EXHIBIT B

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Case No. 10323-VCZ

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE SCHUFF INTERNATIONAL INC. STOCKHOLDERS LITIGATION	))	CONSOLIDATED C.A. No. 10323-VCZ

VERIFIED CONSOLIDATED AMENDED CLASS ACTION COMPLAINT

Plaintiff Mark Jacobs ("Plaintiff"), by his undersigned attorneys, for this Amended Consolidated Complaint against defendants, alleges upon personal knowledge with respect to himself and his own actions, and upon information and belief as to all other allegations herein, based upon, *inter alia*, the investigation of counsel, including the review of confidential, internal documents and depositions, as follows:

NATURE OF THE ACTION

1. Plaintiff brings this class action on behalf of the former and current public stockholders of Schuff International, Inc. ("Schuff" or the "Company") who have been harmed as a result of defendants' breaches of fiduciary duties in connection with a buyout of Schuff's minority interest by its majority stockholder, HC2 Holdings, Inc. ("HC2"), in the form of a unilateral two-step freeze-out (the "Buyout"). The Buyout was structured as a unitary transaction whereby HC2 launched a cash tender offer (the "Tender Offer") for $31.50 per share (the "Merger Consideration"), and committed to squeezing out any remaining stockholders in a second-step short form merger (the "Merger") for the same Merger Consideration.

2. Prior to the commencement of the Tender Offer, HC2 owned 70% of Schuff's outstanding common stock. The Tender Offer commenced on August 21, 2014 and, after two extensions, ended on October 6, 2014. HC2 currently owns approximately 92.5% of Schuff's outstanding shares. However, despite the fact that all of the conditions to the Merger have been satisfied and HC2 has repeatedly and unequivocally promised, both prior to and after the close of the Tender Offer, that "it will complete the short-form merger described in the Offer to Purchase at no less than the Offer Price," HC2 has refused to effect the Merger and consummate the Buyout in breach of its fiduciary duties.

3. To be sure, as confirmed in discovery, there are no legitimate business or legal reasons that are preventing HC2 from consummating the promised Buyout. Rather, HC2 has refused to complete the Buyout for one reason only: to attempt to thwart the successful prosecution of the Action, and the attendant substantial personal liability that each of the defendants face as a result of those stockholder challenges.

4. As described herein, Defendants have good reason to believe that they will be liable for substantial monetary damages in light of the unfair process and unfair price imposed upon Schuff's minority stockholders in the Buyout.

5. At the time HC2 launched the Tender Offer, Schuff's Board of Directors (the "Board" or the "Individual Defendants") consisted of seven individuals. Three of the Board members—Philip A. Falcone ("Falcone"), Keith M. Hladek ("Hladek"), and Paul Voigt ("Voigt")—were members of HC2 management that were placed on the Board when HC2 acquired a majority interest in Schuff in May 2014. Two members of the Board—Michael R. Hill ("Hill") and James Rustin Roach ("Roach")—were (and still are) executive officers of Schuff that were allowed by HC2 to remain with the Company in exchange for facilitating the squeeze out of Schuff's minority stockholders. The final two members of the Board—D. Ronald Yagoda ("Yagoda") and Phillip O. Elbert ("Elbert")—were purportedly independent directors that served on the special committee (the "Special Committee") that was tasked to evaluate the Buyout.

6. Unfortunately for Schuff's minority stockholders, the Buyout for the inadequate Merger Consideration was a foregone conclusion even before HC2 launched the Tender Offer in August 2014. Yagoda aided HC2's purchase of a majority interest in Schuff in May of 2014 with the understanding that HC2 intended to own 100% of the Company. Yagoda specifically asked HC2 to be paid for facilitating the sale. Indeed, throughout the sale process, Yagoda had several conversations with Falcone and Voigt regarding Yagoda's compensation and

possible future employment with the Company.

7. In addition, Elbert was interested in obtaining a liquidity event so that he could completely exit Schuff as a director and a shareholder. Indeed, after HC2 acquired a majority interest in Schuff, Elbert sent an email to Schuff directors and officers indicating that he was resigning from the Board and requesting that the Board cause the Company to purchase his 13,000 shares of Schuff stock. The next day, however, Elbert rescinded his resignation in light of a phone call he received from HC2's Voigt, who presumably promised Elbert the opportunity for the desired liquidity event if he stayed on the Board and helped facilitate the Buyout.

8. After HC2 acquired a 70% interest in Schuff, HC2 sent Schuff draft tender offer materials that formally notified the Company of HC2's intention to commence a tender offer to purchase all of the issued and outstanding shares of Schuff common stock not already owned by HC2 for $31.50 per share. Two days after receiving those tender offer materials, Elbert sent an email to Yagoda that copied Falcone, indicating that was in favor of the tender offer and was available to facilitate it. Elbert and Yagoda committed to taking a hands-off approach with respect to the Buyout and left Schuff's minority stockholders to fend for themselves even before HC2 had commenced the Tender Offer.

9. Following the launch of the Tender Offer by HC2, the Board established the Special Committee consisting of Yagoda and Elbert, who, at that point, were already hemmed in by HC2 and committed to turning a blind eye and taking no action with respect to the Buyout. Indeed, although the Special Committee was given the authority to review, investigate, consider, evaluate, negotiate, and take a position with respect to the Buyout and/or alternatives thereto, the Special Committee did nothing. Among other things, the Special Committee did not: engage an outside financial advisor to perform any valuation analyses; engage in negotiations with HC2 over the Merger Consideration; consider or pursue any other strategic alternatives to the Buyout; or evaluate HC2's ability to obtain financing sufficient to consummate the Tender Offer. The Special Committee, moreover, informed stockholders that it was neutral and took no position with respect to the Buyout, despite knowing, or having reason to know, that the Merger Consideration was patently unfair.

10. Because HC2, as Schuff's majority stockholder, stood on both sides of the Buyout, which was not recommended by the Special Committee, the Buyout is subject to the entire fairness standard of review. The Individual Defendants and HC2 were under an obligation to ensure that the process leading to, and the price offered in, the Buyout were entirely fair to the Company's minority stockholders.

Defendants cannot meet this burden, as the Merger Consideration was grossly unfair and failed to reflect Schuff's true intrinsic value. Moreover, the process leading to the Buyout was grossly inadequate and, indeed, non-existent.

11. The Individual Defendants breached their fiduciary duties by knowingly causing materially misleading and coercive statements to be disseminated to Schuff's minority stockholders, and because they each suffered from a conflict of interest and pursued their own interests to the detriment of Schuff's minority stockholders. In addition, the Individual Defendants breached their fiduciary duties by failing to protect Schuff's minority stockholders and recommend that they not tender their shares in favor of the Tender Offer, despite knowing that the Merger Consideration was grossly inadequate.

12. HC2 breached its fiduciary duties by imposing the unfair Buyout on Schuff's minority stockholders through an unfair process and for an unfair price. Moreover, HC2 has breached, and is continuing to breach, its fiduciary duties by not effecting the Merger and consummating the Buyout as promised. Despite its repeated unequivocal representations, both prior to and after the close of the Tender Offer, that it would complete the Merger upon acquiring 90% of Schuff's stock (which it did), HC2 thereafter refused to consummate the Buyout. HC2's decision not to effect the Merger stemmed from purely selfish reasons to avoid the liability

that it would face as a result of any anticipated and foreseeable class action or appraisal litigation, including the substantial liability that it currently faces as a result of this litigation.

13. As a result of defendants' misconduct and HC2's failure to consummate the promised Buyout, Schuff's former and current public minority stockholders were left in limbo and have been damaged thereby. Those Schuff stockholders who tendered their shares into the Tender Offer were misled and coerced into tendering their shares at an unfair price and through an unfair process, and defendants further harmed the non-tendering stockholders by reneging on the Short Form Merger and preventing them from obtaining fair value for their shares through appraisal.

14. The remedies sought herein, including monetary damages, that will result from this litigation, which stockholders (and defendants) knew were likely to occur due to the patent unfairness of the Buyout, will inure to the benefit of all of Schuff's minority stockholders (other than those who sold their shares), whether they tendered their Schuff stock into the Tender Offer or held their shares. Thus, all of Schuff's minority stockholders, whether they tendered or not, have suffered harms and damages that were inflicted on them by defendants in connection with the Buyout.

PARTIES

15. Plaintiff is, and has been at all relevant times, the owner of common stock of Schuff.

16. Non-party Schuff is a Delaware corporation with its executive offices located in Phoenix, Arizona. The Company is, and was at the time of the Tender Offer, one of the largest fabricators and erectors of steel in the United States. The Company went public in 1997. On November 16, 2004, Schuff filed a Form 15 with the United States Securities and Exchange Commission ("SEC"), which immediately suspended the Company's obligations to file certain reports with the SEC. On January 5, 2005, Schuff received an order from the SEC granting its application to withdraw its shares from listing and registration on the American Stock Exchange, and the Company did not make any further filings with the SEC after January 13, 2005. After that time, the Company's stock traded over-the-counter on pink sheets under the ticker symbol "SHFK." Following the close of the Tender Offer, HC2 changed Schuff's name to "DBM Global, Inc."[1] HC2 currently maintains a 92% controlling interest in Schuff.

[1] To avoid confusion, DBM Global, Inc. will be referred to herein by its prior name, "Schuff."

17. Defendant Falcone has served as a director of Schuff since 2014 when HC2 acquired a majority interest in Schuff. Falcone was at all relevant times, and still is, the President and Chief Executive Officer ("CEO") of HC2 and Chairman of the HC2 Board of Directors.

18. Defendant Hladek served as a director of Schuff from 2014 when HC2 acquired a majority interest in Schuff until December 31, 2016. Hladek was at all relevant times the Chief Operating Officer ("COO") of HC2. Hladek and HC2 entered into a separation and release agreement, effective December 31, 2016, pursuant to which Hladek ceased employment with HC2.

19. Defendant Voigt has served as a director of Schuff since 2014 when HC2 acquired a majority interest in Schuff. When he first became employed by HC2, Voigt had already known Falcone for fifteen years. After Voigt had retired from Jefferies, Falcone asked him to come work with him and "raise money and find companies."

20. Voigt was a Managing Director of Investments for HC2 but is no longer employed by the Company.

21. Defendant Hill has served as a director of Schuff since 2001. Hill was at all relevant times, and still is, the Vice President and Chief Financial Officer ("CFO") of Schuff.

22. Defendant Roach has served as a director of Schuff since 2013. Roach was at all relevant times, and still is, the President and CEO of Schuff.

23. Defendant Yagoda has served as a director of Schuff since 2012, and served as a member of the Special Committee in connection with the Buyout. Prior to joining the Board, Yagoda served as an independent financial consultant to the Board since 1997, and he also provided individual investment advice to Schuff's co-founders, David Schuff and his son, Scott Schuff, with respect to their decisions to sell their respective controlling blocks of Schuff shares.

24. Defendant Elbert served as a director of Schuff from 2012 through at least the close of the Tender Offer. Elbert served as a member of the Special Committee in connection with the Buyout.

25. Defendant HC2 is a Delaware corporation with its executive offices located in New York, New York. HC2 operates as a holding company of operating subsidiaries that span across seven reportable segments, including construction, marine services, energy, telecommunications, life sciences, insurance, and other. HC2's largest operating subsidiary is Schuff. HC2 has been at all relevant times the majority and controlling stockholder of Schuff.

CLASS ACTION ALLEGATIONS

26. Plaintiff brings this action as a class action pursuant to Court of Chancery Rule 23 on behalf of the minority owners of Schuff common stock (the "Class") from August 21, 2014 (the date of the announcement of the Tender Offer and Buyout) to the present. Excluded from the Class are defendants and their affiliates, immediate families, legal representatives, heirs, successors or assigns and any entity in which defendants have or had a controlling interest.

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

28. The Class is so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through discovery, Plaintiff believes that there are hundreds, if not thousands, of members in the Class. According to the Company's Annual Report for the year ended December 29, 2013, approximately 4.2 million shares of common stock were represented by the Company as outstanding.

29. Questions of law and fact are common to the Class, including, *inter alia*, the following:

(i) Whether the Buyout was entirely fair as to price and process to Plaintiff and other members of the Class;

(ii) Whether the Individual Defendants breached their fiduciary duties with respect to Plaintiff and the other members of the Class in connection with the Buyout;

(iii) Whether HC2 breached its fiduciary duties as the Company's majority, controlling stockholder to Class members in connection with the Buyout; and

(iv) Whether Plaintiff and the other members of the Class have been harmed as a result of the Buyout.

30. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature. Plaintiff's claims are typical of the claims of the other members of the Class and Plaintiff has the same interests as the other members of the Class, in that every Class member has been harmed as a result of Defendants' conduct in connection with the Buyout. Accordingly, Plaintiff is an adequate representative of the Class and will fairly and adequately protect the interests of the Class.

31. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class that would establish incompatible standards of conduct for defendants, or adjudications with respect to individual members of the

Class that would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

32. Defendants acted, or refused to act, on grounds generally applicable, and have caused and are causing injury to the Class and, therefore, the relief sought herein on behalf of the Class as a whole is appropriate.

SUBSTANTIVE ALLEGATIONS

Background of the Company

33. Schuff was founded by David Schuff and his son, Scott Schuff, in 1976. The Company originally operated as a steel erector that outsourced the fabrication portion of its projects. As Schuff grew, it began to integrate its services and, in 1985, the Company acquired its first fabrication facility in Phoenix, Arizona. In 1995, David Schuff turned over the Company's operations to Scott Schuff, who became President and CEO of Schuff, while David Schuff continued to serve as Chairman of the Board.

34. The Company issued its initial public offering in July 1997 and originally traded on the NASDAQ market. In 1999, the Company's shares began to trade on the American Stock Exchange until 2005 when the Company's stock traded over-the-counter on pink sheets. In 2006, based on advice from Yagoda, David

Schuff sold half of his Schuff stock to obtain liquidity.

35. Prior to the Tender Offer, Schuff was the largest steel fabrication and erection company in the United States. The Company owned and operated ten steel fabrication plants through its subsidiaries, including, among others, Schuff Steel Company ("Schuff Steel"), Schuff Steel Management Company-Southwest, Inc., and Aitken Inc.

Voigt Delivers Controlling Interest in Schuff To HC2 On The Cheap

36. Falcone and Voigt had a relationship dating back fifteen years prior to Voigt becoming employed at HC2. When Voigt worked at Jefferies, he covered Falcone as a salesman and claims that they had a "very good relationship." Six months after Voigt retired from Jefferies, Falcone called him to ask if Voigt wanted to come work with him and "raise money and find companies." Voigt had ideas that involved HC2 buying securities with the goal of ultimately owning the company. Voigt's only criteria for companies to bring to Falcone was "anything that was cheap."

37. Voigt's compensation structure with HC2 supported his motivation to find cheap companies with significant cash flow. HC2 would have an independent valuation of the companies it acquired that year performed at the end of the year, and Voigt's compensation would come from [redacted]% of the delta of the result of

purchase price and the independent valuation ("Compensation Pool"). It was initially agreed that Voigt would be paid [redacted]% of that Compensation Pool.

38. And Voigt thought that Schuff nicely fit the bill. As early as March, 2014, Voigt targeted Schuff. In an email dated March 13, 2014, Voigt told Falcone: "I like schuff steel free cash flow machine . . . would be a perfect acquisition ." As Voigt told Falcone in an email dated May 5, 2014, "this company will do 40mm ebitda or more this year and 60mm next year if the economy holds together . . . and make 500mm on this investment or more . . . ."

39. In March of 2014, Voigt reached out to Falcone via email providing Yagoda's name and cell phone number stating "Ron Yagoda on board of Schuff worth speaking to." Voigt had learned from a friend on Wall Street, Marc Sole, that Yagoda had "the mandate to sell [Schuff]." Voigt again referred to Schuff as a "free cash flow machine," given the lack of capital expenditures and the fact that all or most of the money the Company made was free cash flow.

40. On March 13, 2013, Voigt sent Falcone an email regarding purchasing a majority stake in Schuff, stating that "I think you can buy Scott's stock at 25 to 30 a share. He needs the money." Scott Schuff was the CEO of the Company at the time, and an extremely vulnerable and a desperate seller. Voigt told Falcone in an email dated August 31, 2014, that he thought that Scott Schuff suffered from many

personal problems and was highly motivated to sell his shares on the cheap.

41. Voigt arranged a meeting with Yagoda and Scott Schuff for him and Falcone. It was clear to Voigt that Yagoda was presenting the deal to HC2 and had been given the mandate to sell the Company.

42. On April 10, 2014, Voigt and Falcone met with Scott Schuff and Yagoda at Teterboro Airport to discuss HC2 purchasing the Company from Scott Schuff. After the meeting, Voigt followed up with Falcone stating that "this is a free-cash flow machine, and there is a tun of fat to cut out here by getting rid of Scott Schuff." Voigt believed that they could "schmooze [Scott Schuff] to a lower price." Yet Voigt cautioned Falcone that "Scott is nuts," and had concerns that because he did not perceive Scott Schuff to be the "smartest bulb in the socket," that he could change his mind at any time about the sale. Nevertheless, after that first meeting, Voigt believed that Scott Schuff "loved" him, and that he felt very comfortable with him.

43. In an email dated March 13, 2014, Voigt made clear to Falcone that Scott Schuff was interested in closing a deal quickly because he "needs the money." Falcone would need to close the deal quickly. Voigt had discussions with all of the Schuff board members as well as the CFO who assured him that there would be any problems with the Board approving the sale of Scott Schuff's shares. Indeed, it

appears that the Board was entirely locked up on approval. Voigt noted to Falcone in an e-mail dated May 3, 2014: "I think we are fine on schuff all the board members and CFO have called me to assure me that we won't have Any problems . . . everyone affiliated with the company trying to help us to get this done smoothly."

44. As of May 9, 2014, Scott Schuff had reached agreement with Falcone on a purchase price for his shares. HC2 did not conduct nor did it have an outside advisor conduct any valuation analysis to determine what price should be paid for Scott Schuff's shares. Indeed, the negotiations regarding the sale were not at all robust, and proceeded consistent with Voigt's opinion of Scott Schuff's poor mental state and lack of business acumen. Voigt testified that he "sat at the table with him and went back and forth on price. He wanted 35 we wanted 30. And then we bumped it up to 31 and a half and he didn't want to do it. We started walking out of the room and he said okay I will do it."

45. That same day, Scott Schuff called Voigt to thank him. Voigt told Falcone "Amazing. Just made 100 million bucks, buy-side. So much fun." Indeed, there was much for Voigt and Falcone to celebrate. In yet another email from that same day, Voigt told Falcone: "fyi. . . .april numbers at scuff better than expected revs 35mm ebitda 4mm (they budgeted 10mm for 2nd qtr-should do a lot better this qtr). . . permanent debt down to 5mm from 9,7mm at march . . . free cash flow

machine …" Voigt was getting his information at this early stage from Company insiders including the future CEO, Rustin Roach. Voigt told Falcone in his email that "rustin just called me that they just signed 40-50mm new contract on the Sacramento Kings new arena and they are bidding on new convention center in Anaheim . . this could be a huge homerun . . . rustin is a great guy . . ."

HC2's Unimpeded Acquisition of Schuff's Majority Interest

46. On May 12, 2014, HC2 purchased 2,500,000 shares of Schuff common stock, representing approximately 60% of Schuff's outstanding shares, from SAS Venture LLC, an entity owned by Scott Schuff, for an aggregate purchase price of $78,750,000, or $31.50 per share. In purchasing Scott Schuff's shares, it was HC2's intent to ultimately own 100% of the Company.

47. According to Yagoda, who "advised" Scott Schuff on the sale of his Company shares to HC2, Scott Schuff sold his stock to get a "liquidity event" when the Company's stock price, which had fluctuated substantially over the years, started to rise. Scott Schuff also insisted on a "quick sale" for cash with a thirty-day window and with no financing condition. HC2, knowing that it was getting a great deal, gladly accommodated. A quick closing suited Falcone, Voigt, and HC2 as well, because, having learned of the Company's excellent projections from management, Voigt urged Falcone to buy the remainder of the Company quickly.

48. In agreeing to sell his Company stock to HC2, Scott Schuff did not engage a financial advisor to perform any valuation analyses or appraisal of the Company's fair value. Instead, unbeknownst to Scott Schuff, Yagoda and Hill only did a "back of the envelope" leveraged buyout analysis as an "academic exercise" in case a group of Schuff's management team wanted to offer to buy Scott Schuff's shares. This analysis, however, was not shared with Scott Schuff. Rather than rely on any valuation analyses, Scott Schuff and Yagoda simply picked a range of prices that would be acceptable to Scott Schuff, with the only criteria being that the sale price should be a premium to the stock's trading price, which traded at a discount due to the lack of liquidity from trading on pink sheets in the over-the-counter market.

49. Pursuant to the stock purchase agreement among HC2, Scott Schuff, and SAS Venture LLC, as a condition to the stock purchase closing, Scott Schuff, his father David Schuff, and Robert Waldrep were required to have resigned or be removed as a director of the Schuff Board. Scott Schuff also resigned as an officer of the Company. However, in connection with the stock sale and at Scott Schuff's insistence, Scott Schuff entered into a consulting agreement with HC2, pursuant to which he agreed to provide consulting services for three years in consideration of aggregate consulting fees of $2.5 million.

50. Additionally, at or around the time of Scott Schuff's stock sale to HC2, Yagoda had conversations with representatives of HC2 about what role he would have with the Company. According to Yagoda: "I wanted to know what role I would be playing on an ongoing basis and what my, what kind of deal I would have." According to Voigt, Yagoda always "wanted more…financial compensation for being the person bringing us the Company that was for sale." Falcone and HC2 got their money's worth from Yagoda. As early as April 16, 2014, Voigt noted in an email to Falcone that "[j]ust FYI, Yagoda called me today to discuss the issues around the employment contracts for senior executives."

51. Specifically, Yagoda had numerous conversations with HC2's CEO, Falcone, and HC2's Senior Managing Director – Investments, Voigt, about providing consulting services to the Company, and Yagoda repeatedly explicitly stated during the course of negotiations that he wanted to be compensated for his services.

52. Following the consummation of the stock purchase transaction with Scott Schuff, HC2 owned 60% of the issued and outstanding shares of the Company, and HC2 replaced the three Board members that stepped down in connection with the stock purchase with three representatives from HC2: Falcone (HC2's CEO, President, and Chairman); Hladek (HC2's Chief Operating Officer); and Voigt

(HC2's Senior Managing Director – Investments). HC2 also selected Roach to replace Scott Schuff as the Company's new President and CEO, effective June 4, 2014.

53. Despite knowing that HC2 was purchasing a majority interest in Schuff to engage in a takeover of the Company, the then-constituted Board never even met to discuss the sale of Schuff's majority interest to HC2. This did not sit well with one Board member. On May 12, 2014, the day that Scott Schuff entered into the stock purchase agreement with HC2, Elbert sent an email to directors and officers of Schuff, stating in part:

> Schuff International Board of Directors,
>
> Effective immediately, I resign as a member of the Board of Directors of Schuff International. I believe in an effort to satisfy Scott's desire to sell his stock; the Investment firm wanting to purchase his stock and of course the "facilitators" wanting their fees and commissions, "corners were cut and some agreements were made" that should have gone to the entire Board for a vote and approval.
>
> While Scott has the right to sell his stock when, to whom he desires and at what price; did Schuff International incur any professional fees and commissions? Additionally, Board Seats and some employment agreements can not be given in this stock sale transaction, without Board approval. While the "Investment firm" can accomplish this after the stock purchase is completed, they can not do this prior to their control of the Board.
>
> The present Schuff International Board has the legal responsibility to look out for the best interests of all the shareholders, our entire Corporation and the employees - I don't think we have done this so far

> during the transaction. Think a lot of this could have been accomplished with a Board Meeting.
>
> * * *
>
> I have enjoyed being a Board Member of "Schuff" and I hope I have made some contribution to the success of the Company. I presently own 13,000 shares of Schuff Stock. Because I will no longer be involved in the Company, would the Board consider purchasing my shares for treasury stock ? [sic] At a price that you think is fair.
>
> I finish my Radiation in a week and am now back to normal - even my hair is growing back.

54. The next day, however, Elbert sent an email to the same directors and officers of Schuff, rescinding his resignation in light of a phone call he received from HC2's Voigt, who undoubtedly promised Elbert the opportunity for liquidity in the anticipated Buyout:

> I received a telephone call from Paul Voigt and he was concerned that I had resigned from the Schuff Board. He asked that I rescind my letter of resignation as he wants me to remain on the Board. I therefore request that you void my letter and restate me as Board Member.

55. After gaining control of Schuff, HC2 continued to acquire additional Company shares, and it caused the conflicted Board to use the Company's cash to repurchase Company shares from various individual stockholders for the purpose of taking the Company private for cheap. The intent of these purchases was to eventually get HC2's ownership of Schuff to 100%. The members of the Schuff family, moreover, continued to sell their shares to obtain liquidity and exit the

Company completely. The following reflects the purchases of Schuff common stock by HC2 and the Company:

- In June 2014, HC2 purchased an additional 198,411 Schuff shares.
- On June 17, 2014, the Company repurchased 253,039 shares from Saied Mahdavi, former President of Quincy Joist Company, a wholly owned subsidiary of the Company until 2013, for $28.25 per share.
- On June 27, 2014, the Company repurchased 45,325 shares from Scott Schuff's son, Ryan Schuff, the former President and CEO of Schuff Steel for $26.50 per share.
- On June 30, 2014, the Company repurchased an additional 26,300 shares from SAS Revocable Trust U/T/A, a trust controlled by Scott Schuff, for $26.50 per share.
- Also on June 30, 2014, the Company repurchased 3,000 shares from Davnan International L.L.C., an entity controlled by David Schuff, for $26.50 per share.

56. HC2 wanted to obtain 100% ownership of Schuff as soon as possible because, as Voigt indicated, "[n]umbers on Schuff will be through the roof the next few quarters" based on the Company's backlog being up, its cash flow, and new management in place.

57. After the consummation of HC2's purchases and the Company's repurchases of its shares, HC2 owned 70% of the issued and outstanding shares of Schuff. At that point, HC2 was ready to commence its pre-ordained freeze-out of Schuff's minority stockholders for an unfair price, which was facilitated by the

conflicted and ineffective Board. As Voigt told Falcone in an e-mail dated July 23, 2014, "the more I think about it, I think the best way to buy back the schuff stock would be at hc2 doing a tender offer at 31.5 with the independent directors take no position . . . this way you don't have to spend any money on a fairness opinion." Voigt continued in another email sent to Falcone that same day "the way you are going to need a fairness opinion, which will be brutal . . .lets tender for as much as we can get at 31.5/share, if we fall 200k shares short we can negotiate with [larger sellers] and horse trade with them somehow . . . but lets do this sooner rather than later." As discussed below, this is exactly what Falcone and HC2 did.

HC2 Predictably Determines to Take Schuff Private for Inadequate Consideration

58. On August 11, 2014, HC2's counsel, Paul, Weiss, Rifkind, Wharton & Garrison LLP ("Paul Weiss"), sent Company representatives an email that attached draft tender offer materials that notified the Company of HC2's intention to commence a tender offer to purchase all of the issued and outstanding shares of Schuff common stock not already owned by HC2 for $31.50 per share. The draft tender offer materials indicated that the proposed tender offer was subject to the following conditions before HC2 would be obligated to accept any Schuff shares that were tendered: (a) a vague minimum tender condition; (b) a financing condition; (c) the absence of any law or governmental order that has the effect of making the

tender offer or the merger illegal; and (d) the absence of an event that is reasonably expected to have a material adverse effect on Schuff or HC2's ability to effect the tender offer or merger.

59. Although the tender offer materials contemplated a "minimum tender condition," it did not expressly contemplate a non-waivable "majority-of-the-minority" tender condition that would require a majority of Schuff's minority shares being tendered into the tender offer. Additionally, the tender offer materials initially indicated that HC2 only had a "non-binding intent" to effect a short-form merger of Schuff into an HC2 subsidiary following the completion of the tender offer, pursuant to Section 253 of the Delaware General Corporation Laws ("DGCL").

60. On August 13, 2014, Elbert sent an email to Yagoda and Scott Sherman, Vice President and General Counsel of Schuff, that copied Falcone and discussed the conversation that they had with Robert Kant, an attorney from Greenberg Traurig, LLP ("Greenberg Traurig"), the previous day. In the email, Elbert stated:

> I thought the Tender Offer discussion that the three of us had with Bob Kant yesterday was excellent. As we thought, to protect you and me as Independent Directors could be involved with lawyers and fairness opinions. However, when you stated you thought HC2 might offer the same price per share as they paid Scott Schuff, that would greatly simplify our involvement, speed up the process and lower the cost. On that basis I can totally support the tender offer and it [sic] think it is definitely the right move.

> Think it would be a win win situation for all involved; shareholders, morale of Schuff employees and showing the "fairness" of HC2 with Schuff International - which could be important for future activities.

61. That same day, Falcone replied to the email and stated: "I guess that means 'no position' right now which is the preferred route." In response to only Falcone, Elbert wrote: "Right 'no position.'"

62. Thus, from the very outset, the Buyout for the inadequate $31.50 per share Merger Consideration was a foregone conclusion, despite the fact that there were no negotiations over the Buyout price and no independent determination that the price paid by HC2 for Scott Schuff's shares was a fair value for Schuff's minority stockholders. Elbert's email, moreover, makes it clear that Falcone was deeply ensconced in the purported deliberations of the so-called independent directors, who wanted no part of actually negotiating a transaction, and Falcone had herded them to his preferred route of conquest before the Board even met to discuss the matter.

63. On August 15, 2014, the full Schuff Board met with the exception of Voigt, who waived his attendance at the meeting. During the meeting, the Board discussed HC2's anticipated tender offer for the Company's minority shares, and determined to form the Special Committee consisting of Yagoda and Elbert. Although purportedly independent, as discussed herein, the members of the Special Committee did not act independently in negotiating on behalf of the minority

stockholders. At the meeting, the Board delegated to the Special Committee the power and authority to engage financial and legal advisors, and to review, investigate, consider, evaluate, negotiate, and take a position with respect to the Tender Offer and/or alternatives thereto. Despite being given these powers, however, the Special Committee did not negotiate with HC2 over the price offered in the Buyout, and never engaged an outside financial advisor to assist in the review of the price being offered by HC2 in the proposed tender offer or to solicit interest from other third parties.

64. On August 18, 2014, the Special Committee met with representatives of Greenberg Traurig in attendance. After Mr. Kant from Greenberg Traurig provided a summary of the draft tender offer materials provided by HC2, the Special Committee determined to adopt resolutions to officially retain Greenberg Traurig as its outside legal counsel.

65. On August 19, 2014, the Special Committee sent a letter to HC2 suggesting revisions to the draft tender offer materials. Specifically, the Special Committee requested that the tender offer be subject to: (i) a non-waivable majority-of-the-minority tender condition; and (ii) an unequivocal "**commitment to consummate the Buyout at the same price per share of Common Stock as contemplated by the Tender Offer promptly following consummation of the**

Tender Offer." (Emphasis added). The letter also warned HC2 that the tender offer should not contain any retributive threats and should not be coercive. In this regard, the letter stated:

> **The Committee believes that HC2's failure to commit to the Merger at the same price per share of Common Stock promptly following the consummation of the Tender Offer may make the Tender Offer materials "coercive."** The Committee also reminds HC2 that any communications it makes to the Company's other stockholders should disclose all material facts and be free of any threat of retribution should the Tender Offer not be consummated. HC2 should also refrain from engaging in any structurally coercive tactics, such as making the Tender Offer in such a way as to prevent the Committee and the other stockholders of the Company from receiving adequate time to evaluate the Tender Offer.

(Emphasis added).

66. Notably, the Special Committee did not request an increase in the consideration to be paid to minority stockholders in connection with the proposed tender offer and merger, or request additional time to evaluate the fairness of the consideration being offered.

67. On August 20, 2014, Greenberg Traurig and Paul Weiss discussed the Special Committee's suggested revisions to the tender offer materials. After some push back from Paul Weiss, HC2 ultimately agreed to accept all of the Special Committee's proposed revisions, including the unequivocal "commitment to consummate the Buyout at the same price per share of Common Stock as

contemplated by the Tender Offer promptly following consummation of the Tender Offer."

68. On August 21, 2014, HC2 filed a Form 8-K, which announced the commencement of the Tender Offer and the anticipated Merger:

> HC2 . . . today announced the commencement of a tender offer for all of the outstanding shares of common stock of Schuff . . . that it does not already own for $31.50 per share . . . (the "Offer"). HC2 currently owns 70% of the outstanding shares of common stock of Schuff. The Offer is being made pursuant to an Offer to Purchase, dated August 20, 2014 (the "Offer to Purchase").
>
> The Offer will expire on September 19, 2014 at 5:00 PM, New York City time, unless the offer is extended. The Offer is subject to various conditions, including, among others: (i) the tender of at least a number of shares, which constitute at least a majority of the outstanding shares of Schuff, excluding shares owned by HC2 or any director or officer of Schuff (which condition is non-waivable); (ii) the tender of at least a number of shares, which, together with the shares then held HC2 [sic], constitute at least 90% of the outstanding shares of Schuff; and (iii) HC2 closing negotiated financing terms, if necessary, to purchase all of the shares that are tendered in the Offer. **If the condition to receive 90% of the outstanding shares of Schuff is satisfied and the Offer is consummated, HC2 will (i) own at least 90% of the outstanding shares of Schuff and (ii) as soon as practicable after consummation of the Offer, effect a merger of Schuff with a subsidiary of HC2 without a meeting of Schuff's stockholders in accordance with Delaware law, unless we are prevented from doing so by a court or other legal requirement**.
>
> Schuff's board has not yet made any recommendation with respect to the Offer. Under Rule 14e-2 of the Securities Exchange Act of 1934, as amended, Schuff is required to disseminate its position with respect to the Offer no later than ten business days from the date the Offer is commenced.

(Emphasis added).

69. In the "Offer To Purchase" that was sent to Schuff's minority stockholders to solicit the tendering of their shares, HC2 explained that its purpose for making the Tender Offer was to acquire **all** of the Company's outstanding shares that it did not already own. In addition, the Offer To Purchase repeatedly reiterated HC2's unequivocal commitment to consummate the Buyout as soon as practicable if the conditions to the Tender Offer were satisfied and the Tender Offer was completed unless HC2 was "prevented from doing so by a court or other legal requirement." In this regard, the Offer To Purchase stated:

> **We are making the Offer in order to acquire all of the outstanding Shares that we do not own.** Our Offer is conditioned on, among other things, the tender of at least a number of Shares, which, together with the Shares then held by Purchaser, constitute at least 90% of the outstanding Shares. If that condition is satisfied and if the Offer is consummated, we will own more than 90% of the outstanding Shares. If that condition is satisfied and if the Offer is consummated, we will own more than 90% of the outstanding common stock of the Company. Under Delaware law, this would allow us to effect a "short-form" merger of the Company with a subsidiary of Purchaser holding Company shares without stockholder approval. **If that condition is satisfied, we will, as soon as practicable after consummation of the Offer, effect such a Merger, with the surviving company becoming a wholly-owned subsidiary of Purchaser, unless we are prevented from doing so by a court or other legal requirement.** To effect the Merger, Purchaser expects that it would contribute all of the Shares of Company common stock to a wholly-owned subsidiary of Purchaser and that subsidiary would merger with and into the Company.

(Emphasis added).

70. In addition, the Offer To Purchase explained that those Schuff stockholders that did not tender their shares would be entitled to the same consideration when the Buyout is consummated and would be entitled to seek appraisal for their shares if they perfected their appraisal rights:

> If the Merger takes place and you have not validly tendered your Shares in the Offer, your Shares will be exchanged for the same consideration per Company Share you own that you would have received, without interest, if you had tendered your Shares in the Offer, unless you properly perfect your appraisal rights under Delaware law.

71. The Offer To Purchase also stated that, if HC2 consummated the Tender Offer but did not effect the Merger because the 90% tender condition was not satisfied or HC2 was prevented from doing so by a court or other legal requirement, "the liquidity of and market for the remaining publicly held Shares, and the rights of the holders of those Shares could be adversely affected."

72. The Special Committee met on August 25, 2014. According to the Special Committee minutes, "[a]s the first order of business, the Committee discussed the most recent press release from plaintiffs' class action counsel announcing 'investigation' of the tender offer being conducted by HC2. . . ." Next, the Special Committee indicated that Voigt "had tried to reach out to the Committee members to discuss the Tender Offer." The Special Committee then discussed the

possibility of retaining "a financial advisor to advise the Committee in evaluating the Tender Offer," but decided not to hire an independent financial advisor to assess the adequacy and fairness of the proposed Merger Consideration. The Special Committee determined that hiring a financial advisor was not necessary in light of Yagoda's experience as an investment executive and portfolio manager and Elbert's experience in the steel construction industry. Yagoda, moreover, opined that he thought engaging a financial advisor would constitute a breach of fiduciary duty. Despite purportedly justifying not hiring a financial advisor, in part, due to Yagoda's experience as an investment manager, neither Yagoda nor anyone else performed any valuation analyses of the $31.50 per share Merger Consideration to determine whether it was fair to Schuff's minority stockholders.

73. On August 29, 2014, the Special Committee met and discussed the public statement made by Sententia Group, L.P. ("Sententia"), the beneficial owner of 1,700 shares of Schuff common stock, that it would not tender its shares in the Tender Offer. The Special Committee also discussed a draft letter that it intended to send to stockholders setting forth its position on the Tender Offer, as required by SEC Rule 14e-2.

74. The Special Committee met again on September 3 and 4, 2014 to further discuss the draft letter that would set forth its position on the Tender Offer.

At the September 4 meeting, the Special Committee authorized Greenberg Traurig and the Company's officers to effect the publication and mailing of a final letter to Schuff's stockholders setting forth the Special Committee's decision to express no opinion and remain neutral with respect to HC2's Tender Offer (the "Stockholder Letter").

75. Specifically, the Stockholder Letter, dated September 5, 2014, stated, among other things:

> **As discussed below, after careful consideration of the Tender Offer, the special committee of independent members of the Board of Directors of the Company (the "Committee") determined to express no opinion and remain neutral regarding the Tender Offer made by HC2.**
>
> **Each Stockholder should make an independent determination as to whether or not to tender Shares in the Tender Offer. No Stockholder is obligated to tender Shares in the Tender Offer.**

(Emphasis in original).

76. According to the Stockholder Letter, among the "material factors" that the Special Committee considered were "the terms and conditions of the Tender Offer, including the non-waivable majority of the minority condition and **HC2's commitment to effect a short-form merger of the Company with a subsidiary of HC2**, with the surviving company being a wholly owned subsidiary of HC2 (the 'Merger'), at the Offer Price[.]" (Emphasis added).

77. The Stockholder Letter also indicated the reasons the Special Committee was "unable to make a recommendation to 'accept' or 'reject' the Tender Offer," and instead took a "neutral" position. According to the Stockholder Letter, some of those reasons included the fact that the Special Committee did not perform, or hire a financial advisor to perform, any valuation analyses, and it did not negotiate the offer price:

> The Company has not performed a financial analysis or formal appraisal of the value of the Shares. The Company has not engaged an outside financial advisor or other third party to conduct a financial analysis or formal appraisal of the current value of the Shares, nor has the Company conducted an evaluation or appraisal of the value of the Company.
>
> * * *
>
> The Company has not negotiated the Offer Price. The Company has not undertaken and not engaged in negotiations with HC2 as to the Offer Price. Further, the Company has not undertaken and not engaged in negotiations with HC2 or any other person regarding a sale of the Company or any other extraordinary transaction with respect to the Company.

78. In addition, the Stockholder Letter made clear that Schuff stockholders would be entitled to seek appraisal in connection with the Merger that would be effected following the consummation of the Tender Offer if those stockholders did not tender their shares into the Tender Offer. In this regard, the Stockholder Letter stated:

> If you do not tender your Shares in the Tender Offer and the Merger is consummated, you may be entitled to exercise appraisal rights. HC2's Tender Offer materials provide that if the Tender Offer is consummated and HC2 owns 90% of the issued and outstanding Shares, HC2 will effect the Merger at the Offer Price. In lieu of receiving the Offer Price, former Stockholders (other than HC2) as of immediately prior to the effective time of the Merger who did not tender their Shares in the Tender Offer will be entitled to demand an appraisal of the fair value of their Shares in accordance with Section 262 of the General Corporation Law of the State of Delaware ("Section 262"). Such former Stockholders who properly perfect their appraisal rights in accordance with Section 262 and do not thereafter withdraw their demands for appraisal or otherwise lose their appraisal rights, in each case, in accordance with Section 262, will be entitled to have their Shares appraised by the Court of Chancery of the State of Delaware (the "Delaware Court").

79. Further, the Stockholder Letter issued a coercive "warning" to Schuff stockholders that "[y]ou should be aware that if the Tender Offer is consummated, but the Merger is not, there will be fewer Shares available for sale and your ability to liquidate your Shares may be more restricted." This statement had the undeniable effect of coercing stockholders into tendering their shares out of fear that they would be left with illiquid stock.

80. On September 21, 2014, the entire Schuff Board met and Roach discussed the Company's efforts to secure a large construction project contract from Tesla Motors, Inc. ("Tesla") to build a battery plant in Reno, Nevada. Also at the meeting, Hill discussed the preliminary cash flow and capital expenditure requirements for the Tesla project, as well as the project's impact on Schuff's credit

facility.

81. On September 22, 2014, HC2 issued a press release announcing that it was extending the expiration time of the Tender Offer until September 29, 2014. The press release also stated that, as of the original expiration time on September 19, 2014, the number of Schuff shares tendered failed to meet both the majority-of-the-minority and the 90% tender conditions. Specifically, when giving effect to the purchase by HC2 of the shares tendered, including shares tendered by Schuff's directors and officers, HC2 would own, upon the consummation of the Tender Offer, only 86% of the outstanding shares. Further, the number of shares tendered represented 53% of the Company's outstanding shares not owned by HC2, but the majority-of-the-minority tender condition was not satisfied because the shares tendered included those shares held by Schuff's directors and officers. In addition, HC2 announced in the press release that HC2 "irrevocably waived the Financing Condition described in the Offer to Purchase."

82. On or around September 24, 2014, Tesla awarded Schuff with the lucrative construction contract whereby Schuff would furnish, fabricate, and erect a structural steel package on Tesla's large-scale manufacturing plant. The Tesla project was expected to be one of the Company's largest projects ever, and the revenue from the project was expected to represent approximately 10% of the

Company's total revenue for fiscal year 2014.

83. On September 25, 2014, the Special Committee met and discussed the Company's new, lucrative contract with Tesla. Specifically, the Special Committee discussed the possible scope of the disclosures to be made regarding the Tesla project in connection with the Tender Offer. The Special Committee also determined to adjourn the meeting temporarily so that Yagoda could approach Falcone to inquire whether HC2 would raise the price offered in the Tender Offer.

84. When the Special Committee reconvened the meeting that same day, the Special Committee's counsel reported that HC2's counsel agreed to the disclosure of the Tesla project and to extend the Tender Offer at least five days. Also, Yagoda reported that Falcone indicated that HC2 would not raise the price offered in the Tender Offer.

85. This was the only time the Special Committee made any request for a price increase from HC2 and, despite the fact that Schuff was awarded a substantial lucrative contract from Tesla, the Special Committee failed to obtain any additional consideration for Schuff's minority stockholders.

86. Having failed in its half-hearted attempt to negotiate for additional consideration, the Special Committee resorted to considering a letter that it would send to Schuff stockholders about the Tesla project.

87. In that letter sent to Schuff stockholders dated September 26, 2014, the Special Committee informed stockholders that Schuff entered into a confidential agreement with an unnamed manufacturer to furnish, fabricate, and erect the structural steel package on a large scale manufacturing plant in the United States. The Special Committee acknowledged in the letter that "the Project is expected to be one of five of the Company's largest current projects," and that the "Company believes that the Project will have a positive effect on its revenue, currently anticipated to be approximately ten percent or more for fiscal year 2014." The Special Committee, however, did not disclose in the letter that it attempted to seek an increase in the price offered in the Buyout, but was rejected by HC2.

88. Also in the letter, the Special Committee informed stockholders that certain Schuff directors, officers, and the members of the Special Committee tendered their Schuff shares into the Tender Offer and that they did not intend to withdraw their shares. The letter also stated that the Special Committee "**determined to express no opinion and remain neutral regarding the Tender Offer made by HC2**." (Emphasis in original).

89. On September 30, 2014, HC2 issued a press release announcing it was again extending the expiration time of the Tender Offer until October 6, 2014. The press release stated that, as of September 29, 2014, 716,080 Schuff shares had been

tendered in the Tender Offer, which satisfied the majority-of-the-minority tender condition. However, when giving effect to the purchase by HC2 of the shares tendered, HC2 would own, upon the consummation of the Tender Offer, only 88.6% of the outstanding shares. The press release, however, stated that: (a) HC2 irrevocably waived the 90% condition; (b) HC2 still intended to acquire 90% of Schuff's outstanding shares, whether through the Tender Offer or subsequent purchases; and (c) HC2 would complete the Merger. In this regard, the press release stated:

> **HC2 today also announced that it has irrevocably waived the 90% Condition described in the Offer to Purchase**, which would have required the tender of outstanding shares which, when combined with the Schuff shares already owned by HC2, represent at least 90% of Schuff's outstanding shares. HC2 had previously waived the Financing Condition to the Offer. . . . **HC2 intends that when its ownership in Schuff reaches 90% of Schuff's outstanding shares, as a result of the tender offer or subsequent purchases following completion of the Offer, it will complete the short-form merger described in the Offer to Purchase at no less than the Offer Price in accordance with applicable law.**

(Emphasis added). Thus, prior to the close of the Tender Offer, all of the conditions to the Tender Offer, including the 90% tender condition, had been either satisfied or waived, and HC2 explicitly represented that, after it acquired 90% of Schuff's shares, it would complete the Merger and consummate the Buyout.

90. On October 6, 2014, the Tender Offer closed and HC2 issued a press release the following day announcing the final results of the Tender Offer. The press release stated that HC2 had accepted for purchase 733,634 shares at a price of $31.50 per share, and that, upon the consummation of the Tender Offer, HC2 would own 89.0% of the outstanding shares. HC2 also reiterated in the press release that it would make further purchases of Schuff shares in the open market or privately negotiated transactions and that, when its ownership in Schuff reached 90% of Schuff's outstanding shares, it would complete the Merger of Schuff:

> Upon the consummation of the Offer, HC2 will own 89.0% of the outstanding Shares. HC2 intends to make further purchases of Shares from time to time in the open market or privately negotiated transactions and **when its ownership in Schuff reaches 90%** of Schuff's outstanding shares, as a result of any subsequent purchases, **it will complete, at no less than the offer price, a merger of Schuff with a subsidiary of HC2** without a meeting of Schuff's stockholders in accordance with applicable law.

(Emphasis added).

91. On October 14, 2014, HC2 filed a Form 8-K with the SEC that confirmed that, on October 7, 2014, HC2 completed the acquisition of the 733,634 shares of Schuff common stock that were tendered into the Tender Offer. HC2 further stated that "when its ownership in Schuff reaches 90% of Schuff's outstanding shares, as a result of any subsequent purchases, **it will complete, at no less than the Offer Price, a merger of Schuff** . . . ." (Emphasis added).

92. After the press release was issued on October 7, 2014, Voigt sent an email to Roach, Hill, and Yagoda, attaching a link to the press release. That same day, Roach replied to everyone on the email and also included Falcone and stated:

> Hey guys, after reading the article it sounds like it will not be too much longer until Schuff Int'l will in fact be a wholly owned subsidiary of HC2. First off, Congratulations……One question that I have is if there will still be a Board of Directors for Schuff International? I really hope that we continue to operate the Board at our level and I am curious what plans or thoughts you guys may have.

93. Following the close of the Tender Offer, and in accord with its repeated promises, HC2 acquired over 90% of Schuff's common stock by purchasing shares of Schuff common stock in transactions with two Schuff stockholders for greater per share consideration than it paid to the Company's other minority stockholders that tendered their shares into the Tender Offer.

94. Specifically, on October 23, 2014, HC2 purchased 4,699 shares of Schuff common stock from a third party for $32.00 per share, or $0.50 per share higher than the Merger Consideration offered in the Buyout. Additionally, on or around October 29, 2014, HC2 purchased 65,120 shares of Schuff common stock from Briarwood Chase Management, LLC for $34.00 per share, or $2.50 per share higher than the Merger Consideration offered in the Buyout.

95. On October 31, 2014, pursuant to Hladek's request, a representative of HC2 sent a spreadsheet to Hladek that listed the dates that Schuff stock was

purchased by HC2, the amount of shares purchased, and the per share and aggregate purchase prices of those acquisitions. According to the spreadsheet, as a result of the two private purchases that HC2 made following the close of the Tender Offer, HC2 owned 90.6% of Schuff's common stock, excluding shares owned by directors and officers of HC2 and Schuff. In the final line of the spreadsheet, HC2 stated "Shares for squeeze-out," and listed the number of remaining Schuff shares not held by HC2 to be purchased (363,467), and indicated a purchase price of those shares of $34.00 per share, or $12,357,878 in the aggregate.

96. Following the consummation of the Tender Offer and the acquisition of over 90% of Schuff's common stock, HC2 publicly and explicitly reconfirmed its intention to effect the Merger. Specifically, on November 3, 2014, HC2 stated in Exhibit 99.5 to a Form 8-K filed with the SEC that, "[o]n October 29, 2014, we entered into an open-market transaction to increase our ownership of Schuff to 90.6%, and **we intend to execute a short-form merger as soon as practicable. Such short-form merger will increase our ownership of Schuff shares to 100%**." (Emphasis added). This same statement was made by HC2 in its Form 10-Q filed on November 10, 2014.

97. Notwithstanding HC2's unequivocal statements and promises to Schuff's minority stockholders that it would effectuate the Merger and complete the

Buyout, defendants never consummated the Merger, despite the fact that all of the conditions thereto were satisfied and/or waived. As discussed herein, defendants' wrongful failure to consummate the Merger has left Schuff's remaining and former minority stockholders with no ability, other than through this litigation, to remedy the harm that has been and is being inflicted upon them as a result of the Buyout, defendants' misrepresentations, and defendants' other breaches of fiduciary duties.

98. HC2's repeated promises to Schuff's stockholders that it would effectuate the Merger upon the acquisition of 90% of Schuff's shares obligated HC2 to effect the Merger and the Buyout. HC2's failure to do so constitutes a breach of fiduciary duties.

Defendants Have Made Material Misrepresentations and Have Breached Their Fiduciary Duties by Failing to Effect the Merger

99. HC2 made repeated representations to Schuff's minority stockholders that it would effect the Merger and complete the Buyout following the completion of the Tender Offer and acquisition of 90% of Schuff's stock, but HC2 broke its promises. Indeed, at the outset of the Tender Offer, HC2 had every intention of effecting the Merger. Schuff's minority stockholders detrimentally relied on those statements when deciding whether to tender their shares into the Tender Offer, and they have been, and continue to be, damaged as a result of those material misrepresentations.

100. From the very commencement of the Tender Offer, HC2 repeatedly represented that it would, "as soon as practicable," complete the Merger if the conditions to the Tender Offer were either satisfied or waived and the Tender Offer was completed, and it acquired at least 90% of Schuff's issued and outstanding common stock, unless HC2 was "prevented from doing so by a court or other legal requirement."

101. Therefore, according to the Offer To Purchase, HC2 obligated itself to consummate the Merger unless HC2: (1) did not close the Tender Offer and accept the tendered shares; (2) did not acquire 90% of Schuff's shares; or (3) was prevented from completing the Merger due to "a court or other legal requirement." These conditions, however, were either satisfied or are inapplicable.

102. *First*, each of the conditions to the Tender Offer were either satisfied or waived, and the Tender Offer closed. In particular, on September 22, 2014, HC2 announced in a press release that it "irrevocably waived the Financing Condition described in the Offer to Purchase." On September 30, 2014, HC2 issued a press release that announced that, as of that time, the amount of Schuff shares that had been tendered in the Tender Offer satisfied the majority-of-the-minority tender condition, and that "it has irrevocably waived the 90% Condition described in the Offer to Purchase." After HC2 satisfied or waived the conditions to the Tender

Offer, HC2 closed the Tender Offer, accepted the shares tendered into the Tender Offer, and completed the acquisition of those tendered shares on or around October 7, 2014.

103. *Second*, there can be no dispute that HC2 acquired 90% of Schuff's shares, thereby allowing HC2 to complete the Merger of Schuff with no need for stockholder approval, pursuant to Section 253 of the DGCL. Following the successful close of the Tender Offer, HC2 made additional purchases of Schuff common stock from two Schuff stockholders. As a result of these transactions, HC2 increased its ownership of Schuff to 90.6%. HC2, moreover, currently owns 92.5% of Schuff's outstanding shares.

104. Defendants cannot claim that they were not obligated to effect the Merger and complete the Buyout because the 90% tender condition was not satisfied prior to the close of the Tender Offer. According to the terms of the Offer To Purchase, if the 90% tender condition was not satisfied prior to the close of the Tender Offer, HC2 could elect to not consummate the Tender Offer or to waive the 90% tender condition and acquire the tendered shares, which it did. The Offer To Purchase also makes clear, however, that, if HC2 does acquire 90% of Schuff's shares, it would effect the Merger.

105. Schuff stockholders reasonably understood that HC2 would consummate the Merger after acquiring 90% of Schuff's common stock, and the stockholders relied on those representations when deciding whether or not to tender their shares. Indeed, one Schuff stockholder, Sententia, publicly stated that: "We have maintained our Schuff investment and **continue to expect HC2 to announce a short-form merger, as they have stated**. Once this is announced, we will look to pursue our appraisal rights." (Emphasis added).

106. Moreover, HC2 repeatedly and unequivocally represented, both prior to and after the close of the Tender Offer, that it intended to acquire 90% of Schuff's shares (which it did), at which time "it will complete the short-form merger described in the Offer to Purchase at no less than the Offer Price in accordance with applicable law." These statements, which Schuff's minority stockholders reasonably relied upon, further obligated HC2 to effect the Merger and consummate the Buyout.

107. Specifically, on September 30, 2014, seven days before the close of the Tender Offer, HC2 issued a press release that announced that, as of that time, the majority-of-the-minority tender condition had been satisfied, and that it irrevocably waived the 90% tender condition. In that same press release, HC2 stated that it still intended to acquire 90% of Schuff's outstanding shares, whether through the Tender

Offer or subsequent purchases, and that it would complete the Merger. Specifically, the press release stated:

> HC2 today also announced that it has irrevocably waived the 90% Condition described in the Offer to Purchase, which would have required the tender of outstanding shares which, when combined with the Schuff shares already owned by HC2, represent at least 90% of Schuff's outstanding shares. HC2 had previously waived the Financing Condition to the Offer. . . . **HC2 intends that when its ownership in Schuff reaches 90% of Schuff's outstanding shares, as a result of the tender offer or subsequent purchases following completion of the Offer, it will complete the short-form merger described in the Offer to Purchase at no less than the Offer Price in accordance with applicable law.**

(Emphasis added).

108. As promised, HC2 subsequently acquired over 90% of Schuff's common stock for more per share consideration than it offered to Schuff's minority stockholders in the Buyout. After HC2 closed these purchases and accepted the shares tendered in the Tender Offer, HC2 publicly and explicitly reconfirmed its intention to effect the Merger by stating in at least two SEC filings on November 3 and 10, 2014 that: "On October 29, 2014, we entered into an open-market transaction to increase our ownership of Schuff to 90.6%, and **we intend to execute a short-form merger as soon as practicable. Such short-form merger will increase our ownership of Schuff shares to 100%**." (Emphasis added).

109. *Third*, HC2 is not prevented from effecting the Merger "by a court or other legal requirement." In a Form 10-Q filed by HC2 on November 10, 2014, four days after Plaintiff filed his initial complaint in this Court, HC2 indicated that Plaintiff's action:

> could result in the Company having to pay a higher price to purchase all of the equity interests in Schuff or it could delay or prevent the completion of our purchase of all of the outstanding shares of Schuff. In addition, in connection with the short form merger, pursuant to which the Company expects to acquire all of the Schuff shares that it does not already own, Schuff shareholders whose shares are purchased in connection with the short form merger will be entitled to exercise rights under Delaware law that could also affect the cost of our purchasing the remaining Schuff shares.

110. This litigation, however, plainly does not constitute a "court or other legal requirement" that would prevent them from effecting the Merger. Moreover, this litigation was filed a month after the close of the Tender Offer and Plaintiff did not move for an injunction at that time. Accordingly, there was no threat of a court or other legal requirement that would have prevented HC2 from effecting the Merger.

111. *Finally*, HC2 cannot claim that it was or is not "practicable" for it to effect the promised Merger and complete the Buyout. HC2 has, and has had at all relevant times, abundant financial resources to effect the Merger. Despite the fact that HC2 was and still is more than capable of consummating the Merger, defendants

have not effected the Merger for selfish and improper reasons; namely, to avoid personal liability as a result of this litigation.

112. The purchase price to acquire the minority shares of Schuff stock that HC2 did not own after acquiring a 90.6% interest in Schuff would have been approximately $11.45 million at the $31.50 per share price offered in the Tender Offer.

113. According to Hladek, HC2 has, and had at the time of the closing of the Tender Offer, enough funds to consummate the Merger:

> **Q:** In that general time frame, did HC2 have sufficient funds?
> **A:** We either had sufficient funds or access to sufficient funds.
> **Q:** Are you aware of whether HC2 had sufficient funds to consummate the short-form merger at that time?
> **A:** According -- I believe according to the recent 10-K, yes, I believe so.
> **Q:** Going back to that 2014 time frame, you testified that you believed either HC2 had sufficient funds or had access to. When you say "had access to," where would that money be coming from?
> **A:** We have raised debt and equity financing historically. So we have accessed capital markets from time to time as we needed.
>
> *** * ***
>
> **Q:** And HC2, in fact, had access to sufficient funds or believed it could and access to those funds were, in fact, a condition of the tender offer, correct?
> **A:** Correct.

114. Indeed, since the closing of the Tender Offer on or around October 6, 2014, HC2 has repeatedly demonstrated that it was financially capable of

consummating the Merger with its own funds and/or more than capable of borrowing or raising money to consummate the Merger, as it had done with other acquisitions that HC2 has completed since 2014.

115. Voigt testified unequivocally that there were not any fundamental changes in Schuff's business operations after the close of the Tender Offer. For example, on March 16, 2015, HC2 issued a press release announcing its consolidated results for the fourth quarter of fiscal 2014 ended on December 31, 2014, as well as the results for the full fiscal year ended on December 31, 2014. The press release disclosed certain highlights for 2014, including that HC2 had consolidated cash of $108 million as of December 31, 2014, which demonstrates that HC2 plainly had the financial capacity to consummate the Merger in 2014. HC2's reported highlights for the 2014 year included the following, which further demonstrate its ability to effect the Merger after the close of the Tender Offer:

- Pro-forma Adjusted EBITDA for the fiscal year ending December 31, 2014 for our primary operating subsidiaries, Schuff International, Inc. ("Schuff") and Global Marine Systems Limited ("Global Marine") was a combined $88.8 million.

- Total pro-forma net revenue for the fiscal year 2014 was $853.5 million, an increase of 6.5% over 2013 pro-forma net revenue.

- Consolidated cash as of December 31, 2014 was $108.0 million.

- Listed Company's common stock on the NYSE MKT LLC national securities exchange.

- Completed the acquisition of an approximate 91% interest in Schuff, a leading structural steel fabricator in the United States, which comprises our Manufacturing segment.

- Completed the acquisition of Bridgehouse Marine Limited, the parent holding company of Global Marine, a leading global offshore engineering company focused on subsea cable installation and maintenance, which comprises our Marine Services segment.

- Equity investment comprised of common stock and warrants in Novatel Wireless, Inc. ("Novatel") which was acquired by HC2 at a cost of $14.2 million, and at December 31, 2014 had a market value of $35.9 million.

- Completed the acquisition of an approximate 51% interest in American Natural Gas ("ANG"), a premier distributor of natural gas motor fuel headquartered in the Northeast that designs, builds, owns, acquires, operates and maintains compressed natural gas fueling stations for transportation, which comprises our Utilities segment.

- Completed investments in NerVve Technologies, Inc., GemDerm Aesthetics, Inc., BeneVir Biopharm, Inc. and DMi, Inc. NerVve has developed a groundbreaking product, the NerVve Visual Search Solution, which is a very high speed visual search engine, capable of searching pixels just like they are text on web-pages. DMi, Inc. has exclusive licensing rights from NASCAR Team Properties to publish NASCAR interactive games for video game consoles, personal computers, tablets and smart phones, beginning in 2015.

116. Additionally, HC2 is more than capable of funding the Merger presently. In an investor presentation HC2 prepared for a conference held on May 25, 2017, HC2 stated that, as of March 31, 2017, it had $1.6 billion of consolidated cash, cash equivalents and investments, which includes its Insurance segment, which

was essentially unchanged from the prior quarter, and $92.3 million in consolidated cash excluding the Insurance segment.

117. This investor presentation, which was filed as an exhibit to HC2's May 25, 2017 Form 8-K, also indicated that the construction division (which includes the Schuff entities) has a $500 million backlog, and $800 million inclusive of contracts awarded but not yet signed.

118. Moreover, HC2's Form 10-K filed on March 9, 2017 describes several acquisitions that HC2 and its subsidiaries completed in 2015 and 2016, which further demonstrates that HC2 could, but consciously choose not to, consummate the Merger, despite its repeated representations and promises to do so.

119. Specifically, on December 24, 2015, HC2 completed the acquisitions of 100% of the interest in each of United Teacher Associates Insurance Company and Continental General Insurance Company, as well as all assets owned by the sellers of those companies and their affiliates for aggregate consideration of $18.7 million.

120. On October 13, 2016, HC2 caused Schuff to acquire the detailing and Building Information Modeling management business of PDC Global Pty Ltd. for aggregate consideration of $25.5 million, including $21.4 million in cash.

121. Also in 2016, HC2 caused its subsidiary American Natural Gas to complete three acquisitions of twenty-one fueling stations for total consideration of $42.1 million, comprised of $39.2 million cash and a $2.9 million 4.25% seller note, due in 2022.

122. Further, during the year ended December 31, 2016, HC2 completed the acquisition of additional interests in, and thereby control of, NerVve and BeneVir, and acquired a 60% controlling interest in CWind Limited with an obligation to purchase the remaining 40% in equal amounts on September 30, 2016 and September 30, 2017. The total consideration for these acquisitions was $14.9 million. On November 1, 2016, HC2 completed the renegotiation of the deferred purchase obligation to purchase the outstanding 40% minority interest of CWind.

123. Thus, despite the fact that HC2 was and still is more than capable of consummating the promised Merger, defendants improperly refused to effectuate it. HC2 satisfied all of the conditions to the Merger, and there were no legitimate business or legal reasons not to consummate the Merger. Rather, HC2 refused to effect the Merger out of their purely self-serving desire to avoid personal liability that will result from this litigation. Defendants therefore must be held accountable for their misrepresentations and self-interested decision not to consummate the Buyout.

Defendants Have Divided Loyalties and Have Failed to Effect the Merger to Avoid Personal Liability

124. Defendants have not moved forward with consummating the Buyout in contravention of their repeated promises solely to avoid the substantial personal liability that they knew they would face as a result of the foreseeable and anticipated litigation that they knew would result from the Buyout. Falcone testified that at the time of the Tender Offer, when HC2 told stockholders that they "expect[ed] to complete the merger as promptly as practicable following the consummation offer," that was an accurate statement. In light of the patent unfairness of the Buyout's price and process, defendants and their counsel knew that the Buyout would be challenged by damaged stockholders. Indeed, in the first meeting of the Special Committee after HC2 launched the Tender Offer, the Special Committee's very first order of business was to discuss "the most recent press release from plaintiffs' class action counsel announcing 'investigation' of the tender offer being conducted by HC2. . . ."

125. To attempt to thwart any stockholder challenges to the Buyout, defendants determined not to effect the Merger. As discussed *supra*, despite knowing that it would not effectuate the Merger, HC2 nonetheless continued to misrepresent, both prior to and after the close of the Tender Offer, that it would complete the Merger and the Buyout when it acquired 90% of Schuff's stock.

126. The fact that defendants' desire to avoid personal liability from likely stockholder litigation was the motivating factor for failing to effect the Merger and complete the Buyout is further supported by defendants' change in tune after this litigation was filed. Despite the fact that this litigation does not and cannot constitute a "court or other legal requirement" that would prevent HC2 from effecting the Merger, HC2 stated in a Form 10-Q filed four days after Plaintiff filed his initial complaint that Plaintiff's action "could delay or prevent the completion of our purchase of all of the outstanding shares of Schuff." In addition, approximately one year after Plaintiff filed his complaint, HC2 stated on November 4, 2015 that, "while we intend to complete the short form merger of Schuff, the timing of such merger is uncertain and we cannot assure you that we will complete such merger in the near term, or at all." This substantial departure from HC2's prior unequivocal statements to stockholders, both prior to and immediately after the close of the Tender Offer, that HC2 "will complete the short-form merger" evidences the self-serving motivations of defendants.

127. Defendants, moreover, have unequivocally acknowledged that HC2 refused to effect the Merger and the Buyout based solely on the pendency of this litigation. Indeed, Yagoda testified as follows:

> **A:** The tender offer was for the shares that they did not own. . . . And they said that they agreed to the majority of the minority,

and they agreed to a back end merger at at least the same price.

Q: Have they consummated that back end merger yet?

*** * ***

A: Not to the best of my knowledge.

Q: Why? Do you have any understanding as to why they haven't consummated the merger?

A: Yes.

Q: What is that?

A: The reason we are sitting here.

128. Further, Hladek testified as follows:

Q: So, aside from people who contacted HC2 regarding the short-form merger not being completed, specifically with regard to the short-form merger not being completed itself, is there any business reason that the short-form merger was not completed aside from advice of legal counsel?

A: No.

Q: Again without divulging substance, when did legal counsel provide the advice to HC2?

A: Sometime in 2014.

Q: Was it --

A: Maybe '15. It was sometime after this litigation.

Q: Is there any other business reason or is there any business reason other than advice of counsel that is precluding HC2 from consummating the short-form merger?

A: Not that I am aware of.

129. Finally, Roach testified as follows:

Q: What is your understanding of what the ultimate result of the tender offer was?

A: That they got up to some level of ownership, I think somewhere around 90 or just above. And I think shortly after that there was a class action lawsuit, or a lawsuit filed that turned into a class action, and that is where it has been.

Q: So the tender offer then has not been, or I am sorry, rather a short-form merger has not been effectuated?

> **A:** That is my understanding, and I think I remember reading something from Phil [Falcone] that said they would move forward at the appropriate time or whatnot. I don't know.

130. Therefore, the only reason defendants never effected the Merger, despite repeatedly representing to stockholders that they would (and despite satisfying all of the conditions to the Merger), is because they wanted to avoid the personal liability that would result from the anticipated stockholder litigation by effectively thwarting the successful prosecution of any plenary class or appraisal actions. Indeed, by their own admissions, defendants have failed to effect the Merger at present due solely to the pendency of this class action lawsuit, and *not* because the conditions to the Merger have not been satisfied or some other legitimate business or legal reason. By not effecting the Buyout, in contravention of their repeated promises, defendants inequitably attempted to create procedural hurdles to any appraisal or class action lawsuits, which defendants knew was the likely mechanism through which stockholders would obtain the fair value of their Schuff shares at the time of the Merger, and seek vindication of their rights in this unfair and coercive Buyout.

131. As such, defendants have acted out of self-interest to the detriment of Schuff's current and former minority stockholders. Despite not being a condition to the Buyout, by their own admissions and conduct, defendants will not consummate

the Merger until this litigation is completed. Defendants suffer from a conflict of interest due to their desire to avoid personal liability as a result of this lawsuit, and their decision to not effect the promised Merger was and is motivated by purely selfish, non-business reasons, which constitutes a breach of the duty of loyalty.

132. Defendants' conduct has harmed all of Schuff's minority stockholders, whether they tendered or not. Those Schuff stockholders who tendered their shares were duped into selling their shares at an unfair price and through an unfair process, and defendants are currently attempting to prevent stockholders from obtaining the fair value of their shares in this lawsuit. Defendants made material misrepresentations and omissions to stockholders, who tendered their shares with the understanding that a class action lawsuit could provide them with the incremental fair value of the Company that was wrongfully taken from them. In addition, the tendering stockholders were coerced into tendering their shares by HC2 and the Special Committee, each of which issued coercive statements to Schuff stockholders that, if they did not tender their shares and HC2 completed the Tender Offer but not the Merger, those stockholders that did not tender would be left with illiquid stock.

133. Those Schuff stockholders who did not tender their shares have been harmed because they have been prevented from obtaining the fair value of their shares in a plenary class action lawsuit or in an appraisal action, despite HC2's

repeated representations to Schuff stockholders that the appraisal remedy would be available. Indeed, at least one Schuff stockholder, Sententia, has publicly stated that: "We have maintained our Schuff investment and continue to expect HC2 to announce a short-form merger, as they have stated. Once this is announced, we will look to pursue our appraisal rights."

134. In addition to being damaged by being prevented from seeking the fair value of their Schuff common stock through this litigation or an appraisal action, those Schuff stockholders that did not tender their shares into the Tender Offer have further been damaged because their Schuff shares were rendered essentially illiquid and have been held hostage in the 92%-owned Company, as each of HC2 and the Special Committee acknowledged prior to the close of the Tender Offer. Indeed, although Schuff's stock trades over-the-counter, sources of historical price information such as OTCMarkets.com and *Yahoo! Finance* report an extremely low volume of trading activity.

135. The remedies sought herein, including monetary damages, that will result from this litigation, which stockholders (and defendants) knew were likely to occur due to the patent unfairness of the Buyout, will inure to the benefit of all of Schuff's minority stockholders (other than those who sold their shares), whether they tendered their Schuff stock into the Tender Offer or held their shares. Thus, all of

Schuff's minority stockholders, whether they tendered or not, have suffered harms and damages that were inflicted on them by defendants in connection with the Buyout.

136. Due to defendants' inequitable conduct, this litigation should be allowed to proceed to vindicate the rights of all of Schuff's minority stockholders as though the Merger had been consummated on the terms and in the time frame originally promised, and defendants should be equitably estopped from raising any procedural defenses that would serve to the defeat the successful prosecution of this class action or any appraisal action.

Defendants Failed to Disclose Additional Material Information to Stockholders

137. In addition to knowingly misrepresenting to Schuff's stockholders that HC2 would effect the Merger and consummate the Buyout when HC2 acquired 90% of Schuff's stock, defendants knowingly failed to disclose additional information that would have been material to stockholders in deciding whether to tender their shares.

138. In connection with the Buyout, the Special Committee sent Schuff's stockholders the eight-page Stockholder Letter, which informed stockholders of the Special Committee's neutral position and provided them with minimal information relating to the background of the Buyout. The Stockholder Letter, as well as any

other information sent to stockholders from defendants, failed to provide Schuff's stockholders with all material information that was necessary to make an informed tender decision.

139. *First*, despite their availability, defendants failed to disclose to stockholders any financial projections for the Company. Indeed, during the Tender Offer period, Schuff management sent HC2 the Company's financial projections, which HC2 subsequently presented to ratings agencies in October 2014. The Individual Defendants therefore allowed HC2 to gain an understanding of Schuff's future prospects and perform valuation analyses and appraisals of Schuff (which, as discussed *infra*, show that Schuff's stock was worth considerably more than the $31.50 per share Merger Consideration), but prevented Schuff's minority stockholders from doing the same when making their tender decision. Instead, the Special Committee, in the Stockholder Letter, simply referred Schuff's stockholders to past audited financials filed with the SEC.

140. *Second*, the Special Committee made statements that had the intended effect of misleading stockholders into believing that the Merger Consideration was fair because Scott Schuff sold his shares to HC2 in 2014 for the same price. Specifically, the Stockholder Letter stated that the Special Committee "believe[d] that the fact that the Offer Price is the same per Share price at which SAS Venture

LLC sold its controlling interest in the Company may evidence the fairness of the Offer Price." This statement seemingly implies, or creates a reasonable but misleading impression, that the price that Scott Schuff sold his shares represented a fair value for the Company. The Special Committee, however, failed to disclose to stockholders that Scott Schuff did not perform, request, or rely on any valuation analyses in determining to sell his Schuff shares for $31.50 per share, which disclosure was necessary to correct the Special Committee's misleading disclosure.

141. *Third*, defendants failed to disclose the fact that Yagoda had numerous discussions with Falcone and Voigt both before and during the Tender Offer period about potential employment or consulting roles that he would have with the Company. Stockholders were entitled to know that a member of the Special Committee that was tasked with protecting them was seeking and negotiating for future employment, which could (and, in fact, did) give rise to a conflict of interest.

142. *Fourth*, defendants failed to disclose that Elbert resigned from the Board and requested that the Board purchase his Schuff stock after Scott Schuff sold his majority interest in the Company to HC2 in May 2014, and that he rescinded his resignation only after speaking with Voigt.

The Buyout Was Not Entirely Fair as to Process

143. The process employed by defendants leading to the Buyout was not entirely fair to Schuff's stockholders.

144. Although the Board established the Special Committee consisting of purportedly independent directors, the nature of HC2's control over the Company did not allow for any "independent" committee to exist in the context of the Buyout. Three members of the Board were directly affiliated with HC2, two members were management who served (and continue to serve) at the pleasure of HC2, and only two members of the Board had nominal independent status. Those two members, Yagoda and Elbert, did not act independently and failed to protect Schuff's minority stockholders in connection with the Buyout. Rather, Yagoda pursued his own pecuniary interests and future employment with HC2, while Elbert, who unfortunately was ill with cancer and wanted to completely exit the Company, merely rubber stamped the deal. Indeed, Elbert briefly resigned from the Board in May 2014 and asked that the Board purchase his 13,000 Schuff shares. The next day, Elbert rescinded his resignation after he had a conversation with Voigt, who apparently offered Elbert the prospect of his desired liquidity event in the anticipated Buyout.

145. According to Voigt, Yagoda was the person at Schuff responsible for delivering the Company to HC2. At or around the time of Scott Schuff's stock sale to HC2, Yagoda had conversations with representatives of HC2 about what role he would have with the Company. Specifically, Yagoda had numerous conversations with Falcone and Voigt about providing consulting services to the Company, and Yagoda explicitly stated during the course of negotiations that he wanted to be compensated for his services. Yagoda continued these conversations following the commencement of the Tender Offer, and he admitted to facilitating the unfair Buyout at HC2's behest with the expectation that he would have a lucrative role with Schuff following the close of the Buyout.

146. In an email to Falcone following the close of the Tender Offer, moreover, Yagoda stated: "we agreed that you and I would sit down on the 25th to formalize an agreement between HC2, Schuff, and me. **I have suggested that I be granted options to purchase HC2 stock commensurate with my value in effecting HC2's acquisition of the Schuff International stock**." (Emphasis added). Thus, Yagoda, a member of the Special Committee, was admittedly serving as a facilitator for HC2 to help with the Buyout. Yagoda's pursuit of his own personal and pecuniary interests during the "negotiations" with HC2 demonstrates a lack of independence and a breach of his duty of loyalty to the Schuff minority

stockholders.

147. This lack of independence was evident throughout the Special Committee's consideration of the Buyout. Although the Special Committee was given the authority to review, investigate, consider, evaluate, negotiate, and take a position with respect to the Tender Offer and/or alternatives thereto, the Special Committee did nothing. Among other things, the Special Committee did not engage an outside financial advisor to assist in the review of financial information. The Special Committee did not undertake or engage in negotiations with HC2 as to the offer price. The Special Committee did not consider or pursue any other strategic alternatives to the Buyout. The Special Committee did not undertake an evaluation of HC2's ability to obtain financing sufficient to consummate the Tender Offer. The Special Committee did not recommend that Schuff's minority stockholders not tender their shares into the Tender Offer, despite the patent unfairness of the Merger Consideration. Simply stated, the Special Committee took no steps to protect Schuff's minority stockholders and to ensure that they received a fair price for their shares. Instead, the Special Committee determined at the outset to take a hands off approach and ultimately remained neutral and expressed no opinion with respect to the Tender Offer.

148. In addition, although the Buyout was ultimately subject to a majority-of-the-minority tender condition, HC2's initial proposal did not contain such a condition. In any event, defendants just barely satisfied the majority-of-the-minority tender condition, and only did so by making material misrepresentations and coercive statements to Schuff's minority stockholders.

149. Significantly, defendants misrepresented to stockholders that they would effect the Merger and complete the Buyout if and when HC2 acquired 90% of Schuff's stock. Although HC2 has acquired over 90% of Schuff's stock, HC2 has refused to go forward with the Merger to avoid the substantial personal liability that they knew they would face as a result of any foreseeable class or appraisal actions. Schuff's minority stockholders reasonably relied on HC2's representations that it would complete the Merger when it acquired 90% of Schuff's stock. Thus, Schuff's minority stockholders, whether they have tendered their shares or not, have been damaged by defendants' breaches of fiduciary duties because they cannot obtain the fair value for their stock, as they were repeatedly promised.

150. In addition, each of HC2 and the Special Committee made statements to Schuff's minority stockholders during the Tender Offer period that had the effect of coercing stockholders into tendering their shares. Specifically, each of HC2 and the Special Committee stated that, if Schuff's minority stockholders did not tender

their shares and HC2 completed the Tender Offer but not the Merger, those stockholders that did not tender would be left with illiquid stock. These statements were made with the purpose, and had the effect, of coercing stockholders into tendering their shares into the Tender Offer. Defendants' threats came true, moreover. For those stockholders that did not tender their shares, including Plaintiff, their shares are now illiquid and have been held hostage by HC2 in the 92%-owned Company.

The Buyout Is Not Entirely Fair as to Price

151. The $31.50 per share Merger Consideration was grossly unfair to the Company's minority stockholders, as it failed to reflect the intrinsic value of Schuff.

152. The Merger Consideration does not (but should) reflect the additional value attributable to the Tesla project, which was awarded to Schuff in September 2014, prior to HC2's acquisition of over 90% of Schuff's common stock in late October 2014. Pursuant to the agreement entered into between Schuff and Tesla, Schuff furnished, fabricated, and erected the structural steel package on Tesla's large scale manufacturing plant in Reno, Nevada, for which Tesla ultimately paid Schuff millions of dollars. As the Special Committee acknowledged in the September 26, 2014 supplemental letter to stockholders, "the Project is expected to be one of five of the Company's largest current projects," and that the "Company believes that the

Project will have a positive effect on its revenue, currently anticipated to be approximately ten percent or more for fiscal year 2014." Despite knowing about the significant positive impact that the Tesla project would have on Schuff, the Special Committee failed to negotiate for any additional merger consideration attributable to the lucrative project, and HC2 reaped the benefit of the contract while wrongfully excluding Schuff's public stockholders from their proportionate share of the Tesla project proceeds.

153. Further, the Merger Consideration failed to adequately incorporate the true value of Schuff's subsidiaries, and particularly its wholly-owned subsidiary, Schuff Steel, which was appraised for a substantially higher value than the Merger Consideration. On behalf of Schuff, Hill requested that an independent appraisal firm, Klaris, Thompson & Scroeder, Inc. ("Klaris"), conduct an appraisal of Schuff Steel, which Klaris sent to Hill on February 10, 2015. In that report, Klaris performed a comparable companies analysis and a discounted cash flow analysis to determine the fair value of the business enterprise and the total assets of Schuff Steel as of October 31, 2014. According to the report, Klaris appraised the fair value of the business enterprise of Schuff Steel to be $316 million. Notably, when calculating Schuff's minority stockholders' 30% beneficial interest in Schuff Steel prior to the launch of the Tender Offer, the minority stockholders would have been entitled to

$94.8 million of Schuff Steel as a business enterprise, compared to only approximately $34 million of aggregate purchase price offered in the Buyout (assuming a $31.50 per share purchase price for Schuff's minority shares, excluding any shares held by Schuff's management and directors, and the third parties that sold their shares to HC2 following the close of the Tender Offer).

154. Like Schuff management, HC2 was well aware that the Merger Consideration grossly undervalued Schuff. HC2 commissioned Ernst & Young ("E&Y") to perform a valuation of Schuff (on a consolidated basis) as of December 31, 2014. In a report sent to HC2 on March 17, 2015, E&Y concluded that Schuff's equity value was approximately $266 million, or about $68 per share (more than double the $31.50 per share Merger Consideration). HC2 later retained E&Y to prepare another valuation report, as of February 28, 2015. In that report, issued May 27, 2015, E&Y concluded that Schuff's equity was $262 million, or $67 per share, still more than double the Merger Consideration.

155. In the fourth quarter of 2015, HC2 sold a total of 81,900 Shares to two HC2 affiliates at a price of approximately $74.48 per Share. The price of $74.48 per Share was based on a quarterly valuation estimate of the Company as of September 30, 2015 provided by E&Y to HC2. Similarly, on February 14, 2018, HC2 entered into a securities purchase agreement with one of its subsidiaries, Continental General

Insurance Company to sell 20,800 Shares to that entity in exchange for $2,749,968.00, which represented a per share purchase price of $132.21 per Share. The price of $132.21 per Share was based on a quarterly valuation estimate of the Company as of December 31, 2017 provided by Duff & Phelps LLP to HC2.

156. The Company's substantial value and the patent unfairness of the Merger Consideration has been well-documented before, during, and after the Tender Offer period by certain of Schuff's stockholders, including Sententia, which was the beneficial owner of approximately 1,700 shares of the Company.

157. For example, two months prior to the commencement of the Tender Offer, on June 20, 2014, Sententia published an article on *SeekingAlpha* titled "Trading Near Book Value And Primed For Growth With Recent Ownership Change, Schuff Is Very Attractive." In the article, Sententia indicated that: "Schuff International (SHFK) is a well-positioned company in the steel fabrication and erector industry. The company is primed to benefit from near record backlogs and a potential uptrend in the non-residential construction cycle." Sententia summarized the Company and its substantial future prospects as follows:

> Schuff is tied to the non-residential construction cycle. The industry has remained pressured since the Great Recession but appears to have bottomed in 2012. As the cycle turns upward, Schuff is positioned to benefit as they have great operational leverage and recapitalized at the bottom of the cycle. **For the industry, AIA has a consensus estimate of 5-8% non-residential construction growth over the next 2 years,**

which will continue to enhance Schuff's returns.

> The strength of the business shows through Schuff's backlogs. The backlogs surged to company highs at the end of 2013. **Should these backlogs equate to average forward revenue recognition, the company would double EPS. This represents a very attractive opportunity, as the free cash flow yield would be north of 20%**. The combination of these dynamics in an upturning non-residential construction cycle represents an attractive investment.

(Emphasis added).

158. Speaking about the Company's earnings per share ("EPS"), Sententia stated that: "[t]aking a conservative view on the backlogs to revenue recognition shows EPS doubling for 2014. Estimating a below consensus growth after 2014 of 7% will lead to a double digit EPS by 2016. The operational leverage of the company will lead to a 20%+ Free Cash Flow yield for 2014."

159. With respect to its estimates of the Company's EV/EBIT, Sententia stated that, under its "base case scenario, with 4x EV/EBIT and a conservative range of backlogs to revenue, implies a $39 price target, or 34% upside." Under its "high case scenario, with 5x EV/EBIT and the high range of backlogs to revenue, leads to a share price of $55, or 90% upside."

160. With respect to Schuff's financial highlights, Sententia indicated that: "Schuff has displayed great operational leverage and as the company's revenue increases, we see the same historical returns increasing. This will have a direct

impact on the cash flows and operational flexibility of Schuff." Further, according to Sententia, its "current financial estimates are conservative and project 7.5% EBITDA margin, 20% ROE margin and 20% FCF yield. We anticipate Schuff will surpass these numbers but will remain conservative in our projections."

161. Following the launch of the Tender Offer on August 21, 2014, Sententia expressed its severe disappointment with the $31.50 per share Merger Consideration. In an August 2014 presentation, Sententia indicated that "Phil Falcone's HC2 Holding Company made a deeply undervalued offer of $31.50 for the remaining shares of Schuff International." Sententia further noted that HC2's Merger Consideration was only a 1.6% premium to the previous day's close and that "HC2 is attempting to pay less than 3x EBIT for the entire business before shareholders realize the operational leverage."

162. In accord with its prior observations in its June article, Sententia stated in the presentation that "Schuff's financials show a high return on capital company with expanding backlogs primed to benefit from the continuation of a non-residual cyclical upturn." In valuing the Company, Sententia noted that, "**[c]onservatively, a one-year base case is $57. The high case is $100**, which should also be considered a 2 year price target." (Emphasis added). In concluding, Sententia stated: "A $31.50 tender price is greatly undervaluing SHFK, which should garner

at least $50 in a tender. HC2 is aware of the value. We should be too."

163. Following HC2's acquisition of over 90% of Schuff's shares pursuant to the Tender Offer and private purchases from two third party stockholders (for up to $2.50 per share more than the Merger Consideration), Sententia issued a statement in March 2015 that included the following:

> In June, HC2 purchased a 65% stake in Schuff International at a price of less than 3x EV/EBITDA, ultimately consummating a tender for 91% of the company in the Fall. HC2 continued to purchase additional companies throughout last year. . . . As HC2 continued their acquisitions, they issued preferreds and began to lever up HC2. **Through one of these debt issuances, HC2 themselves valued their majority owned Schuff position north of $55/share valuation compared to their $31.50 purchase price (*relevant to those who also have an investment in SHFK)**. A catalyst we were anticipating, uplifting to a major exchange from OTC, occurred at the start of 2015.

(Emphasis added).

164. Notably, in that same statement, Sententia indicated that: "**We have maintained our Schuff investment and continue to expect HC2 to announce a short-form merger, as they have stated. Once this is announced, we will look to pursue our appraisal rights**." (Emphasis added).

165. Sententia's observations about the Company's true value comport with the value range of Schuff derived from reliable and independently performed valuation analyses. Applying a conservative discounted cash flow model to projections that were sent by Schuff management to HC2 during the Tender Offer

period, and which HC2 subsequently presented to ratings agencies in October 2014, reveals that the Company's fair value was in the range of at least $45 to $54 per share, depending on the discount rate used in the analysis. This range of per-share equity values implies very conservative valuation multiples of 4.9x to 5.7x (measured as enterprise value divided by latest 12 months' EBITDA).

166. These independently-derived values of Schuff are in line with the value range of $57 to $100 per share suggested by Sententia. Accordingly, the $31.50 per share Merger Consideration was grossly unfair to the Company's minority stockholders.

167. In stark contrast to the ample evidence that the Merger Consideration was unfair to the Company's minority stockholders, there is a complete lack of any indicia that the Merger Consideration was fair.

168. As the Special Committee admitted in the September 5, 2014 Stockholder Letter, in connection with the Tender Offer, "[t]he Company has not engaged an outside financial advisor or other third party to conduct a financial analysis or formal appraisal of the current value of the Shares, nor has the Company conducted an evaluation or appraisal of the value of the Company." Although the Special Committee determined to express no opinion and remain neutral with respect to the Tender Offer, the Special Committee noted in the Stockholder Letter that the

Merger Consideration of $31.50 per share is the same price that HC2 paid Scott Schuff to acquire his Company shares on or around May 12, 2014.

169. However, according to Yagoda, who "advised" Scott Schuff on the sale of his Company shares to HC2, Scott Schuff did not engage a financial advisor to perform any valuation analyses or appraisal of the Company's value in connection with his sale of his Company stock to HC2. Instead, Yagoda and Hill only did a "back of the envelope" leveraged buyout analysis as an "academic exercise" in case a group of Schuff's management team wanted to offer to buy Scott Schuff's shares, but Scott Schuff did not see that analysis.

170. Rather than rely on any valuation analyses, Scott Schuff and Yagoda simply picked a range of prices that would be acceptable to Scott Schuff, with the only criteria being that the sale price should be a premium to the stock's trading price. As noted in the Stockholder Letter, however, Schuff's shares traded as high as $32 per share in the 52 weeks prior to the commencement of the Tender Offer on August 21, 2014, and traded as high as $33 per share on August 29, 2014. Moreover, following the close of the Tender Offer, HC2 itself bought additional Schuff shares from third parties on the open market for $32 and $34 per share, which were $0.50 and $2.50 per share premiums to the Merger Consideration, respectively.

171. Moreover, the suggestion that the Merger Consideration is presumptively fair because Scott Schuff and the Company's minority stockholders received the same consideration for their shares is not well-founded. *First*, at Scott Schuff's insistence and in connection with the sale of his Schuff stock to HC2, Scott Schuff entered into a consulting agreement with HC2, pursuant to which he agreed to provide consulting services for three years in consideration of aggregate consulting fees of $2.5 million. These additional lucrative benefits were not offered to Schuff's minority stockholders in the Buyout. Moreover, Scott Schuff needed cash and needed it quickly. His motivations to sell his stock quickly on account of financial constraints arising out of his personal issues undercut any presumption of fairness in the consideration provided to him.

172. This all was clearly known to Falcone and factored into the low-ball offering price offered.

173. *Second*, as Sententia recognized in its August 2014 presentation, Scott Schuff's decision to sell his Company shares for $31.50 per share does not support the fairness of the Merger Consideration because, among other reasons, Scott Schuff sold his shares for that (low) price for non-investment reasons. In particular, citing an intermediary, Sententia noted that HC2 was a willing buyer with cash, and a Schuff representative indicated that the $31.50 price was the highest price the stock

traded at that time. Further, industry representatives noted that the Schuffs sold their shares for personal reasons: "The Schuff's [sic] are turning things over and taking the opportunity to transition out." These reasons were confirmed by Yagoda at his deposition. Each of David Schuff and Scott Schuff sought to, and did, exit the Company by selling their Schuff shares when the opportunity for a liquidity event arose. As Sententia recognized, these are all non-investment reasons that the Schuffs sold their stock and "HC2 recognizes this and has purchased management's shares at a 'high' price, but a low valuation. **SHFK shares are worth considerably more**."

174. *Third,* Schuff's trading stock price was never an appropriate or reliable basis for determining the Company's fair value. The stock was not listed on a major exchange, but rather was thinly traded on over-the-counter pink sheets. Falcone noted that the market for Schuff stock was "relatively illiquid."[2] The average daily trading volume of the stock from January 1, 2014 through August 20, 2014 (the date prior to the announcement of the Tender Offer) was just 2,100 shares, and the median daily volume was a far lower 575 shares. Moreover, there were 48 days in which no shares traded, equal to nearly one-third of the 160 trading days in the period. As such, Schuff's stock suffered from a significant lack of liquidity that depressed its share price well below the Company's fair value.

[2] Falcone: 80:19-21.

COUNT I

Breach of Fiduciary Duties
(Against the Individual Defendants)

175. Plaintiff repeats all previous allegations as if set forth in full herein.

176. The Individual Defendants violated the fiduciary duties owed to the unaffiliated minority stockholders of Schuff and acted to put the interests of HC2 and themselves ahead of the interests of the Company's minority stockholders, and acquiesced in those actions by fellow defendants. These defendants failed to take adequate measures to ensure that the interests of Schuff's minority stockholders were properly protected.

177. Individual Defendants Falcone, Hladek, and Voigt were members of HC2 management. These Board members controlled HC2 and caused HC2 to acquire Schuff for an unfair price and pursuant to an unfair process to benefit themselves and HC2 to the detriment of Schuff's minority stockholders. At all times, Falcone, Hladek, and Voigt pursued their own and HC2's interests and imposed the unfair Buyout on Schuff's minority stockholders. In addition to disloyally serving the interests of HC2 over those of Schuff's minority stockholders, Falcone, Hladek, and Voigt breached their fiduciary duties as Schuff directors by not recommending that Schuff's minority stockholders not tender in favor of the Tender Offer, despite knowing that the Merger Consideration was grossly

inadequate.

178. Individual Defendants Hill and Roach also served the interests of HC2 and pursued their own pecuniary interests to the detriment of Schuff's minority stockholders. After HC2 acquired a majority interest in Schuff, Hill and Roach lobbied to maintain their lucrative management positions with the Company, and HC2 allowed Hill and Roach to stay with the Company in exchange for facilitating the squeeze out of Schuff's minority stockholders for an unfair price. Specifically, Hill continued as Vice President and CFO of Schuff, and Roach was promoted to President and CEO of Schuff. During the Tender Offer process, Hill and Roach worked closely with HC2 and its management team to ensure that HC2 could acquire Schuff's minority interest for as cheap as possible. In addition to disloyally serving their own interests and the interests of HC2 over those of Schuff's minority stockholders, Hill and Roach breached their fiduciary duties as Schuff directors by not recommending that Schuff's minority stockholders not tender in favor of the Tender Offer, despite knowing that the Merger Consideration was grossly inadequate.

179. Individual Defendants Yagoda and Elbert were members of the Special Committee that knowingly allowed HC2 to squeeze out Schuff's minority stockholders for an unfair price. Before, during, and after the Tender Offer period,

Yagoda constantly pursued his own pecuniary interests and future employment by HC2. Yagoda, acting out of self-interest, helped HC2 facilitate the unfair Buyout, for which he "felt that they owed [him]." Elbert, moreover, pursued his own interests by obtaining a liquidity event in the Buyout. Indeed, when Elbert (briefly) resigned from the Board in May 2014, he indicated in an email to Schuff directors and officers that he wanted the Board to purchase his 13,000 Schuff shares. The next day, Elbert rescinded his resignation after he had a conversation with Voigt, who apparently offered Elbert the prospect for a liquidity event in the anticipated Buyout. As discussed herein, this lack of independence was evident throughout the Special Committee's consideration of the Buyout, as the Special Committee utterly failed to protect Schuff's minority stockholders and to ensure that they received a fair price for their shares. In addition to disloyally serving their own interests and the interests of HC2 over those of Schuff's minority stockholders, Yagoda and Elbert breached their fiduciary duties as Schuff directors by not recommending that Schuff's minority stockholders not tender in favor of the Tender Offer, despite knowing, or having reason to know, that the Merger Consideration was grossly inadequate.

180. Each of the Individual Defendants, moreover, knowingly and purposefully caused materially misleading, incomplete, and coercive information to be disseminated to the Company's public stockholders. The Individual Defendants

had an obligation to be complete and accurate in their disclosures.

181. By the acts, transactions, and courses of conduct alleged herein, these defendants, individually and acting as a part of a common plan, acted unfairly to deprive Plaintiff and other members of the Class of the true value of their Schuff investment.

182. By reason of the foregoing acts, practices, and courses of conduct, the Individual Defendants breached their fiduciary obligations owed to Plaintiff and the other members of the Class.

183. As a result of the actions of Individual Defendants, Plaintiff and the Class have been harmed in that they have not received the fair value of their Schuff stock at the time of the Tender Offer and the promised time frame of the Merger. Plaintiff and the Class are entitled to a remedy in the form of monetary damages as though the Merger was consummated on the terms and in the time frame promised.

COUNT II

Breach of Fiduciary Duties (Against HC2)

184. Plaintiff repeats all previous allegations as if set forth in full herein.

185. As the controlling majority stockholder of Schuff, HC2 owed the Company and its minority stockholders fiduciary duties.

186. As set forth herein, HC2 breached its fiduciary duties to Plaintiff and the other members of the Class by imposing the unfair Buyout on Schuff's minority stockholders through an unfair process and for an unfair price.

187. HC2, moreover, knowingly and purposefully caused materially misleading, incomplete, and coercive information to be disseminated to the Company's public minority stockholders. HC2 had an obligation to be complete and accurate in its disclosures.

188. HC2 has breached, and is continuing to breach, its fiduciary duties by not effecting the Merger and consummating the Buyout as promised. Despite its repeated unequivocal representations, both prior to and after the close of the Tender Offer, that it "will" effect the Merger upon acquiring 90% of Schuff's stock (which it did), HC2 has refused to consummate the Buyout to the detriment of Schuff's minority stockholders. There are no legitimate business or legal reasons for failing to consummate the Buyout. Rather, HC2's decision not to effect the Merger stems from purely selfish reasons to avoid the liability that it would face as a result of any anticipated and foreseeable class action or appraisal litigation, including the substantial liability that it currently faces as a result of this litigation. Had HC2 properly fulfilled its duty to consummate the Merger at the time it had undertaken to do so, the non-tendering stockholders would have been afforded an opportunity to

obtain the fair value of their shares at the time of the Merger through appraisal or plenary litigation. This opportunity was wrongfully denied to them.

189. As a result of HC2's breaches of fiduciary duties, Plaintiff and the Class have been harmed in that they have not received the fair value of their Schuff stock at the time of the Tender Offer and in the promised time frame of the Merger. Plaintiff and the Class are entitled to a remedy in the form of monetary damages as though the Merger had been completed on the terms and in the time frame promised.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs demand judgment against defendants jointly and severally, as follows:

(A) Declaring this action to be a class action and certifying Plaintiff as the Class representative and Plaintiff's counsel as Class counsel;

(B) Enjoining and estopping Defendants from arguing that the Merger need not have been completed on the terms and in the time frame promised, deeming that the Merger was consummated and estopping defendants from asserting any procedural defenses associated therewith, including those relating to Plaintiff's ability to maintain this class action lawsuit or the ability to seek appraisal;

(C) Declaring that Plaintiff and the Class are entitled to a quasi-appraisal remedy and directing defendants to account to Plaintiff and the Class for

all damages suffered by them as a result of defendants' disclosure violations in connection with the Tender Offer and Merger as alleged herein;

(D) Awarding rescissory and compensatory damages to Plaintiff and the Class, including pre-judgment and post-judgment interest;

(E) Directing defendants to account to Plaintiff and the Class for all damages suffered by them as a result of defendants' wrongful conduct alleged herein;

(F) Awarding Plaintiff the costs of this action, including reasonable allowance for the fees and expenses of Plaintiff's attorneys and experts; and,

(G) Granting Plaintiff and the other members of the Class such other relief as this Court deems just, equitable, and proper.

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