EFiled: Mar 18 2016 04:08PM EDT
Transaction ID 58742583
Case No. 12108-VCMR

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

THE FREDERICK HSU LIVING TRUST, Plaintiff, v. ODN HOLDING CORPORATION, OAK HILL CAPITAL PARTNERS III, L.P., OAK HILL CAPITAL MANAGEMENT PARTNERS III, L.P., OHCP GENPAR III, L.P., OHCP MGP PARTNERS III, L.P., OHCP MGP III, LTD., ROBERT MORSE, WILLIAM PADE, DAVID SCOTT, DEBRA DOMEYER, JEFFREY KUPIETZKY, ALLEN MORGAN, LAWRENCE NG, SCOTT JARUS, KAMRAN POURZANJANI, ELIZABETH MURRAY, TODD H. GREENE, and SCOTT MORROW, Defendants.	)	C.A. No. 12108 **PUBLIC VERSION FILED MAR. 18, 2016**

VERIFIED CLASS ACTION AND DERIVATIVE COMPLAINT FOR BREACHES OF FIDUCIARY DUTY AND UNLAWFUL STOCK REDEMPTION

Frederick Hsu, an individual acting as trustee of The Frederick Hsu Living Trust (the "Trust" or "Plaintiff"), by and through its undersigned counsel, on behalf of all other similarly situated stockholders of ODN Holding Corporation ("ODN" or the "Company") and on behalf of nominal defendant ODN, brings the following complaint against ODN, ODN's controlling stockholder ("Oak Hill"), the current members and certain former members of ODN's Board of Directors (the "Board"), and certain current and former ODN officers. Plaintiff makes the following allegations upon knowledge as to itself and upon information and belief

(including the investigation of counsel and Plaintiff's ongoing demand for ODN's books and records under 8 *Del. C.* § 220) as to all other matters, and alleges as follows:

NATURE OF THE ACTION

1. This action seeks relief from ODN's directors, officers, and controlling stockholder for breaching their fiduciary duties by causing the Company to abandon its successful growth and investment strategy which was benefitting its common stockholders, in favor of selling off assets and hoarding cash so that ODN's controlling stockholder could cash out its investment non-ratably through the exercise of its redemption right.

2. This action further challenges as unlawful the subsequent partial redemptions of that controlling stockholder's preferred stock totaling $85 million (the "Redemption Payments" and, together with the above misconduct, the "Redemption Transactions") when the Company lacked "legally available funds" from which to make the Redemption Payments, as required by Delaware law and ODN's certificate of incorporation.

3. In late 2007, Defendant Oak Hill agreed to purchase 53,380,783 shares of ODN Series A Preferred Stock for $150 million (the "Preferred Stock"). The Preferred Stock included a redemption right whereby at any time after February 12, 2013, Oak Hill at its option could compel the Company to redeem its

Preferred Stock at the $150 million original issue price out of "funds legally available therefor."

4. At the time of Oak Hill's investment, ODN was a leading online marketing and advertising company specializing in selling, developing, and registering Internet domain names, and its four robust business lines generated over $200 million in annual revenues **REDACTED** ODN's success was attributable in large part to its growth-by-acquisition strategy.

5. As a function of its Preferred Stock investment, Oak Hill was entitled to and did appoint two of its employees to ODN's eight-member Board. However, Oak Hill soon grew dissatisfied with its influential but non-controlling position, and in 2009, obtained voting control over ODN by purchasing for $24 million common stock from the Company's co-founder and director Lawrence Ng sufficient to give it a majority interest. Oak Hill then appointed its third employee to ODN's Board.

6. For a time, the Company continued its growth strategy. However, in or before 2011, Oak Hill resolved to liquidate its investment and determined the most effective way to do so was by exercising its contractual redemption right in February 2013, on its first possible exercise date.

7. Under Delaware law and the terms of its Preferred Stock, however, Oak Hill would only be able to extract cash from the Company non-ratably

pursuant to its redemption right to the extent the Company had funds legally available. Given that the Company's growth model necessitated that most of its free cash be utilized for acquisitions and research and development, the Company was unlikely to have enough funds on hand in February 2013 to redeem any significant portion of Oak Hill's $150 million investment. Thus, Oak Hill resolved to stop ODN from carrying out its business strategy and instead to cause the Company to liquidate assets and hoard cash until Oak Hill would be able to exercise its redemption right.

8. To achieve its goal at the expense of the Company and its common stockholders, Oak Hill called upon ODN's heavily conflicted Board. Three of ODN's eight Board members were partners at Oak Hill and depended upon it for their principal source of income. Further, they owed fiduciary duties to Oak Hill, whose interests conflicted with the interests of ODN's common stockholders. A fourth Board member owed his position as the Company's Chief Executive Officer—from which he derived his principal source of income—to Oak Hill, and stood to receive material bonus compensation if the Company successfully redeemed a portion of Oak Hill's Preferred Stock. A fifth Board member had a social and business relationship with one of Oak Hill's appointed employee directors, and had worked for 15 years as a corporate attorney for Oak Hill's current/long-time counsel. Moreover, he and the sixth and seventh Board members

sought recurring work as directors and executives at technology companies in Silicon Valley and Southern California. As a result, they had much more to gain by being loyal to Oak Hill, which could offer them future directorships at any number of its portfolio companies in the region or conversely blacklist them from the tech company community if they acted against its interests, than by being loyal to the Company and its common stockholders. The final Board member was similarly unlikely to voice opposition to Oak Hill, as he had recently sold most of his interest in the Company to Oak Hill for a $24 million payday and also sought recurring work as a director and executive at technology companies in Southern California. Consequently, none of ODN's eight directors were independent of Oak Hill or disinterested in the Redemption Transactions.

9. In 2011, Oak Hill used its majority power and control to exploit those conflicts and cause the Board to implement its self-serving scheme. First, the Board halted the Company's acquisition-based growth strategy and instead caused the Company to hoard cash in anticipation of the redemption. These actions caused the Company's cash reserves to increase from **REDACTED** in 2010 to over **REDACTED** in 2011, at a time at least two years before Oak Hill's redemption right could even be exercised and when the Board's fiduciary duties required it to prefer the interests of the Company and its common stockholders. In 2012, the Board continued its disloyal scheme by systematically divesting two of the Company's

four business lines during a period that ODN's management considered unfavorable for divestitures. Rather than utilize the proceeds of these untimely asset sales for growing the Company's remaining business lines, making strategic acquisitions, or even issuing a dividend in which all of the Company's stockholders ratably could share, the Board again caused ODN to hoard its cash. By the end of 2012, ODN had amassed a cash stockpile of over **REDACTED** —more than three times ODN's average cash balance from 2007 through 2010. Oak Hill's and the Board's disloyal conduct starved the Company of the cash necessary to invest sufficiently in the strategic acquisitions and research and development that were achieving long-term growth for the benefit of the Company and its common stockholders.

10. On February 13, 2013, Oak Hill exercised its redemption right for the entirety of its Preferred Stock—the first day in which it was contractually able to do so. On March 18, 2013, the conflicted Board caused ODN to redeem $45 million of Oak Hill's Preferred Stock. In 2014, the conflicted Board caused ODN to sell off one of its two remaining business lines for **REDACTED** and, in turn redeem another $40 million of Oak Hill's Preferred Stock. Following the Board's subsequent dismantling of ODN's sole remaining business line, the Company now generates annual revenue of **REDACTED** and annual net income of **REDACTED**

11. In sum, ODN's Board, key officers, and controlling stockholder expropriated value from the Company and its common stockholders by causing ODN to liquidate assets and hoard cash for the sole purpose of increasing the amount of funds available for Oak Hill to extract non-ratably through its redemption right, at a time when the Defendants had no contractual obligation to do so and their fiduciary duties required them to prefer the interests of the Company's common stockholders. The resultant Redemption Payments were the culmination of the Defendants' inequitable scheme to "tunnel" cash and assets from ODN to its controlling stockholder, and constitute a further breach of fiduciary duty. The Redemption Payments were also unlawful because the Company lacked sufficient "surplus" from which to make the payments and the payments impaired the Company's ability to operate as a going concern.

THE PARTIES

12. Plaintiff The Frederick Hsu Living Trust is a California living trust. At all relevant times, the Trust has been the record holder of 19,931,855 shares of ODN common stock, representing approximately 25.6 % of ODN's outstanding common stock.

13. Non-party Frederick Hsu is an individual, and the co-founder and a former board member and officer of ODN's predecessor/now main subsidiary, Oversee.net ("Oversee"). Mr. Hsu is the Trust's sole trustee.

14. Nominal Defendant ODN Holding Corporation is a privately held Delaware corporation with its principal executive offices situated at 550 South Hope Street, Suite 200, Los Angeles, California. The Company, through Oversee, purports to be an innovative technology company that owns and operates a portfolio of consumer websites designed to help users discover, compare, and save. The Company purports to continue to nurture its start-up mentality and continually invent new technology and applications to engage consumers.

15. Defendant Oak Hill Capital Partners III, L.P. ("Oak Hill Capital Partners") is a Cayman Islands exempt limited partnership. Defendant Oak Hill Capital Management Partners III, L.P. ("Oak Hill Capital Management") is also a Cayman Islands exempt limited partnership. Defendant OHCP GenPar III, L.P. ("OHCP GenPar") is the general partner of Oak Hill Capital Partners and Oak Hill Capital Management. Defendant OHCP MGP Partners III, L.P. ("OHCP MGP Partners") is the general partner of OHCP GenPar. Defendant OHCP MGP III, Ltd. is the general partner of OHCP MGP Partners ("OHCP MGP Ltd.," and together with Oak Hill Capital Partners, Oak Hill Capital Management, OHCP GenPar, and OHCP MGP Partners, "Oak Hill"). Oak Hill maintains its offices at 2775 Sand Hill Road, Suite 220, Menlo Park, California 94025. Oak Hill is ODN's controlling stockholder and sole preferred stockholder. Oak Hill purports to manage private equity funds with more than $8 billion of initial capital

commitments, and invest in four core sectors: industrials; services; consumer, retail and distribution; and media and communications. Oak Hill regularly invests in Delaware entities and has previously been before Delaware courts.

16. Defendants William Pade and David Scott are partners at Oak Hill who at all relevant times served on ODN's Board. Defendant Pade additionally served on ODN's Compensation Committee. Defendant Robert Morse (together with Pade and Scott, the "Oak Hill Director Defendants") was a partner at Oak Hill and served on ODN's Board from 2008 until 2013, when he and Oak Hill parted ways.

17. Defendant Debra Domeyer is ODN's former Co-President now Chief Executive Officer, and has served on ODN's Board since at least 2012. From 2008 until her appointment as Co-President, Domeyer served as ODN's Chief Technology Officer. Defendant Jeffrey Kupietzky served on ODN's Board and acted as ODN's President and Chief Executive Officer until August 5, 2011. Both Domeyer and Kupietzky derived their principal source of revenue from their employment as the Company's CEO, and each had bonus agreements with the Company providing material bonus compensation in the event the Company redeemed Oak Hill's Preferred Stock.

18. Defendant Allen Morgan was one of two members on ODN's special committee (the "Special Committee"), and at all relevant times served on ODN's

Board. Morgan had a personal and professional relationship with Oak Hill Director Defendant Pade, and had worked for 15 years as a corporate attorney advising technology startups for Oak Hill's current and long-time counsel, Wilson Sonsini Goodrich & Rosati ("Wilson Sonsini"). Morgan also serves as a recurring director and executive for various companies in Silicon Valley and Southern California.

19. Defendant Lawrence Ng is ODN's co-founder and served on its Board until October 19, 2015. Ng also served as the other member of ODN's Compensation Committee. In 2009, Ng profited $24 million by selling a significant portion of his interest in the Company to Oak Hill. Ng also serves as a recurring director and executive for various companies in Southern California, and in 2015 founded OnRampFund.com ("OnRamp Fund"), a Los Angeles-based incubator that invests in early stage startups.

20. Defendant Scott Jarus (together with Morgan, the "Special Committee Defendants") was the other member of ODN's Special Committee, and at all relevant times served on ODN's Board. He also serves as a recurring director and executive for various companies in Southern California, and is an advisor for OnRamp Fund.

21. Defendant Kamran Pourzanjani (together with the Oak Hill Director Defendants, Domeyer, Kupietzky, the Special Committee Defendants, and Ng, the

"Director Defendants") served on ODN's Board until December 7, 2011. Pourzanjani also serves as a recurring director and executive for various companies in Southern California, and is an advisor for OnRamp Fund.

22. Defendant Elizabeth Murray is ODN's Executive Vice President and at all relevant times served as ODN's Chief Financial Officer. Defendant Todd H. Greene (together with Domeyer and Murray, the "Management Team") was ODN's Senior Vice President and at all relevant times served as ODN's General Counsel and Secretary. Defendant Scott Morrow (together with Kupietzky and the Management Team, the "Officer Defendants") served as ODN's Co-President from June 16, 2011 to March 1, 2012.

JURISDICTION

23. This Court has jurisdiction over this action pursuant to 10 *Del. C.* § 341 and 8 *Del. C.* § 111. In addition, ODN's Amended and Restated Bylaws provide that the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for any action or proceeding asserting a claim of a breach of fiduciary duty owed by any director or officer of ODN to its stockholders.

24. This Court has jurisdiction over the Director and Officer Defendants under 10 *Del. C.* § 3114 as the directors and/or officers of a Delaware corporation, and under 10 *Del. C.* § 3104.

25. This Court has jurisdiction over ODN because it is a Delaware corporation.

26. This Court has jurisdiction over Oak Hill under 10 *Del. C.* § 3104.

BACKGROUND

A. Hsu and Ng Form ODN's Predecessor, Oversee, And Grow It Into An Industry Leader

27. In 2000, Hsu and Ng co-founded Oversee, a California corporation. From 2000-2007, Hsu helped grow Oversee into a leading provider of technology-based marketing solutions to online publishers and advertisers worldwide, using its industry expertise and leading presence in domain name "real estate" management and development. Its competitors included companies such as GoDaddy and NameMedia Inc.

28. For the year ended 2007, Oversee's revenues exceeded $200 million and its net income exceeded **REDACTED** Oversee's revenues were derived from the following four business lines:

a. *Domain Monetization Services*: which drives Internet traffic derived from the Company's network of owned and managed domain names to online advertisers using proprietary technologies that allow the Company to direct the online user to the most relevant advertiser;

b. *Vertical Markets*:[1] which delivers personal and/or other unique information, or leads, provided by Internet users to marketers collected on the Company's websites;

c. *Domain Aftermarket Services*: which sells domain names predominantly on behalf of third parties; and

d. *Domain Registrar Services*:[2] which charges fees for domain name registrations and other ancillary services such as privacy.

29. Oversee's business lines were composed of numerous subsidiary companies, as it thrived in a competitive environment due to its growth-by-acquisition strategy and consistent investment in ongoing research and development. Oversee's 2007 audited financial statements show that the Company had made numerous recent acquisitions:

a. On June 6, 2006, Oversee purchased **REDACTED** a domain name acquisition entity, for **REDACTED**

b. On October 2, 2006, Oversee purchased customer contracts and receivables from **REDACTED** a lead generation provider for the mortgage banking industry, for **REDACTED**

[1] Then known as "Marketing Services."
[2] Then known, together with Domain Aftermarket Services, as "Value Added Services."

c. On January 9, 2007, Oversee purchased **REDACTED** Inc., an online Web site focused on providing consumers with a side-by-side comparison of prices from various travel sites, for **REDACTED**

d. On June 14, 2007, Oversee purchased **REDACTED** and **REDACTED** (collectively, **REDACTED**), a domain name acquisition services business offering daily auctions of expiring and recently deleted domain names, for **REDACTED**

e. On December 14, 2007, Oversee purchased **REDACTED** **REDACTED**, a leader in domain name registration, aftermarket sales, auctions, and appraisal and escrow services, for **REDACTED**

B. Oak Hill Invests $150 million In ODN, Valuing The Company At More Than $400 Million

30. On December 20, 2007, Oversee agreed to issue Oak Hill the Preferred Stock in exchange for $150 million gross proceeds. As a consequence, on December 31, 2007 Oversee became a wholly owned subsidiary of ODN, a holding company formed to facilitate the transaction. On February 12, 2008, the transaction closed and Oak Hill acquired 53,380,783 shares of ODN Series A Preferred Stock for $2.81 per share, implying a Company valuation of over $400 million.

31. The Preferred Stock included a redemption right whereby at any time after February 12, 2013, Oak Hill at its option could exercise such right and

compel the Company to redeem its Preferred Stock for the original $150 million issue price, provided the Company had sufficient "funds legally available therefor." If the Company did not have $150 million of such funds available at the time Oak Hill exercised its redemption right, the Company was to use whatever funds it did have to make continued partial redemptions until it redeemed all of the Preferred Stock.

32. The Preferred Stock also provided Oak Hill the right to elect two directors to ODN's eight-member Board. Oak Hill chose to appoint to ODN's Board Robert Morse—its partner who had sponsored the investment, and William Pade—another partner in its employ.

33. However, Oak Hill soon grew dissatisfied with its minority position in the Company. In 2009, it acquired voting control over ODN by purchasing for $24 million sufficient shares of ODN common stock from then director and Chairman Lawrence Ng to give it a majority interest. Following its takeover of ODN, Oak Hill appointed David Scott, at the time an Oak Hill vice president, as its third director to the Company's Board.

34. Under Oak Hill's control, ODN initially continued its growth strategy. On December 31, 2009, ODN purchased **REDACTED** an online website focused on providing consumers with a side-by-side comparison of prices from various credit card offers, for **REDACTED** On April 16, 2010, ODN

purchased **REDACTED** an online website focused on providing travelers with the ability to book reservations for airport parking lots based on up-to-date parking information, for **REDACTED** On November 10, 2010, ODN purchased Corporation (**REDACTED**), an online website focused on providing consumers with a side-by-side comparison of prices from various online retail stores of searched products, for **REDACTED**

C. Oak Hill Gets Cold Feet And Directs ODN's Conflicted Board To Ensure The Successful Liquidation Of Its Investment

35. In or before 2011, Oak Hill abruptly decided to pull the plug on its investment, and concluded that exercising its contractual redemption right in February 2013 was the most effective way to achieve the return of its capital. However, under Delaware law and ODN's certificate of incorporation, Oak Hill's redemption right only entitled it to extract cash non-ratably from the Company to the extent the Company had funds legally available for redemption. Because the Company was unlikely to have any significant amount of such funds available by February 2013 if it continued its successful growth strategy which was benefiting its common stockholders, Oak Hill determined to use its majority power and control to cause ODN to cease that growth strategy and instead sell assets to generate and stockpile cash.

36. To facilitate its scheme, Oak Hill called upon ODN's conflicted Board, which was in no position loyally to consider whether implementing Oak

Hill's liquidation strategy was in the best interest of the Company or its common stockholders. At the time, the Board consisted of eight members: the three Oak Hill Director Defendants, Kupietzky, Morgan, Ng, Jarus, and Pourzanjani. All of them had disabling conflicts of interest.

37. The three Oak Hill Director Defendants, Morse, Pade, and Scott, depended on Oak Hill for their principal source of income and owed fiduciary duties both to ODN and to Oak Hill. However, Oak Hill's interests had diverged from those of ODN's common stockholders because Oak Hill was no longer satisfied with ODN's steady returns and long-term profitability, but instead sought the return of its capital as soon as possible. These divergent interests created a disabling conflict of interest for the Oak Hill Director Defendants.

38. Director Kupietzky owed his materially lucrative position as the Company's CEO, from which he derived his principal source of income, to Oak Hill—the Company's controlling stockholder. Moreover, he had a bonus agreement with the Company providing him with material bonus compensation in the event Oak Hill achieved a "liquidity event," which was defined to include the redemption of Oak Hill's Preferred Stock. Kupietzky was thus personally financially interested in the Redemption Transactions and was beholden to Oak Hill for his CEO position, such that his ability to act loyally with respect to the Company and its common stockholders was compromised.

39. Morgan had disabling social and business ties to Oak Hill and its principals. Morgan had served with Oak Hill Director Defendant Pade for a number of years on the board of directors for Varsity Group, Inc., and he and Pade, as well as their sons, have a long-standing social relationship with each other. Morgan was also involved with an advisory council affiliated with Oak Hill, and had worked for over 15 years as a corporate attorney at the Silicon Valley office of Wilson Sonsini—Oak Hill's current and longtime counsel. Additionally, as a recurring director for various companies in Silicon Valley, Morgan was beholden to Oak Hill, a private equity fund with more than $8 billion under management, both for future director and executive appointments and to avoid being blacklisted in the tech company community.

40. Ng had recently sold most of his interest in the Company to Oak Hill for a $24 million payday, and had subsequently mentally checked out of his responsibilities for the Company, which included Chairman. Ng was also beholden to Oak Hill for future director and executive appointments and feared being blacklisted.

41. Jarus and Pourzanjani were also recurring directors for various companies in Southern California, and were dependent on Oak Hill for future director and executive appointments and feared being blacklisted.

D. The Board Implements A Liquidate-And-Hoard Scheme In Furtherance Of Oak Hill's Directive And To The Detriment Of The Company's Common Stockholders

42. To facilitate its self-serving scheme, Oak Hill first used its majority control to cause the conflicted Board to abandon the Company's growth strategy. In 2011, the Company made no acquisitions and invested nothing for internal growth through research and development. ODN ended the year with a cash balance of **REDACTED** up from **REDACTED** in 2010. The Board did not disclose its redemption funding scheme to the Company's common stockholders, who had no reason to suspect that the stockpiled cash would not be used to grow the business as it traditionally had. Moreover, despite the Company's shift from growth to liquidation in anticipation of Oak Hill's exercise of its redemption right, ODN's 2011 audited financial statements continued to report that the Company "believes that it is not probable that a redemption of the Preferred Stock will occur." That misleading statement belied Oak Hill's and the Board's true intentions—to ensure the maximum redemption of Oak Hill's Preferred Stock as soon as possible, by any means necessary.

43. In 2012, the Board ramped up its efforts to generate cash that it could "tunnel" to Oak Hill through the redemption of Oak Hill's Preferred Stock. On January 31, 2012, ODN sold two of its four business lines, Domain Aftermarket Services and Domain Registrar Services, for **REDACTED** The sale included

the **REDACTED** and **REDACTED** businesses which the Company had purchased in 2007 for **REDACTED** and **REDACTED** respectively. While the divestitures benefited Oak Hill by increasing the amount of funds the Company potentially could have available for redemption, they simultaneously slashed ODN's ability to generate revenue as a going concern. For 2011, ODN's four business lines generated **REDACTED** in total annual revenue. But following the divestitures, ODN's remaining Domain Monetization and Vertical Markets business lines generated just **REDACTED** in total annual revenue for the Company in 2012. Presumably to give the impression that ODN still had a diversified revenue stream, however, the Company's 2012 audited financial statements for the first time broke the Company's Vertical Markets business line into its component parts of Travel, Consumer Finance, and Retail.

E. Domeyer Takes The Reins As CEO, And The Board Immediately Sterilizes Her And The Management Team By Granting Them Bonus Agreements Conditioned On Achieving A Redemption For Oak Hill

44. Kupietzky stepped down as the Company's CEO in August 2011. Following his departure, Domeyer and Morrow shared responsibility for ODN's day-to-day operations as Co-Presidents.

45. In December 2011, Pourzanjani stepped down from the Board.

46. Following the provisional tenure of the two Co-Presidents, the Board appointed Domeyer as the Company's sole CEO at a meeting in May 2012. Domeyer became a member of the Board no later than that date.

47. At the same meeting, the Board authorized and instructed Murray to prepare materials for potential lenders and begin discussions regarding the renewal of the Corporation's existing credit facility (which was set to expire in November 2012) or a replacement credit facility, and explore whether there would be any potential financing from such lenders to pay for a portion of the redemption amount. Notably,

REDACTED

the Board was now focused solely on obtaining financing to provide funds for Oak Hill's redemption, even though Oak Hill could not exercise its redemption right for almost another year.

48. To incentivize ODN's key officers similarly to focus on redeeming the largest possible amount of Oak Hill's Preferred Stock rather than on the best interests of the Company and its common stockholders, the Company's Compensation Committee—composed of Oak Hill Director Defendant Pade and the conflicted Ng, met the following day and authorized ODN to sign incremental bonus agreements with Domeyer, Murray, and Greene providing each a significant bonus in the event Oak Hill achieved a "liquidity event." As with Kupietzky's bonus agreement, a liquidity event was defined to include a redemption of Oak

Hill's Preferred Stock, but for the Management Team only so long as the Company redeemed at least $75 million of the Preferred Stock.. Thus, even more so than for Kupietzky, the incentives of the Management Team, which included Director Domeyer, were now aligned with Oak Hill's desire to achieve the maximum redemption possible in the shortest amount of time.

F. The Board Gets Concerned About Optics And Creates A Special Committee For Purposes Of "Window Dressing"

49. In July 2012, after the Board had already caused ODN to hoard tens of millions of dollars of cash for redemption at the expense of investments in long-term growth, and eight months before Oak Hill could even exercise its redemption right, the Board held a special meeting to discuss its fiduciary duties and the potential need to form a special committee (the "Special Committee") to address issues that could arise in connection with Oak Hill's redemption right. On August 21, 2012, the Board established the Special Committee and appointed Morgan and Jarus as its members. The Board determined Morgan and Jarus were independent solely on the basis that they neither owned any of the Preferred Stock nor were employees of ODN.

50. Morgan and Jarus were "independent" in appearance only. As a result of Oak Hill's voting control, both were subject to re-election or even termination from their director positions at Oak Hill's discretion. The specter of impropriety was thus inherent in the Special Committee because any disapproval could result in

retaliation by Oak Hill. This inherent bias was magnified because both Morgan and Jarus were repeat players as directors and executives for companies in Silicon Valley and Southern California and had much more to gain from appeasing Oak Hill—a private equity fund with over $8 billion under management that controlled numerous portfolio companies in the area and could help or hurt their future careers, than from acting to advance the interests of the Company and its common stockholders. Before appointing Morgan and Jarus to the Special Committee, the Board neither considered these compromising facts, nor Morgan's personal and professional relationship with Pade or his affiliation with Oak Hill.

51. In addition to its members' lack of independence, the Special Committee's weak structure further suggested its formation was mere "window dressing." The Special Committee was tasked with contemplating Oak Hill's potential exercise of its redemption right and considering a recapitalization, divestiture, or financing (the "Potential Transactions") in furtherance thereof. The Special Committee's purpose was thus not to protect the interests of the Company's minority stockholders, but to assess how to maximize the redemption of Oak Hill's Preferred Stock even though Oak Hill had not yet, and contractually could not, exercise its redemption right until February 2013. Indeed, the Board mandated that the Special Committee determine whether the Potential Transactions were fair to *all* of the Company's stockholders, including Oak Hill.

52. In any event, the Board empowered the Special Committee only to make a recommendation as to what action it should take. And, while the Board ostensibly bound itself not to approve a Potential Transaction without the Special Committee's favorable recommendation, the Special Committee's powers would terminate on the date Oak Hill exercised its redemption right. Thus, even if the Special Committee had been designed to protect the interests of the Company's minority stockholders, by the time the Board would be deciding whether to approve any redemption payment, which necessarily would occur after the exercise of Oak Hill's redemption right, the Special Committee's powers would have expired under its implementing mandate.

53. Further, the Board delegated to the conflicted Compensation Committee the authority to determine the Special Committee members' compensation. Led by Oak Hill Director Defendant Pade, the Compensation Committee undermined any purported independence of the Special Committee by compensating Morgan and Jarus an exorbitant $10,000 per month plus $1,500 per meeting for their services. As a result of "analyzing" the Potential Transactions, Morgan and Jarus each received additional compensation of over $100,000 for less than a year's work. Such compensation exceeds materially what is commonly understood and accepted to be a usual and customary fee for a director serving in such capacity.

54. On August 28, 2012, the Special Committee had its first meeting, at which Morgan first disclosed his "social relationship" with Pade and his involvement with an advisory council affiliated with Oak Hill. Morgan did not disclose that until recently he had been a member for a number of years, along with Pade, of the board of directors of Varsity Group, Inc., or that his and Pade's sons also were close friends. Nor did he disclose his 15-year career as a corporate attorney advising startups at the Silicon Valley office of Wilson Sonsini.

G. ODN Prematurely Attempts To Obtain Financing To Increase The Amount Of Funds Legally Available For Redemption But The Credit Markets Refuse To Lend For Such Purposes, And The Special Committee Authorizes The Conflicted Management Team To Negotiate With Oak Hill

55. Pursuant to Oak Hill's scheme, which for 2012 included selling off two of ODN's four business lines, completing no acquisitions, and starving ODN's research and development of investment, ODN had accumulated a cash stockpile of over $50 million by the fall of 2012. By comparison, ODN's average cash balance from 2007 through 2010 was approximately **REDACTED** and in no year exceeded **REDACTED** Rather than focus on how to reinvest the stockpiled cash to grow the Company for the benefit of all its stockholders, the Special Committee and the Management Team because of their conflicted interests focused only on maximizing the amount Oak Hill could extract non-ratably through the exercise of its redemption right.

56. Even if the Company sat on the **REDACTED** stockpile until Oak Hill could exercise its redemption right in February 2013, however, the amount still would be insufficient to redeem all $150 million of Oak Hill's Preferred Stock. Accordingly, in September 2012, the Special Committee tasked the conflicted Management Team with drafting a proposal to Oak Hill renegotiating Oak Hill's redemption rights. The Management Team opined that, because **REDACTED** would be needed to fund ODN's ongoing operations, **REDACTED** of its **REDACTED** cash stockpile was available for redemption. To obtain additional funds, the Management Team felt financing was the best option because it believed that interest rate conditions at the time appeared very favorable to borrowers like the Company while divestiture opportunities appeared very limited. Not coincidentally, the Management Team proposed obtaining **REDACTED** in financing, which, when combined with ODN's **REDACTED** in free cash, would enable the Company to redeem $75 million of Oak Hill's Preferred Stock—the minimum threshold needed for the Management Team to achieve their bonuses.

57. However, the Management Team was rightly concerned that lenders would effectively consider Oak Hill's redeemable Preferred Stock as a debt obligation of the Company under the circumstances and refuse to lend to ODN without a restrictive covenant prohibiting any redemption payments. Thus, the Management Team proposed that the Company agree to redeem $75 million of

Oak Hill's Preferred Stock in November 2012 in exchange for Oak Hill's agreeing not to exercise its redemption right until 2017. The Management Team's decision was based on its view that, given the low short term savings rates currently available, the Company would have limited ability to generate any additional significant income based on holding these funds an additional three months. Clearly, the Management Team was not focused on and never considered whether these funds could be deployed to grow the business for the benefit of the Company's common stockholders. Rather, the Management Team acted at all times as if Oak Hill's redeemable Preferred Stock was a note that the Company was legally obligated to pay in full on the date of maturity.

58. On October 29, 2012, the Special Committee approved the Management Team's proposal for renegotiating the redemption right, and submitted it to Oak Hill. That proposal contemplated the Company's ability to obtain at least $35 million in financing, and provided that the Company would immediately redeem $75 million of Oak Hill's Preferred Stock in exchange for Oak Hill's agreeing not to exercise its redemption right until 2016—when the contemplated credit facility would expire. Oak Hill submitted a counterproposal on the same terms, but allowing it to redeem additional shares if the Company sold certain assets and providing a 12% per annum payment in kind dividend on its unredeemed shares that remained outstanding.

59. On November 21, 2012, the Special Committee countered with a revised proposal providing for a 2% payment in kind dividend and that 100% of the net cash proceeds from divestitures outside the ordinary course would go towards redeeming additional shares, in exchange for Oak Hill agreeing to not exercise its redemption right for 3 years. Oak Hill rejected the offer. Importantly, these negotiations, like the financing discussions, were occurring before Oak Hill had exercised or had the right to exercise its redemption right.

60. As noted above, Murray was concurrently in discussions with representatives of Union Bank, Bank of America, Wells Fargo, and GE Capital regarding the replacement or renewal of the Company's credit facility. But because the Special Committee and the Management Team had predetermined that any proceeds of such credit facility would go towards redeeming Oak Hill's Preferred Stock rather than investments that would benefit the Company as a going concern, by December 2012, Bank of America was the sole creditor potentially interested in lending to ODN.

61. Bank of America submitted a draft term loan to the Company, but conditioned any further discussions on Oak Hill guaranteeing the Company's repayment of that loan. Later that month, however, Bank of America informed the Company that it nonetheless could not go forward with the term loan since it expected that the proceeds of the proposed loan would be used to redeem Oak

Hill's stock rather than to fund operations or acquisitions. Oak Hill, for its part, flatly refused to guarantee the loan.

62. In January 2013, Bank of America sent the Company a revised draft term sheet contemplating a $15 million two-year term loan, but which prohibited the Company from using any of the proceeds to make a redemption payment to Oak Hill. Bank of America expressed its willingness to negotiate a side letter with Oak Hill in the event Oak Hill exercised its redemption right in February 2013.

H. The Special Committee's Negotiations Prove Utterly Ineffective, And Oak Hill Offers Cold Comfort To ODN By Proposing A Worthless Forbearance Agreement

63. On February 1, 2013, Pade sent an email to the Special Committee indicating that, despite the Special Committee's and the Management Team's self-serving negotiation efforts, Oak Hill intended to go forward with exercising its redemption right for the entirety of its Preferred Stock as soon as it would be contractually able. Notably, the email conveyed Oak Hill's belief that *following* the exercise of its redemption right, ODN would then be required to redeem its shares out of funds legally available and to consider additional options to raise further funds through borrowings or asset sales. Thus, contrary to the Board's and the Management Team's behavior since 2011, even Oak Hill understood that the Company had no obligation to sell assets or obtain financing in furtherance of the

redemption *before* that redemption right was exercised, much less years in advance.

64. The email also acknowledged that ODN did not currently have the $150 million needed to fully redeem Oak Hill's Preferred Stock, and informed that Oak Hill would be willing to enter into an agreement temporarily forbearing its right to receive further redemption payments until December 31, 2013 if the Company immediately redeemed $50 million of its Preferred Stock. While theoretically this could have relieved ODN from the pressure of having to use any additional funds which came available during the year for further redemption payments to Oak Hill (rather than for growth or sustaining operations), any such comfort was illusory since Oak Hill dictated that any forbearance agreement it entered be cancellable in its sole discretion upon thirty-days' notice.

65. On February 8, 2013, Murray conveniently advised the Special Committee that she now felt comfortable with ODN retaining just **REDACTED** in cash reserves to fund its ongoing operations, even though she had opined just a few months earlier that a cash reserve of at least **REDACTED** was necessary. Aside from that $2 million, Murray proposed using all of the Company's cash to redeem Oak Hill's Preferred Stock and to make an accompanying $700,000 bonus payment to Kupietzky.

66. On February 12, 2013, the Special Committee met to discuss Oak Hill's final proposal. Oak Hill informed that it was determined to exercise its redemption right on February 13, 2013 and was not interested in any side letter arrangement with Bank of America, but that it would agree to forbear its right to further redemption payments, revocable in its discretion, until December 31, 2013, so long as the Company redeemed $45 million of its Preferred Stock by March 18, 2013. Having found its self-serving attempts to negotiate any terms of the forbearance agreement to be utterly ineffective, and relying on the conflicted Management Team's approval of the proposal, the Special Committee resolved to recommend the Board approve the forbearance agreement.

I. Oak Hill Exercises Its Redemption Right, The Company Reclassifies The Preferred Stock As A Current Liability, And The Conflicted Board Approves The Worthless Forbearance Agreement

67. On February 13, 2013, the first day in which it was contractually permitted, Oak Hill exercised its redemption right for the entirety of its Preferred Stock. As a result, the Company reclassified Oak Hill's $150 million of Preferred Stock as a current liability on its balance sheet in accordance with Generally Accepted Accounting Principles ("GAAP"). Also as a result of Oak Hill's exercise of its redemption right, the Special Committee's powers automatically terminated under its implementing mandate, and the Board was free to accept or reject the forbearance agreement regardless of the Special Committee's recommendation.

68. Despite its powers having terminated on February 13, 2013, the Special Committee would not recommend its dissolution until April 17, 2013, after its members had received more than two additional months of lucrative compensation.

69. On February 27, 2013, Domeyer, Morgan, Jarus, and Ng voted to approve resolutions agreeing to enter into the forbearance agreement under the terms dictated by Oak Hill. While the Board considered whether the redemption payment would impair the Company's ability to continue as a going concern, it based its determination on information regarding the Company's operational needs provided by the conflicted Murray. And, while the Board also considered whether the redemption would meet Delaware's surplus test, that analysis was performed as of January 31, 2013—before the Preferred Stock had been reclassified as a liability on ODN's balance sheet in accordance with GAAP. Thus, the Board did not have to consider whether, given that (i) the Company had reclassified Oak Hill's Preferred Stock as a $150 million liability on its balance sheet, (ii) the Board and the Management Team had behaved since 2011 as if Oak Hill's Preferred Stock was a $150 million debt of the Company, and (iii) the credit markets refused to lend to the Company in the face of such an obligation, the Preferred Stock should have been included as a liability when calculating the Company's available surplus. If the Preferred Stock had been included as a liability, the Company

would have had a **REDACTED** surplus and, consequently, no legally available funds from which to make the redemption payment.

70. Nonetheless, on March 18, 2013 the Company redeemed $45 million of Oak Hill's Preferred Stock pursuant to the forbearance agreement.

71. On May 3, the Company paid $632,813 to Kupietzky pursuant to his bonus agreement, which was conditioned on and proportional to the amount of stock Oak Hill redeemed. Because the redemption was for less than the $75 million threshold, however, the Management Team was not yet able to unlock their bonuses.

72. On May 23, 2013, when Greene sent him the Company's 2012 audited financial statements, Hsu first learned that the Company had been liquidating its assets and hoarding cash not for acquisition or investment opportunities, but in order to make a $45 million redemption payment to Oak Hill. Hsu responded in disbelief:

> Well this is a surprise. Our "growth company" emptying its coffers to Oak Hill through redemption? How is this supposed to instill shareholder confidence? On April 5th I asked you if there were any material corporate transactions and to get this to me within a reasonable 5-7 days. How is it this is the first time I'm hearing of this?

73. Greene replied: "I believe you have been aware of the redemption right since Oak [Hill] made their investment back in 2008 . . . . In February they provided a redemption notice pursuant to the charter and the company complied

with its obligation to redeem the shares that it could." Greene's reply obscured the fact that since 2011 the Board and the Management Team, although free to use the Company's resources to grow the business for the benefit of its common stockholders, had been managing the Company solely for the covert purpose of maximizing the amount available for Oak Hill's redemption.

J. Morse And Oak Hill Part Ways, The Board Prolongs The Worthless Forbearance Agreement, And The Company Sells Off One Of Its Two Remaining Business Lines To Facilitate Another Redemption Payment To Oak Hill

74. In September 2013, Oak Hill and Morse parted ways and Morse resigned from the Board.

75. The forbearance agreement terminated on December 31, 2013. However, the Company and Oak Hill entered into a series of thirty-day extensions prolonging the forbearance period. The thirty-day extensions were even more worthless than the original forbearance agreement, as Oak Hill would no longer need to use its discretion affirmatively to terminate the agreement but could simply let the agreement lapse at the end of the thirty-day period if it wanted to apply pressure to the Company.

76. In February 2014, Domeyer updated the Board that the Management Team had been having negotiations with a potential acquirer of the Company's Domain Monetization business line—ODN's main revenue generator and one of its just two remaining business lines. The following month, the now six-member

Board (Pade, Scott, Domeyer, Morgan, Jarus, and Ng) created another Special Committee again composed of Morgan and Jarus to negotiate the transaction, determine its advisability, and recommend what action should be taken by the Board. Morgan and Jarus were provided the same exorbitant compensation of $10,000 per month and $1,500 per meeting.

77. Rather than negotiate the transaction itself, the Special Committee immediately tasked the conflicted Domeyer and Murray with negotiating the term sheet with the potential strategic acquirer, **REDACTED** **REDACTED** The term sheet negotiated by Domeyer and Murray throughout March and April 2014 ultimately provided that **REDACTED** would purchase the Domain Monetization business for **REDACTED** The Management Team informed the Special Committee that it believed it was in the best interest of the Company to sell the Domain Monetization business. This was not surprising, however, given that the proceeds from that sale would provide the Company with an opportunity to redeem significantly more of Oak Hill's Preferred Stock, which, when aggregated with the initial $45 million redemption payment, would likely surpass the $75 million threshold needed to unlock the Management Team's bonuses.

78. The Special Committee also relied on a cut-rate fairness opinion from a financial advisor, for which they authorized the payment of only $20,000.

However, like the Special Committee's mandate, that opinion only opined as to the fairness of the transaction from the financial point of view of all of the Company's stockholders rather than focusing on the transaction's specific impact to the Company's minority stockholders, and it expressly did not address the Company's underlying business decision to effect the transaction. This was significant because the interests of the Company's controlling and sole preferred stockholder were opposed to the interests of the Company's minority stockholders: simply by not renewing the forbearance agreement at the end of the first thirty-day period following any sale, Oak Hill could extract non-ratably the sale proceeds from the Domain Monetization business line, while the Company's minority stockholders only stood to benefit from the retaining that business line's revenue production within the Company over the long term. Further, the fairness opinion relied on information provided by the conflicted Management Team regarding the Domain Monetization business line's future prospects, without any independent verification of the accuracy or completeness of the information supplied.

79. Nonetheless, the Special Committee resolved to recommend the Board approve the transaction, and on April 14, 2014, the Board approved the sale.

K. The Board Plans To Use All Of The Domain Monetization Sale Proceeds To Make A Second Redemption Payment To Oak Hill, And Adopts A Forum Selection Bylaw Anticipating That Its Actions May Warrant Judicial Review

80. On May 29, 2014, shortly after the Domain Monetization business line sale to **REDACTED** the Board discussed forming another Special Committee to address a possible further redemption of Oak Hill's Preferred Stock using the entire proceeds from that sale. The Board also adopted a restructuring initiative providing for the separation from service of certain executive management team members, overall broader reduction in work force, and the exercise of its option to terminate the lease for its Los Angeles headquarters, including the payment of a termination fee. This preemptive restructuring served to shrink the Company's "business plan" so that, superficially, ODN would appear to have more funds legally available for redemption without impairing the Company's ability continue as a going concern or implement its business plan. Further, anticipating that its actions would incur scrutiny, the Board adopted a Delaware forum selection bylaw.

81. On June 4, 2014, the Board acted by written consent to form its third "window dressing" Special Committee since 2012, and again appointed Morgan and Jarus as its members. The Board tasked the Special Committee with advising on a second redemption and negotiating with Oak Hill a further extension of the forbearance agreement.

82. On July 23, 2014, Murray informed the Special Committee that the Management Team was preparing a new "business plan," which accounted for the sale of the Domain Monetization business and the reduction in employees and

overhead. Dissatisfied with the preliminary results of this already downwardly revised business plan, Morgan and Jarus sent the Management Team back to work and directed that the plan reflect the "right sizing" of the Company's remaining businesses to reflect their smaller size and ODN's lower corporate overhead structure. The Management Team dutifully provided the Special Committee with a further downwardly revised business plan on August 4, 2014.

83. Even so, at a meeting on August 15, 2014, the Special Committee told the Management Team that its twice-downwardly revised business plan reflected the "status quo" in terms of number of employees, corporate overhead, and cost structures going forward, and *again* instructed it to further downwardly revise the Company's business plan.

84. At the same meeting, the Special Committee also recounted discussions it had with Oak Hill Director Defendants Pade and Scott regarding further extending the Company's temporary forbearance agreement with Oak Hill so that the Company would have enough cash to carry out its business plan. Notably, while the Management Team had not yet provided the Special Committee with a business plan sufficiently depressed to receive its approval, the Management Team was leaning towards recommending the Special Committee negotiate with Oak Hill to retain $40 million in cash *after* redeeming additional shares to carry out the Company's business plan.

85. On August 25, 2014, the Board met to consider the Management Team's third downwardly revised business plan. Consistent with the Special Committee's repeated instructions, Domeyer recommended to the Board further staff reductions and the need to explore the sale of the Retail component of the Company's remaining Vertical Markets business line, and continuing operations with just its Travel and Consumer Finance components. The Board approved the Oak Hill-serving business plan by the affirmative vote of Pade, Scott, Domeyer, Morgan and Jarus, with Ng abstaining.

86. At a meeting on August 29, 2014, the Special Committee evaluated the Company's new "business plan," and determined in consultation with the Management Team to propose to Oak Hill a redemption amount of $40 million in connection with a further extension of the worthless forbearance agreement. Not surprisingly, the Special Committee believed that a $40 million redemption amount would permit the Company to retain a sufficient cash cushion to carry out its business plan (which the Special Committee itself had self-servingly depressed multiple times before being approved by the conflicted Board) during the forbearance period. Thus, the Special Committee resolved to recommend that, in exchange for Oak Hill's extending the forbearance agreement until March 31, 2015, the Board approve a redemption of its Preferred Stock for $40 million—not

coincidentally the exact same amount for which the Domain Monetization business line was sold to **REDACTED** just a few months earlier.

87. On September 2, 2014, the Board approved the amended forbearance agreement and the $40 million redemption payment by the affirmative vote of Domeyer, Morgan, and Jarus, with Pade and Scott abstaining and Ng absent. In connection with its approval, the Board reviewed a calculation determining that the redemption met Delaware's surplus test, but again that test did not include the Preferred Stock as a liability, even though the Company had carried it as such on its balance sheet since Oak Hill exercised its redemption right in February 2013. Even excluding the Preferred Stock as a liability, however, under the calculation ODN would retain just **REDACTED** surplus following the redemption when the Management Team had previously opined to the Special Committee that **REDACTED** was needed for ongoing operations.

88. In September 2014, the Company redeemed $40 million of Oak Hill's Preferred Stock. Because the aggregate redemption payments now exceeded the $75 million threshold, the second redemption payment resulted in a bonus payment of $587,184 to Domeyer, Murray, and Greene.

L. The Management Team Dismantles The Company's Remaining Vertical Markets Business Line, Decimating The Company's Revenues And Ability To Continue As A Going Concern

89. On December 17, 2014, the Company sold the crown jewel of its Vertical Markets business line's Retail component, REDACTED Despite having purchased REDACTED just four years earlier for REDACTED the Company sold it for REDACTED The sale crippled the Vertical Markets business line. For the year ended 2014, the Company's total revenues were just REDACTED whereas the Retail component alone had generated REDACTED in revenues the prior year.

90. Notably, while the Company had not made an acquisition since 2010, the Company's 2014 audited financial statements misleadingly touted: "[d]uring the past five years, the Company has completed numerous acquisitions for purchase prices, including transaction costs, ranging between approximately $1 million and $25 million."

91. On October 19, 2015, Ng left the Board to launch OnRamp Fund, and enlisted Jarus and Pourzanjani as advisors.

92. For the year ended 2015, now relying solely on the Travel and Consumer Finance components to its Vertical Markets business line, the Company generated only REDACTED in annual revenues and negative $500,000 in annual income.

M. Hsu Learns Of The Second Redemption Payment And Promptly Makes A Books And Records Demand Upon The Company Seeking To Investigate Mismanagement

93. Hsu learned of the second redemption payment on December 11, 2015, when Domeyer emailed him the Company's 2014 audited financial statements. The financial statements also revealed that the Company had switched from its longtime auditor Ernst & Young, without explanation for the change.

94. On January 11, 2016, the Trust served a Section 220 books and records demand (the "Demand") on ODN. The Demand requested that ODN allow the Trust's legal counsel to inspect and make copies or extracts of documents in nine narrowly tailored categories. The stated purposes of the Demand were:

> (1) determining the value of [the Trust's] interest in the Company and identifying potential purchasers of said interest; (2) evaluating whether sufficient legally available funds existed from which to make lawful redemption payments to Oak Hill; and (3) investigating mismanagement by the Company's board of directors (the "Board").

95. On January 15, 2016, ODN acknowledged receipt of the Demand and requested an additional ten business days in which to provide a further response. On January 29, 2016—the tenth business day following ODN's initial response—ODN responded by sending a letter (the "Response") that claimed the Demand "only established a proper purpose with respect to a limited set of the records and documents" sought to be inspected. Those "limited" documents were ODN's bylaws, lists of ODN's stockholders, directors and officers, and ODN's unaudited financial statements for 2015. ODN agreed to make those documents available subject to the Trust's entering into a confidentiality agreement attached to the

letter. While refusing to acknowledge that the Trust had a proper purpose for the balance of the books and records requested, the Response indicated ODN would nonetheless make available, subject to the same confidentiality agreement, the following: the cut-rate valuation of the Domain Monetization business line, annual operating plans from 2011 to 2014, and certain Board and Committee meeting minutes from 2011 to 2014.

96. On February 10, 2016, the Trust and ODN entered into a confidentiality agreement, and the Trust's counsel received the agreed upon books and records. Upon investigation, the Trust's counsel determined the document production was deficient, and sent a letter to ODN's counsel detailing its concerns that several key documents improperly were redacted for privilege and that the Management Team's and Kupietzky's bonus agreements had not been provided. The Trust also requested additional information regarding the relationship between Morgan and Oak Hill Director Defendant Pade, including their concurrent service as board members for Varsity Group, Inc., as well as any work Morgan performed for Oak Hill while working at Wilson Sonsini.

97. On February 26, 2016, ODN responded that it would not rectify the identified deficiencies or provide any further documents, contending that the Trust lacked a proper purpose for inspecting any of ODN's books and records.

THE DEFENDANTS' ACTIONS ARE SUBJECT TO THE ENTIRE FAIRNESS STANDARD

98. When transactions involving self-dealing by a controlling stockholder are challenged, the applicable standard of judicial review is entire fairness, with the defendants having the burden of persuasion. The defendants bear the burden of proving that the transactions with the controlling stockholder were entirely fair to the company's minority stockholders. Under current law, the entire fairness framework governs any transaction between a controller and the controlled corporation in which the controller receives a non-ratable benefit.

99. Oak Hill was ODN's controlling stockholder, and, as the beneficiary of the Company's liquidation and cash hoarding scheme through the exercise of non-ratable redemption right, it stood on both sides of the Redemption Transactions. Under the circumstances, even a Board that was independent of Oak Hill and disinterested in the Redemption Transactions would not be entitled to deferential business judgment review.

100. In any event, entire fairness review applies because ODN's Board was neither independent nor disinterested when it approved the Redemption Transactions. At the time the Board decided to liquidate ODN and hoard cash in 2011, the Board consisted of eight members, all of whom suffered disabling conflicts of interest:

a. The three Oak Hill Director Defendants had a disabling conflict of interest because they were employed by Oak Hill and depended upon

it for their primary source of income. Further, they owed fiduciary duties to Oak Hill, whose interests had diverged from the interests of the Company and its common stockholders once it resolved to obtain the return of its capital by exercising its redemption right;

b. Kupietzky was personally financially interested in the Redemption Transactions on account of his bonus agreement that was conditioned on the Company redeeming Oak Hill's Preferred Stock, and was further dependent on Oak Hill for his principal source of income as the Company's CEO;

c. Morgan worked for an advisory council affiliated with Oak Hill and sought recurring work as a director and executive for technology companies in Silicon Valley. Thus, he had no incentive to oppose the interests of Oak Hill, a private equity fund with over $8 billion under management that could either facilitate future employment for him in the region or blacklist him. Nor did Morgan have any incentive to oppose the interests of Oak Hill Director Defendant Pade—his personal and professional friend, or Oak Hill's counsel, Wilson Sonsini—where he worked for 15 years as a corporate attorney;

d. Ng also was beholden to Oak Hill for future work as a director or executive of technology companies in the region. And, having

recently received a $24 million payday from Oak Hill, he was even less likely to oppose Oak Hill's interest;

e. Jarus and Pourzanjani similarly were beholden to Oak Hill for future work as directors or executives for technology companies in the region.

101. By the time the Company sold its Domain Aftermarket and Domain Registrar services business lines in 2012, Kupietzky and Pourzanjani had left the Board. Kupietzky was replaced by Domeyer and Pourzanjani's seat remained vacant. Like Kupietzky, Domeyer also served as the Company's CEO, from which she derived her principal source of income, and was beholden to Oak Hill for her continued employment. In May 2012, the Board further disabled Domeyer's independence and disinterestedness by granting her, along with the rest of the Management Team, bonus agreements providing lucrative bonus compensation in the event Oak Hill achieved a redemption of at least $75 million of its Preferred Stock. Accordingly, regardless of Domeyer's replacing Kupietzky, the Board at all times suffered disabling conflicts of interest.

102. Decisions not made at the Board level, such as the December 2015 sale of Shopwiki, were made by Kupietzky or the conflicted Management Team—Domeyer, Murray, and Greene, all of whom were interested in the Redemption

Transactions on account of their bonus agreements and were dependent on Oak Hill for their positions as executive officers.

103. Thus, at no time were a majority of ODN's Board or Management Team independent of Oak Hill or disinterested in the Redemption Transactions. And, while the Board formed a Special Committee to analyze some of the Redemption Transactions, at no time did it condition any of the Redemption Transactions on the affirmative vote of a majority of the Company's minority stockholders. Because the prerequisites for application of the business judgment rule have not been met, the Defendants' actions must be evaluated for entire fairness.

104. Nor are the Defendants entitled to a burden shift under entire fairness review due to its use of a Special Committee. Each time the Board formed a Special Committee, the Board selected the conflicted Morgan and Jarus to be its members. And, the conflicted Compensation Committee led by Oak Hill Director Defendant Pade further undermined any purported independence of the Special Committee members by granting them exorbitant compensation for their services. Moreover, the Defendants would not be entitled to a burden shift even if the Special Committee had been composed of independent and disinterested members, because the Special Committee was utterly ineffective in negotiating with Oak Hill, relied on unreliable information provided by the conflicted Management

Team, and was formed to represent the interests of all of the Company's stockholders rather than focusing on the specific impact to its minority stockholders.

CLASS ACTION ALLEGATIONS

105. Plaintiff brings this action on its own behalf and as a class action on behalf of all similarly situated stockholders of ODN (the "Class"). Excluded from the Class are Defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated with any Defendants.

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

107. The Class has over fifty members, and is so numerous that joinder of all members is impracticable.

108. There are questions of law and fact which are common to the Class and which predominate over questions affecting any individual Class member.

109. The common questions include, *inter alia,* the following:

a. whether the Director and Officer Defendants breached their fiduciary duties;

b. whether Oak Hill breached its fiduciary duties, or, alternatively, aided and abetted the Director and Officer Defendants' breaches of their fiduciary duties; and

c. whether and to what extent the Class has been injured.

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

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

112. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for the party opposing the Class.

113. Plaintiff anticipates that there will be no difficulty in the management of this litigation. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

114. Defendants have acted on grounds generally applicable to the Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole.

DEMAND FUTILITY

115. To the extent Plaintiff's claims are derivative in nature, Plaintiff has not made demand on the Board to institute this action because such a demand would be futile.

116. The Board is currently composed of five members (Pade, Scott, Domeyer, Morgan, and Jarus), all of whom are not independent of Oak Hill and/or were interested in the Redemption Transactions, and face a substantial likelihood of liability in this litigation. Thus, as of the time of filing this complaint, the Company's Board does not have a majority of directors who can exercise their independent and disinterested business judgment about whether to pursue litigation.

117. Directors Pade and Scott are beholden to Oak Hill, whose interests have diverged from the interests of the Company and its common stockholders. Both are also interested in the outcome of this litigation because they face a substantial likelihood of liability for their disloyal conduct from 2011 through the present.

118. Director Domeyer owes her position as the Company's CEO, from which she derives her principal source of income, to Oak Hill. Senior corporate officers generally lack independence for purposes of evaluating matters that implicate the interests of a controller. Indeed, in seeking to appoint members to its Special Committee who were not employed by the Company, the Board recognized the inherent conflict senior corporate officials face when evaluating matters that implicate the interests of a controller. Thus, Domeyer lacks independence from Oak Hill such that she could not consider a derivative demand

without also pondering whether an affirmative vote would endanger her continued employment. Domeyer is also interested in the outcome of this litigation because she faces a substantial likelihood of liability for her disloyal conduct in facilitating the Redemption Transactions, in which she was personally financially interested on account of her bonus agreement.

119. Director Morgan is neither independent of Oak Hill, Oak Hill Director Defendant Pade, nor Oak Hill's counsel Wilson Sonsini. Director Jarus is neither independent of Oak Hill, nor Defendants Ng and Pourzanjani, with whom he works at OnRamp Fund. Both Morgan and Jarus are also interested in the outcome of this litigation because they face a substantial likelihood of liability for their disloyal conduct from 2011 through the present.

COUNT I

(Breach of Fiduciary Duty Against the Director and Officer Defendants)

120. Plaintiff repeats and realleges the foregoing paragraphs as if fully set forth herein.

121. The Director and Officer Defendants' actions challenged in this complaint were not entirely fair and represented a means by which Oak Hill extracted a non-ratable return from ODN.

122. As directors and officers of ODN, the Director and Officer Defendants owed fiduciary duties of care and loyalty to all of the Company's stockholders, including the Trust.

123. By virtue of their positions, the Director and Officer Defendants had the ability and obligation to manage the Company for the benefit of all its stockholders, rather than focusing solely on the liquidity desires of its controlling stockholder.

124. The Director and Officer Defendants breached their fiduciary duties by abandoning the Company's growth strategy which was benefitting its common stockholders in favor of selling off whole business lines and hoarding cash in order to provide the maximum amount Oak Hill could extract non-ratably from the Company by exercising its redemption right.

125. As a direct and proximate result of the Director and Officer Defendants' breaches of their fiduciary duties, Plaintiff has and will be damaged.

COUNT II

(Breach of Fiduciary Duty Against Oak Hill)

126. Plaintiff repeats and realleges the foregoing paragraphs as if fully set forth herein.

127. As a general rule, if a defendant has acted in a fiduciary capacity, then that defendant is liable as a fiduciary and not for aiding and abetting.

128. Oak Hill took control of ODN in 2009, and has been ODN's controlling stockholder since that time.

129. As ODN's controlling stockholder, Oak Hill owed ODN's minority stockholders fiduciary duties of care and loyalty at all times relevant to the complaint.

130. Oak Hill has violated its fiduciary duties by engaging in improper self-dealing in which it placed its own interests above the interests of the Company and the Company's disinterested stockholders. Oak Hill has further violated its fiduciary duties as a result of the breaches of fiduciary duties of its employee-appointed directors.

131. Oak Hill's improper self-dealing includes directing its employee appointed directors on ODN's Board to liquidate its investment in the Company without regard to the Company or its common stockholders. Oak Hill then accepted redemption payments totaling $85 million when it knew the Company lacked any legally available funds from which to make the payments, or that, if any legally available funds existed, they were a result of the Defendants' prior inequitable conduct in abandoning the Company's growth strategy in favor of liquidation.

132. As a direct and proximate result of Oak Hill's breaches of its fiduciary duties, Plaintiff has and will be damaged.

COUNT III

(Alternatively, Aiding and Abetting the Director and Officer Defendants' Breaches of Fiduciary Duties Against Oak Hill)

133. Plaintiff repeats and realleges the foregoing paragraphs as if fully set forth herein.

134. The Director and Officer Defendants owed fiduciary duties of care and loyalty to the Company's minority stockholders.

135. As described in Count I, *supra*, the Director and Officer Defendants breached their fiduciary duties.

136. Having appointed three members to ODN's Board, Oak Hill was aware of the Director and Officer Defendants fiduciary duties, and knowingly participated in the breach of those duties in order to expropriate value from the Company in a way that it did not have to share ratably with the Company's common stockholders.

137. As a direct and proximate result of Oak Hill's aiding and abetting the Director and Officer Defendants' breaches of fiduciary duties, Plaintiff has and will be damaged.

COUNT IV

(Waste of Corporate Assets Against All Defendants)

138. Plaintiff repeats and realleges the foregoing paragraphs as if fully set forth herein.

139. The Defendants' decision to liquidate ODN and hoard cash solely in furtherance of the redemption of Oak Hill's Preferred Stock, which was not contractually exercisable for at least another two years, constituted waste.

140. No person acting in a good faith pursuit of the corporation's interests could have approved the scheme to liquidate and hoard cash, the bonuses tied to the redemption for the Management Team or Kupietzky, or the subsequent redemption payments to Oak Hill totaling $85 million.

141. There was no rational basis to liquidate the Company's revenue generating assets, and then hoard that cash until Oak Hill could exercise its mandatory redemption right, rather than redeploying that cash into growing the business or at least paying a dividend in which the minority common stockholders ratably could share.

142. As a direct and proximate result of the Defendants' waste of corporate assets, Plaintiff has and will be damaged.

COUNT V

(Unlawful Redemption Against the Director Defendants and Oak Hill)

143. Plaintiff repeats and realleges the foregoing paragraphs as if fully set forth herein.

144. The redemption payments were unlawful under Sections 160 and 154 of the Delaware General Corporation Law ("DGCL"), the Delaware common law,

and the Company's charter which only permitted redemptions to the extent of funds legally available.

145. The Company lacked any surplus from which to make the redemption payments, as required by DGCL Sections 160 and 154. Surplus is defined as the excess of net assets over the par value of the corporation's stock. Because the par value of the Company's stock was negligible, the surplus calculation turns on the amount of the Company's net assets. Net assets are determined by subtracting "total liabilities" from "total assets."

146. The Board improperly excluded the $150 million in Preferred Stock following the exercise of Oak Hill's redemption right as a "liability" when determining net assets. If the Preferred Stock had been included as a liability, the Company would have had a negative surplus following each of the redemption payments. While Preferred Stock is a hybrid security with both debt and equity components, the Board's failure to treat it as a liability here was improper because: (i) by hoarding cash and selling off assets in anticipation of the redemption years before Oak Hill's redemption right could even be exercised, the Defendants behaved as if the future redemption option was a legally enforceable debt of the Company; (ii) in accordance with GAAP, ODN in fact re-characterized the Preferred Stock as a redemption liability on its balance sheet following Oak Hill's exercise of its redemption right; and (iii) ODN's attempts to obtain credit to

facilitate the Redemption Payments were unsuccessful because the credit markets were treating the Preferred Stock as a liability.

147. Additionally, the Redemption Payments lessened the security of creditors and impaired the Company's ability to continue as a going concern. The Company wrongfully abandoned its business plan in favor of liquidation in 2011. But for this change in business plan, the Redemption Payments would have eviscerated the Company's ability to continue its growth strategy. The Board was forced to further downwardly revise the Company's business plan multiple times in advance of the second redemption payment in order to make it appear as if the Company could carry out its business plan. Following both payments, the Company's auditors were only able to avoid issuing a going concern notice based on the temporary forbearance agreements with Oak Hill that were cancellable in Oak Hill's discretion. Moreover, the Board and Special Committee unreasonably relied on the conflicted Management Team for key information regarding their going concern analyses.

148. Finally, the Company only had available "funds," i.e., available cash, due to the Defendants' prior inequitable conduct of selling assets and hoarding cash.

149. As a direct and proximate result of the Director Defendants' and Oak Hill's unlawful conduct, Plaintiff has and will be damaged.

COUNT VI

(Unjust Enrichment Against Oak Hill, Domeyer, Murray, Greene, and Kupietzky)

150. Plaintiff repeats and realleges the foregoing paragraphs as if fully set forth herein

151. Even if the Director Defendants did not breach their fiduciary duties or waste corporate assets, and are not personally liable under 8 *Del. C.* § 172 for unlawful redemption, the Redemption Payments were objectively unlawful because the Company lacked sufficient surplus from which to make the payments.

152. Because Oak Hill benefited by $85 million as a result of the unlawful Redemption Payments, it is liable for unjust enrichment for that same amount.

153. The bonus payments to Domeyer, Murray, Greene, and Kupietzky were only a result of the unlawful Redemption Payments to Oak Hill. Thus, they are similarly liable for unjust enrichment for the amount of their bonuses.

154. As a direct and proximate result of Oak Hill's, Domeyer's, Murray's, Greene's, and Kupietzky's unjust enrichment, Plaintiff has and will be damaged.

PRAYER FOR RELIEF

WHEREFORE, based upon the foregoing, Plaintiff respectfully requests that the Court:

a) Declare that this action is properly maintainable as a class action and a derivative action;

b) Declare that all Defendants have breached their fiduciary duties;

c) Rescind and unwind ODN's unlawful $85 million redemption of Oak Hill's Preferred Stock;

d) Rescind and unwind the bonuses paid to the Management Team and Kupietzky on account of the Redemption Payments;

e) Determine and award all damages, including but not limited to rescissory damages, sustained as a result of the breaches of all Defendants' fiduciary duties, jointly and severally, together with pre- and post-judgment interest thereon;

f) Award full and complete restitution, and any other amounts recoverable under the Delaware General Corporation Law for unlawful redemptions;

g) Award to Plaintiff the costs and disbursement of this action, including reasonable attorneys' fees, accountants' and experts' fees, costs and expenses; and

h) Grant such other and further relief as this Court deems just and equitable.

MORRIS JAMES LLP

/s/ P. Clarkson Collins, Jr.
P. Clarkson Collins, Jr. (#738)
Lewis H. Lazarus (#2374)
Nicolas Krawitz (#6107)
500 Delaware Avenue, Suite 1500
P.O. Box 2306
Wilmington, DE 19899-2306
302-888-6800

Attorneys for Plaintiff The Frederick Hsu Living Trust

Of Counsel:

Steven Kaufhold
KAUFHOLD GASKIN LLP
388 Market Street, Suite 1300
San Francisco, CA 94111
415-445-4621

Dated: March 15, 2016