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Case No. 10323-VCZ

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

SCHUFF INTERNATIONAL, INC. STOCKHOLDER LITIGATION	)))	Cons. C.A. No. 10323-VCZ

AB VALUE PARTNERS, L.P.'S OBJECTION TO PROPOSED SETTLEMENT

INTRODUCTION

AB Value Partners, L.P. ("AB Value")[1] objects to the proposed settlement of this consolidated class action ("Action"). The two key components of the Stipulation and Agreement of Compromise, Settlement, and Release filed with the Court on November 15, 2019 (the "Stipulation of Settlement") are fundamentally unfair to minority stockholders of DBM Global, Inc. (the "Company") who have continued to hold shares of the Company.

[1] In accordance with Paragraph 17 of the Notice of Pendency of Class Action, Proposed Settlement of Class Action, and Settlement Hearing (the "Notice"), this objection constitutes AB Value's written and signed detailed statement of its objections and the grounds for such objections and the reasons AB Value desires to appear and be heard (the "Objection"). All documents or writings AB Value desires the Court to consider are referred to and incorporated herein. To the extent the Court allows, AB Value reserves its right to present further documents, writings or grounds for its objections in reply to any response filed to this Objection. Attached hereto as Exhibit A is documentation evidencing AB Value's status as a stockholder of the Company.

First, the Stipulation of Settlement requires that the Company, rather than Defendants, pay an additional $35.95 per share to Tendered Stockholders[2] (former stockholders who tendered their shares in the Company to Defendant HC2 Holdings, Inc. ("HC2") in 2014 at a price of $31.50 per share) – an aggregate payment of $20,439,588.20 (the "Settlement Payment").

Second, the Stipulation of Settlement requires that the Company, rather than HC2, commence the Settlement Tender Offer for the remaining outstanding shares not owned by HC2 (289,902 shares) for the price of $67.45 per share, notwithstanding allegations in the recently filed Verified Consolidated Amended Class Action Complaint ("Amended Complaint") (Trans. ID 64626640) that the recent indications of value for Company (such as HC2 inter-company sale of shares of the Company in February 2018) exceed $132 per share. (Am. Compl. ¶ 156.)

The Stipulation of Settlement is unfair and unreasonable to the Non-Tendered Stockholders. It financially burdens them with the Settlement Payment on a *pro rata* basis, and unfairly allocates value from the Non-Tendered Stockholders to the Tendered Stockholders who were cashed-out of the Company in 2014. Meanwhile, the Non-Tendered Stockholders would be cashed-out of the Company today in a coercive manner and at an unfair price.

[2] Capitalized terms have the same meaning as set forth in the Stipulation of Settlement unless otherwise defined herein.

Assuming the aggregate amount HC2 would pay under the terms of the Stipulation of Settlement for a fully participating cash-out of the minority is fair and reasonable (which AB Value seriously doubts) the Tendered Stockholders are receiving at least an $11.4 million windfall. The Tendered Stockholders would nearly fully recover the value HC2 placed on the Company during the 2014 timeframe – a value that Plaintiff seems to have tested during discovery and through expert advice. Meanwhile, the Non-Tendered Stockholders are forced to fund this windfall *pro rata* and will be offered liquidity through the coercive Settlement Tender Offer at a fraction of the Company's present day value.

In effect, the Stipulation of Settlement replaces one unfair and coercive tender offer for another. But this time, HC2 gets (i) the legitimacy of the Court's review and approval, (ii) to use the Company's assets rather than its own to fund the Settlement Payment, and (iii) the releases provided for in the Stipulation of Settlement that would shield Defendants from liability that would otherwise arise from (x) them causing the Company to fund the settlement (rather than funding it themselves) in the first place; and (y) executing a tender offer at a price all parties admit is unfair.

The Stipulation of Settlement's disparate treatment of the Tendered Stockholders and the Non-Tendered Stockholders underscores that they are in different positions, with different claims that would be subject to different measure

of damages. As such, certification of the proposed class would be improper under Rule 23(a). Moreover, even if such a disparate group of stockholders could be certified as a class under Rule 23(a), the terms of the Stipulation of Settlement shows that the Non-Tendered Stockholders have not been adequately represented in this litigation.

BACKGROUND

AB Value is a long-time holder of shares of the Company. As of the date of this filing, AB Value directly holds 34,394 shares of the Company. (Ex. A.) Affiliates of AB Value hold an additional 41,088 share of the Company. Based on the terms of the Stipulation of Settlement, AB Value understands that it and its affiliates' holdings constitute 26% of the 289,902 shares held by the Non-Tendered Stockholders.

Lead Plaintiff, Mark Jacobs, holds 300 shares and represents that he did not tender any shares into the 2014 Tender Offer. Mr. Jacobs therefore holds approximately 00.1035% of the 289,902 minority shares held by the Non-Tendered Stockholders. If he participates in the Settlement Tender Offer, Mr. Jacobs will receive $20,235 ($67.45*300) from the proposed settlement. His counsel is also seeking a $25,000 incentive award on his behalf. If awarded, Mr. Jacobs' collective per share recovery on a gross basis would be $150.78 per share. If his counsel is awarded its requested fee, Mr. Jacobs' net recovery will be $132.23 per share, the

precise amount HC2 recorded in its February 2018 intercompany sale of shares of the Company. (Notice at 7.)

* * *

While the Notice and Settlement Brief set forth the procedural history of this Action, it is worth highlighting a few issues:

Class Certification

Plaintiff originally moved for class certification on October 20, 2016. (Trans. ID 59723245.) The original scope of the certification encompassed stockholders of the Company (other than Defendants and their affiliates) who held shares of the Company during the period of August 21, 2014 through October 7, 2014, regardless of whether they tendered into the 2014 Tender Offer. Briefing on the motion was never completed, and the motion was never heard by the Court. Now, more than three years later and without explanation, the Stipulation of Settlement attempts to certify holders of shares through November 2019 as a class.

Effort to Litigate v. Settle

While the docket reflects some document and deposition discovery was conducted, it also appears that for a substantial part of the time during the pendency of this Action, Plaintiff has focused his efforts on settling the case.

On February 19, 2015, the Court consolidated the Action and appointed lead counsel. Depositions were not noticed until fifteen months later. On June 6, 2016,

Plaintiff noticed the depositions of Phillip O. Elbert, Philip A. Falcone, Michael R. Hill, Keith M. Hladek, James R. Roach, Paul Voight and D. Ronald Yagoda. None of the depositions, however, occurred until March 27, 2017, which was four months after the parties began "extensive arms'-length discussions and negotiations regarding a potential resolution" and two months after they entered into a "tentative framework for the potential settlement."[3] Even then, only Yagoda, Roach and Hladak were deposed, apparently without the benefit of discovery from Duff & Phelps. Plaintiff claims that based on the evidence obtained from those depositions, it walked away from the previously agreed settlement framework, but what that previously agreed settlement framework entailed has not been disclosed. In any event, after purportedly walking away "to proceed with the prosecution of the claims" not much really happened.

From April 24, 2017 until August 6, 2018, status reports filed with the Court is the only activity reflected on the docket. Again it was not until after "the Parties agreed to a new framework for the potential settlement of the Action," that any discovery resumed. (Notice at 7.) While Plaintiff has characterized this a "merits" discovery, the draft Settlement Tender Offer states that the parties engaged in this "additional discovery in connection with the new potential settlement framework."

[3] Rigrodsky Support Aff. ¶¶ 73, 75.

(Notice, Ex. D at 23.) It was not until September 2018, seventeen months later, that Plaintiff subpoenaed Duff & Phelps and Deutsche Bank. Rigrodsky Support Aff. ¶ 77. Apparently, it was from this trove of "3,300 pages of additional documents" that Plaintiff obtained quarterly estimates of the Company's value prepared by Duff & Phelps (one of which was notably the 2014 $68.99 per share valuation) and management-prepared projections which Plaintiff's expert, David Clarke of the Griffing Group, seems to have relied upon.

Plaintiff went on to depose Mr. Falcone on November 29, 2018, and Mr. Voigt on February 20, 2019, but it does not seem that any discovery conducted in this Action was ever pursued to prosecute the claims rather than "in connection with a ... settlement framework."

Limitation of the Discovery Record

The Stipulation of Settlement seeks to release claims through 2019, but it is not clear what if any litigation effort was directed towards this extended timeframe.

With respect to the fairness of the price of the 2014 Tender Offer, HC2 received a valuation analysis from Ernst & Young that valued the Company at $68.99 per share in that timeframe. (Compl. ¶ 69; Stipulation at 5.) Plaintiff alleges that HC2 later retained Ernst & Young to prepare another valuation report. That report was issued on May 27, 2015, and valued the Company at approximately $67.00 per share as of February 28, 2015. Plaintiff supports the valuation with the

analysis prepared by Mr. Clarke. Plaintiff's counsel notes that Mr. Clarke prepared a discounted cash flow analysis which, based on projected information prepared by Company management in 2014 and, what seems to be Plaintiff's view on an appropriate discount and terminal growth rate, indicated a value for the Company of approximately $66.61 per share.[4]

With respect to the fairness of the price of the Settlement Tender Offer, there is no similar support. To the contrary, the draft Settlement Tender Offer flatly states that the shares of the Company "currently may be worth far more than the Net Offer Price." (Notice, Ex. D at 25.) In fact, the draft Settlement Tender Offer describes quarterly valuations it has received from Duff & Phelps, including the most recent identified as of September 30, 2019, that places a discounted cash flow value on the Company of $155 to $181 per share. (Notice, Ex. D at 30.)[5] The Notice also discloses that in February 2018, HC2 sold shares of the Company to itself at $132.32 per share. (Notice at 7.) The intercompany transaction is notable because it is higher than the Duff & Phelps valuation prepared during the same timeframe. (Notice, Ex. D at 29.)

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[4] Affidavit of Seth D. Rigrodsky, Esq. in Support of the Proposed Settlement and Application for an Award of Attorneys' Fees and Reimbursement of Expenses ("Rigrodsky Support Aff.") at ¶¶ 90-91.

[5] Dividing the "discounted cash flow analysis implied . . . range of valuations of the Company from $600.00 million to $700.00 million" by the 3,855,721 shares outstanding.

Notwithstanding the fact that Mr. Jacobs will obtain this higher value for himself if the Stipulation of Settlement is approved, incredibly, "[t]he lead plaintiff and his counsel in the Action expressly disclaim any opinion and make no recommendation as to the financial fairness of the Net Offer Price or its relation to the fair value of the Company." (Notice, Ex. D at 25.) Nor does the Company or the Defendants. (*Id*.) Worse, at least as compared to the 2014 Tender Offer, the draft Settlement Tender Offer makes no representation that any later cash-out of stockholders that do not participate in the Settlement Tender Offer would not be at a lesser price.

In other words, the Settlement Tender Offer is more unfair and coercive than the 2014 Tender Offer that prompted this Action. Yet, while the terms of the Stipulation of Settlement provide the Tendered Stockholders with an even better value ($67.45 per share) than Mr. Clarke's valuation analysis ($66.61 per share), and the Non-Tendered Stockholders fund that recovery on a *pro rata* basis, the Non-Tendered Stockholders must release Defendants from any liability arising from the unfair and coercive Settlement Tender Offer being presented to them, which is also being funded by the Company rather than any wrongdoer. For this "benefit," the Non-Tendered Stockholders are also asked to pay Class Counsel a 27.5% fee. The Stipulation of Settlement should be rejected, and certification of the proposed class should be denied.

ARGUMENT

I. THE PROPOSED SETTLEMENT IS UNFAIR AND UNREASONABLE

Rule 23(e) requires the Court to approve class action settlements. "The [C]ourt fulfills its duty under Rule 23 by exercising its sound business judgment in weighing and considering 'the nature of the claim, the possible defenses to it, [and] the legal and factual obstacles facing the plaintiff in the event of trial." *Marie Raymond Revocable Trust v. MAT Five LLC*, 980 A.2d 388, 402 (Del. 2008). While Delaware law encourages settlements, in considering a proposed settlement, the Court "must determine whether the settlement is fair and reasonable." *Id*. Here, the proposed settlement is not fair and reasonable because (i) the Settlement Payment unfairly burdens the Non-Tendered Stockholders as a result of being funded by the Company rather than the wrongdoers; and (ii) the Stipulation of Settlement unfairly allocates value away from the Non-Tendered Stockholders and unfairly and improperly releases claims.

A. The Settlement Payment Is Unfairly Funded by the Company Rather Than Wrongdoers

The over $20 million Settlement Payment is an unfair and unreasonable wealth transfer of more than $1.5 million on a *pro rata* basis from the Non-Tendered Stockholders to the Tendered Stockholders. This Court rejects settlements that amount to a circular transfer that would result in class members carrying the financial burden of the settlement rather than the wrongdoer. *Gatz v. Ponsoldt*, 2009 WL

1743760 (Del. Ch. June 12, 2009). While HC2 could certainly cause the Company to issue it dividends in the amount of $20,439,588.20 to fund the Settlement Payment, that would also result in the Non-Tendered Stockholders sharing in that dividend on a *pro rata* basis – or $5.75 per share. Instead, the Non-Tendered Stockholders are indirectly carrying a *pro rata* burden to fund the Settlement Payments.

B. The Settlement Unfairly Allocates Value Away from the Non-Tendered Stockholders and Imposes Unfair and Unsupported Releases of Claims

The proposed allocation of value between the Tendered Stockholders and the Non-Tendered Stockholders also renders the Stipulation of Settlement unfair and unreasonable, and creates an $11.4 million windfall for the Tendered Stockholders at the Non-Tendered Stockholders' expense.

The terms of the Stipulation of Settlement effectively give HC2 the opportunity to cash-out the minority on even more coercive terms and obtaining releases for any potential claims for the bargain price of $57,902,992.10: paid out partly in 2014 ($17,909,514 paid to Tendered Stockholders holding 568,556 shares at $31.50 per share), partly within 10 days of approval of the proposed settlement ($20,439,588.20 paid to Tendered Stockholders holding 568,556 shares at $35.95 per share), and partly through the completion of the proposed self-tender offer

($19,553,889.90 paid to Non-Tendered Stockholders holding 289,902 shares at $67.45 per share).

HC2 gets to fund more than 53% of the payment to the Tendered Stockholders with the Company's money rather than its own, and gets to fund 100% of any payment to the Non-Tendered Stockholders with the Company's money rather than its own, notwithstanding the fact that it received more than $60 million in dividends from the Company since 2015. (Notice Ex. D, 16 and 26.)

There is no question that cashing-out the minority for less than the dividends HC2 has received from the Company is a bargain price. Based on HC2's own valuations, the value of the Tendered Stockholders' shares were at least $68.99 back in 2014, and the Non-Tendered Stockholders being asked to sell their shares today in connection with the proposed settlement should be paid at least the $132 per share Plaintiff will receive on a net-basis if the Stipulation of Settlement is approved (the same price HC2 sold itself shares in February 2018). As the chart sets out below, the aggregate value of shares based on those values would be $77,491,742.44:

	Shares	**HC2 Per Share Values**	**Total Internal Value**
Tendered Stockholders	568,556	$68.99	$39,224,678.44
Non-Tendered Stockholders	289,902	$132.00	$38,267,064.00
	858,458		$77,491,742.44

Assuming complete participation, the proposed settlement would account for approximately 74.72% of the HC2 valuations identified in the settlement papers (though recent values were not tested by adversarial discovery). If both the Tendered

Stockholders and the Non-Tendered Stockholders were sharing in that recovery proportionately to how HC2 valued the shares, the Tendered Stockholders would be receiving a total gross recovery of $51.55 per share, rather than $67.45 per share. The chart below allocates the aggregate $57.9 million that would be paid to cash-out the minority on a fully participating basis on the same 74.72% value recovery:

	Shares	**Equal % Recovery**	**Total Recovery**
Tendered Stockholders	568,556	$51.55	$29,309,267.99
Non-Tendered Stockholders	289,902	$98.63	$28,593,724.11
	858,458		$57,902,992.10

By instead allocating $67.45 per share to the Tendered Stockholders, the Tendered Stockholders would receive an allocation of $38,349,102.20, $11,399,753.99 more than they would receive if they were recovering value on a comparable basis with the Non-Tendering Stockholders.

But the proposed allocation of the settlement does not result in a comparable percentage of recovery of relative value for the Tendered Stockholders and the Non-Tendered Stockholders.[6] Instead, both groups would recover $67.45 per share regardless of the value of the Company at the time they sold their shares. In this

[6] Plaintiff notes that in determining the allocation, dividends paid to the Non-Tendered Stockholders were taken into account. This again is unfair to the Non-Tendered Stockholders as the dividends paid reflect the same risk adjusted return any Tendered Stockholder has since received on the $31.50 2014 Tender price.

regard, assuming the award of fees requested,[7] on a net basis, the Tendered Stockholders would recover 83.4% of the HC2 2014/15 valuations while the Non-Tendered Stockholders would recover little more than 40% of the HC2 2019 valuation. Notably, the $31.50 per share 2014 Tender Offer price that prompted this Action was 46% of the HC2 2014/2015 valuations.

Because both the terms of the Stipulation of Settlement and the proposed allocation are unfair and unreasonable to the Non-Tendered Stockholders, the Stipulation of Settlement should be rejected by the Court.

II. THE PROPOSED CLASS CANNOT BE CERTIFIED

The Court cannot certify the proposed class under Rule 23(a) because there is no commonality and typicality among the class. The proposed class consists of "any and all record and beneficial owners of outstanding shares" of common stock of the Company "who held such stock at any time during" the period of May 12, 2014 through November 15, 2019, excluding defendants. (Stipulation at 13-14.) The proposed class would include former stockholders that tendered their shares in 2014, and stockholders that have continued to hold shares since that time.

[7] Which by the way are ensured to be maximized by allocating more to the Tendered Stockholders because Class counsel no doubt appreciates that a Settlement Tender Offer even at 74% of fair value may not be enticing to many Non-Tendered Stockholders.

A. The Proposed Class Lacks Commonality and Typicality of Claims

Rule 23(a)(2) commonality requires that there are questions of law or fact common to the class. While individuals within the class do not need to be identically situated, the question of law linking the class members must be substantially related to the resolution of the litigation. *Leon N. Weiner & Associates v. Krapf*, 584 A.2d 1220, 1225 (Del. 1991). In contending commonality is present here, Plaintiff states "all Class members were similarly injured by Defendants' breaches of fiduciary duty because . . . they were denied a fair price for their shares though an unfair process." (Settlement Brief at 33.) But only the Tendered Stockholders were actually injured as a result of the price set in the 2014 Tender Offer. By trying to shoehorn the Non-Tendered Stockholders into the class, Plaintiff is disregarding the fact that the Non-Tendered Stockholders have continued to participate in the risk and reward of the Company. That the Tendered Stockholders no longer have any regard for participation in the equity of the Company and therefore are in a very different position than the Non-Tendered Stockholders is apparent through the terms of the Stipulation of Settlement. The Tendered Stockholders would (i) have the Company rather than HC2 fund their Settlement Payment; and (ii) deny the Non-Tendered Stockholders the very opportunity that has created their prospect of receiving the Settlement Payment – legal challenge to a coercive and unfair tender offer. While Tendered Stockholders are content with releasing Defendants from claims that they

have no interest in, the Non-Tendered Stockholders are being asked to forgo such claims for only the benefit of being able to participate in the Settlement Tender Offer that is far more unfair and coercive than what any of the Tendered Stockholders experienced.

Rule 23(a)(3) typicality requires that "the claims or defenses of the representative parties [be] typical of the claims or defenses of the class." This means, "the legal and factual position of the class representative must not be markedly different from that of the members of the class." *Leon N. Weiner & Associates v. Krapf*, 584 A.2d 1220, 1225 (Del. 1991). Plaintiff acknowledges he is not a Tendered Stockholder, but places misguided weight on the fact that no Tendered Stockholder has sought to intervene in the Action or objected to the Stipulation of Settlement. As discussed above, the Stipulation of Settlement is a windfall for the Tendered Stockholders. The real question is whether Plaintiff is in a similar "legal and factual position" as the rest of the Non-Tendered Stockholders. The answer is clearly no. As set forth above, Plaintiff anticipates recovering value for his 300 shares that substantially equates on a proportionate basis to the value of the windfall the Tendered Stockholders are receiving. The rest of the Non-Tendered Stockholders are getting nothing but an opportunity to participate in a coercive and unfair Settlement Tender Offer they will have no opportunity to challenge, despite the fact that Plaintiff concedes the price of the Settlement Tender Offer is unfair.

The Stipulation of Settlement places Plaintiff in a position opposed to every other Non-Tendered Stockholder, rendering the Plaintiff atypical of the other class members.

B. Current Stockholder of the Company Have Not Been Adequately Represented

Rule 23(a)(4) requires that the class representative "fairly and adequately protect the interests of the class." This Court determines the adequacy of representation under Rule 23(a)(4) not only by the named representative, but also upon the qualifications, experience, and general ability of the representative's attorneys. *Leon N. Weiner & Associates v. Krapf*, 584 A.2d 1220, 1225 (Del. 1991). Factors that this Court will consider include: (i) conflict or economic antagonism between the interests of the representative and those of the class; (ii) whether the action has been diligently pursued; (iii) the magnitude of the representative's financial interest in the suit as compared with that of other class members; and (iv) the remedy sought by the representative. *See, e.g.*, Donald J. Wolfe, Jr. & Michael A. Pittenger, CORPORATE AND COMMERCIAL PRACTICE IN THE DELAWARE COURT OF CHANCERY § 12.02[b][5] at 12-19-20 (2d ed) (there are others, but these in particular cut strongly against certification here).

As discussed above, factually, Plaintiff has placed himself in a very different position than every other Non-Tendered Stockholders. To be sure, given the value he expects to recover from his participation in this Action rather than from the

remedy he has sought on behalf of other Non-Tendered Stockholders, on a relative basis, Plaintiff stands to receive the same windfall as the Tendered Stockholders. Supporting a wealth transfer from the Non-Tendered Stockholders to the Tendered Stockholders by unfairly allowing the Company to fund both the Settlement Payment and the Settlement Tender Offer, and unfairly allocating on a relative basis a far greater percentage of value to the Tendered Stockholders, Plaintiff has put himself in conflict and economic antagonism with the other Non-Tendered Stockholders. Plaintiff's decision to do so was no doubt a result of his modest financial interest in the Action. In this regard, it is also problematic that Plaintiff supports an allocation of value between the Tendered Stockholders and Non-Tendered Stockholders that ensures the highest award of attorneys' fees, and that Plaintiff supports any application of attorneys' fees based upon the unfair and coercive Settlement Tender Offer he has helped to create. Finally, the Court is familiar with the docket and the qualifications, experience, and general ability of the Plaintiffs' attorneys. The aforementioned conflicts combined with the substantial devotion of time and effort to settlement rather than litigation suggests counsel's efforts here do not satisfy Rule 23(a)(4).

III. SHOULD THE COURT APPROVE THE SETTLEMENT, THE NON-TENDERED STOCKHOLDERS SHOULD BE ALLOWED TO OPT-OUT

Should the Court ultimately determine that the Stipulation of Settlement should be approved, AB Value respectfully submits that the Non-Tendered Stockholders be allowed to opt-out. Plaintiff seeks to certify the class under Rule 23(b)(1) and (2) as a non-opt out class. While AB Value acknowledges that breach of fiduciary duty actions recovering money damages are regularly certified in this Court under Rule 23(b)(1) and (2), there are exceptions. In *BVF Partners L.P. v. New Orleans Emps. Ret. Sys.* (*In re Celera Corp. S'holder Litig.*), 59 A.3d 418, 436 (Del. 2012), the trial court abused its discretion by not allowing a significant stockholder to opt out of what were effectively money damage claims. The Delaware Supreme Court noted that the trial court should not "blind itself" to these facts when due process required the trial court to consider the "posture of the case as it realistically exist[ed]." *Id*.

Here, the parties concede that the Settlement Tender Offer is not fair. The docket and information presented in support of the Stipulation of Settlement show that the proposed claims to be released that extend beyond 2014 were not vigorously pursued in discovery or analyzed by Mr. Clarke. Tellingly, in October 2016, Plaintiff did not even contemplate a class definition that extended beyond 2014. Moreover, Defendants concede that the releases that extend beyond 2014 contemplated by the

Stipulation of Settlement will already be required by any stockholder who participates in the coercive and unfair Settlement Tender Offer. Page 24 of the draft Settlement Tender Offer expressly states: "The claims of the Non-Tendered Stockholders related to the 2014 Tender Offer and this Offer already be been [sic] released by operation of the Delaware Court's approval of the Final Settlement of the Action, regardless of whether the Non-Tendered Stockholder participates in this Offer. Nevertheless, the Letter of Transmittal accompanying this Offer includes a customary release of claims related to this Offer." (Notice, Ex. D at 24.)

There is no factual, legal or equitable reason to force the Non-Tendered Stockholders to involuntarily release such claims through the certification of a non-opt out class. Instead, should the Court determine that the proposed class be certified, the participation of the Non-Tendered Stockholders in the class should by on an opt-in basis only.

CONCLUSION

For the foregoing reasons, AB Value respectfully submits that the Court reject the Stipulation of Settlement as unfair and unreasonable, and deny class certification for lack of commonality, typicality and adequate representation. In the unlikely event that the Court should approve the Stipulation of Settlement and certify the class, AB Value respectfully submits that class certification should be limited to the

Tendered Stockholders only or, to the extent that the Court should include the Non-Tendered Stockholders, they be included on an opt-in basis only.

PRICKETT, JONES & ELLIOTT, P.A.

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Words: 4,541

Dated: January 24, 2020

CERTIFICATE OF SERVICE

I, Marcus E. Montejo, do hereby certify on this 24th day of January, 2020, that I caused a copy of AB Value Partners LP's Objection to Proposed Settlement to be served by eFiling via File and Serve*Xpress* upon the following counsel of record:

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