



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

BRAD PERRY, individually, and
derivatively on behalf of
DEALERSOCKET, INC.,

Plaintiff,

v.

BRIAN N. SHETH, an individual;
DAVID BREACH, an individual;
SEJAL PIETRZAK, an individual;
MARTIN A. TAYLOR, an individual;
JEFF WILSON, an individual; MARC
V. TEILLON, and individual; KIM
EATON, an individual; KIM BRINK,
an individual; STEVE ANENAN, an
individual; VISTA HOLDINGS
GROUP, L.P., a Delaware limited
partnership; VISTA EQUITY
PARTNERS MANAGEMENT, LLC, a
Delaware limited liability company;
VISTA EQUITY PARTNERS FUND
V EXECUTIVE, L.P., a Delaware
limited partnership; VISTA EQUITY
PARTNERS FUND V, L.P., a
Delaware limited partnership; and
DEALERSOCKET, INC., a Delaware
corporation.

Defendants,

and

DEALERSOCKET, INC., a Delaware
corporation

Nominal Defendant.

C.A. No.

VERIFIED DERIVATIVE COMPLAINT

Plaintiff, Brad Perry (“Perry” or “Plaintiff”), on behalf of himself and derivatively on behalf of DealerSocket, Inc. (“DealerSocket”), by and through undersigned counsel, brings the following Verified Derivative Complaint (the “Complaint”) against certain members of the Board of Directors of DealerSocket (collectively, the “Board;” individual members as “Directors” or “Members”), against DealerSocket, and against Vista Holdings Group, L.P. along with several of its affiliate entities including Vista Equity Partners Management, LLC, Vista Equity Partners Fund V Executive, L.P. and Vista Equity Partners Fund V, L.P. (“Vista Fund V,” the Vista-affiliated entities are collectively referred to as “Vista”). Perry in his personal capacity brings the Complaint against DealerSocket for inspection of books and records pursuant to 8 *Del. C.* § 220(d) and against DealerSocket for declaratory relief that certain transactions are voidable. Perry derivatively on behalf of DealerSocket brings the Complaint against certain members of the Board and separately against DealerSocket’s Chief Executive Officer in her capacity as an officer of DealerSocket for breaching their fiduciary duties by conspiring with Vista to devise a plan to secretly negotiate, approve and consummate a set of (now voidable) fraudulent, self-interested transactions that harm DealerSocket and all of its minority shareholders. Except for allegations specifically pertaining to Plaintiff and his own acts, the allegations of the

Complaint are based on information and belief.

NATURE OF THE ACTION

1. On December 27, 2019, DealerSocket's Board voted on whether to purchase another company, Auto/Mate, Inc. Despite the disinterested Board Members voting 6–0 *against* the Auto/Mate transaction, DealerSocket's majority shareholder (*i.e.*, Vista) ignored the vote and had DealerSocket's Chief Executive Officer ("CEO") sign the purchase documents. This matter is about the majority shareholder's Board Members and appointed CEO engaging in months long fraud, among other things, against the minority shareholders all designed to benefit themselves.

2. Pursuant to the DealerSocket governance documents, DealerSocket's Board is limited to nine members. The governance documents allow four members to be appointed by Vista. Those four members (all Vista employees) are Defendants: (1) Brian Sheth ("Sheth"), (2) Martin Taylor ("Taylor"), (3) Jeff Wilson ("Wilson"), and (4) Marc Teillon ("Teillon"). The governance documents refer to these Directors as the "Vista Super Directors." The Vista Super Directors each have three votes. In addition, Vista also has the right through Vista Fund V to appoint a fifth Board Member (the "Fund V Director"). The Fund V Director has one vote. Pursuant to the DealerSocket governance documents, Vista Fund V has not appointed a Director.

3. Plaintiff believes that Defendants David Breach (“Breach”) and Kim Eaton (“Eaton”)¹ recently have acted as Directors, but were either: (1) never appointed to the Board, or (2) added by Vista without the removal of two Members given the limitation of nine Directors. One of the Members of the Board is also DealerSocket’s CEO, Defendant Sejal Pietrzak (“Pietrzak”). Pietrzak is a Vista appointed executive who routinely moves between Vista portfolio companies. Furthermore, as set forth herein, Pietrzak’s actions revealed that she is beholden to Vista and acts solely in its interests. Pietrzak has one vote. Vista also appointed two additional Members; Defendants Kim Brink (“Brink”) and Steve Anenan (“Anenan”). Brink and Anenan are paid Directors and serve entirely at the behest and pleasure of Vista (collectively, the nine Members are referenced herein as the “Vista Interested Directors”).

4. The last two DealerSocket Directors are its co-founders, Perry and Jonathan Ord (“Ord”). They are the only two DealerSocket Directors who are not beholden to Vista (collectively, the “Disinterested Directors”). The Disinterested Directors each have three votes for a total of six.

5. The governance documents have a maximum of seven Vista Board Members and two Disinterested Directors. Despite this restriction, Vista is trying to stack the Board with nine Vista Interested Directors. Stated another way, Vista

¹ Eaton is a Vista employee whose current title is Operating Principal. Her professional profile on Vista’s webpage holds her out as a DealerSocket Director. <https://www.vistaequitypartners.com/team-member/kim-eaton/>

has appointed more Board Members than permitted, and Vista Members voted who were not even on the Board.

6. Vista and the Vista Interested Directors orchestrated a fraudulent scheme that has included (and continues to include) lies, secrets, value manipulation, minority shareholder oppression, bullying, and cover-ups. The goal of Vista's deceptions was long thought out, planned and designed to wipe out the minority shareholders to enrich itself. Vista's motive, in part, is to create artificial valuations of DealerSocket so as to mask losses in its Vista Fund V from its limited partners.

7. The Vista Interested Directors illegally utilized their interested majority voting block to improperly force a set of interested transactions that would, among other things, devalue DealerSocket, mask Vista investment losses, and substantially dilute the interests of Perry and his fellow minority shareholders. To get away with its fraud, the Vista Interested Directors intentionally caused DealerSocket to withhold critical information from the Disinterested Directors in breach of their duties as Directors (the "Information Freeze-Out"). In fact, Perry and Ord made over *fifty* demands for information to the Vista Interested Directors and Pietrzak, but were either ignored, refused access or told that they would not receive anything "in writing." The Vista Interested Directors and Pietrzak breached their fiduciary obligations by crafting an Information Freeze Out scheme

that was specifically designed to impede minority shareholders from fully understanding the nefarious and self-interested nature of the proposed transactions.

8. Specifically, the Vista Interested Directors orchestrated a series of events aimed at harming DealerSocket and its minority shareholders. These events (the details of which are more fully set forth below) include, but are not limited to:

- a. *Secretly* feeding manipulated and/or incomplete financial information to Vista’s valuation firm, Valuation Research Company (“VRC”), in order to generate inaccurate and self-serving valuations. Specifically, Vista manipulated VRC into producing at least four different valuations that wildly-fluctuated to benefit Vista’s agenda to wipe out the minority shareholders. For example, In June 2019, Vista had VRC produce a valuation of DealerSocket at \$499 million, but then, in conjunction with the Auto/Mate transaction, had VRC produce a “revised” valuation just *58 days* later decreasing DealerSocket’s *value to \$28 million – a 95% loss in value*;
- b. Crafting a scheme that equated to the Information Freeze Out so as to keep the substantive information about the transactions a *secret* from the Disinterested Directors;
- c. Instructing DealerSocket’s Vista-appointed CEO, Pietrzak, to ignore

Perry's requests for information, and instead, keeping the information a *secret*;

- d. Fraudulently and intentionally misrepresenting to the Disinterested Directors that the Auto/Mate transaction was not proceeding, when in actuality, Vista and the Vista Interested Directors were *secretly* and without authority from the Board, continued to negotiate the transaction;
- e. After *secretly* orchestrating negotiations between Auto/Mate and DealerSocket, the Vista Interested Directors presented their Vista *secretly* pre-negotiated Auto/Mate deal to the Board for a vote. The Disinterested Directors were surprised since the Vista Interested Directors previously said they were "passing on the acquisition." Nevertheless, the Disinterested Directors requested information to understand the proposed transaction. Unfortunately, Vista's Information Freeze Out was already long on its way and it refused to provide information to the Disinterested Directors;
- f. After the vote, Perry requested a copy of the transaction documents, but consistent with the Information Freeze Out, he was refused. On Friday, January 10, 2020, Perry informed Vista that he would need to seek his inspection rights and request judicial assistance. On Sunday,

January 12, 2020, only after threat of litigation Perry received the transaction document;

- g. The Vista Interested Directors unilaterally and in *secret* structured the Auto/Mate transaction whereby Vista would provide an equity infusion into DealerSocket of \$263.3 million. The Vista Interested Directors have failed to justify the need for this amount of equity or tried to obtain less expensive and less dilutive capital from other sources. Rather, Vista is using its own resources because that effectively dilutes the minority shareholders in favor of Vista;
- h. Despite being interested Directors, the Vista Interested Directors did not recuse themselves. Rather, at the Board meeting, Vista Interested Directors and Pietrzak continued with their Information Freeze Out and forced an improper vote. The vote was precisely what was anticipated in this *secretly* negotiated transaction; specifically, that the Vista Interested Directors (all nine of them despite only have seven Board seats) voted in favor of the transaction (the “Null Votes”). However, all the Disinterested Directors voted *against* the Auto/Mate transaction. Consequently, since the Disinterested Directors are the only votes that count, the Auto/Mate transaction (including the equity infusion) was *rejected* by a vote of 6-0;

- i. Despite being voted *against* 6–0, Pietrzak proceeded to utilize the Null Votes to empower her to *secretly* execute the Auto/Mate transaction documents. Perry discovered that Pietrzak executed the Auto/Mate transaction documents minutes before she sent a company-wide email announcing it. Pietrzak’s signature on behalf of the DealerSocket is invalid since she relied on the Null Votes; and
- j. In a ruse of a “process,” on or about January 6, 2020, Pietrzak sent preemptive rights notices (“Preemptive Notices”) to DealerSocket’s minority shareholders offering them an opportunity to participate in the equity raise. While the Preemptive Notices informed minority shareholders “how” to elect to participate in the equity raise, they did not provide minority shareholders with *any of the information* that was made available to the Vista Interested Directors. For example, the minority shareholders should have been provided information such as (but is not limited to):
 - i. All valuations and corresponding reports related to DealerSocket from at least the past twelve months;
 - ii. All valuations and corresponding reports related to Auto/Mate from at least the past twelve months;
 - iii. The Auto/Mate transaction documents;

- iv. A current DealerSocket capital table;
- v. Projections relating to how the combination of DealerSocket and Auto/Mate would increase enterprise value of the combined entity;
- vi. Explanations of the equity dilution facing non-participating shareholders; and
- vii. Proof that a majority of Disinterested Directors approved the Auto/Mate transaction and the corresponding equity raise (which they did not—they voted 6–0 *against* it);
- viii. Corresponding details supporting models and assumptions.

9. The Vista Interested Directors *secretly* orchestrated the Null Votes to allow DealerSocket to purchase Auto/Mate. In conjunction with the purchase, and in order to raise the capital to do so, the Vista Interested Directors have utilized the Null Votes to authorize issuance of \$263.3 million in equity. Any shareholder failing to purchase a pro rata share of this stock issuance will have the value of their equity diminished through dilution. The Null Votes were a sham. No relevant information was provided to anyone other than Vista and Vista Interested Directors. The Vista Interested Directors have extended their Information Freeze Out to all minority shareholders.

10. Doubling down on the nefarious and injurious conduct of the Vista

Interested Directors, when DealerSocket issued Preemptive Notices, it informed them that the purpose of the equity raise was for the purchase of Auto/Mate. However, the Vista Interested Directors have refused to provide the minority shareholders with any information about the Auto/Mate transaction. Equally disturbing is that the \$263.3 million equity infusion is not just to purchase Auto/Mate; the Vista Interested Directors are misleading the minority shareholders.

11. Due to the Vista Interested Directors Information Freeze Out, no investor could reasonably make an informed decision about this illegal transaction.

12. In 2014, when the Board approved the agreement to make Vista the majority shareholder, Perry believed that the Vista was entering into the agreement with good faith. Unfortunately, time tells a different story.

13. Starting in or around September 2019, Perry became aware that the Vista Interested Directors intended to use their majority voting block to approve transactions that were self-interested and harm DealerSocket and all of its minority shareholders.

14. In order to fulfill his duty as a director, Perry repeatedly demanded that the Board and DealerSocket provide him with access to relevant documents. *Inter alia*, Perry (and Ord) demanded copies of the valuation of DealerSocket,

Auto/Mate, and DealerSocket's intended business strategy if the transaction was to happen. To date, DealerSocket has refused to comply with these demands and are still employing the Information Freeze Out strategy.

15. It is well-settled that a director is entitled to unfettered access to a corporation's books and records. Here, as a Director, Perry is entitled to access to DealerSocket's books and records, including but not limited to, financial information, communications among DealerSocket's directors and officers, Board meeting minutes and valuation reports.

16. Accordingly, Perry brings this action, in part, to enforce his right under Delaware law to inspect DealerSocket's books and records pursuant to Section 220(d), and to halt the interested Auto/Mate transaction.

THE PARTIES

17. Plaintiff is the co-founder, Director and stockholder in DealerSocket. Perry has served as a Director at all material times alleged in this Complaint.

18. Defendant DealerSocket, Inc. is a privately-held Delaware corporation.

19. Defendant Pietrzak is a DealerSocket's CEO (appointed by Vista) and a Director. Pietrzak has served as such at all material times alleged in this Complaint. Prior to being appointed CEO, Pietrzak worked for more than a decade as an executive at another Vista portfolio company.

20. Defendant Brink is a DealerSocket Director and has served as such at all material times alleged in this Complaint. Brink is a Vista appointed Director and is paid by DealerSocket in cash and stock. Brink's entire position and remuneration rests in the hands of Vista. If Brink votes against Vista's interests, she will be removed and lose significant money.

21. Defendant Sheth is a DealerSocket Director. Sheth is a co-founder of Vista and its current president.

22. Defendant Taylor is a DealerSocket Director. Taylor is a current Vista employee whose current title is Operating Principal.

23. Defendant Wilson is a DealerSocket Director. Wilson is a Vista employee whose current title is Senior Vice President.

24. Defendant Teillon is a DealerSocket Director. Teillon is a current Vista employee whose current title is Principal.

25. Defendant Eaton is a current Vista employee whose current title is Operating Principal. Eaton has acted as a DealerSocket Director despite the lack of governance documents appointing Eaton to the Board.

26. Defendant Anenan has acted as a DealerSocket Director. Anenan is a Vista appointed Director and is paid by DealerSocket in cash and stock. Anenan's entire position and remuneration rests in the hands of Vista. If Anenan votes against Vista's interests, he will be removed and lose significant money.

27. Defendant Breach is the Chief Operating Officer and Chief Legal Officer of Vista and has acted as a DealerSocket Director. Breach has acted as a DealerSocket Director despite the lack of governance documents permitting him to be a Board Member.

28. Defendant Vista Holdings Group, L.P. is a Delaware limited partnership.

29. Vista Equity Partners Management, LLC is a Delaware limited liability company and a subsidiary of Vista Holdings Group, L.P.

30. Defendant Vista Equity Partners Fund V Executive, L.P. is a Delaware limited partnership.

31. Defendant Vista Equity Partners Fund, L.P. is a Delaware limited partnership and the majority shareholder of DealerSocket.

JURISDICTION AND VENUE

32. This Court has jurisdiction over this action pursuant to 10 Del. C. § 341.

33. This Court has jurisdiction over DealerSocket pursuant to 10 Del. C. § 3111.

FACTUAL ALLEGATIONS

34. DealerSocket was founded in 2001 and offers the leading Customer Relationship Management software for the retail and independent automotive

industries.

35. Perry and Ord are the co-founders of DealerSocket.

36. From 2001 to 2014, under the direction of Perry, Ord, and others who some are now minority shareholders, DealerSocket grew from a startup company in a garage to a four hundred and fifty employee company. These employees devoted themselves to building DealerSocket through endless hours of work and time spent away from their families all with the goal of building a solid company and the dream that one day their equity would grow in value.

37. As a result of DealerSocket's success, in 2014, Vista invested in DealerSocket. At that time, Vista's equity valuation of DealerSocket was approximately \$387,000,000. Vista became the largest shareholder in DealerSocket and its designees would hold the majority of the seats on the Board.

38. After Vista invested in DealerSocket, Perry and Ord remained on the Board. From that time until present, Vista's designees made up the majority of the Board. Ord and Perry are the only independent Directors.

39. In a press release announcing Vista's investment, DealerSocket stated that it was a "true partnership with Vista in every sense of the word."² Ord himself explained, "[w]e did not want to be acquired. Rather, we sought to find a

² *DealerSocket Inc. enters into strategic partnership with Vista Equity Partners*, May 13, 2014, available at <https://dealersocket.com/dealersocket-inc-enters-strategic-partnership-vista-equity-partners> (last visited November 22, 2019).

partner that would not dilute our brand or de-energize our employees or customers as well as help us capitalize on all available opportunities for growth. This relationship with Vista accomplishes that goal and more.”³

40. Unfortunately, Vista appears to have a different view of the relationship—not a partnership, but rather, that the Vista Interested Directors have carte blanche to make self-interested decisions. In fact, Vista recently told Perry that as a majority shareholder it can do “whatever it wants.”

41. For the first four years of the relationship, DealerSocket grew as a company.

42. In June of 2019, one DealerSocket equity valuation was \$499,500,000—a gain of \$112,500,00 since 2014.

43. In September 2019, Perry became aware that the Vista Interested Directors intended to hold a Board meeting wherein one of the purposes was a vote to approve: (1) the issuance of equity shares; and (2) the purchase of Auto/Mate.

44. Shortly after learning this information, the Disinterested Directors requested that the Vista Interested Directors provide information regarding the valuation of DealerSocket, the valuation of Auto/Mate, and the rationale behind the equity funding. In particular, in September 2019, the Interested Directors

³ *Id.*

emailed the Vista Interested Directors to demand Auto/Mate's exact valuation as determined by VRC.

45. Instead of providing documents, the Vista Interested Directors stonewalled the Disinterested Directors' requests. Instead, the Vista Controlled Directors initiated a telephonic conference with the Disinterested Directors on October 3, 2019.

46. After the October 3, 2019 telephonic conference, the Disinterested Directors demanded that the Vista Interested Directors provide the following limited information: (1) the manipulated information regarding the most recent valuation of DealerSocket; (2) list of recent options exercised and granted; (3) current financials of the business that shows negative cash flow and insolvency projection; (4) manipulated business model and supporting documents for Auto/Mate; and (5) manipulated Vista built business model to justify an investment in Auto/Mate. The Vista Controlled Directors and Pietrzak refused to provide anything else.

47. The Disinterested Directors have fiduciary obligations to protect DealerSocket and its minority shareholders. That obligation that drove the Disinterested Directors to seek the inspection once they became aware of nefarious activity by the Vista Interested Directors. Specifically, in December 2018, DealerSocket was allegedly valued at \$493 million based on the Vista

Narrative.⁴ In June 2019, DealerSocket was valued at \$499 million. Then, in September 2019, *just 58 days later*, DealerSocket was *de-valued* by \$471 million to approximately \$28 million. Of course, the alleged *loss of 95%* of DealerSocket’s value was alarming (and seemed impossible) to the Disinterested Directors. As such, the Disinterested Directors started asking questions to the chagrin on the Vista Interested Directors.

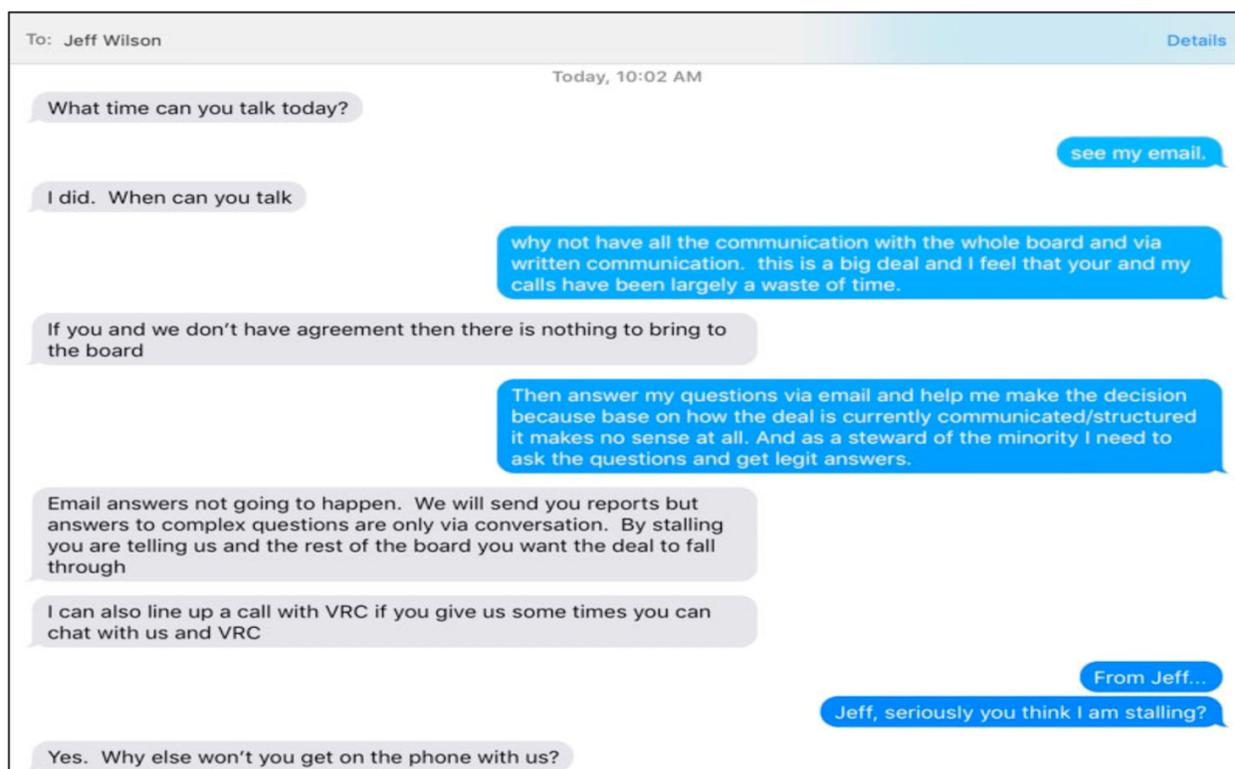
48. Not surprisingly, this \$28 million valuation came in conjunction with the proposed purchase of Auto/Mate. Vista proposed it would invest in DealerSocket with \$263.3 million in equity, but at a 3x preference. The fraud by *Vista* was to *de-value* DealerSocket so that its investment would wipe out the minority shareholders from approximately 33% to less than 2% of the equity. Importantly, these were valuations that the Vista Interested Directors put on DealerSocket at Vista’s direction—*DealerSocket did not devalue itself*.

49. The Disinterested Directors again raised concerns with the Vista Interested Directors. Specifically, on October 8, 2019, the Disinterested Directors emailed the Vista Controlled Directors requesting: (1) an explanation for the drastic fluctuation in valuation; (2) that the Board focus on fixing current issues before acquiring another company; (3) contact information for a VRC

⁴ VRC was retained to conduct a valuation and is Vista’s primary valuation company for its portfolio companies and is not truly independent. Part of the books and records being sought is the information *Vista* provided manipulated and false information to VRC. To date, *Vista* has precluded Disinterested Directors from obtaining that data. Hence, the reference to the “Vista Narrative.”

representative to understand the *95% decline in value*; (4) if Vista was a minority shareholder, would it agree that the acquisition was the best scenario for DealerSocket; (5) how much DealerSocket has paid Vista Consulting Group (“VCG”) since inception; (6) request for a VRC valuation report of Auto/Mate; (7) an explanation of whether Vista’s proposed equity infusion would essentially “wipe out” all shareholders except for Vista; (8) an explanation as to why Vista has not gone to the market to see what terms independent investors may provide; and (9) explanations regarding Vista’s incoming equity infusion (at three times preferred value). The Vista Controlled Directors and Pietrzak refused to provide the information.

50. On October 8, 2019, Defendant Wilson texted Ord requesting a telephonic conference. Ord requested that the Board act transparently and in writing so as to avoid issues. Wilson, on behalf of the Vista Controlled Directors,



refused to be transparent. In response, Ord circulated screenshot of this text conversation to the Board to ensure that all Members were apprised of the document requests status. A true and correct copy of the text screenshot is included below.

51. On October 10, 2019, one business day prior to a scheduled Board meeting, Ord emailed Wilson stating that the Disinterested Directors still did not receive any of the requested information. The Disinterested Directors also shared their concern that the Vista Interested Directors are “keeping [the non-Vista directors] in the dark.”

52. Later that same day, Breach appeared to acknowledge Vista’s wrongdoing. In particular, Breach sent an email by accident to the Vista Interested Directors, and others, stating that “he doesn’t want to give these guys a process argument.” Vista acted intentionally in perpetrating its fraud, among other things.

53. On October 10, 2019, the Disinterested Directors again reached out to the Vista Interested Directors with financial questions following their review of the limited documents provided by Vista, including: (1) DealerSocket cash flow; (2) long-term debt; (3) the target entity’s business model; and (4) impact of DealerSocket’s low valuation.

54. At no point did the Vista Interested Directors provide all the requested information to the Disinterested Directors.

55. On October 14, 2019, in a sudden about-face, and in retrospect a blatant lie, the Vista Interested Directors represented to the Disinterested Directors that they would not acquire Auto/Mate and that the deal was dead. Specifically, Wilson wrote to the Board: “We have said consistently we won’t acquire Auto/Mate at this time without your support and we hear you that you are not supportive. **Consequently, we will let the seller know we are passing on the acquisition and we will cancel the Board call for Wednesday.**” (Original emphasis). But, this was all a lie by the Vista Interested Directors and Pietrzak. As such, the Vista Interested Directors canceled the Board meeting to discuss Auto/Mate. However, *secretly*, the Vista Interested Directors continued to negotiate, employ lawyers (*i.e.*, Vista’s lawyers), draft documents, and proceed without any Board approval.

56. Pursuant to Section 220(d), on or about October 17, 2019, the Disinterested Board Members reiterated their demands for its records. To date, the Vista Interested Directors have not fully complied with this demand.

57. On or about October 22, 2019, Ord spoke with a VRC representative to understand Vista’s *95% decrease* in DealerSocket’s value in *58 days*. The telephonic conference raised further concerns regarding Vista’s involvement in intentionally decreasing DealerSocket’s valuation. Essentially, Vista, by manipulating DealerSocket’s long-term financial outlook, told VRC what and how

to value DealerSocket.

58. Thereafter, in November 2019, the Vista Interested Directors informed the Disinterested Directors that DealerSocket's equity valuation had changed *again* to \$248,000,000. In other words, DealerSocket seemingly overnight gained back \$220,200,000. To date, the Vista Interested Directors have offered no explanation for the extreme variations in DealerSocket's valuation. The only thing clear about these wildly fluctuating valuations is that they lack transparency, accuracy and integrity and were designed for the benefit of Vista to dilute the minority shareholders.

59. Vista's conduct continues today and needs to be curbed. During a discussion with Ord, Wilson has stated that "Vista could do whatever it wants" as a "majority shareholder." Wilson even gave relevant example; stating that "Vista" can issue equity shares at a "twenty-six times preference," without needing the approval of the minority directors.

60. In fact, Wilson told Perry that the 3x preference which would wipe out the minority shareholders was fair because DealerSocket was not worth anything (*despite Vista telling its Fund V investors (limited partners) the complete opposite; e.g., more Vista fraud*), and that Perry's choice would be between the Auto/Mate transaction and getting nothing. These communications were intended to strong-arm Perry into voting for the Auto/Mate transaction.

61. Despite prior representations that the Auto/Mate transactions was dead, on December 22, 2019, Perry received notice that the Board would be once again meet to discuss a proposed acquisition of Auto/Mate. It became clear that the Vista Interested Directors had been lying all along that the Auto/Mate transaction was dead. The reality was that the Vista Interested Directors were behind the scenes *secretly* negotiating to buy Auto/Mate, while also scheming to raise equity to consummate the transaction at an artificially low DealerSocket valuation. Moreover, as part of Vista's plan, it has artificially increased the value of Auto/Mate as another means to wipe out the minority shareholders and to hide Vista Fund V losses from its limited partners.

62. This scheme would serve to harm DealerSocket and dilute its minority shareholders, while substantially benefiting Vista. By infusing equity capital into DealerSocket at an artificially low valuation, and an substantiate Auto/Mate value, Vista increases its equity in DealerSocket. In the end, the Vista Interested Directors charged with the obligation to protect the minority shareholders have, instead, not only sought to wipe out the minority shareholders' interests in DealerSocket, but also their years of hard work to realize their dream.

63. On December 27, 2019, the Directors voted on the proposed transactions. Ultimately, The Vista Interested Directors relied on the Null Vote and approved the transactions with zero support from the Disinterested Directors.

This too was another Vista Interested Director lie; on October 14, 2020, Wilson wrote: “We have said consistently we won’t acquire Auto/Mate at this time without your support.” The Disinterested Directors voted 6-0 *against* the Auto/Mate transaction.

64. Within *three days* after the Board voted on the Auto/Mate transaction, a highly complex Stock Purchase Agreement (which obviously had been *secretly* negotiated over months) was already prepared and awaiting Pietrzak’s signature. She executed the Stock Purchase Agreement whereby DealerSocket would purchase 100% of Auto/Mate’s outstanding shares. Aware of its illegal actions, the Stock Purchase Agreement provides that if a Temporary Restraining Order is issued to prevent the Auto/Mate transaction, it will not proceed, and *Vista* will owe Auto/Mate (as the guarantor) a millions in a penalty payment. Even Auto/Mate recognized this illegal conduct and sought to protect itself from the Vista Interested Directors.

65. On January 6, 2020, DealerSocket’s parent company, Ousland Holdings, Inc. provided shareholders with the Preemptive Notices giving them only ten days to decide whether to purchase Series A Preferred Stock.

66. The Preemptive Notices provides the technical instructions of how to elect to participate in the investment. The Preemptive Notices does not, however, provide investors with any details, financial or otherwise, related to

DealerSocket's purchase of Auto/Mate; the very transaction that the proposed investment will fund. Nor does it disclose that the \$263.3 million is not just for Auto/Mate, and therefore, is misleading and potentially a fraud. No investor could make an informed decision without such information. DealerSocket and the Vista Interested Directors have refused to provide full and complete information to minority shareholders in a timely manner.

67. As of the filing of this Complaint, although the DealerSocket - Auto/Mate transaction documents have been executed, neither DealerSocket's purchase of Auto/Mate nor Vista's additional investment in DealerSocket have closed.

DEMAND FUTILITY

68. Perry did not make a demand on the Board to bring suit asserting the claims set forth herein because a pre-suit demand would have been futile.

69. Only two Disinterested Board members voted on the Auto/Mate transaction, Perry and Ord. They both *rejected* the Auto/Mate transaction. Thus, the Auto/Mate transaction failed on a 6–0 vote *against* it.

70. Pursuant to the Stockholders Agreement as amended by Amendment No. 2, as of October of 2018, the Board was to have nine seats. Amendment No. 2 listed Perry and Ord as Directors of the Board with three votes each and gave Vista the right to appoint four Vista Super Directors with three votes each.

71. Despite that the governance documents allowing only a maximum of nine Board seats, eleven individuals appear to have participated in the vote on the Auto/Mate transaction and the associated equity raise. Those are the nine Vista Interested Directors and the two Disinterested Directors.

72. Sheth is a co-founder and president of Vista. Sheth's incentive, therefore, is to maximize the amount of money that is directed to Vista, which would directly enrich him. Sheth was incentivized to negotiate an equity buy that favored Vista at the expense of DealerSocket.

73. Taylor is an Operating Principal at Vista. He has been an employee of Vista for over thirteen years. Taylor has, therefore, for some time depended upon Vista for his employment and all of its attendant compensation and benefits. Thus, Taylor has a personal financial interest in the Auto/Mate transaction that differs from the interests of DealerSocket and its minority shareholders.

74. Wilson is a Senior Vice President at Vista. He has been an employee of Vista since 2015. Wilson has, therefore, for some time depended upon Vista for his employment and all of its attendant compensation and benefits. Thus, Wilson has a personal financial interest in the Auto/Mate transaction that differs from the interests of DealerSocket and its minority shareholders.

75. Teillon is a Principal at Vista. He has been an employee of Vista for over ten years. Teillon has, therefore, for some time depended upon Vista for his

employment and all of its attendant compensation and benefits. Thus, Teillon has a personal financial interest in the Auto/Mate transaction that differs from the interests of DealerSocket and its minority shareholders.

76. Eaton is an Operating Principal at Vista. She has been an employee of Vista since 2019. Eaton, therefore, depends upon Vista for her employment and all of its attendant compensation and benefits. Thus, Eaton has a personal financial interest in the Auto/Mate transaction that differs from the interests of DealerSocket and its minority shareholders. Further, given her relatively new position with Vista, it is particularly unlikely that she would vote to sue her new employer, Vista.

77. Breach is the Chief Operating Officer and Chief Legal Officer of Vista. He has been an employee of Vista since 2014. Breach has, therefore, for some time depended upon Vista for his employment and all of its attendant compensation and benefits. Thus, Breach has a personal financial interest in the Auto/Mate transaction that differs from the interests of DealerSocket and its minority shareholders.

78. Brink is beholden to Vista. She is a paid Director who was appointed by Vista. Her continued directorship at DealeSocket, its corresponding compensation, and any opportunity for appointment to directorships on other Vista portfolio company boards is contingent upon her allegiance and loyalty to

Vista. If Brink did not act in accordance with Vista's wishes, she knew she would likely be removed as a Director. Further, Brink is compensated with stock options, making her uniquely vulnerable to Vista's unfounded threats that DealerSocket will not survive without the Auto/Mate transaction.

79. Anenan is beholden to Vista. He is a paid Director who was appointed by Vista. His continued directorship at DealerSocket, its corresponding compensation, and any opportunity for appointment to directorships on other Vista portfolio company boards is contingent upon his allegiance and loyalty to Vista. If Anenan did not act in accordance with Vista's wishes, he knew he would likely be removed as a director. Further, Anenan is compensated with stock options, making him uniquely vulnerable to Vista's unfounded threats that DealerSocket will not survive without the Auto/Mate transaction.

80. Pietrzak is not a Vista employee but is not independent because she is entirely beholden to Vista for her employment and compensation. Vista appointed her to her positions as Director and CEO of DealerSocket in 2017. It did so after she spent over ten years as an employee of ACTIVE Network, LLC, another Vista portfolio company, where she was an executive. By continuing to act in Vista's interests, Pietrzak secures her continued employment at DealerSocket and obtains the possibility of future appointments with Vista portfolio companies, just as she was appointed to DealerSocket after working at ACTIVE Network, LLC. It is

reasonable to infer that Pietrzak would feel strong gratitude to Vista for significantly advancing her career by providing her first posting as CEO, and thus it is highly implausible that she would reciprocate by approving a lawsuit against Vista's interests. Further, because management stock options are paid before equity holders under the relevant governance documents, Pietrzak was particularly incentivized to protect her personal financial motivations over protecting the minority shareholders. Therefore, she voted to allow for their dilution and against the minority shareholders' interests in favor of her own financial motivations.

81. The facts alleged in the preceding paragraphs show that the Auto/Mate transaction was entered into only because a majority of Directors are interested in the ultimate outcome of the transaction by virtue of their allegiance to Vista, and/or are not independent. Therefore, demand is excused.

COUNT I

(Inspection of Books and Records Under 8 *Del C.* § 220(d))

(Direct Against DealerSocket)

82. Plaintiff repeats and incorporates by reference each of the allegations set forth above.

83. Section 220(d) of the Delaware General Corporation Law grants directors a virtually unfettered right to inspect the books and records of the company.

84. Plaintiff, as a director of DealerSocket, has demanded inspection of the categories of books and records sought in the Demand pursuant to Section 220(d) of the Delaware General Corporation Law. DealerSocket has refused Plaintiff's Demand.

85. Plaintiff's purpose for requesting the books and records of DealerSocket is a proper purpose, reasonably related to Plaintiff's position as a director of DealerSocket. Perry requires information about DealerSocket, its financial plans and the actions of their fellow directors in order to fulfill his duties as a DealerSocket director and discharge his fiduciary duties of care and loyalty.

86. Perry is entitled to receive copies of the books and records demanded herein.

87. Perry lacks an adequate remedy at law.

COUNT II

(Declaratory Judgment)

(Direct Against DealerSocket)

88. Plaintiff repeats and incorporates by reference each of the allegations set forth above.

89. Plaintiff brings this Count 2 in his individual capacity.

90. The Auto/Mate transaction was not authorized by the affirmative votes of a majority of the Disinterested Directors.

91. Every Director who voted in favor of the Auto/Mate transaction was either interested, not independent, or both.

92. The material facts of the Auto/Mate transaction were not disclosed to the entire Board.

93. The Auto/Mate transaction was not approved by a good faith vote of the stockholders of DealerSocket.

94. The Auto/Mate transaction was not fair to DealerSocket as of the time it was authorized by the Board.

95. The Auto/Mate transaction is therefore voidable in its entirety.

COUNT III

(Breach of Fiduciary Duty)

(Derivatively Against Vista Interested Directors)

96. Plaintiff Perry repeats and incorporates by reference each of the allegations set forth above.

97. Perry brings this Count 3 derivatively on behalf of DealerSocket.

98. By virtue of their positions as Directors of DealerSocket, the Vista Interested Directors owe fiduciary duties of care and loyalty to DealerSocket and its stockholders. In contemplating, formulating, structuring, approving, and executing the Auto/Mate transaction, the Vista Interested Directors breached their fiduciary duty of loyalty to DealerSocket.

99. The Vista Interested Directors breached their fiduciary duties by failing to evaluate the Auto/Mate transaction fairly, approving the Auto/Mate transaction without permitting the Disinterested Directors to know the details of the transaction and thus depriving them of the ability to independently evaluate it, and causing DealerSocket to devalue itself by agreeing to issue preferred stock to Vista at an artificially low price.

100. The Vista Interested Directors did not exercise independence in approving the Auto/Mate transaction, which unfairly enriched Vista at the expense of DealerSocket and its minority shareholders, whose shares will be diluted and devalued. As a result, the Vista Interested Directors cannot meet their obligation to show that the Auto/Mate transaction is entirely fair to DealerSocket or its non-Vista shareholders.

101. As a direct and proximate result of the foregoing breaches of fiduciary duty, DealerSocket has sustained damages, as alleged herein.

COUNT IV

(Breach of Fiduciary Duty)

(Derivatively Against Defendant Pietrzak as an Officer)

102. Plaintiff Perry repeats and incorporates by reference each of the allegations set forth above.

103. Perry brings this Count 4 derivatively on behalf of DealerSocket.

104. By virtue of her position as CEO of DealerSocket, Defendant Pietrzak owes fiduciary duties of care and loyalty to DealerSocket and its shareholders. In formulating, structuring, negotiating, and executing the Auto/Mate transaction, Defendant Pietrzak breached her fiduciary duty of care and loyalty to DealerSocket.

105. Defendant Pietrzak did not exercise independence in negotiating and structuring the Auto/Mate transaction, which is designed to unfairly enrich Vista and its affiliated entities and individuals at the expense of DealerSocket and its shareholders, whose shares will be diluted and devalued as a result of the Auto/Mate transaction. Therefore, Defendant Pietrzak must, but cannot, show that the Auto/Mate transaction is entirely fair to DealerSocket and its shareholders.

106. As an officer of DealerSocket, Defendant Pietrzak is not entitled to exculpation in accordance with 8 *Del.* § 102(b)(7).

107. As a direct and proximate result of the foregoing breaches of fiduciary duty by Defendant Pietrzak, DealerSocket has sustained damages, as alleged herein.

COUNT V

(Claim for Aiding and Abetting the Vista Interested Directors' Breaches of

Fiduciary Duty)

(Derivatively Against the Vista Entities)

108. Plaintiff Perry repeats and incorporates by reference each of the allegations set forth above.

109. Perry brings this Count 5 derivatively on behalf of DealerSocket.

110. Vista was aware of the Vista Interested Directors' duties to DealerSocket stockholders to not put self-interest and personal or other considerations ahead of the interests of DealerSocket and its stockholders.

111. As a result of Vista's control of them, and due to their employment, all of the acts of the Vista- Interested Directors are imputed to the Vista. The Vista are liable for having aided and abetted the Vista- Interested Directors' breaches of fiduciary duty. Their knowledge must be attributed to the entities that they worked for and acted on behalf of, and used to effectuate the breaches of duty.

112. By agreeing to the Auto/Mate transaction and the associated equity raise, which was designed to benefit Vista, the Vista Interested Directors breached their fiduciary duties. By orchestrating the Auto/Mate transaction and associated equity raise for their own benefit, the Vista Entities aided and abetted the Vista Interested Directors' breaches of fiduciary duties.

113. The Vista Entities had knowledge of provided substantial assistance in, and knowingly participated in these breaches of fiduciary duties.

114. As a direct and proximate result of the Vista Interested Directors' conduct, DealerSocket has sustained damages as alleged herein.

COUNT VI

(Claim for Breach of Fiduciary Duty)

(Derivatively Against Vista)

115. Plaintiff Perry repeats and incorporates by reference each of the allegations set forth above.

116. Perry brings this Count 6 derivatively on behalf of DealerSocket.

117. As the majority and controlling shareholder of DealerSocket, Vista owes DealerSocket and its shareholders a fiduciary duty.

118. By causing the Vista Interested Directors to negotiate and execute the Auto/Mate transaction and the associated equity raise, which was designed to benefit Vista at the expense of DealerSocket and its shareholders, Vista breached its fiduciary duty.

119. As a direct and proximate result of the Vista conduct, DealerSocket has sustained damages as alleged herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter an Order

as follows:

1. Entering judgment in favor of Plaintiff and against DealerSocket;
2. Ordering DealerSocket to provide to Plaintiff the books and records sought in the Demand;
3. For an order deeming this action to be a proper derivative action and Plaintiff to be a proper and adequate derivative plaintiff;
4. For an order rescinding the Auto/Mate Acquisition and/or awarding damages to DealerSocket;
5. For an order declaring that the Auto/Mate transaction is not entirely fair and is a breach of the fiduciary duties of the Vista Interested Directors, and therefore any agreement arising therefrom is unlawful and unenforceable;
6. For declaratory judgment that the Auto/Mate transaction is void;
7. For an order directing that Defendants account to Plaintiff and DealerSocket for all damages, plus interest, caused to DealerSocket and account for and disgorge all profits and special benefits obtained as a result of their unlawful conduct;
8. Awarding to Plaintiff the costs and disbursements of this action, including reasonable attorneys' fees, expert fees, costs, and expenses; and
9. Awarding such other and further relief as the Court deems just and proper.

BARNES & THORNBURG LLP

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