inc. ("TCI"), and regularly handled acquisitions for Liberty-related entities, including Liberty Media. Jerome Kern also served on TCI's board of directors.

38. In 2000, Liberty Media appointed Peter Kern to the board of On Command, and made Jerome Kern the CEO of the company. Jerome Kern was also made Chairman of the Board of On Command. Liberty Media's disclosures also reveal that they have retained Peter Kern and a company that Kern controls, Gemini Associates, to advise on certain transactions. Kern's contacts are not limited to those with Malone/Liberty Interactive entities. Before Kern founded Gemini Associates in 1996, he worked as a senior executive at HSN – an entity Malone/Diller purchased in 1995 and is owned by Liberty Interactive.

39. Expedia admits in its 10-K/A that Kern is not an independent director under NASDAQ listing rules. Because of his employment and directorship at Expedia and his long-standing close ties to Malone and Liberty related entities,

Kern was not disinterested and independent with respect to the challenged transactions.

5. Dara Khosrowshahi

40. Defendant Dara Khosrowshahi (“Khosrowshahi”) has served on the Expedia Board since 2005. He served as the CEO of Expedia from 2005 to 2017.

41. Diller recruited Khosrowshahi to IAC from Allen and Company in the late 1990s, while Diller was running QVC and attempting a hostile takeover of Paramount. Following Khosrowshahi’s work with Diller on Paramount, Khosrowshahi admits that he looked up to Diller, and wanted to work for him. Immediately thereafter, Khosrowshahi joined IAC in 1998 as Vice President of Strategic Planning and was promoted to Senior Vice President in 1999. Khosrowshahi then served as President, USA Networks Interactive, a division of IAC, from 1999 to 2000, and IAC’s Executive Vice President, Operations and Strategic Planning, from July 2000 to January 2002. Khosrowshahi served as Executive Vice President and Chief Financial Officer of IAC from January 2002 to January 2005. Khosrowshahi served as the Chief Executive Officer of IAC Travel, a division of IAC, from January 2005 to the IAC/Expedia Spin-Off date.

42. In 2005, Diller asked Khosrowshahi to take the position of Expedia CEO, which he held from 2005 to August 2017. During his time at Expedia and IAC, Khosrowshahi was paid handsomely, reaping over \$186 million in total

compensation from 1998-2017. In 2015, Khosrowshahi was the highest paid CEO in the S&P 500 with a pay package worth an estimated \$94.6 million.

43. Khosrowshahi is frequently referred to in public news sources as Diller's protégé. Khosrowshahi is considered part of a small circle of Diller mentees known as the "Killer Dillers." Recently, at a roundtable event held at the Economic Club, Khosrowshahi stated, "I have Barry to thank for pretty much everything in my professional career."

44. Expedia admits in its 10-K/A that Khosrowshahi is not an independent director under NASDAQ listing rules. Because of his work for Expedia and IAC, long associations with Diller, and his interest in his incumbency as a director of Expedia, Khosrowshahi was not disinterested and independent with respect to the challenged transactions.

6. Mark D. Okerstrom

45. Defendant Mark Okerstrom has served on Expedia's Board and as President and CEO of Expedia since August 2017. Since 2006, Okerstrom has held various senior executive positions at Expedia, including EVP of Operations (2014 to 2017); CFO (2011 to 2017); Secretary (2011 to 2012); Senior Vice President and Head of Corporate Development and Strategy (2009 to 2011); and Vice President / Senior Director of Corporate Development (2006 to 2009).

[REDACTED]

[REDACTED]

46. After Khosrowshahi departed Expedia in 2017, Diller made Okerstrom the CEO of Expedia. Diller released a press release at Okerstrom's appointment stating that "[t]here was no other candidate that the Board considered." In an internal email, Diller repeated that "there was no other candidate considered other than Mark."

47. From 2011 to 2017, Okerstrom earned over \$83 million from Expedia, much of which came from equity grants that lacked performance conditions. Glass Lewis gave Expedia an F rating for their pay-for-performance grade in 2017. While the typical CEO of a major U.S. public company made 164 times what their median employee earned in 2017, Defendant Okerstrom made 431 times more than his median employee. According to *Skift*, the largest industry intelligence platform to key sectors of travel, Okerstrom was the second-highest paid CEO of an online travel company in 2017.

48. Expedia admits in its 10-K/A that Okerstrom is not an independent director under NASDAQ listing rules. Because of his interest in continuing his employment at Expedia, his interest in his incumbency as a director of Expedia, and his relationship with Diller, Okerstrom was not disinterested and independent with respect to the challenged transactions.

B. Other Defendants Who Have Disabling Conflicts With Diller

1. Chelsea Clinton

49. Defendant Chelsea Clinton (“Clinton”) has served on the Expedia Board since March 2017. [REDACTED]

[REDACTED] Clinton has received compensation of \$838,416 in total for her services at Expedia in 2017 and 2018.

50. Since 2011, Clinton has also served on the board of IAC with Diller, Kaufman, and AVF. Each year, Clinton receives an IAC board salary and \$250,000 per year in IAC stock awards since 2011. All told, Clinton has received over \$2.3 million in total compensation as a director of IAC, and an October 2018 Barron’s article pegged the value of Clinton’s IAC holdings at over \$6 million.

51. Clinton’s appointment to the IAC Board in 2011, when she was still a graduate student, was controversial. Professor Steven Davidoff Solomon panned the appointment in *The New York Times’ Dealbook* column, writing:

But let’s be real. Ms. Clinton has this position only because she is the daughter of former President Bill Clinton and Hillary Rodham Clinton, the current secretary of state. This is clearly an appointment made because of who she is, not what she has done, one that defies American conceptions of meritocracy. Even most celebrity directors earn their way to such celebrity — sort of.

Professor Davidoff Solomon continued:

Too many boards, including those of Yahoo and Hewlett-Packard, have gotten into hot water for failing to act forcefully and to exercise

their duties to run the company. Will a celebrity — even a smart, well-regarded one like Ms. Clinton — ask the hard questions we want a director to ask?

The particular company matters. IAC gets low marks on corporate governance from GovernanceMetrics International, a research and rating firm. A representative of the company recently wrote that IAC was rated poorly for “governance concerns including dual share classes with disparate voting rights, a board containing many overcommitted and nonindependent directors, and executive compensation that is not well aligned with company performance.”

IAC’s board is filled with high-powered friends of Mr. Diller, including Michael D. Eisner, Edgar Bronfman Jr. and Mr. Diller’s stepson. The celebrity bug appears contagious on this board. When Mr. Eisner served as chief of Disney, his board was also criticized for being filled with lightweights, celebrities and cronies, among them Mr. Poitier.

GovernanceMetrics also asserts that IAC’s executive compensation does not conform with best practices. Mr. Diller, who controls the company, serves only as board chairman, but he was paid about \$3.7 million last year, while the new chief executive, Gregory R. Blatt, was paid about \$18.6 million. For IAC, a midsize company with a market capitalization of \$3.4 billion, this is a rather hefty payout....

The real question is whether Ms. Clinton can act independently and provide value to the IAC board.

52. In an interview, Diller claimed that he made her a Board member because she uses the internet a lot. In his own words, she is on the internet “in every way, all the time.” In reality, Diller added Clinton to the Expedia Board while she was serving on an IAC special committee that was deciding whether to grant Diller’s request to implement a reclassification that would create dynastic control of IAC for Diller and AVF.

53. Defendant Clinton and her family, including her mother, Hillary Clinton, have longstanding ties to Diller and DVF. Their families meet regularly. Diller and DVF are so close to Clinton that Clinton invited them to attend her wedding. Diller and Clinton are in regular contact about their personal lives. Diller communicates with, and emails photographs to Clinton from his iPhone – *e.g.*, “Here are some snaps from Scotland.... Sent from my iPhone.”

54. Diller and Clinton have vacationed together. As reflected on Diller-controlled corporate jet flight manifests, Diller often takes Board members on trips. In 2015, Clinton and her husband were photographed snorkeling with Diller and DVF on Diller’s mega-yacht in Sardinia, Italy.

55. Diller, DVF, Clinton, and her mother regularly attend galas, Broadway shows and events together.







56. A mere month after the Board approved the Merger and related Side Deals, Diller, DVF, and Clinton spent a few days together in New York City attending, according to the Wall Street Journal Magazine, a “star-studded fete for the Statute of Liberty Museum” on May 15, 2019, and the 2019 High Line Benefit in New York City on May 21, 2019.

57. Diller has also provided considerable support for the Clinton family’s political aspirations. In a 2010 email between Melanne Verveer, a close deputy of Clinton, and Hillary Clinton, Verveer relayed details of an event being held by Diller and DVF. Verveer suggested that Hillary Clinton accept an award and speaking invitation offered from the D/vF Family Foundation, noting that “I have no doubt you would be very warmly embraced and [Diane] and Barry are so fond of you.” The following year, the foundation awarded Hillary Clinton a “lifetime leadership award.” Diller and DVF donated a combined \$816,000 to the 2016 Hillary Clinton campaign or its surrogates. Hillary Clinton is specifically mentioned as Diller’s friend in the extensive 2018 *New York Times* interview of Diller called “All Men are Guilty.”

58. In April 2016, at the Seventh Annual Diller-von Furstenberg Family Foundation Awards, the foundation again saluted Hillary Clinton. As noted on the foundation’s website, DVF asked attendees to “[p]lease spread the word. We want [Hillary Clinton] as our president.” In September 2016, Diller and DVF held a

private, \$50,000 per plate fundraiser at their home for Hillary Clinton's campaign. Attendees paid \$100,000 per couple with proceeds going to the Hillary Victory Fund, a joint fundraising committee of Hillary Clinton's campaign and state and national Democratic Party committees.

59. The fact that Expedia considers Clinton to be independent is an indictment of the NASDAQ listing standards. [REDACTED]

[REDACTED]

[REDACTED]

2. Jonathan Dolgen

60. Defendant Jonathan L. Dolgen ("Dolgen") was a member of the Expedia Board from the completion of the Expedia Spin-Off in August 2005 until June 5, 2019, receiving more than \$3.929 million in total director compensation for his services. On June 5, 2019, after fourteen years with the Expedia Board, Dolgen became a Director Emeritus, for which he "will receive an annual retainer of \$50,000 and each of Mr. Dolgen's unvested restricted stock unit awards outstanding as of the date of his resignation from the Board will continue to vest in accordance with their terms."

61. In 1985, Diller recruited Dolgen to work under him at Twentieth Century Fox, where Diller served as chairman. From 1994 to 2004, Dolgen was CEO at Viacom. When Dolgen quit the CEO position at Viacom reportedly due to

being “the loser in Viacom’s succession plans,” Diller praised Dolgen as “the complete pro.... There is no one who has a more fundamental understanding and ability to execute”; and “a ferocious executive and nobody who has met Dolgen does not know within a second how smart he is.” Dolgen, in turn, praised Diller for teaching him not to settle, to assume almost anything was doable, and the importance of being open-minded. Dolgen is one of the Killer Dillers, a group of media executives that Diller has mentored.

62. Dolgen was a director of Ticketmaster, along with Diller, Craig Jacobson, and Victor Kaufman, from August 2008 through its merger with Live Nation in January 2010, earning more than \$2.069 in total compensation for his services. Prior to the LiveNation merger, Liberty Media was the largest stockholder of Ticketmaster, owning a 29% position. Following the merger, Diller became Chairman of Live Nation, and Liberty Media was its largest stockholder. Dolgen became a director of Live Nation, along with Diller and Kaufman, and served through June 2018.

63. Because of his long associations with Diller and Liberty, Dolgen was not disinterested and independent with respect to the challenged transactions.

3. Craig A. Jacobson

64. Defendant Craig A. Jacobson has been a director of Expedia since 2007, receiving \$3.595 million in total compensation over that time. Jacobson also

served as the Chair of the Special Committee that recommended the challenged transactions to the full Expedia Board. Jacobson was not disinterested or independent with respect to the challenged transactions.

65. Jacobson is a founding partner of Hansen, Jacobson, Teller, Hoberman LLP (“Hansen Jacobson”). Hansen Jacobson is a twenty-eight lawyer Beverly Hills boutique law firm that specializes in transactional and entertainment law. Jacobson’s firm has provided extensive legal services to IAC, its subsidiaries and Barry Diller. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Indeed, Jacobson helped Diller and Vice Chairman Kaufman form Reveille Productions, a company that Diller financed, which has global rights to lucrative television series such as “The Office” and “Ugly Betty.”

66. Jacobson also has extensive, long-term business ties with John Malone. In November 2018, Jacobson “packaged” a television franchise, “Ash vs. the Evil Dead,” which Starz purchased. At the time, Malone held 45.5 percent of the voting power in Starz and was chairman of its board of directors. Jacobson also worked on a 2018 deal worth over \$300 million where Lionsgate, another Malone company, acquired a majority stake in 3 Arts Entertainment. At the time, Malone served as a director of Lionsgate and owned more than 5% of its

outstanding stock. Jacobson also founded New Form Digital, which is partly owned by Discovery Communications. Discovery Communications is owned in turn by Discovery Inc. Malone holds over 93 percent of super-voting shares in Discovery Inc., which amounts to 28.2 percent of total voting power.

67. Jacobson formed a boutique investment banking/advisory company, Whisper Advisors. One of Jacobson's two partners in Whisper Advisors, Jason L. Rapp, was a senior IAC executive.

68. Jacobson served on the board of Ticketmaster from 2008 to 2010 with Defendants Diller, Dolgen, and Kaufman, at the behest of Diller. In 2010, Jacobson joined the board of Charter Communications, from which he has received over \$2.157 million in total compensation for his service. Malone is Charter's largest stockholder. The Chairman of Qurate, Greg Maffei, is also a Charter Director. Jacobson also serves on the board of Tribune Media Company, with Kern.

69. Because of his longstanding relationships with Diller, Malone, and their respective companies, Jacobson's interest in past and potential business with them, and his interest in his incumbency as a director of Expedia, Jacobson was not disinterested and independent with respect to the challenged transactions.

4. Susan C. Athey

70. Defendant Susan Athey (“Athey”) has served on Expedia’s board since December 2015. She is a professor at Stanford University’s Graduate School of Business. Athey was a member of the Special Committee that recommended the challenged transactions to the full Expedia Board. Athey was not disinterested or independent with respect to these transactions.

71. Upon information and belief, Diller’s wife, DVF, sat for a lengthy interview in 2018 and was a 2019 guest speaker at the Stanford Graduate School of Business at Athey’s request.

72. Athey also has acted or expects to act as an independent consultant to Expedia and its subsidiaries. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] More recently, according to the Company’s 2017 public filings, Athey entered into a consulting agreement with HomeAway, an Expedia subsidiary, which allows her to bill up to \$24,000 per quarter.

73. Athey also received \$1.136 million in total director compensation from Expedia for the years 2015 to 2018. According to a recent report by F.W. Cook & Co., the value of the compensation paid to Athey in 2018 materially

exceeded the compensation of directors at the majority of similarly-capitalized companies.

74. Based on publicly available information, Athey's compensation (and expected compensation) is material to her, as it comprises a majority of her income. According to Glassdoor, one of the world's largest job and recruiting websites, the typical Stanford University Professor salary is \$207,156. Her husband is also a Stanford University Professor.

75. Athey's lucrative Board and consulting positions sterilized her independence.

5. George "Skip" Battle

76. Defendant Skip Defendant A. George "Skip" Battle ("Battle") has been a member of the Expedia Board since the Expedia Spin-Off closed on August 9, 2005. Battle was also a member of the Special Committee that recommended the challenged transactions to the full Expedia Board.

77. Diller selected Battle to serve on the Expedia Board. In close to 14 years on the Expedia Board, Battle has received more than \$4.229 million in total director compensation for his services. Other than service as a director to various companies, Battle has been unemployed since he joined the Expedia Board, which means the compensation he receives is material to him.

78. Battle served as either CEO or Executive Chairman of Ask Jeeves Inc. from 2000, until he sold that company to Diller’s IAC in 2005. Additionally, from 2006 until its July 2014 sale, Battle served as a director of OpenTable, Inc. (“OpenTable”), earning more than \$1.214 million in total director compensation for his services. IAC was an early investor in OpenTable, and owned approximately 10% of its stock at the time of its May 2009 IPO. Although the timing of IAC’s investment in OpenTable is unclear, publicly available information indicates that the investment occurred at some point prior to November 2007, which means that it is inferable that Diller selected Battle to serve on the OpenTable board on behalf of IAC.

79. Because of Battle’s personal interest in his incumbency as a director of Expedia precludes him from being independent, Battle was not disinterested and independent with respect to the challenged transactions.

80. Athey, Jacobson, and Battle are collectively referred to as the “Special Committee.”

C. Defendants Who Are Admittedly Not Independent From Liberty Holdings and Malone

1. Courtnee A. Chun

81. Defendant Courtnee Chun (“Chun”) has been a member of the Expedia Board since December 2017. Chun served as the Senior Vice President of Investor Relations for Liberty Broadband Corporation (“Liberty Broadband”).

Malone controls Liberty Broadband is the Chairman of the board. Chun also served as Senior Vice President of Investor Relations of Qurate since at least 2012. Qurate is a party to multiple agreements related to the transactions.

82. Chun also served as Senior Vice President of Investor Relations for Liberty Interactive/Qurate when Liberty Interactive acquired the remaining equity of HSN in a stock for stock merger. In July 2019, Chun was promoted to Chief Portfolio Officer of New Liberty Media.

83. Pursuant to an Amended and Restated Governance Agreement among the Company, Liberty Interactive, and Diller dated December 20, 2011 (the “2011 Governance Agreement”) and certain subsequent intra-Liberty assignments, Liberty Holdings nominated Chun to serve on the board of Expedia.

84. The Company admits in its 10-K/A that Chun is not an independent director under NASDAQ listing rules. Chun was not disinterested and independent with respect to the challenged transactions because of her affiliations with Liberty and her interest in her incumbency as a director of Expedia.

2. Pamela L. Coe

85. Defendant Pamela L. Coe (“Coe”) has been a member of the Expedia Board since November 2012.

86. Coe has served as Senior Vice President, Deputy General Counsel, and Secretary of Liberty Holdings (where John Malone, Christopher Shean, and

AVF sit on the board) since it was split-off from Liberty Interactive in November 2016 Liberty Holdings Split-Off (as defined below).

87. Coe has been Senior Vice President, Deputy General Counsel, and Secretary of Qurate, New Liberty Media, and Liberty Broadband, since January 2016. Prior to that, Coe was Vice President, Deputy General Counsel, and Secretary of those companies. Malone is the Chairman of the Board and controls Qurate, New Liberty Media, and Liberty Broadband. Coe also held those positions with Liberty TripAdvisor Holdings, Inc. (“Liberty TripAdvisor”) from August 2014 to April 2016. Liberty TripAdvisor owns 22% of TripAdvisor and was controlled by Malone until he passed his shares to his right-hand man Greg Maffei in 2014.

88. Prior to joining Qurate, Coe served as Senior Counsel at Qurate/Liberty Interactive/Liberty Media’s predecessor, TCI, long controlled by John Malone. Liberty Holdings nominated Coe to serve on the Expedia Board pursuant to the 2011 Governance Agreement.

89. The Company admits in the 10-K/A that Coe is not an independent director under NASDAQ listing rules. Because of her affiliations with Malone, the various Qurate/New Liberty Media/Liberty Broadband related entities and her interest in her incumbency as a director of Expedia, Coe was not disinterested and independent with respect to the challenged transactions. [REDACTED]




3. Christopher W. Shean

90. Defendant Christopher W. Shean has served on the Expedia Board since December 2015.

91. In March 2016, Shean was made the CEO and President of Liberty Holdings. He has been a member of the board of directors of Liberty Holdings (the “Liberty Holdings Board”) since completion of the Liberty Holdings Split-Off. Shean has also held several executive positions with Liberty Media/Liberty Interactive/Qurate since October 2000. Previously, he was CFO of New Liberty Media (and its predecessor) from November 2011 to October 2016 and of Liberty Interactive from November 2011 to October 2016. Shean also served as Senior Vice President of Liberty Broadband from June 2014 to December 2015 and as CFO of Liberty Broadband from June 2014 to October 2016. In addition, from July 2013 to January 2016, Shean served as Senior Vice President and CFO of Liberty TripAdvisor, and from February 2013 to December 2015, Shean served as a director of TripAdvisor, along with Diller.

92. Liberty Holdings nominated Shean to serve on the Expedia Board pursuant to the rights held under the 2011 Governance Agreement. The Company admits in its 10-K/A that Shean is not an independent director under NASDAQ

listing rules. Shean was not disinterested and independent with respect to the challenged transactions due to his interest in his incumbency as a director of Expedia and due to his long-standing and multiple affiliations with Liberty.

93. Defendants Diller, Athey, Jacobson, Battle, Chun, Clinton, Coe, Dolgen, Kaufman, Kern, Khosrowshahi, Okerstrom, Shean, and AVF, are collectively referred to as the “Director Defendants.”

94. Defendants Diller, Okerstrom, and, Kern are collectively referred to as the “Officer Defendants.”

D. The D/vF Family Foundation

95. Defendant the D/vF Family Foundation is private foundation founded in 1999 for the Diller-von Furstenberg family. The D/vF Family Foundation is domiciled in Delaware. The D/vF Family Foundation mission statement is “guided by the shared values, concerns and passions of the Diller – von Furstenberg family” and its Board of Directors is comprised of Defendant Diller, Diller’s wife, DVF, Defendant AVF, and Tatiana von Furstenberg. The D/vF Family Foundation is a party to the Exchange Agreement.

IV. RELEVANT NON-PARTIES

A. Liberty Holdings

96. Liberty Expedia Holdings Inc. (“Liberty Holdings”) is a public holding company. Its principal asset is a group of Expedia shares that constitute a control block if it had the authority to vote them. Liberty Holdings owns 11.1

million Expedia common shares and all 12.8 million Class B common shares. Liberty Expedia also owns Bodybuilding.com (generally considered to have little to no value) and over \$300 million in net debt.

B. John Malone

97. John Malone's ("Malone") association with Diller goes back to the 1970s, when Diller ran Paramount Pictures and then started the Fox news network with Rupert Murdoch. From the years of 1972, when Malone became CEO of TCI, until 1999 when Malone sold TCI to AT&T, he was one of the cable industry's most significant players. Legendary for "baroque deal-making," Malone garnered a reputation as a calculating mogul's mogul. In 1991, while he was still running TCI, Malone started Liberty Media, which became a minority owner of 25 percent of the nation's cable programmers. After selling TCI to AT&T, Malone emerged with a thirty-three percent voting control over Liberty Media and *de facto* control over Liberty Media's board of directors. Starting from the 2000s and described further below, Malone diversified his investments under the Liberty Media umbrella.

98. Malone's sponsorship was instrumental to Diller's rise. Called variously "one of Malone's creations," and Malone's "Frankenstein," Diller transformed from the head of the Paramount and Fox studios into a "mergers-and-acquisitions specialist" himself allegedly after Malone gave Diller control of the

Home Shopping Network (HSN) in 1995 under the umbrella of the predecessor entity of IAC.

99. Their mentor-mentee relationship has sometimes soured, as when Diller attempted to reduce Liberty Media's voting control of IAC by proposing a five-split of that company and instituting a single-tiered voting structure, which Malone countered by attempting to evict Diller from the IAC board.

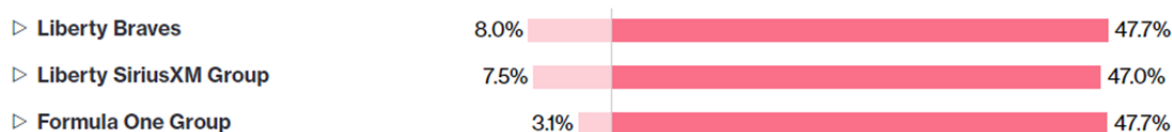
100. Since that time, Malone and Diller have reconciled, with Diller attending a UJA Federation of New York Leadership Awards Dinner in honor of Malone in 2016.

101. Malone now serves on the board of Liberty Holdings. He also served as a director of Expedia from 2005 to 2017. Malone has been Chairman of the Board of Liberty Interactive since 1994; a director of Charter Communications from May 2013 to July 2018; Chairman of the Board of Liberty TripAdvisor since 2014; and Chairman of the Board of Liberty Broadband since November 2014. Malone has also served on the Board of Discovery Communications, Inc. since 2008. He previously served as a director of IAC from May 2006 to June 2010 and a director of Live Nation from January 2010 to February 2011.

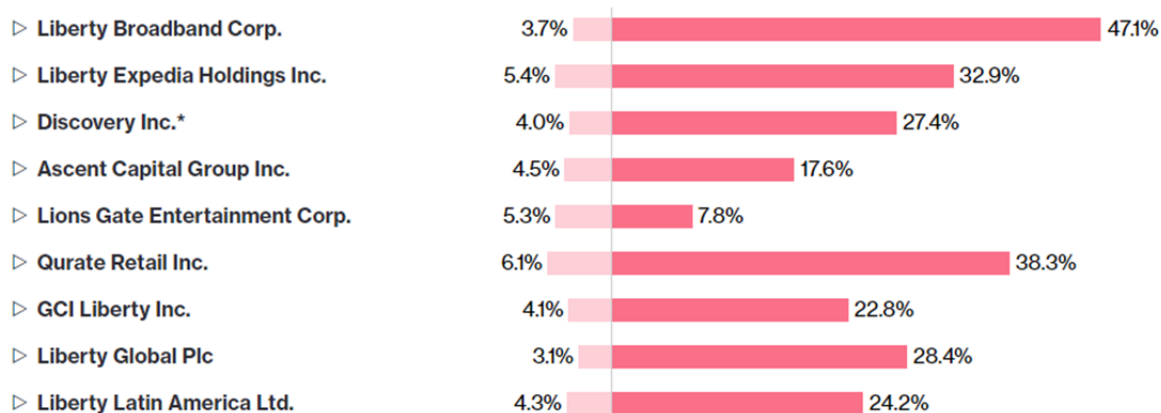
102. Malone resigned from the Expedia Board in December 2017, whereupon he was replaced by Courtnee Chun as one of Liberty Holdings' designees.

103. The below demonstrates Malone's top holdings as of 2018. Different share classes allow Malone to have control over Liberty Media, Qurate, Liberty Broadband, New Liberty Media and other Liberty-related entities. The darker shaded areas represent Malone's voting ownership percentage while the lighter shaded areas represent his equity ownership percentage:²

Liberty Media Corp.



Other direct holdings



Secondary holdings via Greg Maffei



² Crayton Harrison, Cedric Sam & Mathieu Benhamou, *Breaking Down John Malone's Investments, Company by Company*, Bloomberg (Updated Aug. 14, 2018), <https://www.bloomberg.com/graphics/2018-john-malone/>.

SUBSTANTIVE ALLEGATIONS

I. HISTORY OF EXPEDIA

104. Expedia is an online travel company that provides tools and information to help travelers research, plan, book, and experience business and leisure travel. Expedia operates through a variety of brands, including Expedia.com, Hotels.com, trivago, HomeAway, Orbitz, Travelocity, and Hotwire.

105. Prior to 2005, Expedia was a wholly owned subsidiary of IAC. Diller began working with Malone in 1995 pursuant to arrangements where Malone and his affiliates owned control blocks of shares of other entities, but granted Diller a proxy over the shares such that Diller exercised control. Specifically, in 1995, Diller obtained control of IAC's predecessor (Silver King Communications) in a deal backed by John Malone's Liberty Media.³ Liberty Media had the option to acquire a majority of the voting stock of IAC, but could not exercise the option due to FCC ownership restrictions. To solve that problem, Liberty Media entered into an agreement with Diller that granted Diller voting control while Liberty Media maintained almost all of the equity of IAC.

106. Liberty Media and Diller controlled IAC through Liberty Media's ownership of a control block of super voting Class B shares. Thereafter, although

³ On September 22, 2011, Liberty Media Corporation changed its name to Liberty Interactive Corporation. On April 9, 2018, Liberty Interactive Corporation changed its name to Qurate Retail, Inc.

Liberty Media actually owned the underlying shares, Diller controlled IAC through proxy and governance arrangements that were the bases of the similar arrangements imparted upon Expedia at the time of its Spin-Off from IAC in 2005. From the very beginning of their business relationship, the parties clearly established that Diller's right to vote shares owned by Liberty Media would last only so long as he was running the applicable company. Thus, Diller could only pass control of any corporation he ran on behalf of Liberty Media to his eventual heir if he obtained the super voting shares owned by Liberty Media.

107. On August 8, 2005, IAC completed a spin-off of Expedia to its stockholders (the "Expedia Spin-Off"). The Expedia Spin-Off was structured in a manner to replicate the capital structure and governance arrangements of IAC. As a result, Expedia has two classes of shares: common shares with one vote per share and Class B common shares with ten votes per share. Following the Expedia Spin-Off, Liberty Media owned a control block of IAC's super voting shares, but Diller possessed an irrevocable lifetime proxy over those shares and thus controlled Expedia. As a result, Diller controls approximately 55% of the voting power within Expedia, making him the Company's controlling stockholder.

II. Diller Wrests Control of IAC from Malone

108. The Merger and Diller's related acquisition of all of Expedia's outstanding super voting Class B shares has been at least a decade in the making.

A series of transactions over the years evidences a consistent pattern of Diller abusing corporate machinery to obtain or maintain dynastic control over his companies.

109. According to judicial proceedings in this Court, Diller and Malone began to have substantial disagreements after Liberty Media took steps Diller believed were designed to circumvent his proxy in 2006. Shortly thereafter, Diller took actions to encourage Liberty Media to swap its shares of IAC in exchange for certain IAC assets. Such a swap would have allowed Diller to swap his low-vote IAC shares for Liberty Media's high-vote IAC shares. On March 13, 2007, Diller even emailed his personal financial staff, including AVF, to inform them he was close to such a deal and that he was attempting to acquire outright ownership of at least 51% of the voting power. However, the parties could not come to an agreement at that time.

110. Then, Diller and IAC management advanced a plan to split IAC into five separate companies, which resulted in litigation between Malone/Liberty Media and Diller/IAC. In particular, Malone took umbrage at Diller's plan not to replicate the dual class voting structure in the four entities IAC would spin-off. Instead, Diller proposed each spun-off entity would have a single-class of shares with a single vote each. Malone was particularly concerned about not having sufficient control over such entities such that he could prevent them from engaging

in a transaction that would result in a taxable event.⁴ In the litigation, Malone testified that he believed Diller recommended spin-offs with single-class structures as a means to prompt Liberty Media to agree to a swap transaction that would give Diller outright ownership of control.

111. Diller and IAC prevailed in the litigation. By December 2010, Malone decided to exit his investment in IAC in a complicated share and asset swap that appears to have formed the basis for the Merger and Side Deals complained of herein.

112. In relevant part, Liberty Media exchanged all of the IAC stock it owned for certain operating subsidiaries of IAC and \$218 million in cash. Diller exchanged approximately 4.3 million common IAC shares for an equal number of IAC super voting Class B shares previously owned by Liberty. Diller also received an option that allowed him to exchange an additional 1.5 million IAC common shares for an equal number of IAC Class B shares held in IAC's treasury. After he exercised his option in full, Diller controlled 41% of IAC's voting power through his newfound ownership of IAC's Class B shares.

113. In sum, Diller used the corporate machinery and corporate assets of IAC in order to allow him to acquire actual ownership of super voting Class B

⁴ Throughout his career, Malone has engaged in numerous complex corporate transactions designed to minimize or eliminate any tax burden.

shares previously held by a Liberty Media entity for the price of ordinary voting common shares—which is exactly what he is now doing at Expedia.

114. Diller made clear at the time that he orchestrated that transaction to help create dynastic control of IAC for himself and his family. In response to a question about whether he would step back from IAC following the transaction,⁵ Diller responded: “That’s ridiculous because *now I have direct control over the company. If anything I’m stepping closer. Frankly my family and I want to be in this for the long term . . .*”⁶

III. [REDACTED]

115. Diller’s likely heir and successor is his stepson, AVF, whom Diller ensured had positions on the Boards of IAC, Expedia, and Liberty Holdings. [REDACTED]

[REDACTED]

116. [REDACTED]

[REDACTED]⁷

A. Diller Forces a Deal at IAC to Pass Dynastic Control to AVF

117. With respect to IAC, Diller already acquired a control block of super voting shares from Malone and Liberty Media, which meant Diller simply needed

⁵ In connection with the transaction, Diller resigned as CEO and became “Senior Executive.”

⁶ Unless otherwise indicated, all emphasis is added.

⁷ [REDACTED]

to make appropriate estate planning arrangements and maintain control so he could eventually pass the shares to AVF.

118. To that end, on February 22, 2016, [REDACTED]

[REDACTED] Diller transferred all of the IAC Class B shares he owned, which represented all of IAC's outstanding Class B shares, into various trusts. Specifically, he transferred 540,901 IAC Class B shares into a trust for the benefit of certain undisclosed family members over which AVF has sole voting and investment power. Moreover, Diller transferred some common IAC shares and 5,248,598 IAC Class B shares into two grantor retained annuity trusts (each, a "GRAT") with two-year terms.

119. Between February 2016 and February 2018, the value of IAC appreciated significantly. As a result, upon expiration of Diller's 2016 GRATs in February 2018, Diller was able to transfer 2,831,367 of IAC Class B shares, or 49% of the total IAC Class B shares outstanding, to trusts his SEC filings describe as "Descendants Trusts" without incurring any tax obligation.

120. In February 2017, Diller created two new GRATs in which he placed the Class B shares he was forced to withdraw from the 2016 Grants as an annuity payment. Diller likely did the same thing in February 2018 or February 2019 in connection with those annuity payments, but Diller failed to file Schedule 13D amendments reflecting the annuity payments and termination of the 2017 GRATs.

121. [REDACTED]

[REDACTED] Diller set up a system of GRATs that began transferring ownership of IAC's super voting shares to family trusts. However, IAC regularly used large amounts of stock to fund acquisitions and richly compensate executives. Continued large equity issuances, however, would dilute Diller's (and AVF's) control position, which Diller wanted to prevent.

122. [REDACTED] in April 2016, Diller proposed to the IAC board of directors that they approve the creation of a new class of non-voting stock that IAC could use for acquisitions and compensation without diluting his control. The IAC board rubber-stamped Diller's proposal on November 1, 2016.

123. However, Diller eventually abandoned his attempt to create a non-voting class of shares at IAC after counsel listed below sued and obtained discovery into [REDACTED]

[REDACTED]

[REDACTED]

B. Diller Pivots to Giving AVF Substantial Control of Expedia

124. Securing control of Expedia for AVF would be much more complicated because Diller only controlled Expedia as a result of a lifetime personal proxy that he could not transfer. Therefore, he needed to find a way to

first acquire the Expedia Class B shares owned by Liberty. Diller determined to use Expedia to acquire Liberty Holdings, and in the process arrange an exchange of his Expedia common shares for super voting shares like the one he completed with IAC years earlier.

125. On November 4, 2016, Liberty Interactive completed a split-off of Liberty Holdings after which Liberty Holdings became its own separate publicly traded Company (the “Liberty Holdings Split-Off”). Liberty Holdings assumed all of the rights and obligations of Liberty Interactive with respect to its governance arrangements with Diller and Expedia.

126. The Liberty Holdings Split-Off initially qualified as a tax-free transaction.⁸ However, under Section 355(e) of the Internal Revenue Code (the “Code”), if one or more persons or entities acquired 50% or more of Liberty Holdings as part of a plan or series of related transaction that includes the Liberty Holdings Split-Off itself, then the split-off becomes a taxable event. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁸ This type of transaction is often called a Reverse Morris Trust Transaction.

127. Under the Code, if one or more persons or entities acquired 50% or more of Liberty Holdings within two years of the Liberty Holdings Split-Off, then it is presumed to be a taxable event. If such an acquisition occurs later, there is no presumption, but the Liberty Holdings Split-Off could still be deemed a taxable event. [REDACTED]

[REDACTED]

[REDACTED]

128. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

129. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

130. Following the Liberty Holdings Split-Off , Liberty Holdings had two main assets: (i) all of Liberty Interactive’s former Expedia shares, which represented a 15.8% ownership interest and 52.4% voting interest in Expedia; and

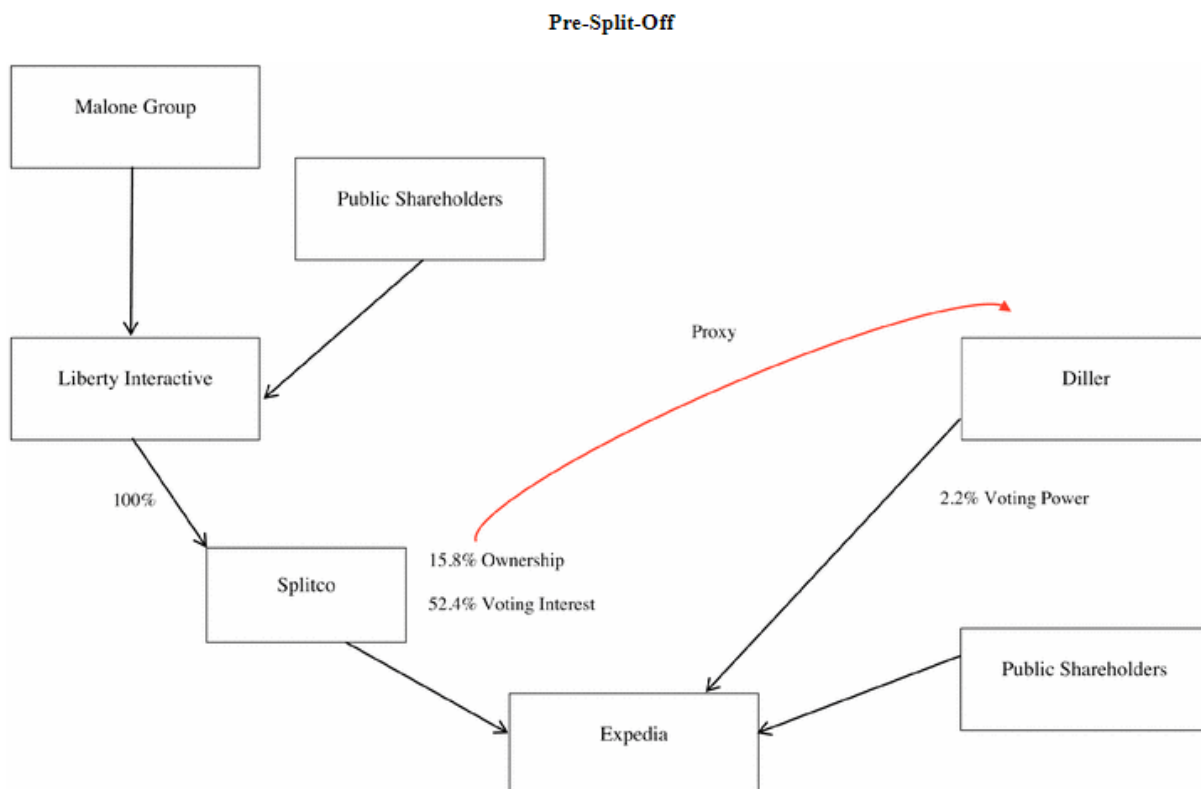
(ii) Vitalize, LLC (“Vitalize”), which housed the operations of Bodybuilding.com. The vast majority, if not all of the value of Liberty Holdings was attributable to the value of its Expedia shares. For example, 98% of Liberty Holdings’ 2018 revenue was attributable to Expedia, and Vitalize has been operating at a loss in recent years.

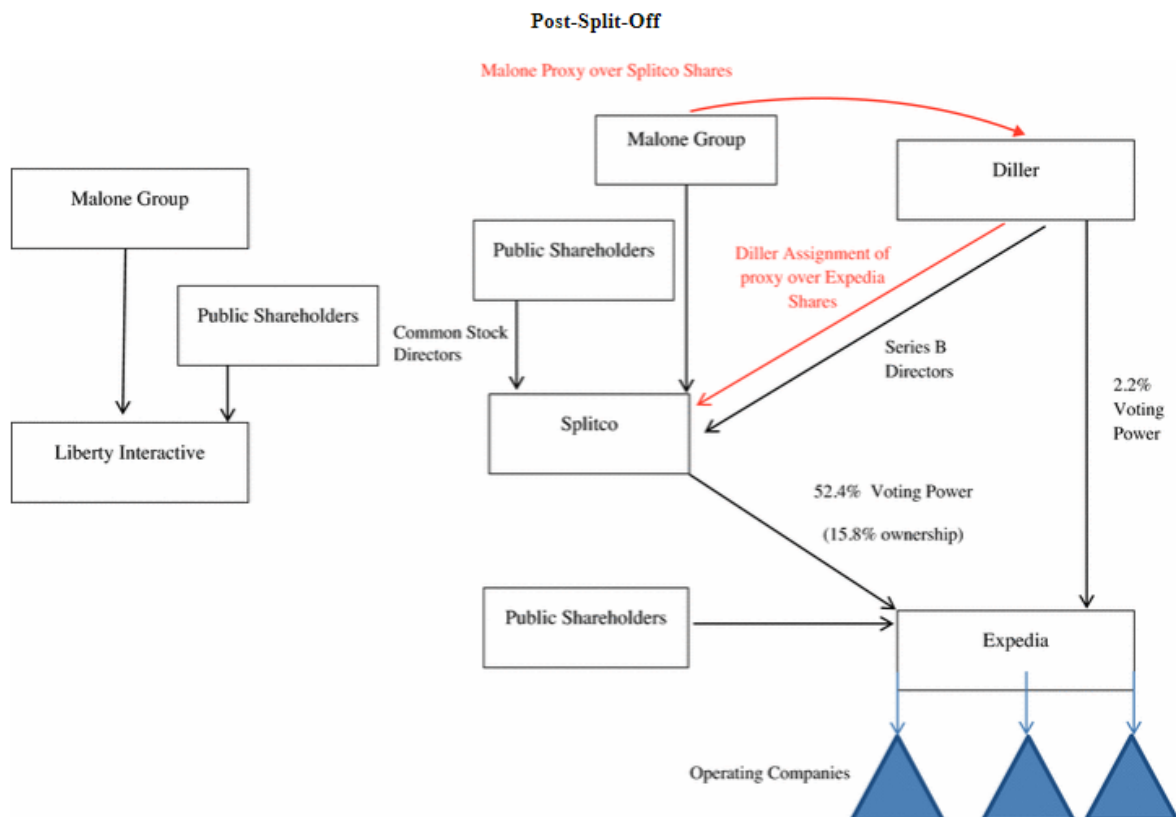
131. As a result, Liberty Holdings warned investors in the registration statement that it filed in connection with the Liberty Holdings Split-Off (the “Registration Statement”) and subsequent SEC filings that it may eventually have to register as an investment company under the Investment Company Act of 1940 (the “1940 Act”). Under the 1940 Act, an investment company is one whose primary activity is to invest in other companies. Moreover, with certain exceptions, a company is deemed an investment company if 40% of its assets consist of investment securities.

132. According to Liberty Holdings’ own SEC filings, if it is forced to register as an investment company, that “could result in significant registration and compliance costs, could require changes to our corporate governance structure and financial reporting, could place limitations on our capital structure and prohibit transactions with affiliates, and could otherwise restrict our activities going forward.” Moreover, if Liberty Holdings failed to appropriately register as an investment company in violation of the 1940 Act, “such violation could subject us

to material adverse consequences, including potentially significant regulatory penalties and the possibility that some or all of our contracts could be deemed unenforceable.”

133. In order to avoid having to register as an investment company at the time of the Liberty Holdings Split-Off, Liberty Holdings, the Malone family, and Diller entered into a proxy swap arrangement where Diller assigned his proxy over Liberty Holdings’ Expedia shares in exchange for a proxy over the Malone family’s Holdings shares, as illustrated by the pre- and post-Split-Off diagrams below:





134. According to the parties, the proxy swap arrangement allows Liberty Holdings to refrain from registering as an investment company while it is in effect.

135. The proxy swap arrangement allowed Diller to designate directors on the Liberty Holdings Board that would be responsible for determining how to vote Liberty Holdings' Expedia shares in certain situations, including the elections of Expedia directors. As a result, Diller maintained control over Expedia. However, the proxy swap arrangement does not give Diller the right to vote the Malones' Liberty Holdings shares on a merger between Expedia and Liberty Holdings.

136. Upon termination of the proxy swap arrangement, the Diller proxy over Liberty Holdings' Expedia shares immediately reverts back to Diller. Liberty

Holdings admits in SEC filings that upon the termination of that proxy swap arrangement, which was originally set to expire in May 2018, it may have to register as an investment company under the 1940 Act.

137. As a result, if Liberty Holdings wanted to avoid the need to register as an investment company, it either needed to sell itself (or its Expedia shares) or acquire a very large operating business by May 2018. Acquiring an operating business of sufficient size would be difficult, risky, and dilutive to its existing stockholders, including Malone. Selling its Expedia shares or itself to a third party would also be difficult given the rights of Diller under his governance and proxy arrangements, which grant him swap/exchange rights in connection with certain sales of the Expedia shares owned by Holdings to third parties. Moreover, the sale of Expedia shares to a third party was unlikely, given that Malone had a historical preference to structure transactions to avoid triggering any tax liability.

138. Thus, the most logical option for Liberty Holdings was always to sell itself to Expedia. Liberty Interactive even admitted in the Registration Statement that it:

believes that separating [Liberty Holdings] from Liberty Interactive's other businesses could help facilitate a potential combination of [Liberty Holdings] with Expedia by substantially eliminating the need for negotiations regarding the valuation of Liberty Interactive's other businesses, thereby increasing [Liberty Holdings'] flexibility to pursue such a transaction in the future. Liberty Interactive believes that a combination of [Liberty Holdings] with Expedia could be beneficial for its stockholders, on the one hand, and Expedia, on the

other hand, by eliminating the overhang associated with the current dual-public company structure.

139.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

140.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

IV. Diller Had No Right to Acquire Voting Control, Liberty Holdings' Class B Shares, or to Transfer Voting Control

141. Expedia's acquisition of Liberty Holdings will extinguish Diller's proxy. Under 8 *Del. C.* § 160(c), a company cannot exercise the vote of that company stock owned by the company:

Shares of its own capital stock belong to the corporation or to another corporation, if a majority of the shares entitled to vote in the elections of directors of such other corporation is held, directly or indirectly, by the corporation, shall neither be entitled to vote or for quorum purposes.

142. Therefore, Diller could only maintain control of Expedia following the Merger if he somehow managed to receive a large amount of Class B shares in connection with the Merger. However, Diller had no right to acquire Liberty Holdings' Class B shares in connection with the Merger.

143. Whatever rights Diller had to acquire the Expedia Class B shares owned by Liberty Holdings are governed by the 2011 Governance Agreement and the Amended and Restated Stockholders Agreement (the "2011 Stockholders Agreement") and an Amended and Restated Governance Agreement (the "Governance Agreement"), each dated as of December 20, 2011.

144. The 2011 Stockholders Agreement provides for certain transfer restrictions on Liberty Holdings Expedia shares and provides Diller with certain protective rights. However, the 2011 Stockholders Agreement does not provide Diller with any right to acquire Liberty Holdings' Class B shares in the event of a

merger between Liberty Holdings and Expedia, which is the structure of the transaction complained of herein.

145. In particular, the 2011 Stockholders Agreement did provide Diller with a first refusal in favor of Diller (Section 4.3) and [REDACTED] Diller's "Swap Rights" (Section 4.4), if Liberty Holdings "Transfers" its shares.

146. Section 1.1 specifically defined "Transfer," however, to exclude any merger involving Liberty Holdings that was not intentionally designed to avoid Diller's rights under the Stockholders Agreement:

[A] merger or consolidation in which a Stockholder is a constituent corporation shall not be deemed to be the Transfer of any Common Shares [which includes Class B Common Stock] beneficially owned by such Stockholders (provided, that a significant purpose of any such transaction is not to avoid to provisions of this Agreement).⁹

147. Moreover, Diller's right of first refusal and swap rights only apply in the event of a Transfer with an "unaffiliated third party." Even if a merger qualified as a "Transfer" (and it is not), Expedia is not an "unaffiliated third party" of either Liberty Holdings or Diller.

148. [REDACTED]

[REDACTED]

[REDACTED]

Therefore, Diller had no rights

⁹ Section 6.54 of the Governance Agreement provides an identical definition. Nothing in the 2011 Governance Agreement grants Diller a right to acquire Class B shares in connection with the Merger.

whatsoever pursuant to his contractual agreements with Liberty Holdings and Expedia to acquire Expedia Class B shares to acquire any Class B shares in connection with the Merger.

149. Furthermore, Diller had no right to transfer voting control to his family or future heirs. Section 3.3 of the 2011 Stockholder Agreement provided Diller with an irrevocable proxy over the Expedia shares owned by Liberty Holdings during Diller's lifetime, while he served as Chairman, and while he was not disabled. Section 3.3 expressly provided that "the Liberty Proxy is personal to Diller and may not be assigned by Diller by operation of law or otherwise and shall not inure to Diller's successors without the prior written consent of Liberty." In other words, Liberty Holdings did not want Diller passing voting control to AVF or anyone else.

V. THE MERGER AND DILLER'S VALUABLE SIDE DEALS

150. Despite the absence of any contractual right of Diller to acquire Liberty Holdings' Class B stock in the event of a merger with Expedia, on April 15, 2019, Expedia and Liberty Holdings entered into a wide array of interconnected agreements that had two main parts: (i) the acquisition of Liberty Holdings by Expedia and (ii) the acquisition of a control block of super voting Class B shares by Diller from Expedia.

A. Expedia Agrees to Acquire Liberty Holdings

151. Pursuant to the Merger Agreement, Expedia will acquire Liberty Holdings in an all-stock transaction where it will exchange 0.360 Expedia shares for each Liberty Holding share.¹⁰ All told, Expedia will issue approximately 20.8 million shares worth, as of the filing of this Complaint, over \$2.866 billion to Liberty Holdings' stockholders. Liberty Holdings' former stockholders will own approximately 14% of the post-Merger Company. In connection with the Merger Agreement, Expedia entered into a voting agreement with Malone and Leslie Malone in which they agreed to vote their shares of Liberty Holdings common stock, representing approximately 32% of the total voting power of Liberty Holdings, in favor of the Merger. Expedia's stockholders will not be given the opportunity to vote on the Merger or any of the related Side Deals.

152. Expedia also entered into an Assumption and Joinder to Tax Sharing Agreement (the "Assumption and Joinder Agreement") on April 15, 2019, with Liberty Holdings and Qurate. Pursuant to the Assumption and Joinder Agreement, Expedia will assume all of Liberty Holdings' rights and obligations under the November 4, 2016 Tax Sharing Agreement between Qurate (then known as

¹⁰ Upon closing, Liberty Holdings will merge with and into LEMS II Inc. ("Merger Sub", with Holdings surviving as a wholly owned subsidiary of LEMS I LLC ("Merger LLC"). Immediately thereafter, Liberty Holdings will merge with and into Merger LLC with Merger LLC surviving as a wholly owned subsidiary of Expedia.

Liberty Interactive) and Liberty Holdings. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

B. Expedia Agrees to Diller's Side Deals

153. Diller caused the Company to enter a variety of side agreements that supersede his pre-existing agreements and that provide him and his family extremely valuable side benefits (the "Side Deals"). These Side Deals are unnecessary. If the Expedia Board consisted of truly independent directors, Expedia could have agreed to the Merger (at a fair exchange ratio) and not agreed to the Side Deals. Doing so would have allowed the Company to retire all of its outstanding super voting Class B shares and removed the overhang of a controlling stockholder in perpetuity. Instead, Diller used his influence to secure direct control of Expedia for himself for the rest of his life and thereafter for his likely heir, AVF.

154. *First*, on April 15, 2019, Diller, the D/vF Family Foundation, Liberty Holdings, and Expedia entered into an Exchange Agreement that grants Diller and the D/vF Family Foundation a newly created right to exchange all of the common

shares they own at the time of the closing of the Merger for an equal number of Class B common shares owned by Liberty Holdings.¹¹ As a result, Diller will acquire a number of shares representing approximately 29% of the total voting power of Expedia's stockholders. These shares are referred to herein as the "Original Shares."

155. One of the Merger Agreement's conditions precedent to the obligations of Expedia to close the Merger is that Diller shall be able to consummate the acquisition of the Original Shares pursuant to the Exchange Agreement. As a result, Expedia reserved the right to terminate the Merger if Diller cannot obtain his Side Deals.

156. *Second*, on April 15, 2019, Diller and Expedia entered into a Second Amended and Restated Governance Agreement (the "New Governance Agreement"). The New Governance Agreement provides Diller with a newly created right (the "Purchase/Exchange Right") during the nine months¹² following

¹¹ Specifically, the Exchange Agreement grants Diller and the D/vF Family Foundation the right to exchange a number of common shares equal to: (i) 5,523,452; plus (ii) the number of shares acquired by Diller prior to the exchange pursuant to his exercise of up to 537,500 vested options after deducting a number of shares sufficient to satisfy the aggregate exercise price.

¹² Section 3.03 of the New Governance Agreement provides for temporary extensions of the nine month exercise period in certain circumstances, including in the event of: (i) a change of law such that exercising the Purchase/Exchange Right violating such law; (ii) the issuance of an injunction or other order from a governmental authority of competent jurisdiction preventing or prohibiting the exercise of the Purchase/Exchange Right; and (iii) receipt of a formal written

the close of the Merger to acquire a number of additional Class B common shares equal to 12,799,999, which is the number of Class B shares currently outstanding and owned by Liberty Holdings, minus the number of Original Shares he and the D/vF Family Foundation acquire pursuant to the Exchange Agreement. These shares are referred to herein as the “Additional Shares.”

157. Diller can acquire the Additional Shares directly from the Company either by exchanging ordinary common shares for an equal number of Class B common shares or by purchasing Class B common shares for the price of ordinary common shares as determined by the average closing price of common shares for the five trading days immediately preceding their purchase. Diller can exercise the Purchase/Exchange at any time in whole or part and thus can game the timing of his purchases to take advantage of arbitrary, or perhaps manipulated, changes in Expedia’s trading price.¹³

158. Assuming Diller acquires all of the Class B shares permitted by the Exchange Agreement and New Governance Agreement, Diller will own shares representing approximately 49% of the total stockholder voting power within

notification from a governmental authority communicating a determination that exercise of the Purchase/Exchange Right would violated applicable law.

¹³ The Purchase/Exchange Right may be exercised by third parties so long as Diller retains sole voting control of the Additional Shares before they are converted into ordinary common shares and the third party agrees to be bound by the terms of the New Governance Agreement.

Expedia.¹⁴ Although 49% is sufficient to allow Diller to determine the outcome of every stockholder vote, he also could easily acquire an amount of ordinary common shares in the open market or via stock compensation granted to him by the Board to increase his voting percentage above 50%. Therefore, Diller used the Merger to secure direct ownership of an absolute control block of Expedia shares during his lifetime.

159. All Additional Shares will be automatically converted into ordinary common shares upon the earlier of: (i) Diller's death or disability; (ii) such time as Diller no longer serves as Chairman or Senior Executive of Expedia, with certain exceptions if he is removed from office; or (iii) aggregate transfers by Diller of Original Shares exceeding 5% of the outstanding voting power of the Company (the "Limited Sunset Provision"). Notably, the Original Shares will remain super voting Class B common shares regardless of the occurrence of the foregoing, which allows Diller to transfer them to the person of his choice upon his death (or earlier).

160. Thus, Diller also used the Merger as a mechanism to acquire Class B common shares representing 29% of the voting power within Expedia that he can

¹⁴ This assumes Diller exercises the Purchase/Exchange Right in full by exchanging ordinary common shares he otherwise acquires for the Class B shares. If Diller acquires the Additional shares by purchasing them directly from the Company, Diller will directly own approximately 48% of the total stockholder voting power within Expedia.

pass on to AVF. The ownership of 29% of the vote would make AVF the most powerful stockholder within Expedia and at a minimum will allow him to exercise negative control.

161. Super voting shares are inherently more valuable than ordinary voting shares with the same economic rights. Nonetheless, as a result of the Merger and the Side Deals, Diller is acquiring nearly thirteen million super voting shares and direct, lasting control of Expedia for the price of ordinary voting shares and without paying a control premium. As explained below, this is unfair.

162. Diller and Expedia create the impression that Diller had a preexisting right to acquire Class B shares in connection with the Merger by stating that the rights provided to Diller in the Exchange Agreement and New Governance Agreement are “deemed to be in recognition of and in lieu of” his rights under the pre-existing 2011 Governance Agreement and 2011 Stockholders Agreement. However, as explained above, Diller’s pre-existing contracts, including the Stockholders’ Agreement and Governance Agreement did not provide him with any right to swap, exchange, purchase, or otherwise acquire Class B common shares in connection with the Merger, whether from Liberty Holdings or Expedia.

163. An independent Board would have supported the Merger (at a fair exchange ratio) regardless of Diller’s objections. Diller could not prevent the Merger through his limited proxy over the Malone’s shares of Liberty Holdings

because, as management admitted to the Board, Diller's proxy over the Malone Family shares did not apply to any vote on a merger of Liberty Holdings and Expedia. As a single director of Expedia, Diller alone could not stop the Merger in the boardroom and Diller prevented any vote of Expedia stockholders. Nonetheless, at Diller's behest, the Board inextricably tied the Merger to Diller's receipt of Class B common shares.

VI. THE MERGER AND SIDE DEALS ARE THE RESULT OF AN UNFAIR PROCESS

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VII. THE DILLER SIDE DEALS ARE UNFAIR

210. As discussed above, Diller did not have a contractual right to swap Expedia common shares for Expedia Class B common stock held by Liberty Holdings at any point during or in connection with the Merger. As such, the Special Committee could have executed the Merger and retired the Company's Class B common stock regardless of Diller's preferences. The Special Committee nonetheless agreed to enter into brand new agreements with Diller that allow him to obtain a control block of Expedia Class B shares for no additional consideration.

211. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

212. The "Give": A growing body of academic literature makes clear that preserving the dual class structure was a substantial give on the part of the

Company and its public stockholders. [REDACTED]

[REDACTED]

213. By granting a control block to Diller, the Special Committee provided him the ability to waste corporate resources to pursue private benefits at the expense of public stockholders through activities such as empire building, excessive compensation and perquisites, and subsidizing unprofitable projects or divisions.²¹ For example, Diller was one of the country's highest paid executives for many years, and consistently tops the list of executives that use corporate aircraft the most, including as noted above for trips with co-directors.²² Further, Expedia and IAC have received dismal or failing grades from Glass Lewis and ISS concerning the companies' corporate governance in the past.

²¹ Diller is known to shower IAC and Expedia executives with lavish compensation and perks. As CEO, Defendant Khosrowshahi received a pay increase of 309% (to \$14.4 million) in 2013. In 2015, Defendant Khosrowshahi became the highest paid CEO in the S&P 500, with a pay package worth an estimated \$94.6 million. Since that time, Expedia CEOs have been some of the highest paid CEOs in the travel industry, ranking in the top 3 in 2017. In addition to paying CEOs lavish pay, Expedia also compensates Diller with nearly \$9 million in compensation per year. Further, Diller routinely provides some of the most outrageous perks to himself and his executives. According to *Forbes*, Diller won "the King of the Corporate Jet award" after racking up \$1.28 million in personal flight time. *See also* CNNMoney, "These CEOs Spend the Most of Corporate Jets for Personal Trips, Mar. 7, 2016 (noting that in 2014, Barry Diller spent the most on private jets for personal flight time).

²² *See* Kerry Close, *These CEOs Spend the Most on Corporate Jets for Personal Trips*, Money (Mar. 7, 2016), <http://money.com/money/4250207/ceos-corporate-jets-private-use-barry-diller/>.

214. Moreover, the Special Committee gifted Diller a substantial control block that will act as an effective anti-takeover device for years to come. Minority stockholders are now subject to the whim and caprice of Diller and his heirs when it comes to eventually receiving a control premium for Expedia.

215. The ability of Diller and his heirs to extract private benefits through the dual class structure (or repel an attractive takeover proposal) is a substantial benefit. Moreover, Diller and his heirs will be insulated from public market accountability, leading to agency costs being shouldered disproportionately by minority stockholders. This is especially true here because Diller's and his future heirs' voting power will be disproportionate to their low equity ownership.²³

216. By allowing Diller and AVF to obtain perpetual control over approximately 29% of the Company's voting rights, the Special Committee ignored the fact that any purported benefits of dual class structures tend to dissipate overtime. For instance, a recent study found that on average dual class firms begin

²³ As discussed above, Diller has the right to acquire up to 49% of the Company's voting rights while only owning well less than 10% of the Company's total equity value. In the seminal paper on dual class structures in the U.S., written by Gompers et al., the authors found that firm value increases alongside an increase in insider cash flow rights and decreases with the increase in insider voting rights. *Extreme Governance: An Analysis of Dual Class Firms in the United States*, 23 REV. FIN. STUD. 1051, 1057 (2010). The authors also found firm value to be negatively correlated with the wedge between cash flow rights and voting rights, suggesting a negative impact of the dual class structure on stockholder value.

trading at a discount relative to comparable single class firms about six to nine years after an initial public offering.²⁴

217. The harm to public stockholders is exacerbated by the fact that the Side Deals will transfer dynastic control to Diller's heirs. According to another study, family firms with control-enhancing mechanisms (such as, super voting stock) that employ descendants as CEOs or Chairmen (in particular, second generation descendants) "destroy value."²⁵ That same study found that family firms trade at a "quite large and economically significant" discount where one or more family members from the second generation or later serve as officers, directors, or 5% or more blockholders.

218. [REDACTED]

[REDACTED] As SEC Commissioner Jackson recently noted, one of the problems with perpetual dual-class structures is it insulates "entrenched managers – and their kids, and their kids' kids – from the discipline of

²⁴ See Martin Cremers, Beni Lauterbach, and Anete Pajuste, *The Life-Cycle of Dual Class Firm Valuation*, December 2018, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3062895&download=yes

²⁵ Villalonga, Belen, Amit, Raphael, *How do family ownership, control and management affect firm value?*, Journal of Financial Economics, Volume 80, 385-417 (2006).

the market forever. Simply put: asking investors to put eternal trust in corporate royalty is antithetical to our values as Americans.”²⁶

219. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

220. AVF’s sole qualification to run Expedia is his last name and he owes whatever success he has had in his life to his mother and stepfather. He has no operational experience. His only significant employment has been as the head of Arrow Capital Management, LLC/Arrow Investments, Inc. and Ranger Global Advisors, LLC, two investment firms that manage his family’s money. He only has directorships on the boards of Expedia, IAC, Liberty Holdings, the D/vF Family Foundation, and Friends of the High Line because his mother and stepfather put him on those boards. Unlike Diller, he has not helped shepherd dozens of successful business ventures. He does not have the experience necessary to run a multi-billion-dollar multi-national corporation.

²⁶ Speech, Commissioner Robert J. Jackson, Jr., *Perpetual Dual-Class Stock: The Case Against Corporate Royalty* (Feb. 15, 2018).

221. Nor does he have the required temperament. In 2009, he discovered that his fiancée was exchanging explicit text messages with former NBA star Reggie Miller (“Miller”). In a fit of jealous rage, he began repeatedly calling Miller’s friends and hired a private investigator to follow Miller. Miller was forced to hire an attorney to prepare a restraining order that was never filed. After Miller believed the two resolved their differences, AVF then hired a small plane to fly over the beaches in Southern California trailing a sign that read “Reggie Miller Stop Pursuing Married Women.”

222. In sum, the Special Committee’s decision to continue the dual class structure at a time when Diller is seventy-seven years of age is an enormous and harmful “give,” especially when the Company had the right to complete the Merger and eliminate Expedia’s dual class structure. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

223. The above discussion of the “give” is one reason the Merger and the Side Deals are unfair to the Company and its public stockholders.

224. **The “Get”**: The Special Committee agreed to transfer super-voting stock to Diller for the same price as inferior voting shares, which alone makes the Merger and the Diller Side Deals unfair. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

225. By failing to extract value for the transfer of control to Diller, the Special Committee utterly failed to negotiate for the best price on behalf of the Company and its public stockholders, even though Diller and his heirs will use the control to extract benefits over time. The value of the Side Deals is substantial no matter how one looks at it. For instance, Some studies estimate the average control premium on tradable super voting shares in the U.S. to range from 5.44%²⁷ to

²⁷ Lease, Ronald C., McConnell, John J., and Mikkelsen, Wayne H., *The Market Value of Control in Publicly-Traded Corporations*, Journal of Financial Economics 11, 439-471 (1983)

10.5% on a per share basis.²⁸ Applying a similar premium to the control block transferred to Diller on a per share basis, and using the price of Expedia's common stock at the time of filing this Complaint, Diller received approximately **\$96 million** to **\$185 million** in value as a result of the Merger. Of course, the size of the trading differential between super voting and low-vote stock is a function of the probability that a vote is relevant in a control contest and the magnitude of the private benefits obtainable by controller. Thus, the price differential between one share of super-voting stock and one share of low-vote common stock may understate the value of the control block transferred to Diller.

226. To estimate the value of Diller's control block in the aggregate, it is reasonable to survey recent merger transactions where a controlling stockholder held super voting shares further support Diller receiving a massive windfall. As shown in Exhibit A, recent merger transactions indicate that acquirors will pay a substantial premium for super-voting stock compared to low-vote common stock, with the premium paid for super voting shares ranging from 7.5 percent to 66.7 percent. Applying a similar premium to the control block transferred to Diller on a per share basis, and using the price of Expedia's common stock at the time of filing this Complaint, Diller received approximately **\$132.3 million** to **\$1.177 billion** in value for no additional consideration. This suggests the control block in Diller's

²⁸ Zingales, Luigi, *What Determines the Value of Corporate Votes?*, The Quarterly Journal of Economics, Volume 110: Issue 4, 1047-1073 (Nov. 1995).

hands is worth exponentially more than a single super voting share would fetch on the open market.

227. No matter what premium analysis is applied at this stage, no reasonable person can conclude that Diller's receipt of super voting shares for no consideration and pursuant to a right he did not even possess was fair to the Company and its public stockholders.

228. Instead of extracting value, the Special Committee touts certain "concessions" the Company received from Diller, but none of them alter the unfairness of the Side Deals between the Company and Diller. Indeed, the Special Committee's purported "concessions" ring hollow because Diller never had a right to acquire the Class B common stock in the first place. Touting these as concessions is akin to thanking a mugger for returning your driver's license after she stole everything else in your wallet.

229. More broadly, however, none of the "concessions," individually or collectively, alter the unfairness of the side deal struck between the Company and Diller.

230. ***First***, the Special Committee purportedly negotiated to remove a controlling stockholder – Liberty Holdings – from the Expedia governance structure. This is disingenuous. As discussed above, Diller has stacked the Board and executive ranks with his loyalists. Thus, even if Diller maintains only 29%

(and he can promptly receive Class B shares representing 49%) of the Company's voting power, Expedia will effectively remain under Diller's control.

231. [REDACTED]

[REDACTED] Therefore, through open market purchases and/or executive compensation, Diller can still easily accumulate additional Expedia common stock to give himself absolute control of the Company during his lifetime.

232. *Second*, the Special Committee obtained an equal treatment commitment – i.e., Expedia common stock and Class B stock will be treated the same – in the event of a Change of Control transaction. (See Section 6.02 of the New Governance Agreement.) This provision is toothless. The purpose of the Merger and the Side Deals is to grant Diller dynastic control of the Company, a control block he has no interest in selling.

233. Further, the equal treatment provision does nothing to stop Diller or his heirs from selling the 29% control block of Class B common stock to a third party for a premium. This is so despite Diller's failure to pay a premium for the control block of super voting shares in the first place. Thus, the "concession" is smoke and mirrors, setting up a massive windfall for Diller and/or his heirs in the future.

234. Additionally, Diller can amend or remove the equal treatment provision if the Company's so-called "independent" directors consent. This is a perfunctory procedural hurdle given the fact that Diller has always stacked his boards with close friends and associates. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

235. The equal treatment provision also does not apply to a slew of corporate transactions could occur in the future, such as stock and option issuance, certificate amendments, reclassifications, recapitalizations, share exchanges, spin-offs, split-offs, or numerous other financial engineering that could enable Diller and his heirs to avoid the equal treatment provision all together.

236. *Third*, the Special Committee obtained the Limited Sunset Provision for the Additional Shares acquired by Diller. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Limiting the sunset provision solely to the Additional Shares grants Diller a massive windfall. Moreover, Diller did not pay any consideration for the Additional Shares, and therefore the sunset provision provides no compensation to the Company or the

public stockholders for Diller's rental of the Additional Shares for the remainder of his lifetime.

237. *Fourth*, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

238. *Finally*, the Special Committee touts the Merger and Side Deals as simplifying the Company's governance and capital structure. The Special Committee, however, could have eliminated the Company's dual class structure for good, which would be the ultimate simplification and in the best interests of the Company and its public stockholders. Any argument to the contrary misses the point: Diller did not have a right to acquire the Class B common stock in connection with the Merger, which otherwise would have eliminated the Class B shares from the Company's capital structure.

VIII. THE MERGER IS UNFAIR

239. The Merger is also unfair because the Company paid more than fair value for Liberty Holdings.

240. As an initial matter, Expedia traded economic value to Liberty Holdings in order to reach agreement on the unnecessary Side Deals that provide

Diller with valuable and unique benefits. Prior to the announcement of the Merger, Expedia's and Liberty Holdings' stock prices traded in tandem with one another. However, after the Merger negotiations were disclosed publicly on February 4, 2019, Liberty Holdings broke from its historical trading correlation to Expedia's stock returns, trading 5% higher on a relative basis to Expedia ever since. The following chart is illustrative of this point:



241. Assuming the market is a fair indicator of value, Expedia is overpaying by approximately 5% to acquire Liberty Holdings, which totals approximately \$143.3 million.

242. [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

243. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

244. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

245. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

²⁹ [REDACTED]

[REDACTED]

246. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

247. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

248. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

249. According to the Proxy Statement/Prospectus, issued to Liberty Holdings stockholders in connection with the Merger and signed by the Expedia Board, the Special Committee and management made the decision to forego insurance based on a legal opinion issued by Skadden, Arps, Slate, Meagher & Flom LLP that relied solely on certain representations and assumptions, including those “contained in representation letters from each of Qurate Retail, Liberty Expedia, Expedia Group, Mr. Malone, and Mr. Diller.”

250. The Proxy Statement/Prospectus, however, warns that “[i]f any of the factual representations in any of these representation letters, or any of the assumptions in the signing split-off tax opinion or the closing split-off tax opinion is untrue or incomplete, the signing split-off tax opinion or the closing split-off tax opinion may not be valid.” [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

251. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

CLASS ACTION ALLEGATIONS

252. 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 Expedia 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").

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

254. The Class is so numerous that joinder of all members is impracticable. According to the Company's 2018 Proxy Statement, filed with the SEC on April 30, 2018, as of April 23, 2018, there were 137,347,762 shares of Expedia common

stock issued and outstanding. Thus, upon information and belief, there are thousands of Expedia stockholders throughout the United States.

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

- (a) The Defendants breached their fiduciary duties;
- (b) The Officer Defendants breached their fiduciary duties as an officer, director, and/or controlling stockholder of Expedia;
- (c) Diller and/or the D/vF Family Foundation were unjustly enriched;
- (d) Diller had the right to acquire Expedia Class B shares in connection with the Merger and whether he had the right to block the Merger from occurring without his Side Deals; and
- (e) Plaintiffs and the other members of the Class were injured by the wrongful conduct alleged herein and, if so, what is the proper measure of damages.

256. 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.

257. 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 or substantially impair or impede their ability to protect their interests.

DERIVATIVE ALLEGATIONS

258. To the extent alleged herein, Plaintiff also brings this action derivatively in the right and for the benefit of the Company to redress breaches of fiduciary duty by its officers, directors, and the Company's controlling stockholder, Diller.

259. Plaintiff is a stockholder of Expedia, was a stockholder of the Company at the time of the wrongdoing alleged herein, and has been a stockholder of the Company continuously since that time.

260. Plaintiff will adequately and fairly represent the interests of the Company and its stockholders in enforcing and prosecuting its rights.

DEMAND FUTILITY ALLEGATIONS

261. To the extent derivative claims are alleged herein, Plaintiff did not make a demand on the Board to institute this action because pre-suit demand is

excused. The facts alleged in the preceding paragraphs raise a reasonable doubt that, at a minimum, a majority of the current Board of Directors of Expedia was disinterested and independent, or whether the Merger and Side Deals were a product of a valid exercise of business judgment.

262. Demand is excused because Plaintiff raises a reasonable doubt that at least half of the Board at the time of the filing of this Complaint could properly exercise independent and disinterested judgment in responding to a demand. The Board has fourteen members. At least a majority of the Board – Defendants Diller, Kern, Athey, Battle, Chun, Clinton, Coe, Jacobson, Kaufman, Khosrowshahi, Okerstrom, Shean, and AVF – are interested and/or lack independence from Diller, and therefore are unable to make an impartial decision concerning any litigation demand.

263. *First*, Diller and AVF are interested in the Side Deals at issue, and therefore are incapable of assessing a demand. Diller and AVF undeniably had personal and material financial interests in the Merger and Side Deals that differed from the interests of the Expedia public stockholders; Diller and the Director Defendants conceded as much in forming the Special Committee of purportedly independent members of the Board to review and evaluate the Merger and Side Deals. Diller and AVF are conflicted because they received unique benefits not

shared with Expedia's public stockholders in connection to the Merger and the Side Deals.

264. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] As a result, Diller and AVF, to whom Diller will transfer his dynastic control of Expedia, unfairly benefitted from the Merger and the Side Deals at the expense of the Expedia and its public stockholders. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

265. As set forth above in the Parties Section, eleven of the remaining directors – Defendants Kern, Athey, Battle, Chun, Clinton, Coe, Jacobson, Kaufman, Khsrowshahi, Okerstrom, and Shean – have divided loyalties in connection with the Merger and the Side Deals, and thus are not disinterested and not independent and cannot impartially consider a demand to institute litigation against or otherwise involving Diller on behalf of the Company.

266. Diller has packed the Board with his loyalists. Kern, Athey, Battle, Clinton, Jacobson, Kaufman, Khsrowshahi, Okerstrom, and AVF's longstanding personal, familial, professional, and beneficial ties to Diller demonstrate a lack of

independence from Diller. Additionally, three members of the Board – Chun, Coe, and Shean – are Liberty Holdings’ designees and cannot independently from Liberty Holdings, which benefited from Expedia’s overpayment.

267. Importantly, when analyzing conflicts, the Merger and Side Deals must be viewed as one and the same, as the directors with conflicts to Liberty Holdings’ cannot review the Side Deals impartially (or vice versa) because the wrongdoing concerning both transactions were necessary to effectuate the transaction as a whole.

268. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

269. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

270. In sum, the Director Defendants cannot impartially consider a demand to institute litigation against or otherwise involving Diller on behalf of Expedia.

271. *Second*, the Director Defendants and Special Committee face a substantial likelihood of liability for their misconduct in connection with the Merger and the Diller Side Deals, including by:

(a) [REDACTED]

[REDACTED]

(b) [REDACTED]

[REDACTED]

(c) [REDACTED]

[REDACTED]

[REDACTED]

(d) [REDACTED]

[REDACTED]

(e)

[REDACTED]

[REDACTED]

(f)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(g)

[REDACTED]

[REDACTED]

(h)

[REDACTED]

[REDACTED]

272.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

273.

[REDACTED]

[REDACTED]

[REDACTED]

274.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

275. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

276. [REDACTED]

[REDACTED]

[REDACTED]

277. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

278.

[REDACTED]

CLAIMS FOR RELIEF

COUNT I

Direct and Derivative Claim for Breach of Fiduciary Duty (Against the Director Defendants)

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

280. By virtue of their positions as directors of Expedia, the Director Defendants owe fiduciary duties of care, loyalty, and good faith to the Company and Expedia stockholders. These duties require them to place the interests of Expedia and its stockholders above their own interests and/or the interests of Diller.

281. By reason of the foregoing, the Director Defendants have breached and continue to breach their fiduciary duties. In particular, the Director Defendants have violated their fiduciary duties of care and loyalty by:

■ [REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

282. As a direct and proximate result of the foregoing breaches of fiduciary duty by the Director Defendants, Plaintiff, the Class, and the Company have been harmed and will continue to be harmed, both directly and derivatively, as they have not received fair consideration for the transfer of dynastic control to Diller, have lost the opportunity to influence the management decisions of Expedia on an ongoing, long-term basis, and the value of their investments in Expedia will be diminished.

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

COUNT II

Direct and Derivative Claim for Breach of Fiduciary Duty (Against Diller in His Capacity as Controlling Stockholder)

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

285. Diller is the controlling stockholder of Expedia and, as such, owes Plaintiff, the Class, and the Company the utmost fiduciary duties of care and loyalty.

286. By reason of the foregoing, Diller has breached his fiduciary duties and continues to breach his duties. In particular, Diller has violated his fiduciary

duties by, among other things, causing the Board to agree to the Merger and the Diller Side Deals, which will unfairly perpetuate his control of Expedia.

287. As a result, Plaintiff, the Class, and the Company have been harmed and will continue to be harmed, both directly and derivatively, as they have not received fair consideration for the transfer of dynastic control to Diller, have lost the opportunity to influence the management decisions of Expedia on an ongoing, long-term basis, and the value of their investments in Expedia will be diminished.

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

COUNT III

Direct and Derivative Claim for Breach of Fiduciary Duty (Against Diller and Okerstrom In Their Capacities as Officers)

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

290. By virtue of their positions as officers of Expedia, Defendants Diller and Okerstrom owe fiduciary duties of care, loyalty, and good faith to the Company and Expedia stockholders. These duties require them to place the interests of Expedia and its stockholders above their own interests and/or the interests of Diller and his family. As officers, they are not exculpated for breaches of their duty of care.

291. By reason of the foregoing, Defendants Diller and Okerstrom have breached and continue to breach their fiduciary duties. In particular, Defendants Diller and Okerstrom have violated their fiduciary duties of care and loyalty by:

■ [REDACTED]
[REDACTED]

■ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

■ [REDACTED]
[REDACTED]

■ [REDACTED]
[REDACTED]

■ [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

292. As a result, Plaintiff, the Class, and the Company have been harmed and will continue to be harmed, both directly and derivatively, as they have not

received fair consideration for the transfer of dynastic control to Diller, have lost the opportunity to influence the management decisions of Expedia on an ongoing, long-term basis, and the value of their investments in Expedia will be diminished.

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

COUNT IV

Derivative Claim for Unjust Enrichment (Against Defendants Diller and the D/vF Family Foundation)

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

295. By their wrongful acts and omissions, Defendants Diller and the D/vF Family Foundation were unjustly enriched at the expense of and to the detriment of Expedia and its stockholders through their receipt of Expedia Class B shares for price of Expedia common shares, despite having no contractual right to the beneficial ownership of the Expedia Class B shares.

296. Defendants Diller and the D/vF Family Foundation's unjust enrichment was directly and causally related to the acts that have materially damaged Expedia and its stockholders.

297. Defendants Diller and the D/vF Family Foundation accepted these benefits under such circumstances that it would be inequitable for them to be retained. As alleged above, Diller abused his position as a controlling stockholder, director, and/or officer of the Company and, therefore, Diller and the D/vF Family

Foundation are not justified in retaining the benefits conferred upon them in the form of Expedia Class B stock. These benefits should be disgorged back to the Company or all Expedia stockholders should be granted the same right to participate in the exchange of Expedia common stock for Expedia Class B stock.

298. Additionally, the wrongful conduct alleged herein was continuous, connected, and ongoing throughout the period of misconduct herein. The wrongful conduct thus resulted in continuous, connected, and ongoing harm to the Company and its stockholders.

299. Plaintiff, as a stockholder and representative of Expedia, seeks restitution from Diller and the D/vF Family Foundation and seeks an order from this Court disgorging all profits, unique benefits, and other compensation obtained by them by reason of their wrongful conduct alleged herein.

COUNT V

Declaratory Judgment That Diller Had No Contractual Right or Power to Prevent or Interfere with the Merger (Against All Defendants)

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

301. As discussed above, the 2011 Governance Agreement and 2011 Stockholders Agreement granted Diller certain exchange rights, swap rights, and

or rights of refusal with respect to the Class B shares of Expedia owned by Liberty Holdings in certain limited situations.

302. As explained above, nothing in the 2011 Governance Agreement or the 2011 Stockholders Agreement grants Diller any rights whatsoever to acquire Class B shares in connection with the Merger. However, Diller and the other Defendants claim otherwise.

303. [REDACTED]

[REDACTED]

[REDACTED]

304. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

305. Moreover, Diller's temporally limited proxy over the Liberty Holdings shares owned by Malone did not grant him the ability to vote those shares in connection with an acquisition of Liberty Holdings by Expedia.

Therefore, Diller could not prevent the Liberty Holdings board of directors from approving the Merger.

306. Therefore, Plaintiff seeks a declaration that Diller had no right to acquire Expedia Class B shares in any manner in connection with the Merger and that Diller could not have prevented the consummation of the Merger in the event the Expedia Board, the Liberty Holdings board of directors, and Liberty Holdings stockholders approved the Merger without also approving Diller's entry into the Side Deals.

307. Plaintiff and the Cass have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment and relief in its 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. In the alternative, declaring that demand is excused, and Plaintiff can pursue the derivative claims alleged herein on behalf of the Company;
- C. Finding the Director Defendants liable for breaching their fiduciary duties owed to Plaintiff and the Class;
- D. Finding that Defendant Diller breached his fiduciary duties as a controlling stockholder;

E. Finding that Defendants Diller and Okerstrom breached their fiduciary duties in their capacities as officers of Expedia ;

F. Finding that Defendants Diller and the D/vF Family Foundation have been unjustly enriched;

G. Declaring that Diller had no contractual right to obtain Class B shares in connection with the Merger or to prevent the Merger from occurring without his Side Deals;

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

I. Awarding damages in an amount which may be proven at trial, together with interest thereon;

J. Awarding pre-judgment and post-judgment interest, as well as their reasonable attorneys' and experts' witness fees and other costs; and

K. Awarding such other relief as this Court deems just and equitable.

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit Claims Expedia Executive Orchestrated 'Side Deals' in Merger to Protect Legacy](#)
