



IN THE COURT OF CHANCERY IN THE STATE OF DELAWARE

PAUL HUDELSON, on behalf of himself
and on behalf of all other similarly situated,

Plaintiff,

v.

VIVEK RANADIVE, NANCI
CALDWELL, ERIC DUNN, MANUEL A.
FERNANDEZ, PHIL FERNANDEZ,
PETER JOB, DAVID J. WEST, PHILIP
WOOD, BALBOA INTERMEDIATE
HOLDINGS, LLC, BALBOA MERGER
SUB, INC., VISTA EQUITY PARTNERS
V, L.P. and GOLDMAN SACHS & CO.,

Defendants.

C.A. No. _____

VERIFIED CLASS ACTION COMPLAINT

1. Plaintiff Paul Hudelson (“Plaintiff”) brings this Verified Class Action (“Complaint”) against Vivek Ranadive, Nanci Caldwell, Eric Dunn, Manuel A. Fernandez, Phil Fernandez, Peter Job, David J. West, Philip Wood, Balboa Intermediate Holdings, LLC, Balboa Merger Sub, Inc. and Goldman Sachs & Co. (collectively, “Defendants”). The allegations of the Complaint are based on the knowledge of Plaintiff as to himself, and on information and belief, including the investigation of counsel and review of publicly available information, as to all other matters.

PRELIMINARY STATEMENT

2. This case challenges the price being paid by the acquirer of Tibco Software, Inc. (“Tibco” or the “Company”) in a merger transaction set to close later this year . In what was hailed by Tibco and acquirer Vista Equity Partners V, L.P. (“Vista”) as a \$4.3 billion deal, Tibco stockholders recently learned that Vista will be paying only \$4.2 billion, or \$100 million less than previously announced.

3. Why the reduction in consideration? Defendants are attributing the lower price to a purported miscount of Tibco’s equity by the investment advisor Tibco’s Board of Directors retained to help it maximize value for Tibco’s stockholders, Goldman Sachs & Co. (“Goldman”). Goldman, one of this country’s leading investment bankers, provided incorrect information to Vista concerning the number of Tibco shares Vista needed to acquire in the merger.

4. It is unclear if Tibco’s Board knew that Goldman had strong ties to Vista, having advised and *co-invested* with Vista entities, but one thing is patently clear. When Goldman claimed to have made this counting error and told the Board it should accept the lower purchase price, the Board did so without question.

5. The Board, knowing that Vista had intended and agreed to pay \$4.3 billion for Tibco, did not: (a) ask Vista to reform the merger agreement to call for total compensation of \$4.3 billion; (b) try to negotiate with Vista to capture even a portion of that lost \$100 million; or (c) tell Goldman that it must answer for its

purported “mistake” and make Tibco’s public stockholders whole. The Board utterly failed to comply with its fiduciary duties to secure the highest price reasonably available for Tibco, per its *Revlon* mandate. Goldman and Vista took full advantage of that failure.

6. This complaint seeks recompense for that \$100 million in foregone merger consideration for the Tibco public stockholders.

THE PARTIES

7. Plaintiff, Paul Hudelson (“Plaintiff”), is and has been at all relevant times, a stockholder of Tibco common stock.

8. Tibco Software Inc. (“Tibco” or the “Company”) is a Delaware corporation and has its principal executive offices in California. Tibco is a leading independent provider of infrastructure and business intelligence software. As of September 25, 2014, Tibco had: 163,851,917 shares of common stock outstanding; 4,641,716 shares of common stock issuable upon the exercise of stock options; 3,601,289 shares of common stock underlying performance-based restricted stock; and 2,934,638 shares of common stock underlying stock-based awards (excluding 4,147,144 shares of restricted stock that are already included in the shares outstanding, and excluding 1,450,000 shares underlying restricted stock units that were to be cancelled for no consideration).

9. Defendant Balboa Intermediate Holdings, LLC is a Delaware limited liability company which has a wholly owned subsidiary, defendant Balboa Merger Sub, Inc. (together with Balboa Intermediate Holdings, LLC, “Balboa”), a Delaware corporation. Balboa was formed by affiliates of Vista Equity Partners V, L.P. in order to acquire Tibco.

10. Defendant Vista Equity Partners V, L.P. (“Vista”), through Balboa, entered into a merger agreement with Tibco pursuant to which Vista’s Balboa will acquire the outstanding stock of Tibco. Vista and Balboa are sometimes referred to herein as the “Vista Defendants.”

11. Defendant Goldman, Sachs & Co. (“Goldman”) is an investment banker retained by a special committee of the Tibco Board to advise on the fairness of the Tibco/Balboa merger to the stockholders of Tibco from a financial point of view.

12. Defendant Vivek Ranadive (“Ranadive”) is the Chairman of Tibco’s Board of Directors and is the Company’s CEO.

13. Defendant Nanci Caldwell (“Caldwell”) has been a director of Tibco since June 2009.

14. Defendant Eric Dunn (“Dunn”) has been a director of Tibco since April 2004.

15. Defendant Manuel A. Fernandez (“M. Fernandez”) has been a director of Tibco since June 2014.

16. Defendant Phil Fernandez (“P. Fernandez”) has been a director of Tibco since June 2014.

17. Defendant Peter Job (“Job”) has been a director of Tibco since June 2000.

18. Defendant David J. West (“West”) has been a director of Tibco since February 2014.

19. Defendant Philip Wood (“Wood”) has been a director of Tibco since its founding in 1997.

20. Defendants Ranadive, Caldwell, Dunn, M. Fernandez, P. Fernandez, Job, West, and Wood are referred to herein collectively as the “Individual Defendants” and the “Board.”

I. ALLEGATIONS

A. BACKGROUND ON THE MERGER

21. In the spring and summer of 2014, a number of financial firms made contact with Ranadivé, Tibco’s Chairman and CEO, to indicate interest in potential strategic transactions for the Company, including an acquisition or capital injection. At that time, Tibco’s Board and management did not pursue these

inquiries because they wanted to continue to focus on the Company's standalone plan.

22. When Tibco's financial results for the second quarter of 2014 were below Wall Street's expectations, the Board held a special meeting on June 5, 2014 to discuss the Company's standalone plan and growth challenges, as well as a potential acquisition. Representatives of Goldman attended this meeting and gave a presentation on Tibco's general position and the strategic alternatives available to it.

23. Goldman subsequently sent the Board a more detailed market analysis of the Company, and at a special meeting of the Board on July 11, 2014, the Board instructed Goldman to engage in a comprehensive review of the strategic alternatives available to the Company.

24. At a special meeting held on July 29, 2014, the Board determined to explore a possible sale of the Company, and decided to begin this process by contacting four of the financial firms that had previously contacted Ranadivé. The Board elected not to contact two additional financial firms that had contacted Ranadivé because those firms were interested only in a financial transaction, not an acquisition.

25. Three days after the Board decided to explore a sale of the Company, the Compensation Committee of the Board approved amendments to the

Company's Executive Change in Control and Severance Plan. The August 1, 2014 amendments increased the severance benefits, medical benefits, and percentage of unvested equity awards that would vest if a participating executive were to be terminated in connection with a change in control of the Company.

26. On August 15, 2014, one of the financial firms contacted by the Company indicated that it would be interested in pursuing an acquisition of Tibco for between \$20.00 and \$21.00 per share. Another firm indicated its interest in an acquisition at between \$24.00 and \$25.00 per share.

27. On August 16, 2014, the Board held a special meeting, with Goldman in attendance. The Board determined to (1) engage in a further review of the strategic alternatives available to the Company; and (2) form a Special Committee for this purpose, comprised of Caldwell, Dunn and West. The Special Committee was charged with reviewing all strategic alternatives available to Tibco and making a recommendation to the Board regarding a course of action.

28. On August 18, 2014, the Special Committee held its first meeting. The Special Committee determined to appoint Goldman as its financial advisor, and authorized Goldman to contact a number of potential buyers that Goldman had identified. The retention of Goldman by the Special Committee was memorialized in a September 1, 2014 engagement letter.

29. Goldman's engagement as financial advisor was structured such that the vast majority of Goldman's compensation was earned through incentive payments for closing a deal. Goldman's final transaction fee was approximately \$47.4 million, of which only \$500,000 became due prior to the announcement of the Merger Agreement and the remainder of which was contingent upon closing. Thus, Goldman was highly incentivized to ensure that a strategic transaction closed, rather than to ensure that any transaction entered into maximized value for Tibco's shareholders.

30. On September 3, 2014, the Company issued a press release announcing the formation of the Special Committee to review the strategic and financial alternatives available to Tibco. Thus, it was clear that the Company was "in play" and that the Board was actively seeking an acquisition.

31. In late August 2014, the Special Committee instructed Goldman Sachs to inform all previously contacted parties that Tibco was seeking preliminary indications of interest by August 30, 2014.

B. VISTA AGREES TO PAY AN AGGREGATE OF APPROXIMATELY \$4.3 BILLION FOR TIBCO

32. On August 30, 2014, Vista provided a preliminary, non-binding indication of interest in pursuing an acquisition of the Company for between \$23.00 and \$25.00 per share.

33. Over the next two weeks, Tibco management and Goldman met repeatedly with Vista to discuss a possible transaction. Vista also received access to Tibco's electronic dataroom. On September 15, 2014, Goldman, at the direction of the Special Committee, provided Vista with a draft merger agreement. Vista continued negotiations with Tibco and Goldman thereafter.

34. On September 26, 2014, the Board and Special Committee held a joint meeting, with Tibco management and Goldman representatives in attendance. At this meeting, Goldman reviewed proposals submitted by Vista and another party that had been bidding on Tibco. Vista's current offer at that time was \$23.00 per share. The Board instructed Goldman to work to increase the per share prices in the competing acquisition proposals, and discussed the financial model and forecasts that Goldman would use in preparing a fairness opinion.

35. In the process of trying to elicit higher offers from Vista and the other bidder, Goldman provided Vista and the other bidder with a spreadsheet (the "Goldman Spreadsheet") containing information about Tibco's outstanding equity awards and common stock. Unbeknownst to any of the parties, the Goldman Spreadsheet improperly double-counted Tibco's restricted stock, including it in both the equity awards and common stock figures. As a result, the Goldman Spreadsheet made it appear as though Vista would need to acquire 4,174,144 shares more than it really needed to acquire Tibco. In other words, the Goldman

Spreadsheet misled Vista to believe that it would need to pay the per share merger consideration for 179,277,415 shares instead of 175,130,271 shares.

36. After receiving the Goldman Spreadsheet, Vista informed Goldman in the evening of September 26 that it was increasing its offer to \$24.00 per share. Goldman told Vista that its offer was the highest, as the other bidder maxed out at \$23.75 per share. Goldman also told Vista that Tibco's legal counsel would be in touch with Vista's legal counsel for the purposes of finalizing the merger agreement, with the goal of signing the merger agreement, if approved by the Board, the next morning.

37. Using the share price of \$24.00 per share proposed by Vista, the Goldman Spreadsheet produced an implied enterprise value for the transaction of approximately \$4.3 billion.

38. Goldman continued to use the incorrect capitalization numbers from the Goldman Spreadsheet in a September 27, 2014 presentation to the Board. Following this presentation, Goldman delivered the Board a written fairness opinion ("The September 27 Fairness Opinion") opining that the \$24.00 in cash per share of common stock to be paid pursuant to the Merger Agreement was fair from a financial point of view to such holders of common stock. Based in part on this presentation and the September 27 Fairness Opinion, the Special Committee then unanimously recommended to the Board that it approve the Merger, after which

the Board unanimously: (1) determined that the Merger was fair to, advisable and in the best interests of Tibco and its stockholders; and (2) adopted and approved the Merger Agreement and recommended that Tibco's stockholders vote in favor of adoption of the Merger Agreement.

C. UNDER THE MERGER AGREEMENT AS EXECUTED, VISTA ACQUIRES TIBCO FOR APPROXIMATELY \$4.2 BILLION

39. Later in the morning of September 27, 2014, Tibco and Vista signed the Merger Agreement. At the time the Merger Agreement was executed, both Tibco and Vista understood the implied enterprise value of Tibco under the transaction to be approximately \$4.3 billion, and their mutual agreement and understanding was for a transaction with that enterprise value. However, at the \$24.00 share price and using the *correct* share count, the Merger Agreement only provided for total merger consideration of approximately \$4.2 billion – about \$100 million less than the parties had contemplated. At the time the Merger Agreement was executed, neither Tibco nor Vista realized that the capitalization numbers in the Goldman Spreadsheet, which the parties had jointly relied upon in the finalization of the transaction, were different from the capitalization numbers in the Merger Agreement documents. The Merger Agreement documents did reflect termination fee calculations in certain circumstances and limits of liability for the Vista Defendants in certain circumstances that were based upon the incorrect capitalization numbers.

40. On September 29, 2014, Tibco issued a press release and Form 8-K announcing the Merger (the “September 29 Press Release”). The September 29 Press Release was drafted in collaboration with Vista. The September 29 Press Release stated, among other things, that “Vista will acquire all outstanding TIBCO common stock for \$24.00 per share in cash,” and that the, “[t]ransaction values TIBCO at approximately \$4.3 billion[.]”

41. These numbers were, however, erroneous and inconsistent because they relied upon the capitalization figures from the Goldman Spreadsheet. Had the deal proceeded at the \$4.3 billion enterprise value that was agreed upon by Tibco and Vista at the time the Merger Agreement was executed, Tibco common stock holders would have received approximately \$24.57 per share.

42. After the announcement of the Merger, the overstatement of the share count in the Goldman Spreadsheet was discovered. On October 11, 2014, the Board and Tibco management met with Goldman. At this meeting, representatives of Goldman presented a revised analysis of the Merger eliminating the double-counting problem of the Goldman Spreadsheet and reflecting revised capitalization numbers. Notwithstanding the facts that the corrected capitalization numbers shaved approximately \$100 million off of the enterprise value of the Company as compared to the announced value of the transaction, and that Vista had unambiguously agreed to pay the higher \$4.3 billion amount (and indeed, had

announced that the deal was valued at \$4.3 billion), Goldman confirmed that there was no change to the September 27 Fairness Opinion. Following Goldman's presentation, the Board concluded that the revised analysis provided by Goldman did not impact its recommendation in favor of the Merger.

43. On October 16, 2014, Tibco filed the Proxy, inviting stockholders to attend a special meeting to vote on the Merger. According to the Proxy, the Merger is expected to be completed in the fourth calendar quarter of 2014.

44. On October 23, 2014, the Board met with certain of its advisors to review the situation arising from the Goldman Spreadsheet. The Board noted that Vista likely had based its final offer on the capitalization reflected in the Goldman Spreadsheet and that the Merger Agreement contained the termination fee and limit of liability calculations referred to above based upon the incorrect capitalization numbers. The Board believed it could not "force" Vista to increase its per share price for Tibco, and decided to forego any attempt to negotiate further with Vista or to seek redress from Goldman. The Board simply agreed to accept \$100 million less than the amount for Tibco that it and Vista had both agreed upon.

D. GOLDMAN AND CERTAIN INSIDERS ARE INCENTIVIZED TO COMPLETE THE DEAL UNDER ANY CONDITIONS

45. As noted above, Goldman is directly incentivized to ensure this proposed transaction is consummated. Goldman's engagement fee is structured so that a vast majority of its compensation is contingent on the closing of a deal.

Goldman's total fee for its engagement by Tibco is \$47.4 million, only \$500,000 of which became due prior to the announcement of the Merger Agreement. In other words, a whopping **98.7%** of Goldman's fee is contingent on the completion of this merger.

46. Moreover, Vista has significant prior relationships with Goldman. Robert F. Smith and Brian Sheth, the co-founders of Vista, are both former Goldman bankers, with Smith having been co-head of Goldman's Enterprise Systems and Storage Sector division, and Sheth having worked in Goldman's Mergers & Acquisitions Group. Of Vista's thirteen principals, seven are former Goldman bankers. Moreover, Goldman advised Vista on the \$2 billion acquisition of a software company called Misys in March 2012. The Proxy Statement that Tibco filed with the U.S. Securities and Exchange Commission on October 29, 2014 in connection with the Merger (the "Proxy") does not state whether Goldman disclosed these relationships prior to Goldman's retention as Tibco's financial adviser. The Proxy does state that during the two year period ending September 27, 2014, Goldman received approximately \$7.5 million in compensation for financial advisory and underwriting services provided to Vista.

47. The Proxy also contains a telling passage stating that "Affiliates of Goldman Sachs also may have co-invested with [a Vista affiliate] and its affiliates from time to time and may have invested in limited partnership units of affiliates of

[a Vista affiliate] from time to time and may do so in the future.” When one parses out the “affiliate” of an “affiliate” language, the passage leaves open the possibility that Goldman has an investment in the very Vista entity involved in this transaction. Therefore, Goldman has an interest in Vista, its longtime business partner, completing the acquisition of Tibco.

48. Finally, according to the September 29 Press Release, certain Company insiders, including Defendant Ranadive, will receive lucrative bonuses if, and only if, the transactions contemplated by the Merger Agreement are consummated. Upon consummation, Ranadive, the Company’s Chairman and Chief Executive Officer, will receive a \$4 million bonus. Additionally, (i) Murray Rode, the Company’s Chief Operating Officer, will receive a \$1 million bonus; (ii) William R. Hughes, the Company’s Executive Vice President, Chief Administrative Officer, and General Counsel, will receive a \$500,000 bonus; and (iii) James Johnson, the Company’s Senior Vice President and Chief Financial Officer, will receive a \$500,000 bonus. Therefore, in addition to Goldman, the Company’s top officers, including the Chairman of the Board, are incentivized to close this deal regardless of Goldman’s error.

II. CLASS ACTION ALLEGATIONS

49. Plaintiff brings this action individually and as a class action on behalf of a class consisting of all public holders of Tibco common stock during the period

of September 26, 2014 through the present (the “Class”). Excluded from the Class are Defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated with any of the Defendants.

50. This action is properly maintainable as a class action because:
- a. The members of the Class are so numerous that joinder of all members is impracticable. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court. As of January 20, 2014, there were approximately 1,852 stockholders of record of Tibco common stock, and a great many more beneficial owners who own over 163 million shares of common stock;
 - b. There are questions of law and fact that are common to members of the Class, including, *inter alia*, the following, which predominate over any questions affecting only individual class members:
 - Whether the merger agreement should be reformed to reflect the \$4.3 billion total purchase price to which both Tibco (through its Board) and Vista had agreed;
 - Whether the Board members breached their fiduciary duties by not even trying to secure payment of the \$100 million merger consideration that Goldman claimed had been calculated in error;
 - Whether the Vista Defendants used their extensive relationship with Goldman to aid and abet the Board members’ breaches of duty and to secure a lower total purchase price for Tibco;
 - Whether Goldman aided and abetted the Board members’ breaches of duty; and
 - Whether Goldman committed professional malpractice or professional negligence in connection with its retention by the Special Committee to advise that

Committee on how best to maximize value for Tibco's public stockholders.

- c. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature. The claims of Plaintiff 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. Accordingly, Plaintiff is an adequate representative of the Class and will fairly and adequately protect the interests of the Class;
- d. No difficulties are likely to be encountered in the management of this action as a class action; and
- e. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

COUNT I
(Class Action Count for Reformation of the
Merger Agreement Due to Mutual Mistake)

51. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

52. On September 26, 2014, Goldman gave the Vista Defendants the Goldman Spreadsheet, which reflected that Tibco had 179,277,415 shares outstanding. The Vista Defendants thus understood that they had to acquire 179,277,415 Tibco shares in order to acquire Tibco. Using that information, the Vista Defendants proposed to acquire Tibco for \$24 per share, for a total purchase price of \$4.3 billion.

53. On September 27, 2014, Tibco's Board reviewed the Goldman Spreadsheet and the Vista Defendants' \$4.3 billion merger proposal. Goldman

expressed its opinion that the Vista Defendants' offer was fair, from a financial point of view, to Tibco's stockholders. After reviewing the Goldman Spreadsheet and considering Goldman's fairness opinion, the Board accepted the \$4.3 billion offer made by the Vista Defendants.

54. When the Board accepted the Vista Defendants' offer, an agreement was formed pursuant to which the Vista Defendants would acquire Tibco for an aggregate purchase price of \$4.3 billion.

55. Later on September 27, 2014, Tibco and the Vista Defendants executed the Merger Agreement. The Merger Agreement does not reflect the agreed upon aggregate purchase price of \$4.3 billion.

56. Plaintiff and the Class seek the reformation of the Merger Agreement to reflect the agreed upon aggregate purchase price for Tibco of \$4.3 billion.

57. Plaintiff and the Class have no adequate remedy at law.

COUNT II
(Class Action Count Against the Individual
Defendants for Breach of Fiduciary Duty)

58. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

59. This count is brought against the Individual Defendants for breach of fiduciary duty.

60. It was the fiduciary obligation of the Individual Defendants to secure the highest price reasonably available for Tibco. They approved a merger with Vista's Balboa that both they and Vista agreed would pay an aggregate purchase price of \$4.3 billion for Tibco.

61. When the Individual Defendants learned that Goldman had given an inaccurate share count just before Vista made its final offer, and that the corrected number rendered a purchase price \$100 million lower than the Individual Defendants and Vista had agreed upon, the Individual Defendants acquiesced in the \$100 million lower purchase price.

62. The Individual Defendants knew that Vista was willing and had agreed to pay \$4.3 billion for Tibco, but did nothing to secure that price in the final transaction. Rather, they simply accepted the \$100 million lower purchase price without: (a) demanding that Vista honor the agreed and announced \$4.3 billion purchase price; (b) negotiating with Vista to secure at least part of the \$100 million difference for Tibco's public stockholders; or (c) seeking to hold Goldman accountable for its error. In short, the Individual Defendants did not secure the highest price reasonably available in the sale of Tibco.

63. Due to the Individual Defendants' breaches of fiduciary duty, Plaintiff and the Class are being harmed by the loss of the opportunity to receive the highest price reasonably available for their shares.

64. Plaintiff and the Class have no adequate remedy at law.

COUNT III
(Class Action Count Against The Vista Defendants
for Aiding and Abetting the Individual
Defendants' Breaches of Fiduciary Duty)

65. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

66. This count is brought against the Vista Defendants for aiding and abetting the Individual Defendants' breaches of fiduciary duty. The Vista Defendants knew the Individual Defendants owed the Tibco stockholders fiduciary duties which, in the context of the sale of the Company, required the Individual Defendants to secure the highest price reasonably available for Tibco.

67. The Vista Defendants agreed to a \$4.3 billion purchase price for Tibco, but used the purported "error" by Goldman in accounting for Tibco's number of shares outstanding to lower that total purchase price to \$4.2 billion.

68. The Vista Defendants used their pre-existing ties to Goldman in order to get the Individual Defendants to agree to lower the purchase price of Tibco by \$100 million.

69. Plaintiff and the Class have been harmed by the Vista Defendants' actions.

70. Plaintiff and the Class have no adequate remedy at law.

COUNT IV

**(Class Action Count Against Goldman for Aiding and Abetting
the Individual Defendants' Breaches of Fiduciary Duty)**

71. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

72. This count is brought against Goldman for aiding and abetting the Individual Defendants' breaches of fiduciary duty. Goldman knew that the Individual Defendants owed Tibco stockholders fiduciary duties, which in the context of a sale of the Company, required them to secure the highest price reasonably available for Tibco.

73. After the Individual Defendants had secured a \$4.3 billion price for Tibco from the Vista Defendants, Goldman convinced them to accept a purchase price that was \$100 million lower. Goldman was motivated to do so by both its pre-existing ties to the Vista Defendants and its \$47 million fee tied to the successful closing of the transaction.

74. Plaintiff and the Class have been harmed by Goldman's actions.

75. Plaintiff and the Class have no adequate remedy at law.

COUNT V

**(Class Action Count Against Goldman for
Professional Malpractice/Professional Negligence)**

76. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

77. This count is brought against Goldman for malpractice. Goldman was engaged by the Special Committee of the Board that was charged with exploring strategic alternatives for maximization of stockholder value. Goldman's responsibilities were to advise the Special Committee in the process of exploring those alternatives (in the end, selling the Company) and to opine on the fairness of the price ultimately secured in the process. Goldman was obligated to perform those duties with the care and knowledge of a competent investment banker for the benefit of Tibco's stockholders whose shares were being acquired in the transaction.

78. Goldman failed to meet the required standard of care. Being able to appropriately account for a company's equity is a basic responsibility required of all investment bankers. Goldman did not properly account for Tibco's equity, and double-counted the restricted shares when providing information to Vista in calculating its final per share offer price.

79. Goldman compounded its incompetence by advising the Tibco Board to accept a purchase price that was \$100 million lower than what the Vista Defendants were willing and had agreed to pay for Tibco.

80. As a result of Goldman's actions, Plaintiff and the Class have been harmed.

81. Plaintiff and the Class have no adequate remedy at law.

RELIEF REQUESTED

WHEREFORE, Plaintiff demands judgment as follows:

- a) Declaring that this action is properly maintainable as a class action;
- b) Reforming the merger agreement to reflect a total purchase price of \$4.3 billion for the Vista Defendants' acquisition of Tibco;
- c) Declaring that the Individual Defendants breached their fiduciary duties in agreeing to the reduced total purchase price for Tibco and are liable to Plaintiff and the Class for those breaches;
- d) Declaring that the Vista Defendants and Goldman aided and abetted the Individual Defendants' breaches of fiduciary duty and are liable to Plaintiff and the Class for aiding and abetting those breaches of fiduciary duty;
- e) Declaring that Goldman committed professional malpractice or professional negligence in connection with the services it provided for the benefit of Tibco's public stockholders;
- f) Awarding Plaintiff the costs and disbursements of this action, including reasonable attorneys' and experts' fees;
- g) Awarding Plaintiff and the Class compensatory damages, including both pre- and post-judgment interest; and

- h) Granting such other and further relief as this Court deems just and proper.

Dated: November 5, 2014

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