IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

ALAN SOBEL, Individually And On Behalf Of All Others Similarly Situated, Plaintiff, v. CLAYTON WILLIAMS ENERGY, INC., CLAYTON W. WILLIAMS, JR., MEL G. RIGGS, DAVIS L. FORD, Ph.D., P. SCOTT MARTIN, RONALD D. SCOTT, JORDAN R. SMITH, and NATHAN W. WALTON, Defendants.	**Case No.** **Judge** **CLASS ACTION** **CLASS ACTION COMPLAINT FOR VIOLATIONS OF SECTIONS 14(a) AND 20(a) OF THE SECURITIES EXCHANGE ACT OF 1934, AND RULE 14A-9** **JURY DEMAND**

Plaintiff Alan Sobel ("Plaintiff"), by and through his undersigned counsel, brings this shareholder class action on behalf of himself and all other similarly situated public shareholders of Clayton Williams Energy, Inc. ("CWEI" or the "Company") against CWEI and the members of the Company's board of directors (collectively, the "Board" or the "Individual Defendants"), for violations of Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§78n(a) and 78t(a) respectively, and Securities and Exchange Commission ("SEC") Rule 14a-9, 17 C.F.R. § 240.14a-9, and Regulation G, 17 C.F.R. § 244.100, in connection with the proposed merger (the "Proposed Merger") between CWEI and Noble Energy, Inc. ("Noble"). Plaintiff alleges the following based upon personal knowledge as to himself, and upon information and belief, including the investigation of Counsel, as to all other matters.

NATURE OF THE ACTION

1. On January 16, 2017, Noble and CWEI jointly announced that they had reached a definitive Agreement and Plan of Merger ("Merger Agreement") under which Noble will acquire all of the outstanding common stock of Clayton for $2.7 billion in Noble stock and cash. According to the Company, the value of the transaction based on Noble's closing stock price as of January 13, 2017, is approximately $139 per CWEI share, or $3.2 billion in the aggregate, including the assumption of approximately $500 million in net debt (the "Merger Consideration").

2. Defendants have violated the above-referenced Sections of the Exchange Act by causing a materially incomplete and misleading Form S-4 Registration Statement (the "S-4") filed with the SEC on March 21, 2017. The Board recommends that CWEI shareholders vote in favor of approving the Proposed Merger at the shareholder special meeting scheduled for April 24, 2017, and agree to exchange their shares pursuant to the terms of the Merger Agreement based on, among other things, the factors examined by the Board to make its recommendation and an opinion rendered by the Company's financial advisor, Goldman, Sachs & Co. ("Goldman").

3. The Merger Consideration and the process by which Defendants agreed to consummate the Proposed Merger are fundamentally unfair to CWEI's public shareholders. The Company's stock price increased from $29.53 to $103.98, an increase of 3.52 times over the six months preceding the announcement of the Proposed Merger.

4. To ensure the success of the Proposed Merger, the Board issued the S-4, which fails to provide shareholders with all material information necessary for them to assess the fairness of the Merger Consideration. In particular, the S-4 fails to disclose: (1) certain material

projections for CWEI, including a reconciliation of the non-GAAP (generally accepted accounting principles) projections to the most directly comparable GAAP measures and the line items used to calculate the non-GAAP measures, (2) a fair summary of the financial analyses performed by Goldman, and (3) the terms of certain confidentiality agreements entered into during the sale process.

5. For these reasons and as set forth in detail herein, Plaintiff seeks to enjoin Defendants from proceeding with the shareholder vote on the Proposed Merger, or, in the event the Proposed Merger is consummated, to recover damages resulting from the Defendants' violations Sections 14(a) and 20(a) of the Exchange Act.

6. On March 21, 2017, Defendants announced that the special meeting of CWEI stockholders to vote on the Proposed Merger will be held on April 24, 2017. Thus, it is imperative that the relief requested herein be granted prior to the April 24, 2017 special meeting to ensure that CWEI stockholders can make an informed decisions on how to vote their stock regarding the Proposed Merger.

PARTIES

7. Plaintiff is, and has been at all relevant times, a shareholder of CWEI common stock.

8. Defendant CWEI is a Delaware corporation headquartered in Midland, Texas. CWEI is an independent oil and gas company engaged in the exploration for and production of oil and natural gas primarily in Texas and New Mexico.

9. Individual Defendant Clayton W. Williams, Jr. is Chairman of the Board, Chief Executive Officer, and a Director of the Company, and has served in such capacities since September 1991.

10. Individual Defendant Mel G. Riggs is, and has been since March 2015, CWEI's President and a Director of the Company.

11. Individual Defendant Davis L. Ford, Ph.D., is, and has been at all relevant times, an Independent Director of the Company. Also, Defendant Ford is the Chairperson of the Nominating and Governance Committee and a member of the Audit and Compensation Committees.

12. Individual Defendant P. Scott Martin is, and since March 2016 has been an Independent Director of the Company. Also, Defendant Martin is the Chairperson of the Compensation Committee and member of the Nominating and Governance Committee.

13. Individual Defendant Ronald D. Scott is, and has been since August 2016, an Independent Director of the Company.

14. Individual Defendant Jordan R. Smith is, and has been since July 2000, an Independent Director of the Company. Also, Defendant Smith is the Chairperson of the Audit Committee and a member of the Compensation and Nominating and Governance Committees.

15. Individual Defendant Nathan W. Watson is, and has been since March 2016, an Independent Director of the Company.

JURISDICTION AND VENUE

16. This Court has subject matter jurisdiction pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331 (federal question jurisdiction) as Plaintiff alleges violations of Section 14(a) and 20(a) of the Exchange Act.

17. Personal jurisdiction exists over each Defendant either because the Defendant is an individual who is either present in this District for jurisdictional purposes or has sufficient

minimum contacts with this District as to render the exercise of jurisdiction over Defendant by this Court permissible under traditional notions of fair play and substantial justice.

18. Venue is proper in this District under Section 27 of the Exchange Act, 15 U.S.C. § 78aa, as well as under 28 U.S.C. § 1391, because: (i) the conduct at issue had an effect in this District; and (ii) CWEI is incorporated in this District.

SUBSTANTIVE ALLEGATIONS

Company Background and Recent Financial Performance

19. CWEI, a Delaware corporation, is an independent oil and gas company engaged in the exploration for and production of oil and natural gas primarily in Texas and New Mexico.

20. As a result of the Company's recent strong financial performance, its stock price increased significantly during the six months preceding the announcement of the Proposed Merger, as reflected in the chart below:

21. Accordingly, it appears that the Merger Consideration offered to CWEI's public shareholders in the Proposed Merger is unfair and inadequate because, among other things, the intrinsic value of the Company's common stock is materially in excess of the amount offered for those securities in the Proposed Merger given the Company's recent financial performance and prospects for future growth and earnings. If consummated, the Proposed Merger will deny Class members their right to fully share equitably in the true value of the Company.

22. It is therefore imperative that CWEI's shareholders receive the material information (discussed in detail below) that Defendants have omitted from the S-4, so that they can properly assess the fairness of the Merger Consideration for themselves and make an informed decision concerning whether or not to vote in favor of the Proposed Merger.

The Materially Misleading S-4

23. On March 21, 2017, Defendants caused the materially incomplete and misleading Amended S-4 Registration Statement (the "S-4) to be filed with the SEC. The information contained in the S-4 has thus been disseminated to CWEI shareholders to solicit their vote in favor of the Proposed Merger. The Individual Defendants were obligated to carefully review the S-4 before it was filed with the SEC and disseminated to the Company's shareholders to ensure that it did not contain any material misrepresentations or omissions. However, the S-4 misrepresents and/or omits material information that is necessary for the Company's shareholders to make an informed decision concerning whether to vote in favor of the Proposed Merger, in violation of Sections 14(a) and 20(a) of the Exchange Act.

24. First, the "Certain Unaudited Financial and Operating Forecasts" section of the S-4 (p. 40-42) is incomplete and misleading because it omits material information concerning the

Company's financial projections. Specifically, the S-4 provides projections for Non-GAAP financial metrics including EBITDA and Free Cash Flow, but fails to provide the line item projections for the metrics used to calculate these non-GAAP measures or otherwise reconcile these non-GAAP projections to GAAP.

25. When a company discloses non-GAAP financial measures in a S-4, the Company must also disclose all projections and information necessary to make the non-GAAP measures not misleading, and must provide a reconciliation (by schedule or other clearly understandable method), of the differences between the non-GAAP financial measure disclosed or released with the most comparable financial measure or measures calculated and presented in accordance with GAAP. 17 C.F.R. § 244.100.

26. Indeed, the SEC has recently increased its scrutiny of the use of non-GAAP financial measures in communications with shareholders. The former SEC Chairwoman, Mary Jo White, recently stated that the frequent use by publicly traded companies of unique company-specific non-GAAP financial measures (as the Company has included in the S-4 here), implicates the centerpiece of the SEC's disclosures regime:

> In too many cases, the non-GAAP information, which is meant to supplement the GAAP information, has become the key message to investors, crowding out and effectively supplanting the GAAP presentation. Jim Schnurr, our Chief Accountant, Mark Kronforst, our Chief Accountant in the Division of Corporation Finance and I, along with other members of the staff, have spoken out frequently about our concerns to raise the awareness of boards, management and investors. And last month, the staff issued guidance addressing a number of troublesome practices *which can make non-GAAP disclosures misleading*: the lack of equal or greater prominence for GAAP measures; exclusion of normal, recurring cash operating expenses; individually tailored non-GAAP revenues; lack of consistency; cherry-picking; and the use of cash per share data. I strongly urge companies to carefully consider this guidance and revisit their approach to non-GAAP disclosures. I also urge again, as I did last December, that appropriate controls be

> considered and that audit committees carefully oversee their company's use of non-GAAP measures and disclosures.[1]

27. In recent months, the SEC has repeatedly emphasized that disclosure of non-GAAP projections can be inherently misleading, and has therefore heightened its scrutiny of the use of such projections.[2] Indeed, on May 17, 2016, the SEC's Division of Corporation Finance released new and updated Compliance and Disclosure Interpretations ("C&DIs") on the use of non-GAAP financial measures that demonstrate the SEC's tightening policy.[3] One of the new C&DIs regarding forward-looking information, such as financial projections, explicitly requires companies to provide *any* reconciling metrics that are available without unreasonable efforts.

29. In order to make the projections included on page 41 of the S-4 materially complete and not misleading, Defendants must provide a reconciliation table of the non-GAAP measures to the most comparable GAAP measures. In fact, the Defendants acknowledge the materially incomplete and misleading nature of said non-GAAP measures in the S-4: "the unaudited financial and operating forecasts require significant estimates and assumptions that make them inherently less comparable to the similarly titled GAAP measures in the historical GAAP financial statements of Noble and CWEI." S-4 at 40. Despite disclosing the misleading

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[1] Mary Jo White, *Keynote Address, International Corporate Governance Network Annual Conference: Focusing the Lens of Disclosure to Set the Path Forward on Board Diversity, Non-GAAP, and Sustainability* (June 27, 2016), https://www.sec.gov/news/speech/chair-white-icgn-speech.html.

[2] *See, e.g.*, Nicolas Grabar and Sandra Flow, *Non-GAAP Financial Measures: The SEC's Evolving Views*, Harvard Law School Forum on Corporate Governance and Financial Regulation (June 24, 2016), https://corpgov.law.harvard.edu/2016/06/24/non-gaap-financial-measures-the-secs-evolving-views/; Gretchen Morgenson, *Fantasy Math Is Helping Companies Spin Losses Into Profits*, N.Y. Times, Apr. 22, 2016, http://www.nytimes.com/2016/04/24/business/fantasy-math-is-helping-companies-spin-losses-into-profits.html?_r=0 (last visited 03/06/2017).

[3] *Non-GAAP Financial Measures, Compliance & Disclosure Interpretations*, U.S. SECURITIES AND EXCHANGE COMMISSION (May 17, 2017), https://www.sec.gov/divisions/corpfin/guidance/nongaapinterp.htm. (last visited 03/06/2017)

and materially incomplete nature of non-GAAP financial measures, Defendants fail to reconcile the non-GAAP measures disclosed in the S-4.

30. Compounding the failure to reconcile the non-GAAP financial metrics is the S-4's reference to a "standalone valuation of CWEI" prepared by CWEI's management and the "Unaudited Standalone Financial and Operating Forecasts of CWEI." Theses references render the S-4 materially misleading because CWEI shareholders are unable to discern the differences between the two references. In other words, did CWEI management use the forecasts to develop its own independent analyses? If no, this fact needs to be disclosed. If yes, CWEI stockholders are entitled to know the extent of the analyses done by management as well as the extent the Board relied upon said analyses in making its recommendation.

31. At the very least, Defendants must disclose the line item projections for the financial metrics---including stock-based compensation, synergies, G&A expenses, MTM commodity hedges, and taxes payable---that were used to calculated the non-GAAP EBITDA and Free Cash Flow metrics, disclosed on page 41 of the S-4. Such projections are necessary to make the non-GAAP EBITDA and free cash flows projections included in the S-4 not misleading, especially in light of the fact that Goldman used "after-tax cash flows," also undefined, in its *Illustrative Net Asset Value Analysis* If corporate directors and officers choose to disclose financial projections in a S-4, they must provide complete and accurate projections, not merely excerpts of certain sets or line items of projections, particularly non-GAAP projections.

32. The S-4 also fails to provide sufficient information for shareholders to assess the valuation analyses performed by Goldman Sachs in support of its fairness opinion.

33. With respect to Goldman's *Selected Transactions Analysis*, the S-4 fails to disclose the individual "adjusted price per acre multiples" for each transaction nor does it disclose the mean, median, or high/low of the observed multiple. Moreover, the S-4 fails to indicate the source or explain the assumption that current production should be valued at $30,000 per flowing barrel of oil equivalent per day. As a result of these omissions, shareholders are unable to assess whether Goldman applied an appropriate multiples range, or, whether the estimated value of current production was reasonable. The omission of such information renders the summaries of these valuation analyses and the implied share price ranges on pages 36-37 of the S-4 misleading.

34. In regards to Goldman's *Illustrative Net Asset Value Analysis*, the S-4 fails to disclose certain key estimates developed by CWEI's management and utilized by Goldman. More specifically, the S-4 fails to disclose management's estimates regarding: (1) "the value of net undeveloped acreage owned by CWEI" in certain counties; (2) "the value of midstream facilities owned by CWEI;" (3) "CWEI's net debt provided by the management of CWEI;" and (4) certain line items from CWEI's forecasts, including the projected "after-tax cash flows" for the reserves through the end of the forecast period. S-4 at 35. Because the S-4 fails to disclose any of the line items used in calculating the forecasts, as discussed above, and Goldman relied upon several of those line items in its *Illustrative Net Asset Value Analysis*, the summary of said analysis found on page 35 is materially incomplete and misleading.

35. As to Goldman's *Illustrative Noble Pro Forma Discounted Cash Flow Analysis*, the S-4 fails to disclose how Goldman calculated unlevered free cash flows from Noble's free cash flow forecasts disclosed on page 41 of the S-4. Because free cash flows accounts for the Company meeting its financial obligations and unlevered free cash flows does not, the line items

used in calculating unlevered free cash flows are particularly material. For instance, there is a general dispute regarding whether stock based compensation should be accounted for in calculating either of these financial metrics. Further, the S-4 discloses the multiples Goldman used in determining Noble's terminal value, but fails to provide the corresponding range of implied perpetuity growth rates. Last, the S-4 does not disclose the pro forma net debt nor the pro form shares outstanding for Noble, as assumed by Goldman. As such, the omission of this material financial information renders the summary of Goldman's *Illustrative Noble Pro Forma Discounted Cash Flow Analysis* on page 37 of the S-4 and the implied present value range set forth therein incomplete and misleading.

36. The S-4 also fails to disclose whether the confidentiality agreements entered into by Evercore in November 2016 contained standstill provisions, as the confidentiality agreements with Noble and Party B did, and if so whether they included Don't Ask Don't Waive ("DADW") provisions and whether the DADW provisions remain in effect or terminated upon announcement of the Proposed Transaction similar to the Party B confidentiality agreement.

37. In sum, the omission of the above-referenced information renders statements in the S-4 materially incomplete and misleading, in contravention of the Exchange Act. Absent disclosure of the foregoing material information prior to the special shareholder meeting to vote on the Proposed Merger, Plaintiff and the other members of the Class will be unable to make a fully-informed decision regarding whether to vote in favor of the Proposed Merger, and they are thus threatened with irreparable harm, warranting the injunctive relief sought herein.

CLASS ALLEGATIONS

38. Plaintiff brings this Action as a class action pursuant to Fed. R. Civ. P. 23 individually and on behalf of all other holders of CWEI common stock (except Defendants

named herein and any person, 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").

39. This action is properly maintainable as a class action.

40. The Class is so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through discovery, Plaintiff believes there are thousands of members in the Class. As of February 23, 2017, there were approximately 17,629,338 shares of CWEI common stock issued and outstanding. The holders of these shares of stock are believed to be geographically dispersed throughout the United States. All members of the Class may be identified from records maintained by CWEI or its transfer agent and may be notified of the pendency of this action by mail, using forms of notice similar to that customarily used in securities class actions.

41. Questions of law and fact are common to the Class and predominate over questions affecting any individual class member. The common questions include, *inter alia*, the following: (i) whether Defendants have misrepresented or omitted material information concerning the Proposed Merger in the S-4 in violation of Section 14(a), SEC Rule 14a-9, and Regulation G; (ii) whether the Individual Defendants may be liable under Section 20(a) of the Exchange Act; and (iii) whether Plaintiff and other members of the Class will suffer irreparable harm if the Proposed Merger is consummated as presently anticipated.

42. Plaintiff's claims are typical of the claims of the other members of the Class. Plaintiff and the other members of the Class have and will sustain legal and equitable damages as a result of Defendants' wrongful conduct as alleged herein.

43. Plaintiff will fairly and adequately protect the interests of the Class, and has no interests contrary to or in conflict with those of the Class that Plaintiff seeks to represent. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature.

44. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Plaintiff knows of no difficulty to be encountered in the management of this action that would preclude maintenance as a class action.

COUNT I
Claim for Violations of Section 14(a) of the Exchange Act Against All Defendants

45. Plaintiff repeats and realleges each allegation set forth herein.

46. Section 14(a)(1) of the Exchange Act makes it "unlawful for any person, by the use of the mails or by any means or instrumentality of interstate commerce or of any facility of a national securities exchange or otherwise, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, to solicit or to permit the use of his name to solicit any proxy or consent or authorization in respect of any security (other than an exempted security) registered pursuant to section 78l of this title." 15 U.S.C. § 78n(a)(1).

47. Rule 14a-9, promulgated by the SEC pursuant to Section 14(a) of the Exchange Act, provides that S-4 communications with shareholders shall not contain "any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading." 17 C.F.R. § 240.14a-9.

48. SEC Regulation G has two requirements: (1) a general disclosure requirement; and (2) a reconciliation requirement. The general disclosure requirement prohibits "mak[ing] public a non-GAAP financial measure that, taken together with the information accompanying that measure, contains an untrue statement of a material fact or *omits to state a material fact necessary in order to make the presentation of the non-GAAP financial measure…not misleading*." 17 C.F.R. § 244.100(b). The reconciliation requirement requires an issuer that chooses to disclose a non-GAAP measure to provide a presentation of the "most directly comparable" GAAP measure, and a reconciliation "by schedule or other clearly understandable method" of the non-GAAP measure to the "most directly comparable" GAAP measure. 17 C.F.R. § 244.100(a). As set forth above, the S-4 omits information required by SEC Regulation G, 17 C.F.R. § 244.100.

49. The omission of information from an S-4 will violate Section 14(a) and Rule 14a-9 if other SEC regulations specifically require disclosure of the omitted information.

50. Defendants have issued the S-4 with the intention of soliciting shareholder support for the Proposed Merger. Each of the Defendants reviewed and authorized the dissemination of the S-4, which fails to provide critical information regarding, amongst other things: (i) financial projections for the Company; and (ii) the valuation analyses performed by Goldman; and (iii) conflicts of interest faced by Company management and Goldman.

51. In so doing, Defendants made untrue statements of fact and/or omitted material facts necessary to make the statements made not misleading. Each of the Individual Defendants, by virtue of their roles as officers and/or directors, were aware of the omitted information but failed to disclose such information, in violation of Section 14(a).

52. The Individual Defendants knew or were negligent in not knowing that the S-4 is materially misleading and omits material facts that are necessary to render it not misleading. The Individual Defendants undoubtedly reviewed and relied upon the omitted information identified above in connection with their decision to approve and recommend the Proposed Merger; indeed, the S-4 states that Goldman reviewed and discussed its financial analyses with the Board, and further states that the Board considered both the financial analyses provided by Goldman as well as its fairness opinion and the assumptions made and matters considered in connection therewith. Further, the Individual Defendants were privy to and had knowledge of the projections for the Company and knew or should have known of the conflicts faced by Goldman and the timing of management's discussions regarding post-close employment.

53. The Individual Defendants were, at the very least, negligent in preparing and reviewing the S-4. The preparation of an S-4 by corporate insiders containing materially false or misleading statements or omitting a material fact constitutes negligence. The Individual Defendants were negligent in choosing to omit material information from the S-4 or failing to notice the material omissions in the S-4 upon reviewing it, which they were required to do carefully as the Company's directors. Indeed, the Individual Defendants were intricately involved in the process leading up to the signing of the Merger Agreement and the preparation of the Company's financial projections.

54. CWEI is deemed negligent as a result of the Individual Defendants' negligence in preparing and reviewing the S-4.

55. The misrepresentations and omissions in the S-4 are material to Plaintiff and the Class, who will be deprived of their right to cast an informed vote if such misrepresentations and omissions are not corrected prior to the vote on the Proposed Merger.

56. Plaintiff and the Class have no adequate remedy at law. Only through the exercise of this Court's equitable powers can Plaintiff and the Class be fully protected from the immediate and irreparable injury that Defendants' actions threaten to inflict.

COUNT II
Claims for Violations of Section 20(a) of the Exchange Act
Against the Individual Defendants

57. Plaintiff repeats and realleges each allegation set forth herein.

58. The Individual Defendants acted as controlling persons of CWEI within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their positions as officers and/or directors of the CWEI, and participation in and/or awareness of the Company's operations and/or intimate knowledge of the false statements contained in the S-4 filed with the SEC, they had the power to influence and control and did influence and control, directly or indirectly, the decision making of the Company, including the content and dissemination of the various statements which Plaintiff contends were false and/or materially incomplete and therefore misleading.

59. Each of the Individual Defendants were provided with or had unlimited access to copies of the S-4 and other statements alleged by Plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

60. In particular, each of the Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company, and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations alleged herein, and exercised the same. The S-4 at issue contains the unanimous recommendation of each of the Individual Defendants to approve the Proposed Merger. Thus,

the Individual Defendants were intimately connected with and directly involved in the making of this document.

61. In addition, as the S-4 sets forth at length, and as described herein, the Individual Defendants were each involved in negotiating, reviewing, and approving the Merger. The S-4 purports to describe the various issues and information that the Individual Defendants reviewed and considered. The Individual Defendants participated in drafting and/or gave their input on the content of those descriptions.

62. By virtue of the foregoing, the Individual Defendants have violated Section 20(a) of the Exchange Act.

63. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment and relief as follows:

A. Ordering that this action may be maintained as a class action and certifying Plaintiff as the Class representative and Plaintiff's counsel as Class counsel;

B. Enjoining Defendants and all persons acting in concert with them from proceeding with the shareholder vote on the Proposed Merger or consummating the Proposed Merger, unless and until the Company discloses the material information discussed above, which has been omitted from the S-4;

C. Rescinding, to the extent already implemented, the Proposed Merger or any of the terms thereof, or granting Plaintiff and the Class rescissory damages;

D. In the event Defendants consummate the Proposed Merger, awarding damages to Plaintiff and the Class;

E. Awarding Plaintiff the costs of this action, including reasonable allowance for Plaintiff's attorneys' and experts' fees; and

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

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: March 22, 2017

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