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7 *Counsel for Plaintiff*

8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

10 JERRY RUBENSTEIN, Individually and on
11 Behalf of All Others Similarly Situated,

12 Plaintiff,

13 v.

14 FINANCIAL ENGINES, INC., BLAKE R.
15 GROSSMAN, JOSEPH A. GRUNDFEST, E.
16 OLENA BERG-LACY, HEIDI KUNZ,
17 ROBERT A. HURET, MICHAEL E.
18 MARTIN, LAWRENCE M. RAFFONE,
19 JOHN B. SHOVEN, and DAVID B. YOFFIE

20 Defendants.

Civil Action No. 5:18-cv-3542

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

- 21 **1. VIOLATIONS OF SECTION**
22 **14(a) OF THE SECURITIES**
23 **EXCHANGE ACT OF 1934**
24 **AND RULE 14a-9**
- 25 **2. VIOLATIONS OF SECTION**
26 **20(a) OF THE SECURITIES**
27 **EXCHANGE ACT OF 1934**

28 Plaintiff Jerry Rubenstein (“Plaintiff”), by his undersigned attorneys, alleges upon personal knowledge with respect to himself, and upon information and belief based upon, *inter alia*, the investigation of counsel as to all other allegations herein, as follows:

NATURE OF THE ACTION

1. This action is brought as a class action by Plaintiff on behalf of himself and the other public stockholders of Financial Engines, Inc. (“Financial Engines” or the “Company”) against Financial Engines and the members of the Company’s board of directors (collectively referred to as the “Board” or the “Individual Defendants,” and, together with Financial Engines, the “Defendants”) for their violations of Sections 14(a) and 20(a) of the Securities Exchange Act

1 of 1934 (the “Exchange Act”), 15 U.S.C. §§ 78n(a) and 78t(a), and Securities and Exchange
2 Commission (“SEC”) Rule 14a-9, 17 C.F.R. 240.14a-9, in connection with the proposed
3 acquisition of Financial Engines by Edelman Financial, L.P. (“Edelman”) through a transaction as
4 alleged in detail herein

5 2. On April 29, 2018, Financial Engines, Edelman, and Flashdance Merger Sub, Inc.,
6 a Delaware corporation and an indirect wholly owned subsidiary of Edelman (“Merger Sub”),
7 entered into an Agreement and Plan of Merger (the “Merger Agreement”), pursuant to which
8 Merger Sub will merge with and into Financial Engines, with Financial Engines continuing as the
9 surviving corporation and as an indirect, wholly owned subsidiary of Edelman (the “Proposed
10 Transaction”).

11 3. Pursuant to the terms of the Merger Agreement, each outstanding share of Financial
12 Engines common stock will be converted into the right to receive \$45.00 per share in cash, without
13 interest and subject to required withholding taxes (“Merger Consideration”).

14 4. On June 8, 2018, in order to convince Financial Engines’ stockholders to vote in
15 favor of the Proposed Transaction, Defendants authorized the filing of a materially incomplete and
16 misleading Schedule 14A Definitive Proxy Statement (the “Proxy”) with the SEC, in violation of
17 Sections 14(a) and 20(a) of the Exchange Act.

18 5. In particular, the Proxy contains materially incomplete and misleading information
19 concerning: (i) financial projections for Financial Engines; (ii) the valuation analyses performed
20 by Financial Engines’ financial advisor, Sandler O’Neill & Partners, L.P. (“Sandler”), in support
21 of its fairness opinion; and (iii) the background process leading up to the Proposed Transaction.

22 6. The special meeting of Financial Engines stockholders to vote on the Proposed
23 Transaction is scheduled for July 16, 2018 (the “Stockholder Vote”). It is imperative that the
24 material information that has been omitted from the Proxy is disclosed to the Company’s
25 stockholders prior to the Stockholder Vote so that they can properly exercise their corporate
26 suffrage rights.

27 7. For these reasons, and as set forth in detail herein, Plaintiff asserts claims against
28 Defendants for violations of Sections 14(a) and 20(a) of the Exchange Act and SEC Rule 14a-9.

1 Plaintiff seeks to enjoin Defendants from holding the Stockholder Vote and taking any steps to
2 consummate the Proposed Transaction unless and until the material information discussed below
3 is disclosed to the Company's stockholders sufficiently in advance of the Stockholder Vote or, in
4 the event the Proposed Transaction is consummated, to recover damages resulting from the
5 Defendants' violations of the Exchange Act.

6 **JURISDICTION AND VENUE**

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

10 9. Personal jurisdiction exists over each Defendant either because the Defendant
11 conducts business in or maintains operations in this District, or is an individual who is either
12 present in this District for jurisdictional purposes or has sufficient minimum contacts with this
13 District as to render the exercise of jurisdiction over Defendant by this Court permissible under
14 traditional notions of fair play and substantial justice.

15 10. Venue is proper in this District under Section 27 of the Exchange Act, 15 U.S.C. §
16 78aa, as well as under 28 U.S.C. § 1391, because: (i) the conduct at issue took place and had an
17 effect in this District; (ii) Financial Engines maintains its primary place of business in this District;
18 (iii) a substantial portion of the transactions and wrongs complained of herein, including
19 Defendants' primary participation in the wrongful acts detailed herein, occurred in this District;
20 and (iv) Defendants have received substantial compensation in this District by doing business here
21 and engaging in numerous activities that had an effect in this District.

22 **PARTIES**

23 11. Plaintiff is, and at all relevant times has been, a stockholder of Financial Engines.

24 12. Defendant Financial Engines is a Delaware corporation and maintains its principal
25 executive offices at 1050 Enterprise Way, 3rd Floor, Sunnyvale, California 94089. Financial
26 Engines is a leading provider of independent, technology-enabled financial advisory services,
27 discretionary portfolio management, personalized investment advice, financial and retirement
28 income planning, and financial education and guidance. The Company's stock is traded on the

1 NASDAQ under the ticker symbol “FNGN”.

2 13. Defendant Blake R. Grossman (“Grossman”) is, and has been at all relevant times,
3 a director of Financial Engines, and currently serves as the Chairman of the Board.

4 14. Defendant Joseph A. Grundfest (“Grundfest”) is, and has been at all relevant times,
5 a director of Financial Engines.

6 15. Defendant E. Olena Berg-Lacy (“Berg-Lacy”) is, and has been at all relevant times,
7 a director of Financial Engines.

8 16. Defendant Heidi Kunz (“Kunz”) is, and has been at all relevant times, a director of
9 Financial Engines.

10 17. Defendant Robert A. Huret (“Huret”) is, and has been at all relevant times, a
11 director of Financial Engines.

12 18. Defendant Michael E. Martin (“Martin”) is, and has been at all relevant times, a
13 director of Financial Engines.

14 19. Defendant Lawrence M. Raffone (“Raffone”) is, and has been at all relevant times,
15 a director of Financial Engines, and currently serves as the Chief Executive Officer (“CEO”) and
16 President of the Company.

17 20. Defendant John B. Shoven (“Shoven”) is, and has been at all relevant times, a
18 director of Financial Engines.

19 21. Defendant David B. Yoffie (“Yoffie”) is, and has been at all relevant times, a
20 director of Financial Engines.

21 22. The parties in paragraphs 13 through 21 are collectively referred to herein as the
22 “Board” or the “Individual Defendants,” and together with Financial Engines, the “Defendants.”

23 **CLASS ACTION ALLEGATIONS**

24 23. Plaintiff brings this class action pursuant to Fed. R. Civ. P. 23 on behalf of himself
25 and the other public stockholders of Financial Engines (the “Class”). Excluded from the Class are
26 Defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated
27 with any Defendant.

28 24. This action is properly maintainable as a class action because:

1 a. The Class is so numerous that joinder of all members is impracticable. As
2 of June 1, 2018, there were 63,716,814 shares of Financial Engines common stock
3 outstanding, held by hundreds to thousands of individuals and entities scattered throughout
4 the country. The actual number of public stockholders of Financial Engines will be
5 ascertained through discovery;

6 b. There are questions of law and fact that are common to the Class that
7 predominate over any questions affecting only individual members, including the
8 following:

9 i) whether Defendants have misrepresented or omitted material
10 information concerning the Proposed Transaction in the Proxy in
11 violation of Section 14(a) of the Exchange Act;

12 ii) whether the Individual Defendants have violated Section 20(a) of
13 the Exchange Act; and

14 iii) whether Plaintiff and other members of the Class will suffer
15 irreparable harm if compelled to vote their shares regarding the
16 Proposed Transaction based on the materially incomplete and
17 misleading Proxy.

18 c. Plaintiff is an adequate representative of the Class, has retained competent
19 counsel experienced in litigation of this nature and will fairly and adequately protect the
20 interests of the Class;

21 d. Plaintiff's claims are typical of the claims of the other members of the Class
22 and Plaintiff does not have any interests adverse to the Class;

23 e. The prosecution of separate actions by individual members of the Class
24 would create a risk of inconsistent or varying adjudications with respect to individual
25 members of the Class, which would establish incompatible standards of conduct for the
26 party opposing the Class;

27 f. Defendants have acted on grounds generally applicable to the Class with
28 respect to the matters complained of herein, thereby making appropriate the relief sought

1 herein with respect to the Class as a whole; and

2 g. A class action is superior to other available methods for fairly and
3 efficiently adjudicating the controversy.

4 **SUBSTANTIVE ALLEGATIONS**

5 **I. Company Background and the Proposed Transaction**

6 25. Financial Engines is a leading provider of independent, technology-enabled
7 financial advisory services, discretionary portfolio management, personalized investment advice,
8 financial and retirement income planning, and financial education and guidance. The Company
9 helps individuals, either online or with an advisor, develop a strategy to reach financial goals by
10 offering a comprehensive set of services, including holistic, personalized plans for saving and
11 investing, assessments of retirement income, and the option to meet face-to-face with a financial
12 advisor at one of more than 140 advisor centers nationwide.

13 26. Financial Engines' advice and planning services cover employer-sponsored defined
14 contribution (DC) accounts (401(k), 457, and 403(b) plans), IRA accounts, and taxable accounts.
15 The Company uses its proprietary advice technology platform to provide our services to millions
16 of individual investors, both DC plan participants in the workplace as well as retail investors, on a
17 cost-efficient basis.

18 27. On April 30, 2018, Financial Engines issued a press release announcing the
19 Proposed Transaction. The press release stated, in relevant part:

20 **FINANCIAL ENGINES ANNOUNCES AGREEMENT TO**
21 **BE ACQUIRED BY HELLMAN & FRIEDMAN**
22 **FOR \$45.00 PER SHARE IN CASH**

23 **Transaction Would Combine Financial Engines and Edelman**
24 **Financial Services,**
25 **Creating Unparalleled Independent Registered Investment**
26 **Advisor**

27 SUNNYVALE, Calif.-- April 30, 2018-- Financial Engines
28 (NASDAQ:FNGN), America's largest independent investment
advisor¹, today announced that it has signed a definitive agreement
to be acquired by funds affiliated with Hellman & Friedman
("H&F") in an all-cash transaction that values Financial Engines at
an aggregate value of approximately \$3.02 billion. Under the terms
of the agreement, Financial Engines shareholders will receive
\$45.00 per share in cash upon the closing of the transaction. The

1 price per share represents more than a 32 percent premium above
2 the closing share price of \$33.95 on April 27, 2018 and more than a
3 41 percent premium above the trailing 90-day volume weighted
4 average stock price for the period ended April 27, 2018. The
5 agreement has been unanimously approved by Financial Engines'
6 board of directors. Edelman Financial Services ("Edelman"), one of
7 the nation's largest independent financial planning and investment
8 management firms, will be combined with Financial Engines as part
9 of the transaction. H&F owns a majority interest in Edelman.

6 Financial Engines and Edelman are two firms with similar proud
7 legacies of providing investors independent financial
8 advice. Founded in 1996, Financial Engines uniquely leverages
9 proprietary technology and a network of advisors to deliver a broad
10 range of financial planning and investment advice to investors
11 through nationwide advisor centers and employees at their
12 workplace. Today, with \$169 billion in assets under management,
13 more than 750 of America's leading employers and largest
14 recordkeepers trust Financial Engines to help over ten million
15 employees with more than \$1 trillion in assets to save and invest for
16 retirement. Over the past thirty years, Edelman has established itself
17 as a leader in personal finance education and financial planning
18 services. Edelman has become one of the largest independent
19 financial planning firms in the nation, managing more than \$21.7
20 billion for more than 35,000 clients across the country. The
21 combined companies, with a shared vision, will create the leading
22 provider of scalable, comprehensive, and unbiased advice for all
23 investors.

15 "After a thorough assessment, the Board has determined that this
16 transaction represents a compelling outcome for our stockholders,
17 customers and employees. It recognizes the value of Financial
18 Engines' franchise and mission while providing stockholders with a
19 substantial premium," said Blake Grossman, Chairman of the Board
20 of Financial Engines.

19 "Financial Engines is extremely excited to enter the next chapter of
20 growth through a partnership with Hellman & Friedman," said Larry
21 Raffone, President and CEO of Financial Engines. "We see
22 tremendous alignment and commitment to our vision, and we
23 believe the H&F partnership and the combination with Edelman is
24 the best path for us to achieve our long-term strategic objectives,
25 while providing significant and immediate upside to our
26 stockholders, employees and clients." Larry will be President, CEO
27 and board member of the combined company.

24 "Financial Engines is a pioneer in the high-growth financial
25 technology sector. It brings a competitively superior investment
26 methodology to its trusted relationships with the largest employers
27 and recordkeepers in America," said Allen Thorpe, Partner at
28 Hellman & Friedman. "We look forward to further investing in
Financial Engines to accelerate its growth and success. We will
work closely with Larry and the rest of the Financial Engines team
and Ryan Parker and the Edelman team to bring these companies
together into a unique business with an unparalleled mission to bring
better financial help to millions of investors."

1 “Our unwavering focus on our clients has allowed us to build a
2 rapidly growing business and we are proud of our long-time
3 commitment to delivering high-quality financial planning and
4 investment advice,” said Edelman Founder and Chairman Ric
5 Edelman. “We are very excited to join forces with Financial Engines
6 to serve more clients better than ever and to accelerate growth in the
7 business.” Ric will be a board member and Chairman of Financial
8 and Investor Education of the combined company.

9 The transaction, which is expected to close in the third quarter of
10 2018, is subject to approval by Financial Engines stockholders,
11 regulatory approval and other customary closing conditions.

12 Sandler O’Neill & Partners, L.P. acted as financial advisor to
13 Financial Engines, and Wachtell, Lipton, Rosen & Katz provided
14 legal counsel. J.P. Morgan, Barclays, Deutsche Bank Securities Inc.,
15 and UBS Investment Bank acted as financial advisors to H&F and
16 Simpson Thacher & Bartlett provided legal counsel to H&F and
17 Edelman.

18 **About Financial Engines**

19 With roots in Silicon Valley, Financial Engines is the nation’s
20 largest independent investment advisor¹. We believe that all
21 Americans – not just the wealthy – should have access to high-
22 quality, unbiased financial help and our client’s best interests should
23 always come first. Today, more than 750 of the nation’s most
24 respected employers trust Financial Engines to offer professional
25 financial help to over ten million employees nationwide.

26 For more information, visit www.financialengines.com.

27 ¹ For independence methodology and ranking, see InvestmentNews
28 Center (<http://data.investmentnews.com/ria/>).

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Engines® is a registered trademark of Financial Engines, Inc. All
advisory services provided by Financial Engines Advisors L.L.C.
Financial Engines does not guarantee future results.

About Edelman Financial Services

Edelman Financial Services is one of the nation’s largest
independent financial planning firms providing financial planning
and investment management services to over 35,000 individuals and
families, and managing more than \$21.7 billion in assets. Edelman
Financial Services has won more than 100 financial, business,
community and philanthropic awards, and offers an investment
philosophy that puts clients first and delivers value through in-depth
financial education, personalized financial plans and access to
experienced financial planners.

For more information, visit www.EdelmanFinancial.com.

About Hellman & Friedman

Hellman & Friedman is a leading private equity investment firm
with offices in San Francisco, New York, and London. Since its

1 founding in 1984, Hellman & Friedman, through its affiliated funds,
2 has raised and managed over \$35 billion of committed capital. The
3 firm focuses on investing in superior business franchises and serving
4 as a value-added partner to management in select industries
5 including financial services, software, business & information
6 services, healthcare, internet & media, retail & consumer, and
7 industrials and energy.

8 For more information on Hellman & Friedman, please visit
9 www.hf.com.

10 28. In sum, the Proposed Transaction will deny Class Members their right to fully share
11 equitably in the true value of the Company because the Merger Consideration appears to
12 inadequately compensate Financial Engines stockholders.

13 29. It is therefore imperative that Defendants disclose the material information they
14 have omitted from the Proxy, discussed in detail below, so that the Company's stockholders can
15 properly exercise their corporate suffrage rights and make a fully informed decision concerning
16 whether to vote in favor of the Proposed Transaction.

17 **II. The Materially Incomplete and Misleading Proxy**

18 30. On June 8, 2018, Financial Engines filed the Proxy with the SEC in connection
19 with the Proposed Transaction. The Proxy solicits the Company's stockholders to vote in favor of
20 the Proposed Transaction. The Individual Defendants were obligated to carefully review the Proxy
21 before it was filed with the SEC and disseminated to the Company's stockholders to ensure that it
22 did not contain any material misrepresentations or omissions. However, the Proxy misrepresents
23 and/or omits material information that is necessary for the Company's stockholders to make an
24 informed decision concerning whether to vote in favor of the Proposed Transaction, in violation
25 of Sections 14(a) and 20(a) of the Exchange Act.

26 ***Material Omissions Concerning Financial Engines' Financial Projections***

27 31. The Proxy provides two Non-GAAP (generally accepted accounting principles)
28 financial metric for Financial Engines—Adjusted EBITDA and Cash Flow—but fails to provide a
footnote and/or definition for each figure that details the specific metrics, adjustments, and/or
inputs that are used to calculate each Non-GAAP financial measure. *See Proxy at 37-38.*

1 32. The failure to disclose the specific metrics, adjustments, and/or inputs that are used
2 to calculate each Non-GAAP renders the Proxy materially incomplete and misleading because
3 Non-GAAP numbers are inherently misleading. Specifically, in contrast to GAAP metrics, Non-
4 GAAP figures are not standardized and, consequently, can be manipulated and easily taken out of
5 context.

6 33. In fact, as Warren Buffet and other financial experts have stated: “References to
7 EBITDA make us shudder. Too many investors focus on earnings before interest, taxes,
8 depreciation, and amortization. That makes sense, only if you think capital expenditures are
9 funded by the tooth fairy.”¹

10 34. With respect to Financial Engines’ projections for Adjusted EBITDA, the Proxy
11 fails to provide such inputs (*i.e.*, Financial Engines’ projected taxes, depreciation, and
12 amortization).

13 35. Furthermore, the only definition of Adjusted EBITDA provided in the Proxy
14 defines Adjusted EBITDA as:

[N]et income before net interest expense (income), income tax
expense (benefit), depreciation, amortization of intangible assets,
including internal use software, amortization and impairment of
direct response advertising, amortization of deferred sales
commissions, non-cash stock-based compensation expense,
expenses related to the closing and integration of acquisitions,
severance and benefits expenses related to restructuring activities
and losses incurred on acquisitions, if applicable for the period.

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19 *See* Proxy at 43.

20 36. However, the Proxy is unclear if this definition of Adjusted EBITDA also applies
21 to Financial Engines’ projections for Adjusted EBITDA on page 38. But if so, the Proxy also fails
22 to disclose Financial Engines’: (i) non-cash stock-based compensation expense; (ii) expenses
23 related to the closing and integration of acquisitions; (iii) severance and benefits expenses related
24 to restructuring activities; and (iv) losses incurred on acquisitions.

25
26
27 ¹ Elizabeth MacDonald, *the Ebitda folly*, FORBES (March 17, 2003),
28 <http://www.forbes.com/global/2003/0317/024.html>.

1 37. Numerous courts have championed the importance of management based financial
2 projections because a company's management has unique insight into their firm's future that the
3 market does not. Stockholders cannot hope to replicate management's inside view of the
4 Company's prospects. The established case law shows the importance (and, hence, materiality) of
5 financial projections to shareholders' decision-making.

6 38. The omission of the above information renders the financial projections included
7 in the Proxy materially incomplete and misleading. If a Proxy discloses financial projections and
8 valuation information, such projections must be complete and accurate. The question here is not
9 the duty to speak, but liability for not having spoken enough. With regard to future events,
10 uncertain figures, and other so-called soft information, a company may choose silence or speech
11 elaborated by the factual basis as then known—but it may not choose half-truths.

12 ***Material Omissions Concerning Sandler's Financial Analyses***

13 39. With respect to Sandler's *Discounted Cash Flow Analysis*, the Proxy fails to
14 disclose the following key components used in their analysis: (i) the inputs and assumptions
15 underlying the selection of the compound annual growth rates ranging from 8.0% to 16.%; (ii)
16 Financial Engines' estimated cash flow from operating activities for the year ending December 31,
17 2018; (iii) Financial Engines' estimated cash used in investing activities for the year ending
18 December 31, 2018; and (iv) the inputs and assumptions underlying the calculation of the 13.1%
19 discount rate. *See* Proxy at 48.

20 40. These key inputs are material to Financial Engine stockholders, and their omission
21 renders the summary of Sandler's *Discounted Cash Flow Analysis* incomplete and misleading. As
22 a highly-respected professor explained in one of the most thorough law review articles regarding
23 the fundamental flaws with the valuation analyses bankers perform in support of fairness opinions,
24 in a discounted cash flow analysis a banker takes management's forecasts, and then makes several
25 key choices "each of which can significantly affect the final valuation." Steven M. Davidoff,
26 *Fairness Opinions*, 55 Am. U.L. Rev. 1557, 1576 (2006). Such choices include "the appropriate
27 discount rate, and the terminal value..." *Id.* As Professor Davidoff explains:
28

1 There is substantial leeway to determine each of these, and any
2 change can markedly affect the discounted cash flow value. For
3 example, a change in the discount rate by one percent on a stream of
4 cash flows in the billions of dollars can change the discounted cash
5 flow value by tens if not hundreds of millions of dollars.... This issue
6 arises not only with a discounted cash flow analysis, but with each
7 of the other valuation techniques. This dazzling variability makes it
8 difficult to rely, compare, or analyze the valuations underlying a
9 fairness opinion *unless full disclosure is made of the various inputs*
10 *in the valuation process, the weight assigned for each, and the*
11 *rationale underlying these choices*. The substantial discretion and
12 lack of guidelines and standards also makes the process vulnerable
13 to manipulation to arrive at the “right” answer for fairness. This
14 raises a further dilemma in light of the conflicted nature of the
15 investment banks who often provide these opinions.

16 *Id.* at 1577-78.

17 41. With respect to Sandler’s *Comparable Company Analysis*, the Proxy fails to
18 disclose the individual multiples Sandler utilized for each of the companies included in the
19 analyses. *See* Proxy at 44-46. A fair summary of the *Comparable Company Analysis* requires the
20 disclosure of the individual multiples for each company utilized; providing the high, mean,
21 median, and low multiples that a banker applied is insufficient, as stockholders are unable to assess
22 whether the banker utilized the appropriate companies, or, instead, applied unreasonable
23 companies in order to drive down the implied valuation of the Company. Accordingly, the
24 omission of the individual multiples renders the summary of these analyses set forth on pages 44
25 through 46 of the Proxy materially incomplete and misleading.

26 42. Similarly, with respect to Sandler’s *Analysis of Precedent Merger Transactions*,
27 the Proxy fails to disclose the individual multiples Sandler utilized for each of the transactions
28 included in the analyses. *See* Proxy at 46-47. For the same reasons discussed above, the omission
of why the individual multiples renders the summary of the analysis materially incomplete and
misleading.

43. Finally, with respect to Sandler’s *Public Company Premiums Paid Analysis*, the
Proxy fails to disclose the identities and individual multiples for the transactions that Sandler
included in the analysis. *See* Proxy at 48. This is particularly troublesome in light of the fact that
Sandler considered transactions “across all industries,” and, in stark contrast to the other analyses
in the fairness opinion, only disclosed the median and mean values that were calculated. The

1 absence of such information forces Company stockholders to blindly rely on the transactions
2 considered referenced simply because Sandler found them satisfactory. Accordingly, the
3 misleading information should be addressed by providing Financial Engines stockholders with the
4 identities and individual values for each transaction considered so the stockholder can assess for
5 themselves the credibility of the analysis.

6 44. In sum, the omission of the above-referenced information renders statements in the
7 Proxy materially incomplete and misleading in contravention of the Exchange Act. Absent
8 disclosure of the foregoing material information prior to the Stockholder Vote, Plaintiff and the
9 other members of the Class will be unable to make a fully-informed decision regarding whether to
10 vote in favor of the Proposed Transaction, and they are thus threatened with irreparable harm,
11 warranting the injunctive relief sought herein.

12 **COUNT I**

13 **(Against All Defendants for Violations of Section 14(a) of the Exchange Act and Rule 14a-9
14 and 17 C.F.R. § 240.14a-9 Promulgated Thereunder)**

15 45. Plaintiff incorporates each and every allegation set forth above as if fully set forth
16 herein.

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

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

1 48. The omission of information from a Proxy will violate Section 14(a) and Rule 14a-
2 9 if other SEC regulations specifically require disclosure of the omitted information.

3 49. Defendants have issued the Proxy with the intention of soliciting shareholder
4 support for the Proposed Transaction. Each of the Defendants reviewed and authorized the
5 dissemination of the Proxy, which fails to provide critical information concerning: (i) financial
6 projections for Financial Engines; (ii) the valuation analyses performed by Financial Engines'
7 financial advisor, Sandler, in support of its fairness opinion; and (iii) the background process
8 leading up to the Proposed Transaction.

9 50. In so doing, Defendants made misleading statements of fact and/or omitted material
10 facts necessary to make statements in the Proxy not misleading. Each of the Individual
11 Defendants, by virtue of their roles as officers and/or directors, were aware of the omitted
12 information but failed to disclose such information, in violation of Section 14(a). The Individual
13 Defendants were therefore negligent, as they had reasonable grounds to believe material facts
14 existed that were misstated or omitted from the Proxy, but nonetheless failed to obtain and disclose
15 such information to shareholders although they could have done so without extraordinary effort.

16 51. The Individual Defendants knew or were negligent in not knowing that the Proxy
17 is materially misleading and omits material facts that are necessary to render it not misleading.
18 The Individual Defendants undoubtedly reviewed and relied upon most if not all of the omitted
19 information identified above in connection with their decision to approve and recommend the
20 Proposed Transaction; indeed, the Proxy states that Sandler reviewed and discussed their financial
21 analyses with the Board, and further states that the Board considered both the financial analyses
22 provided by Sandler as well as their fairness opinion and the assumptions made and matters
23 considered in connection therewith. Further, the Individual Defendants were privy to and had
24 knowledge of the projections for Financial Engines and the details surrounding the process leading
25 up to the signing of the Merger Agreement. The Individual Defendants knew or were negligent in
26 not knowing that the material information identified above has been omitted from the Proxy,
27 rendering the sections of the Proxy identified above to be materially incomplete and misleading.
28 Indeed, the Individual Defendants were required to review the Sandler's analyses in connection

1 with their receipt of the fairness opinion, question Sandler as to the derivation of their fairness
2 opinion, and be particularly attentive to the procedures followed in preparing the Proxy and review
3 it carefully before it was disseminated, to corroborate that there are no material misstatements or
4 omissions.

5 52. The Individual Defendants were, at the very least, negligent in preparing and
6 reviewing the Proxy. The preparation of a Proxy by corporate insiders containing materially false
7 or misleading statements or omitting a material fact constitutes negligence. The Individual
8 Defendants were negligent in choosing to omit material information from the Proxy or failing to
9 notice the material omissions in the Proxy upon reviewing it, which they were required to do
10 carefully as the Partnership's directors. Indeed, the Individual Defendants were intricately
11 involved in the process leading up to the signing of the Merger Agreement and the preparation of
12 the Company's financial projections.

13 53. Financial Engines is also deemed negligent as a result of the Individual Defendants'
14 negligence in preparing and reviewing the Proxy.

15 54. The misrepresentations and omissions in the Proxy are material to Plaintiff and the
16 Class, who will be deprived of their right to cast an informed vote if such misrepresentations and
17 omissions are not corrected prior to the Stockholder Vote. Plaintiff and the Class have no adequate
18 remedy at law. Only through the exercise of this Court's equitable powers can Plaintiff and the
19 Class be fully protected from the immediate and irreparable injury that Defendants' actions
20 threaten to inflict.

21 **COUNT II**

22 **(Against the Individual Defendants for Violations of Section 20(a) of the Exchange Act)**

23 55. Plaintiff incorporates each and every allegation set forth above as if fully set forth
24 herein.

25 56. The Individual Defendants acted as controlling persons of Financial Engines within
26 the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their positions
27 as officers and/or directors of Financial Engines, and participation in and/or awareness of the
28 Financial Engines' operations and/or intimate knowledge of the incomplete and misleading

1 statements contained in the Proxy filed with the SEC, they had the power to influence and control
2 and did influence and control, directly or indirectly, the decision making of the Company,
3 including the content and dissemination of the various statements that Plaintiff contends are
4 materially incomplete and misleading.

5 57. Each of the Individual Defendants was provided with or had unlimited access to
6 copies of the Proxy and other statements alleged by Plaintiff to be misleading prior to and/or
7 shortly after these statements were issued and had the ability to prevent the issuance of the
8 statements or cause the statements to be corrected.

9 58. In particular, each of the Individual Defendants had direct and supervisory
10 involvement in the day-to-day operations of the Company, and, therefore, is presumed to have had
11 the power to control or influence the particular transactions giving rise to the Exchange Act
12 violations alleged herein, and exercised the same. The Proxy at issue contains the unanimous
13 recommendation of each of the Individual Defendants to approve the Proposed Transaction. They
14 were thus directly involved in preparing this document.

15 59. In addition, as the Proxy sets forth at length, and as described herein, the Individual
16 Defendants were involved in negotiating, reviewing, and approving the Merger Agreement. The
17 Proxy purports to describe the various issues and information that the Individual Defendants
18 reviewed and considered. The Individual Defendants participated in drafting and/or gave their
19 input on the content of those descriptions.

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

22 61. As set forth above, the Individual Defendants had the ability to exercise control
23 over and did control a person or persons who have each violated Section 14(a) and Rule 14a-9 by
24 their acts and omissions as alleged herein. By virtue of their positions as controlling persons, these
25 Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate
26 result of Individual Defendants' conduct, Plaintiff will be irreparably harmed.

27 62. Plaintiff and the Class have no adequate remedy at law. Only through the exercise
28 of this Court's equitable powers can Plaintiff and the Class be fully protected from the immediate

1 and irreparable injury that Defendants' actions threaten to inflict.

2 **PRAYER FOR RELIEF**

3 **WHEREFORE**, Plaintiff prays for judgment and relief as follows:

4 A. Declaring that this action is properly maintainable as a Class Action and certifying
5 Plaintiff as Class Representative and his counsel as Class Counsel;

6 B. Enjoining Defendants and all persons acting in concert with them from proceeding
7 with the Stockholder Vote or consummating the Proposed Transaction, unless and until the
8 Company discloses the material information discussed above which has been omitted from the
9 Proxy;

10 C. Directing the Defendants to account to Plaintiff and the Class for all damages
11 sustained as a result of their wrongdoing;

12 D. Awarding Plaintiff the costs and disbursements of this action, including reasonable
13 attorneys' and expert fees and expenses; and

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

15 **JURY DEMAND**

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

17
18 DATED: June 13, 2018

Respectfully submitted,

19 /s/ David E. Bower

David E. Bower

20 **OF COUNSEL**

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