EFiled: Jul 08 2021 05:07PM EDT
Transaction ID 66750900
Case No. 2021-0058-SG

IN THE COURT OF CHANCERY IN THE STATE OF DELAWARE

DAVID LOCKTON AND KATHY LOCKTON AS TRUSTEES OF THE LOCKTON FAMILY TRUST 2019, C. GORDON WADE, DAVID P. HANLON, BARTLEY FRITZSCHE, RICHARD A. LOCKTON, JENNIFER BARKER, DR. FREDERICK HENDRICKS, and MARY W. MARSHALL	)	
Plaintiffs,	)	
	)	C.A. No. 2021-0058-SG
v.	)	
THOMAS S. ROGERS, HANK J. RATNER, R. BRYAN JACOBOSKI, JAKE MAAS, STEVE GOODROE and GRAHAM HOLDINGS COMPANY	)	
Defendants.	)	

FIRST AMENDED VERIFIED COMPLAINT
FOR BREACH OF FIDUCIARY DUTIES

NOW COME Plaintiffs David B. Lockton and Kathy A. Lockton, as Trustees of the Lockton Family Trust 2019, C. Gordon Wade, David P. Hanlon, Bartley Fritzsche, Richard A. Lockton, Jennifer Barker, Dr. Frederick Hendricks, and Mary W. Marshall, by and through their undersigned counsel, for their complaint against Defendants, alleging upon personal knowledge as to themselves and upon information and belief as to all other allegations herein, as follows:

PRELIMINARY STATEMENT

This is a textbook merger squeeze-out. In 2019, WinView, Inc. was poised to

institute a series of significant patent infringement lawsuits to monetize its foundational portfolio of over seventy-five patents covering In-Play, and mobile sports betting, online gaming, and Daily Fantasy Sports.

At the time of the Merger squeeze-out in 2019, WinView had negotiated contingent fee terms with first-tier patent infringement counsel and signed Letters of Intent from multiple third-party patent litigation funders that would have enabled the company to file timely patent infringement suits and licensing actions without financial risk or diluting its existing shareholders.

But WinView's controlling shareholder and secured note holders, who also controlled the Board of Directors (the "Board"), chose to advance their personal interests to the exclusion of WinView's common stockholders. In breach of their fiduciary duties, the Defendant Directors approved an "interested party" three-way Merger between WinView, Frankly, a Canadian company partly owned and led by WinView's controlling shareholder and Board chairman, Thomas Rogers, and Torque, a thinly-traded public company on the Toronto Venture exchange. In the Merger, WinView contributed all its patents and its industry-leading mobile sports platform developed over five years using tens of millions of investment capital from shareholders. Rogers and the Defendant Directors exchanged their secured notes and a portion of their Preferred shares for stock in Torque. Meanwhile, WinView's Common Stockholders received no cash, no stock, and no potential earnings from

WinView's business or software. Instead, Common Stockholders received only a contractual promise of a contingent cash payment in the future of half of the net proceeds from the monetization of the patents, should the merged entity recover on a patent lawsuit enforcing WinView's patents. There is no circumstance wherein WinView's Common Stockholders will receive anything from the monetization of the WinView platform. The Defendant Directors, as WinView's controlling secured noteholders and Preferred Stockholders, converted their investments into stock they could sell on the open market. WinView's Common Stockholders got nothing.

PARTIES

1. Plaintiff David Lockton is the founder of WinView and is the former CEO, President and Secretary of WinView from 2009 through 2017.

2. At the time of the Merger, Dave Lockton and Kathy Lockton served as Trustees of the Lockton Family Trust 2019, which held WinView Common stock.

3. Plaintiff C. Gordon Wade is a co-founder and former Board member and former shareholder of WinView. At the time of the Merger, he held Common stock.

4. Plaintiff David P. Hanlon is a former Advisory Board member and Common Stockholder of WinView. At the time of the Merger, he held Common stock.

5. Plaintiff Richard A. Lockton is a former Common Stockholder of WinView. At the time of the Merger, he held Common stock.

6. Plaintiff Jennifer Barker is a former Common Stockholder of WinView. At the time of the Merger, she held Common stock.

7. Plaintiff Bartley Fritzsche is a former director and Common Stockholder of WinView. At the time of the Merger, he held Common stock.

8. Plaintiff Mary W. Marshall is a former Common Stockholder of WinView. At the time of the Merger, she held Common stock.

9. Plaintiff Dr. Frederick Hendricks is a former Common Stockholder of WinView. At the time of the Merger, he held Common stock.

10. Defendant Thomas S. Rogers was, at the time of the Merger and throughout WinView's consideration and exploration of the Merger, the Executive Chairman of WinView, and at the same time the Chairman of the Board of Frankly, Inc., one of the merged entities. At the time of the Merger, Rogers was WinView's *de facto* controlling shareholder. At the time of the Merger, Rogers was a holder, directly or indirectly, of Common shares and restricted share units of Frankly. Rogers also held secured debt in WinView. As a result of the Merger Rogers proposed and effected, Rogers became the Executive Chairman of the Board of directors of newly renamed, combined entity, Engine Media Holdings after the Closing.

11. Defendant Hank J. Ratner, a close associate brought into WinView by Rogers, was, at the time of the Merger and throughout WinView's consideration and exploration of the Merger, a director of WinView and is presently a Board member of Engine. Ratner also held secured debt in WinView.

12. Defendant R. Bryan Jacoboski was, at the time of the Merger and throughout WinView's consideration and exploration of the Merger, a director of WinView and a required Board representative for Abingdon Capital Management, Ltd. Jacoboski also held secured debt in WinView.

13. Defendant Jake Maas was, at the time of the Merger and throughout WinView's consideration and exploration of the Merger, a director of WinView and the Series B Preferred Stockholder representative in his capacity as the agent of Graham Holdings, WinView's largest stockholder. Maas was appointed Chairman of "the independent committee", the five Board members other than Rogers, which was represented to have performed the Delaware requirements for interested party sales of corporations. Maas was, and remains, an agent and representative of Graham Holdings. Maas' role on the Board of WinView existed for the sole purpose of providing Graham Holdings a representative on the Board to further its interests and effectuate its commands. Maas, through Graham, also held secured debt in WinView.

14. Defendant Graham Holdings Company, a Delaware corporation, at the time of the Merger, had an agent representative serving on the Board, Jake Maas. The actions taken by Maas, in his role as director of WinView and the Series B Preferred Stockholder representative, occurred at the direction and sole discretion of Graham Holdings as principal. Graham also held secured debt in WinView.

15. Defendant Steve Goodroe was, at the time of the Merger and throughout WinView's consideration and exploration of the Merger, a director of WinView, and Series A Preferred Stockholder representative starting with the close of the "A" equity financing in May 2016. Goodroe also held secured debt in WinView.

JURISDICTION AND VENUE

16. Jurisdiction is appropriate in Delaware Chancery court over this action pursuant to 10 Del. C. § 341.

17. Jurisdiction is appropriate in Delaware Chancery court over all Defendants pursuant to 10 Del. C. § 3114 as each Defendant, was, at the time of the challenged actions, a director and/or officer of WinView, Inc., a Delaware corporation.

ALLEGATIONS
FACTUAL BACKGROUND

18. WinView, Inc.("WinView") was a privately held Delaware Corporation founded in 2009 by Dave Lockton, his wife Kathy Austin Lockton, and Gordon Wade. WinView initially focused on real-time televised sports games and advertising on the second screen and was the leading skill-based sports prediction mobile games platform in the world.

19. After forming WinView around nine pending patents he filed in 2005, Dave Lockton built the company on two tracks. WinView's business plan involved leveraging Lockton's extensive experience in pioneering real-time interactive television games played on the mobile second screen along with its numerous foundational patents. Lockton worked to build and develop a unique mobile live proposition betting service, build a team, and raise startup capital to develop the sports applications of WinView's mobile patents.

20. Lockton pursued additional patents to broaden WinView's intellectual property assets related to its core business. WinView held the foundational patents, with Lockton as the sole or primary inventor, on the synchronized second screen experience, mobile sports betting, online gaming, and foundational aspects of Daily Fantasy Sports. Lockton grew WinView's portfolio from twenty-four patents at the close of the "A" round to seventy-five in 2019.

21. Over the next few years, Lockton built up WinView and funded its operations through "seed" capital financing provided by friends and family, offering convertible notes and Common shares of WinView, Inc. to investors or in lieu of cash to suppliers.

22. WinView raised the A round of equity and launched the WinView application and service. But then Rogers and WinView's Board failed to obtain the required operating equity to grow the company. By mid-2018, WinView's focus on obtaining equity funding became almost entirely dependent on its patent portfolio. Those patents were, and remain, foundational to among other mobile market segments, conducting mobile and live sports betting, on-line casino gambling, and daily fantasy sports.

23. At multiple points in its history, WinView retained outside advisors to evaluate its patent portfolio for breadth, depth, and the quality of its patents for the live and mobile sports betting and on-line gaming business. In examining the portfolio as it existed beginning 2019, the outside advisors concluded that WinView's patent portfolio was not only legally defensible but "foundational" to the operation of live and mobile sports betting and on-line gaming. One advisor conducted a coverage analysis that showed that the industry segments covered by WinView's patents are projected to generate 85% of all sports related gaming, a market estimated to grow to tens of billions of dollars annually in the next few years.

ROGERS TAKES CONTROL OF WINVIEW

24. In January 2016, with a successful Alpha test of its football game, WinView's capital needs had advanced. WinView began to raise "A" round Preferred equity, which led to the addition of Defendants Rogers and Ratner.

25. During this period, Lockton approached Rogers, who had recently been replaced as CEO of TiVo, to act as Chairman of WinView in return for investing $1 million in the company. Rogers agreed to join WinView as Chairman and invest the requested $1 million on the condition that close friend and former business partner Hank Ratner, who had recently been replaced as CEO of Madison Square Garden, would also invest $1 million and serve as a Board member and co-Chairman.

26. But during prolonged negotiations, Rogers and Ratner continually decreased their investment commitments down to just $400,000 each, while continually negotiating a consulting agreement that paid substantial stock options vesting piecemeal at various milestones. The milestones included the signing of sponsorships for the football, basketball or baseball applications, acquisition of any major advertising contracts or affiliated co-market agreements with the sports leagues. Most importantly, they included the required financing closing dates of sensitive equity financings at various amounts and pre-financing valuations, and several additional specific conditions. Rogers would, upon the close of the "A" financing, use the consulting agreement and stock vesting milestones as justification

for demanding and exerting complete control over critical aspects of WinView's business to insure his and Ratner's option vesting milestones would be met. As described below, the ability to raise new capital was the essential requirement of building a startup company like WinView.

27. Defendant Bryan Jacoboski, who had made a convertible loan to WinView early on, agreed to convert his existing secured loan to WinView into Series "A" Preferred shares on the condition that WinView's Bylaws and Certificate of Incorporation be amended to provide him with a permanent Board seat. Despite demanding and receiving that Board seat, Jacoboski uniformly acquiesced to any request by Rogers whether such requests were in the company's best interest or otherwise.

28. A few short months later in September 2016, Ratner resigned as co-Chairman of WinView to take full time employment but continued to remain on WinView's Board. Rogers then took over and demanded the title of executive chairman of the Board, demanded that he also receive Ratner's compensation, a total of $150,000 annually for what he promised would be 50% of his time, and demanded full and exclusive authority and control over raising money and securing corporate sponsorships, and contracts along with increased consulting fees and more stock options.

29. Upon the close of the A round, Rogers also demanded, obtained, and exercised sole responsibility for obtaining co-marketing deals, league sponsorships, and strategic marketing arrangements essential to the financings and launch of the business. In so doing, Rogers usurped the chain of command and management of WinView from Lockton and other managers. This occurred even though Lockton, as CEO, was represented to investors to be solely responsible for the management of WinView. Rogers also regularly inserted himself into the day-to-day business decisions of WinView, ignoring the chain of command. Additionally, although he had no expertise in marketing, Rogers forced the Board to direct Lockton to cede control of WinView's experienced five-person marketing team, engaged in, among other things, approving and changing copy, and orchestrating media buys, and drafting press releases.

30. In May 2017, Rogers directed his personal PR agent be hired to supplement and then replace WinView's PR firm. When WinView's Chief Marketing Officer Kathy Lockton advised Rogers that additional resources were unnecessary and would be outside the budget, Rogers directed her to "do as you're told."

31. To further memorialize his control and to quash resistance to his micromanagement, Rogers had WinView's Board sign off on a memo on August 8, 2017, requiring Lockton to follow Rogers' specific directions in marketing and

public relations. Specifically, the memo stated that "the board instructed Mr. Lockton to follow any and all specific direction given by Mr. Rogers as Executive Chairman in the areas of marketing and PR…" Rogers used this control to minimize contact between potential investors and WinView's operating team., When potential investors requested a call with the operating team as part of due diligence, Rogers would introduce Lockton not as the Chief Executive Officer, but as the "founder" or "inventor" and instructed Lockton to remain silent unless asked a question specifically pertaining to the patent technology.

32. Led by Rogers, on January 1, 2018, the Board also exercised its contractual option to replace Lockton as CEO under his employment agreement and reduced his role to Chief Innovation Officer ("CIO"), a role which left him in charge of expanding and monetizing WinView's patent portfolio. Rogers replaced Lockton with the Vice President of engineering in an "acting CEO" position that would be beholden to and report exclusively to Rogers, a title that continued until the sale of WinView's assets. He now reports to Rogers as an executive of Engine.

33. In April 2018, as a condition to providing WinView with additional capital through a new issuance of secured debt and to further expand control, Rogers and the Defendant Directors demanded and obtained an amendment to the corporate charter to remove the requirement of majority vote by class, to a vote of a majority of all shares, removing the Common Stockholders' right to disapprove of a sale or

Merger. Rogers and the Defendant Directors also amended the corporate charter to remove Lockton as the named Common Stockholder representative on the Board and appoint the new "acting CEO" to serve on the Board in his place as representative of the common shareholders. Having removed the only person likely to voice dissent, Rogers' control was complete.

34. Despite total control over new sponsorships and marketing, Rogers failed to obtain a single sponsorship, advertising agreement, or league license agreement, or co marketing agreement much less the critical "C" round equity financing. Meanwhile, competitors to WinView, some of which were, and remain, in violation of WinView's patents, secured sponsorship and financing from the very same entities that Rogers and Ratner allegedly approached.

35. Other than Lockton, no Board member expressed opposition or voted against Rogers' strategies, actions or positions from the time Rogers became Executive Chairman in May 2016 and throughout the effectuation of the Merger. Despite his intrusive management of even the most minute of business decisions, Rogers continued to fail to meet any of the goals in the Board approved business plan which repeatedly put WinView on the brink of insolvency, a situation which Rogers, as described below, would repeatedly use to his benefit. But WinView's Board took no steps to check or limit Rogers' control over the business or remove

him as executive chairman over his continued failure to meet the key requirements of WinView's business plan for over 40 months.

ROGERS DOMINATES AND CONTROLS WINVIEW'S CAPITAL RAISING

36. New capital is the lifeblood of a tech startup. Developing complex intellectual property, software applications, and business takes time, money, and expertise. For WinView to fund these cash needs, it required a regular infusion of additional capital. WinView and similarly situated companies typically obtain this capital through a series of equity investments, often called "rounds", and denoted using letters, A round, B round, etc. Bridge or temporary loans, convertible into the pending equity round, are typically used to provide operational funding on a short-term basis to extend the time to close a new round of equity financing so that interested parties can perform due diligence.

37. Lockton has substantial experience raising equity funding in various companies and was successful doing so for WinView. Before Rogers joined WinView, WinView had successfully raised over $3 million between 2009 and 2016 before the "A" Round. Rogers joined WinView at or near the close of the "A" Round and at that time, took control over future fundraising.

38. Once under Rogers's control, WinView raised only one other "round" of equity. Rogers instead leveraged his failure to provide for WinView's continued operations and his control over the board to implement a series of five bridge loans

without any new equity financing. These loans were atypical because, in addition to a right to convert debt to stock, warrants, and/or liquidation preferences, four were secured directly by liens filed against each patent with the US Patent Office, with Jake Maas, Graham's Board representative, designated sole Power of Attorney for all secured creditors.

39. Rogers routinely acted in bad faith and used threats to control the Board and force it to engage in a series of atypical, fully-secured bridge loans. He would refuse to raise money, refuse to meet with potential investors, and even subvert business opportunities if the Board did not acquiesce to his litany of demands, which often included disproportionately favorable investment terms and incentives. Rogers thus demonstrated his potent retributive capacity and control over WinView.

The First Bridge

40. When the A Round of Preferred stock closed on or about May 24, 2016, Lockton sent the board a memo noting the long lead time needed to raise equity meant WinView needed to begin work immediately obtaining investors for the "B" Round, which would allow WinView to build on its progress and launch a football application in the fall. Instead, by fall of 2016 Rogers had made no meaningful effort to raise financing. Lockton anticipating that WinView would run out of funds was forced to scale back its product launch to preserve its ability to continue in business. WinView planned to compensate for Rogers' failure (intentional or otherwise) by

raising a short term, bridge loan financing using many interested, existing investors. Rogers and Ratner had continually represented to shareholders that they had led the "A" financing and were leading the "B." It was apparent that if WinView was to raise bridge funds from its existing investors, those investors would expect Rogers and Ratner to participate.

41. Instead, Rogers used the dire financial position he had created to take further control of WinView. In late November 2016 and at a Board meeting on or about November 19, 2016, Rogers informed Lockton and the other Board members that he and Ratner would not invest in the Bridge Loan and that if forced to be on calls with investors about it, they would relay their plans not to invest and that Rogers had concerns with WinView's management not responding to their suggestions on marketing and development. Had Rogers made good on this threat it would have ended any chance of financing and left WinView with no money and imminent risk of insolvency. But Rogers agreed not to tank the company and agreed that he and Ratner would invest if the Board granted him additional compensation by changing terms of his prior warrants, by changing other compensation terms to lower the thresholds, and by giving Rogers more direct authority over WinView's business.

42. As conditions to not tank WinView, Rogers demanded that: (a) the threshold for the financing incentives be reduced from a $50 million valuation to

$30 million; (b) the language awarding 1% of the company for signing the first license with a league be modified to include 1% for each license signed; and c) the vesting requirement 0.5% of the stock for signing a major $3-$6 million sponsorship for A WinView football game, i.e. "The Verizon Football Challenge," be considered met by a $150k in-app advertising buy from Pepsi sold by WinView's VP of Advertising Sales.

43. In emails with Lockton on November 18, 2016, Jacoboski referred to Rogers' demands as "slimy" and Goodroe called it "greedy" and wondered if Rogers and Ratner "already have verbal commitments from investors who will come in soon and are trying to get a little more for themselves in the process?"

44. But with the survival of the company at stake, and Rogers now completely in control of the financing process, and therefore the company itself, the Board complied. Rogers would repeat this pattern repeatedly in future financings. In December 2016, WinView raised its first bridge of $2,535,000, of which Rogers and Ratner each invested $200,000.

45. While this first bridge loan was closing, WinView was introduced by an existing investor to Graham Holdings Company WinView's Series "B" financing introduced Graham Holdings ("Graham"). Graham agreed to commit $10 million of the $12 million raised in the Series B financing. Graham conditioned its participation on WinView amending its corporate charter, giving Graham a permanent

representative on WinView's Board. Graham assigned Jake Maas to be its designated Board member. Despite demanding and receiving a Board seat, Maas, as Graham's designee, uniformly acquiesced to and supported any request by Rogers, whether in the company's best interest or otherwise.

46. After the series B share issuance, Rogers, Ratner, and the Director Defendants failed to meet financing commitments to raise the C series financing five consecutive times. Instead, WinView's Board proposed more short-term secured bridge loan agreements with conversion rights and warrants.

47. After the close of the "B" round, in April 2017, it was again imperative that WinView close the "C" round by the beginning of the 2018 NFL Football season. This deadline was important because it would ensure that the marketing expenditures projected in the Business Plan would be sufficient to quicken growth and dramatically drive down costs. Both Rogers and the Board were aware of the pivotal nature of this timeline. However, by October 2018, one month after the start of the NFL Football season, Rogers had once again failed to raise any funds to finance WinView's operating budget, causing another curtail of WinView's marketing efforts.

48. On a Board call on or around October 2, 2017, Rogers once again held WinView's Board hostage by refusing to raise any more funds unless he and Ratner's stock agreements were amended again to grant significant new stock

options. This was despite the fact that Rogers had demanded and been granted sole responsibility and authority for all financing and critical management decisions. Rogers threatened on a board call that, if he were not awarded the additional stock, he would simply cancel investor meetings and let WinView run out of money, and then lead a cram-down financing.

49. The Board expressed general opposition and outrage to Rogers' renewed effort to subvert WinView. In response to the Board's dismay, Rogers sent an email to the Board on October 3, 2017, at 2:11 p.m. reminding them that he had a meeting with Brian Roberts, CEO of Comcast in two days, and that without new stock grants, he had no incentive to help raise more funds. He even threated to postpone his "purportedly scheduled" meetings with Brian Roberts, Les Moonves and other investor meetings if his demands were not granted.

50. On October 4, 2017, Rogers repeated his demand in an email sent at 6:30 p.m., saying that he wanted to "know incentive in place." When the Board informed Rogers that it was discussing his demands with WinView's attorneys, he responded in an email sent at 6:59 p.m. stating, [i]f need be, I will postpone the Brian meeting."

51. The Board again acquiesced to Rogers' demands and granted him the beneficial stock options he demanded to perform his duties. But none of the investor

meetings that Rogers threatened to cancel resulted in any investment for WinView. Rogers was rewarded for his threats and obtained zero funds for WinView in return.

The Second Bridge

52. By late January of 2018, Rogers' failure to raise new equity left WinView out of cash and forced to suspend payments to its suppliers. WinView had no alternative but to seek a second bridge loan. Conversations with participants in the first bridge indicated a willingness to provide a second short term secured loan on the same terms as the first bridge.

53. But instead of a bridge on the same terms as the first bridge, Rogers related to Lockton on a board meeting call on or about February 1, 2018, that the other five members of the Board, including Ratner, Jacoboski, Goodroe, and Maas (representing Graham) had met separately, regarding the terms of the new bridge loan.

54. Rogers informed Lockton that the five Board member/note holders rejected Lockton and the shareholders' proposal to use the same terms as the first bridge. Instead, Rogers said that for them to participate, the terms of the note would need to offer 100% warrant coverage for themselves and any other investors, in effect demanding for themselves additional benefits beyond what was required to obtain a new bridge.

55. The final terms of the second bridge, in addition to the 100% warrant, included: (a) a 2x liquidation preference upon change of control; (which became effective as no "C" round was ever raised; (b) a conversion into series "B" preferred instead of common; (c) that Lockton immediately resign from the Board; (d) the corporate charter replace the requirement that Lockton represent the common holders, naming Eric Vaughn, Rogers direct report, as the common shareholders representative; (e) the Charter be amended from requiring a vote of a majority of each class for approval of financings and major transactions, to all shareholders voting as one class, a change which gave Graham virtual control of the company; and; (f) Rogers proposed the unpreceded step that the bridge loan be separately secured by a direct lien against the patents filed at the patent office, with Graham granted sole Power of Attorney to foreclose on the portfolio in the event of a default and take ownership, with just 10-days' notice.

56. Rogers also threatened to let the company go under if Lockton did not immediately agree.

57. The second bridge closed on March 12, 2018, with 26 investors, including Rogers, Ratner, Jacoboski, Goodroe, and Maas (as representative of Graham) taking advantage of their increased power and leverage. Graham invested $2 million in the bridge. Rogers, Ratner, and other Board members invested $250,000 each to reach a total of $5.2 million.

58. In late 2018, there was growing interest in WinView's patent portfolio following the Supreme Court decision that left legalization of sports betting to the states. This was because WinView's paid entry mobile games of skill utilized patents that also explicitly covered: games of chance such as mobile betting, online gaming, and real time "in play" sports betting. Although no longer CEO, Lockton, concerned about WinView's complete failure to connect with the gaming community, on his own contacted MGM's CEO through advisory Board member and plaintiff Dave Hanlon to seek capital and a working partnership. After a series of meetings between MGM and Lockton, MGM's VP of Development and his team came to WinView's headquarters for an all-day due diligence session with the management team and informed Lockton that he would make a positive recommendation to proceed further.

59. When the process with MGM slowed, Lockton visited with the responsible MGM executives, only to learn that MGM had just been approached by Rogers and Ratner on behalf of a different mobile technology company and potential competitor WinView called Tunity and obtained a $12 million investment. On information and belief based on statements by Rogers, one or both of Rogers and Ratner were compensated by Tunity because of this $12 million investment. Soon after this event, MGM told Lockton it was no longer interested in investing in WinView.

60. Without new capital from MGM, and with no prospects for new equity financing, WinView lacked sufficient operating capital and was again forced to reduce marketing efforts and overall operations to a skeleton schedule and crew and cut salaries dramatically. WinView's only capital came from the short-term secured loan agreements.

61. Again, with scaled-back operations and limited funds, Rogers, while still responsible for raising equity, directed Lockton to pursue a parallel course of financing for patent litigation and operations by filing patent infringement suits to enforce WinView's IP and funding for litigation and licensing and operational expenses from a rapidly exploding patent litigation funding industry.

The Third Bridge

62. Funds from the second bridge loan ran out by August of 2018. At this point, the management team had not participated in any presentations to potential investors for its series "C" financing round, which remained under the sole control of Rogers. None of the meetings Rogers had represented to shareholders in the fall of 2017 in connection with his demands increased payment led to new equity for WinView.

63. As a result of the Rogers' and the Board's continued inability (whether intentionally or otherwise) to secure funding, WinView was once again forced to pursue a bridge loan financed by members of the Board. The third bridge loan, which

closed on August 22, 2018, amounted to $7,750,000, and included, $200,000 investments from Rogers and Ratner. This third bridge loan once again provided significantly advantageous terms to Rogers, Ratner and the other investors and members of the Board.

64. Following the close of the third bridge loan, Rogers, once again, made no visible efforts to raise Series "C" funding. Other than two preliminary calls with major companies in the gaming space arranged through Lockton's efforts, no other potential investors received presentations.

The Fourth Bridge

65. On February 22, 2019, Rogers informed Lockton that WinView would need to raise a fourth bridge.

66. Rogers told the shareholders on a call in March 2019, that the bridge funds were necessary to give the company time to conclude financing discussions with interested parties. This was untrue. Although Rogers mentioned various major companies as potential investors such as Apple, Verizon, and AT&T, Rogers knew from prior interactions that each had either passed already or were not prospects for an investment in WinView.

67. Rogers then reminded the shareholders that if the bridge was not raised, it was the intention of the secured creditors, including Rogers, Ratner, Jacoboski and

Maas (as representative of Graham) all of whom were on the Board, to foreclose on the patents on 10 days' notice and pursue patent monetization on their own behalf.

68. The Board, without utilizing any interested party procedural requirements, provided themselves and participating WinView shareholders with terms of 6% interest, and an unprecedented liquidation preference on the amount loaned and the right to purchase common stock warrants for a penny a share.

69. Following the close of the fourth bridge loan, the Board made little to no effort to raise operating equity, as their strategy almost entirely centered on Lockton securing contingent fee representation and litigation cost financing including funds for operations offered by several patent litigation funds, to monetize the anticipated patent litigation.

70. As reported by the Board in an addendum to the Consent Solicitation and Information Statement sent in connection with the Merger, WinView engaged in four additional debt offerings in the last three years, referred to as "non-brokered private placements" on March 12, 2018, August 22, 2018, April 8, 2019, and August and December 2019. For each, WinView issued Convertible Promissory Notes secured directly by patents valued at many times more than the amount borrowed.

- March 12, 2018 - $6 million in secured convertible promissory notes, together with WinView series B Warrants at an exercise price of $1.35963 per share of WinView Series B Preferred Stock.

- August 22, 2018 - $8 million in secured convertible promissory notes.
- April 8, 2019 - $2 million in secured convertible promissory notes, together with WinView Common Warrants at an exercise price of $0.01 per share of WinView Common Stock.
- August 2019/December 2019 - WinView extended the April 2019 financing for an additional $2.4 million in secured convertible promissory notes together with WinView Common Warrants at an exercise price of $0.01 per share.

ROGERS AND THE BOARD REJECT LITIGATION FINANCING OPPORTUNITIES IN FAVOR OF THEIR OWN SELF-INTEREST

71. To pursue monetizing its intellectual property instead of operations, WinView needed patent litigation counsel that could represent WinView on a contingent fee basis. WinView also needed litigation financing to cover the costs of bringing such lawsuits. Contingent fee patent counsel would eliminate the need for WinView to pay its lawyers the substantial fees incurred with cash. Litigation funding had become a significant specialized form of finance in which lenders made non-recourse loans for lawsuit and licensing related costs relying on their assessment of the value of the patents repayable only from funds received from litigation. These funds also could provide operating capital and debt refinancing if the risk/reward calculation met their criteria.

72. Lockton, as CIO since 2018 was responsible for enforcement of the patent portfolio and obtaining financing for costs. At Rogers' direction and with the knowledge and approval of WinView's Board, Lockton worked with law firms that were considering representing WinView in their due diligence process, which often lasted from 6- 8 months for each patent firm. Lockton also made presentations to and pursued discussions with several patent litigation funders that were ready and waiting to move forward once WinView signed an engagement with contingent fee counsel and gave the litigation funders permission to complete their due diligence process by communicating directly with litigation counsel. In discussions with Rogers and the Board, the Board recognized and orally agreed that contingent patent litigation and litigation financing required either conversion of the secured loans, the removal of liens against the patents, or an agreement not to foreclose during litigation as foreclosure would lead to dismissal of any patent lawsuits.

73. Lockton kept WinView's Board updated on these patent litigation funders' interests, their process, timing, and their non-recourse compensation structure for funding the millions in cash expenses required to launch WinView's patent litigation. As this progressed, Rogers informed shareholders on shareholder calls that litigation funding was the best solution for a cash-strapped WinView.

74. By mid-2019, WinView and a first-tier law firm had reached an agreement for a contingent fee representation of WinView to pursue patent

infringement litigation. On information and belief, based on statements disclosed by Rogers to shareholders on a call in November 2019, this law firm executed "an unprecedented full contingent fee agreement" with WinView. But WinView could not file patent infringement lawsuits until it also had financing for an estimated $6-$10 million in litigation and licensing costs.

75. On a Nov 16, 2019, call during which Lockton informed Rogers of the success in finalizing litigation funding, Rogers informed Lockton, for the first time, that instead of utilizing litigation funders that Rogers and WinView's Board had authorized and touted to the shareholders, the Board had executed a binding Term Sheet to sell WinView's assets, the platform and ownership of the patents, to a new business through a Merger. Rogers stated he planned to merge WinView with two small public companies listed on the Toronto Venture Exchange: (1) Frankly, a cash-strapped company with declining revenues of which Rogers had been Chairman for over three years, and (2) Torque Esports Corp, a failing Canadian company controlled by Frankly's largest investor and trading on the Toronto Venture Exchange, a stock market for small, speculative companies.

76. Rogers explained to Lockton that Frankly's largest shareholder, later determined to be Andy Defrancesco, was also, indirectly, the largest stockholder of Torque, which claimed to be a promising esports business. Rogers stated that the deal was fully supported by the Board (namely, Rogers, Ratner, Jacoboski, Goodroe

and Maas, as Graham's representative, collectively the "Defendant Directors") because, as secured creditors, the Board wanted liquidity and a public market valuation for their secured loans.

77. Rogers further explained that his and the other Defendant Directors' plan was to merge Frankly and Torque, then merge WinView into Torque, with the final entity being renamed Engine Media. The Merger would also convert secured loans and a portion of Preferred stock into Torque equity.

78. The Defendant Directors hailed the Merger as a solution to WinView's cash shortage, claiming Torque had revenues sufficient to fund WinView's patent litigation costs with dilution much smaller than an outside funder while fully funding WinView's operations. In truth, Frankly and Torque were both insolvent with increasing losses, no profits, and no apparent financial ability to survive much less to monetize the patents without leveraging their prospective ownership of them.

The Pump-and-Dump Scheme

79. Rogers informed shareholders that the merged companies would then "raise $50 million in equity to qualify for a listing on NASDAQ". Rogers implied that once the patent lawsuit was filed, the Engine stock would significantly appreciate. This pump and dump scheme would benefit the Defendants, who could sell their Engine stock based on the news of filing a patent lawsuit and without regard

to whether the patent lawsuits were ultimately successful or generated even a penny for the common stockholders.

80. The Merger would allow Rogers, Ratner, Jacoboski, and Graham to avoid trying to enforce their secured debt by foreclosing on WinView's assets, where, as directors, they would have a simultaneous and contrary duty to protect the Company from the attempt to seize patents they represented to be worth $175 million for just $25 million in debt. It also allowed the Defendant Directors to benefit, as stockholders in the merged entity, from ownership of WinView's patent portfolio and its software platform. Simultaneously, the Defendant Directors could capitalize on any patent-lawsuit-related stock appreciation in Engine or its platform by selling their shares once any hype began.

81. Rogers, the Defendant Directors, and Engine also intended for WinView to continue its operations after the Merger as the Merger would allow secured note holders and Preferred Stockholders that received Torque stock to benefit from any future success of WinView's operations and its fully-developed, patent-protected platform including a possible sale.

82. The Common Stockholders received very different treatment. The Merger would eliminate their long-held stock in WinView (and the right to long term capital gains treatment on any return) and they would receive zero shares and zero cash. Instead, the Merger would only provide them a contractual right to a percentage

of recoveries on patent litigation on WinView's patents if such lawsuits ever occurred and after legal fee deductions and splits of such proceeds with the merged entity. Common Stockholders would receive nothing for WinView's business or patented platform. The Merger would turn the Common Stockholders into a group colloquially referred to as the "stub" holders, with no stock, no interest in the business, and only a possible payment of royalties in the patents.

83. Rogers was exercising his *de facto* control over WinView through his complete control of financing and other necessary third-party agreements and his complete control of the Board to orchestrate a financial transaction that would inure to the benefit of the other Defendant Directors and Rogers himself as the Chairman and major shareholder in Frankly and CEO of the combined companies. This transaction would do nothing but harm WinView's Common Stockholders.

84. On November 22, 2019, Rogers held a call with all shareholders to announce the sale of the company and to explain the general terms and conditions of the Merger.

85. Rogers, Ratner, Jacoboski, and Graham, each held significant debt and stock in WinView as of the November 22, 2019, announcement, as later reported in the March 30, 2020 Information Statement soliciting votes:

a. Rogers held WinView Notes with an aggregate principal amount of US$700,328.77, Rogers held 188,074 shares of WinView Series B Preferred

Stock and WinView Warrants to purchase 879,656 shares of WinView Common Stock and 183,873 shares of WinView Series B Preferred Stock.

b. Ratner held WinView Notes with an aggregate principal amount of US$700,350.68. Ratner held 188,074 shares of WinView Series B Preferred Stock, WinView Warrants to purchase 183,873 shares of WinView Series B Preferred Stock, and 398,927 shares of WinView Series A Preferred Stock and 879,656 shares of WinView Common Stock.

c. Jacoboski held WinView Notes with an aggregate principal amount of US$475,000.00 and WinView Warrants to purchase 183,873 shares of WinView Series B Preferred Stock, 602,323 shares of WinView Series A Preferred Stock, and 792,821 shares of WinView Common Stock.

d. Graham held WinView Notes with an aggregate principal amount of US$2,000,000.00. Graham Holdings held 5,883,953 shares of WinView Series B Preferred Stock and WinView Warrants to purchase 1,470,988 shares of WinView Series B Preferred Stock, and 1,103,241 shares of WinView Common Stock.

e. Goodroe[1] held WinView Notes with an aggregate principal amount of $700,438.36. Goodroe also held 763,585 shares of WinView Series

[1] Entries for Goodroe reported conflicted holdings of stock. In some places he reported 487,270 common shares, in others he appeared to include shares held by a Trust he controlled and reported the higher total listed here. He also failed to

A Preferred Stock, 188,074 shares of WinView Series B Preferred Stock, and WinView Warrants to purchase 879,656 shares of WinView Common Stock, 87,067 shares of WinView Series A Preferred Stock and 183,873 shares of WinView Series B Preferred Stock.

The Fifth Bridge

86. During the November 22, 2019 call, Rogers stated that it was essential to the completion of the Merger for WinView to raise $1.2 million through a fully secured bridge loan to cover WinView's expenses until the projected March 2020 close of the Merger. The targeted amount later increased to $1.4 million.

87. The Board proposed to obtain this $1.2 to $1.4 million of additional funds by offering prospective lenders notes that would be repaid with Torque stock when the Merger closed just a few months later. Based on various offering related spreadsheets and documents from WinView, anyone that lent would receive their loan principal and interest and a massive change of control payment for a total of approximately $3 in Torque stock for each $1 dollar loaned. This would be fully secured by patents worth, by their own estimate, as much as $150 million more than the $25 million of secured debt. In addition, the Board included warrants that gave each lender the right to purchase 3.3 shares of WinView's Common stock for $0.01

include disclosure of 128,227 shares of Series A Preferred Stock held by a family member, leaving shareholders confused and misled.

per share for each $1.37 loaned. Thus, when the Board sought to persuade Common stockholders to support the Merger, it represented that the Merger implied an enterprise value for WinView between $127 million and $216 million, with the Merger giving Common Stockholders the right to receive patent proceeds worth tens of millions of dollars. But when the Board members intended to invest their own money, they ignored their proffered Merger valuations of WinView and gave themselves the right to purchase those same Common shares (and same residual rights) for only $0.01 per share. In fact, when extrapolated to the whole company, the $0.01 per share price valued all 47 million fully diluted shares at only $470,000.

88. With this drastically reduced valuation of WinView of just $470,000, and the ability to acquire shares for just a penny each, the final bridge loan was more than a means of financing WinView's supposed cash needs until the merger closed, it also appears to have been a strategic move by the Defendant Board members to make loans to WinView that just so happened to be sufficient to ensure that Defendants could control 51% of the voting stock and vote the merger through whether they had votes from other stockholders or not.

89. The information statement reported that approval of the merger required a majority of the Preferred stock and a majority of the preferred and common, voting together. Defendants had removed the power of the common stock to approve independently through changes in the charter required by Graham and

evidenced by WinView's April 27, 2017, Second Restated and Amended Certificate of Incorporation and restated in the Information Statement. Thus, Defendants needed to control a majority of the preferred and a majority of the total votes, irrespective of class, to push through any agenda they desired.

90. Through this carefully structured and orchestrated bridge loan, Defendants were now in the position to secure 50% voting control necessary to ensure that the Merger would be approved. Defendants were able to ignore the multitude of warnings and concerns identified by Lockton and push through a Merger that would benefit them while harming WinView's Common Stockholders.

91. Based on a capitalization table circulated in December 2019 and subsequent records of cash receipts by WinView, the Defendant directors, including the family members, trusts, and entities they used to make investments, held 59% of the total preferred stock and 45% of the total common and preferred stock voting together. Thus, Defendants already had the requisite majority control of the preferred stock. In the fourth and fifth bridge loans, Defendants collectively loaned $1,275,000 to WinView, including at least $300,000 in December 2019 alone. Because these funds included warrants to purchase three common shares for $0.01 each, the Defendants obtained in total, the right to purchase 3,0674.46 common shares for only $30,674. As described in the information statement, these warrants could be

exercised at any time. Nothing stopped Defendants from exercising these warrants and voting the resulting common shares in favor of the merger.

92. The addition of 3,0674.46 common shares in the hands of Defendants would have increased Defendants overall ownership of the common and preferred shares voting together to 51%. Making these final self-serving bridge loans guaranteed that Defendants could vote to approve the merger. And the change of control payments meant that the money they loaned, without risk, would be repaid at a massive premium just a few short months later. The warrants for common shares, whether ultimately exercised or not, became part of "stub" at near zero cost. The overall effect of the Board's fundraising effort was to add millions of new Common shares to the "stub" for virtually no consideration, thus badly diluting any possible payout to the Common Stockholders. And at the same time, Defendants could vote the merger through regardless of the votes of others. Neither WinView nor Defendants have ever disclosed the final capitalization table or disclosed the count of the vote in favor of the merger. But as directors, they were uniquely positioned to determine if they needed to exercise additional warrants to control the outcome or if their threats of foreclosure and seizure of the patents had been sufficient.

93. On December 1, 2019, Lockton sent WinView's Board a detailed memo reminding the Board of WinView's pending and superior alternative opportunity to fund patent litigation and licensing expenses with one of several

patent financing litigation funds he had been updating Rogers and the Board on. Lockton pointed out that WinView would receive four more, for a total of six signed Letters of Intent in the next few days, as litigation financers were now competing to fund WinView's patent litigation and were waiting for the chance to have discussions with WinView's contingent fee patent counsel.[2] A competition among potential financing alternatives could have presented better alternatives to the merger for WinView and its common stockholders. Lockton also included a financial analysis comparing the economics of litigation financing versus the effects of the Merger on the patents' potential and the interests of the various classes of shareholders. Lockton pointed out that the financing could be completed, and the litigation launched as planned in January 2020, a schedule important to the litigation strategy. Suing by January 2020 using the existing plan of contingent fee counsel and litigation financing offered a key litigation advantage to WinView because a potential defendant was in the midst of a business deal that would likely have been unsuccessful with pending patent litigation. But WinView could not realize this advantage if it waited even a few months.

94. Lockton's memo also objected to the Defendant Directors' conflicts of interest. The Defendant Directors had repeatedly threatened to foreclose in their

[2] The names of the six entities that supplied letters of intent are withheld to preserve any confidentiality obligations contained therein.

capacity as secured creditors and take WinView's patents, despite the fact their fiduciary obligations to the company as directors would require that they take available actions that would protect shareholders from any attempt to foreclose on the patents and protect the excess value in the patents above the amount of secured debt for the unsecured creditors and shareholders because, as noted above, WinView had approximately $25 million in notes while the patent portfolio was represented as being valued at $175 million. Lockton objected that they were advancing their interest as secured creditors by structuring a Merger deal that repaid their loans with stock in Torque and ignoring the conflict of each Defendant Director that held secured notes, Rogers' conflicts, Rogers' control, and failing to investigate all viable alternatives.

95. Notwithstanding Lockton's memo, neither WinView's Board nor the "independent committee" took meaningful steps to evaluate the alternative options to the merger that they understood to be available prior to executing a binding term sheet or to address their conflicts of interest. The Board did not commission a fairness opinion or retain other outside advisors to evaluate the options or to evaluate the benefits of different options to WinView's various classes of stockholders. And the Board peremptorily refused to allow litigation funders to contact contingent patent litigation firm as the Defendant Directors understood was a required standard

procedure to enable the funder to submit a competing binding Term Sheet that might have revealed a better alternative to the Merger.

96. The Defendant Directors' direct or indirect, or *de facto* control of a majority of the secured debt and control of enough WinView shares to force the Merger through meant they had no practical obligation to consider Lockton's arguments out of concern that he could convince the shareholders to reject the Merger.

THE MERGER DAMAGED THE COMMON STOCKHOLDERS WHILE BENEFITING THE DEFENDANTS AS NOTEHOLDERS AND PREFERRED STOCKHOLDERS

97. The terms of the Merger resulted in an unfair benefit to Rogers, the other Defendant Directors, and other WinView noteholders and Preferred Stockholders.

98. Graham Holdings controlled 83% of the Series B Preferred shares.

99. All stock consideration paid to WinView in the Merger would be distributed to the note holders and Preferred Stockholders, which included multiple Board members.

100. WinView's Common Stockholders would receive nothing for the platform and the patent portfolio developed by virtue of their nine-year investment. These "stub holders" would only receive a contractual right to a speculative share of

the allotted portion of the proceeds from future monetization of the patent portfolio, if they were paid at all.

101. The ability to convert debt into publicly traded Torque shares was a paramount benefit that the defendant noteholders and Preferred Stockholders held but that was not shared by the Common Stockholders.

102. The noteholders and those of the Preferred Stockholders who converted their shares into shares of Torque were able to benefit from a potential sale of Engine or could sell these shares on the public stock market. As such, the noteholders and Preferred Stockholders had an opportunity to profit from the new company's acquisition of WinView assets that did not exist for the Common Stockholders.

103. Defendants' Merger agreement was also designed to pay them a grossly disproportionate share of the total shares and value being paid to WinView. In total, with their various note holdings and the change of control payments they were entitled to receive, a capitalization table from WinView in December 2019 shows Defendants (directly and indirectly through various vehicles) would receive $6,968,608.91 in Engine stock for their notes. In addition, based on cash deposit records, the Director Defendants loaned $300,000 more to WinView in December 2019, entitling them to $900,000 more in Engine stock. Finally, Defendants, including their spouses, relatives, and retirement accounts, controlled 59.4% of the preferred stock.

104. The premerger waterfalls showing the allocation of the merger proceeds showed that the preferred stockholders would be able to receive approximately $10 million of the merger proceeds, entitling defendants to 59% of those funds, or an additional $5.9 million. In total then, Defendants would realize $13.8 million of the total $35 million in merger consideration, while simultaneously leaving them with an equal or larger percentage of the residual stub units.

105. Additionally, the Common Stockholders' (hereafter called "Stub holders") interest in monetization of the patent portfolio was not guaranteed. Over a year after WinView originally planned to close litigation financing and file the patent litigation, Engine did nothing.

106. Moreover, Engine retained the ability to sell the patent portfolio at its own discretion. Thus, it could sell the patent portfolio, along with the company, prior to monetizing the patents, and leave the Stub holders without recourse or opportunity to realize any return on their investments.

107. By the terms of the Board-drafted Merger agreement, there is only one barrier to Engine completely eliminating Plaintiffs' potential recovery through the patent portfolio. Ostensibly, Engine can only do so with the consent of a supposed representative that was appointed by the Defendant Directors in the Merger documents to represent the interest of "Stub holders" that received nothing in the Merger. This "representative" is tasked in the Merger document with protecting

"Stub holders" by ensuring that Engine undertakes the promised reasonable efforts to monetize the entire patent portfolio, by demanding information from Engine on its efforts, and if Engine fails to fulfill its promises, by demanding return of the ownership of the patents to any entity controlled the Stub holders.

108. However, the appointment of the securityholder representative to protect the "Stub holders" was done by the Defendant Directors, and, like the Merger process, was a sham. The Board proposed the appointment of a Board member, defendant Jacoboski, as the representative. But Jacoboski has continuing conflicts of interest that materially impede his ability to represent the Common Stockholders.

109. First, Jacoboski was a note holder and from the Merger received shares in Engine and thus has a direct conflict of interest in taking a position to enforce the rights of "Stub holders" that would be detrimental to his interests as a holder of Torque stock.

110. Second, on information and belief based on conversations with current WinView executives, Jacoboski elected to maintain his liquidation preference for his Preferred shares. This means he would receive a fixed payout per share from the first dollars of patent proceeds paid to the "Stub holders" and then have no further upside. Jacoboski did not convert his ownership into Common stock that would have no cap on its upside. With an incentive only to get enough patent proceeds to repay

his liquidation preference, Jacoboski has no incentive to maximize the returns on the patents.

111. The arrangement chosen by the Defendant Directors for WinView's Common Stockholders also stripped them of the organization and rights they held as shareholders. Unlike their status as shareholders in a Delaware corporation, as holders of a contractual right to some residual payment, they are entitled to none of the information rights and protection rights afforded shareholders. These residual interest holders do not know and have no way of getting, under Delaware corporate law, a list of the other members, and no way of communicating with each other. Requests by shareholders for a cap table of the "Stub" have been summarily rejected. Despite purported voting rights to remove Jacoboski, only Jacoboski, as the representative, along with Engine, appears to know the identity of the residual interest holders or how to contact them. All these elements disadvantage and deprive the Common Stockholders of the value of their shares. The refusal to provide a cap table or other information on the Merger vote also deprives Plaintiffs of the ability to ascertain who voted in favor of the Merger and the vote of the Defendant Directors along with their stock holdings for voting purposes.

112. Furthermore, Engine has taken specific actions that meet the definitions in the Merger agreement as a "takeback triggering event" and has not remitted to WinView's Common Stockholders any licensing or other payments. Nor has Engine

provided any information to WinView's former Common Stockholders identifying any actions taken long after it represented to shareholders these efforts would commence.

113. On information and belief, based on the absence of any announcement to the Common Stockholders to the contrary, Jacoboski has failed to enforce promises to the Common Stockholders in the Merger agreement or seek to enforce their rights in breach of his obligations as the representative and his fiduciary duty to the Common Stockholders.

114. Jacoboski's bad faith and false loyalties notwithstanding, the Common Stockholders have still received an unfairly low benefit from the Merger because any monetization of the patent portfolio will only result in a distribution of 50% of the net recovery for WinView shareholders taxed as ordinary income, while the other fifty percent goes to Engine's shareholders.

THE MERGER SIGNIFICANTLY UNDERVALUED WINVIEW

115. In justifying the Merger proposal to the Common Stockholders, the Defendant Directors significantly undervalued WinView. Additionally, the consideration paid for WinView in the Merger was significantly less than the value of WinView's patents and platform.

116. Leading up to and during the Merger negotiations, Rogers repeatedly indicated that WinView's patents alone had a value of at least $175 million. Yet,

Rogers and the Defendant Directors agreed to a Merger which valued WinView at just $35 million.

117. Furthermore, the $35million was far below the true value of WinView based on the value of its software applications. WinView owned a paid-entry, game of skill platform synchronized with televised sports in the U.S. WinView's Board created and presented conservative projections showing that WinView would break even at 120,000 users and net $100 Million for everyone million users based on achieved KPI's (key performance indicators). These Board projections were based on over three years of marketing results and data and were confirmed by several gaming companies who analyzed WinView's results under NDAs.

118. WinView's Board also knew that it could explore the possibility of selling WinView or WinView's patent portfolio to a third party or conduct an auction and possibly receive a higher value for WinView's assets. But the Defendant Directors failed to explore that option or obtain bids. Additionally, WinView could have explored Mergers or sales of its business and software application to synergistic buyers like gaming companies that could have promoted WinView to their customers, but the Defendant Directors refused to do so even when repeatedly recommended in writing by Lockton.

119. Accordingly, WinView's Board possessed ample evidence that the price paid for WinView's assets was vastly below their true value or else failed to

take steps to determine if the value received in the Merger was the highest price possible for WinView's assets.

THE BOARD WAS CONFLICTED, DISHONEST AND FAILED TO FOLLOW PROPER PROCEDURES

120. Rogers and the Defendant Directors acted in bad faith as they pretended to vet the Merger and its terms by creating a sham "independent committee." The committee consisted of all six Board members other than Rogers, five of whom were noteholders that controlled WinView's secured debt, including Ratner, Jacoboski and Maas (as representative of Graham) and Goodroe Each stood to receive a benefit of Torque stock that would not be received by Common Stockholders.

121. Maas was appointed chairman of the supposed committee and claimed that he negotiated the Merger agreement with Frankly and Torque and was representing WinView in all matters involving Rogers' conflict of interests as both Chairman of the Board of WinView and Chairman of the Board of Frankly. But in fact, Rogers had represented in a call to Lockton as early as November that he had negotiated the Merger.

122. The sham committee did not retain any independent advisors, consultants or other professional assess or vet the Merger terms considering the alternatives or provide a fairness opinion to WinView.

123. Although Rogers claimed he would abstain from participation on the committee and Maas assured shareholders this was the case, Rogers continued to

control the company in seeking the merger over any other alternatives. For example, Rogers was involved in calls with Board members about Merger issues, and members of the committee and WinView's corporate counsel acted at Rogers' direction in efforts to eliminate other sources of funding which were alternative to his own personal interests.

124. On December 4, 2019, after Lockton prepared a memo to WinView's Board on December 1, WinView's corporate counsel, Damien Weiss called Lockton and said he had just had a conversation with Rogers. He told Lockton that Rogers had said the Board was "furious," and unless by Friday of that week Lockton: (a) executed a signed a consulting agreement to represent ENGINE in the patent litigation at a 30% reduction in his previous salary; (b) Lockton and his family signed a release of the Board from all fiduciary obligations and agreement not to communicate with fellow shareholders, or assist them in any way in matters relating to the Board's actions in this financing; and (c) sign a proxy giving the Board the right to vote his and his family shares in favor of selling WinView to Rogers' Company, and threatened that "the Board would immediately foreclose on the patents, and pursue the patent litigation on their own behalf." Weiss then emailed Lockton's lawyer execution copies of these three documents on Wednesday for execution and Weiss repeated in writing the Board's threat of foreclosure and seizure of the patents if the Board demands were not met within 48 hours. Rogers and the

company later deliberately mischaracterized the release they demanded in formal disclosure documents as "a non-disclosure agreement."

125. After the Merger announcement, Rogers and the Defendant Directors regularly shared false and misleading information with WinView's shareholders on shareholder calls and emails while concealing other material details. This bad faith behavior included representations that Torque and Frankly had large and growing revenues, that those revenues would fund patent lawsuit and licensing and WinView's business operations and provide opportunities for its software platforms. They exaggerated descriptions of Torque and Frankly's business and valuation. They also represented that WinView was receiving a fair and adequate value for the company, that WinView had no adequate alternative financing options or had explored all such options and made misleading threats that WinView's secured noteholders (including Board members) could foreclose and take the patents leaving the company with nothing.

126. When the WinView Board sent the Information Statement to all WinView shareholders on March 30, 2020, it reiterated many of the misrepresentations made informally to shareholders.

127. For example, the Information Statement asserted that the Merger was the best alternative because WinView had made prior unsuccessful fundraising efforts. The Information Statement said: "[t]hroughout the period from October 2018

through early October 2019, WinView management arranged meetings with at least 15 potential investors to discuss a significant minority investment in WinView....”

128. This assertion was false. From October 2018 through October 2019, Rogers obtained only five preliminary pitches, three for litigation funding, and just one management arranged meeting with ATT, which was specifically limited to sponsorship. The Board had failed to consider or pursue alternative funding options.

129. The Defendant Directors also claimed in the Information Statement that:

> [F]rom December 19, 2019 through December 23, 2019, WinView met with at least four financing firms to discuss potential financing to fund litigation and licensing activities in the event WinView were to continue as a standalone company. These meetings were arranged by Dave Lockton and WinView met with these firms at Dave Lockton’s request. None of the firms that management met with expressed an interest in providing equity capital sufficient to fund the company beyond litigation and licensing, which financing would have been insufficient for WinView to continue to operate on a standalone basis, nor pay off WinView’s substantial outstanding debt from its convertible notes, which would remain unpaid and past due and in default.

130. The above assertion was false. No meetings were held by the committee with any of the six companies who presented Letters of Intent. Furthermore, one company that had been in communication with WinView, specifically indicated in writing to WinView’s Board its willingness to fund up to $10 million in operating expenses beyond licensing and litigation costs. Each of the remaining five companies expressed similar interest to Lockton. The committee refused to allow

the required conversation with patent litigation counsel, with full knowledge that refusal would prevent funders from submitting a term sheet.

131. In addition, during this same period, instead of refraining from participation in the transaction as required, Rogers directly inserted himself in the Merger process to criticize and actively eliminate alternatives to the Merger. Rogers, not the purported independent committee, had calls with two of the prospective litigation funding firms. In contradiction to the Defendant Directors' representations in the Information Statement above, each litigation funder separately related to Lockton that they had told Rogers they were interested and had sought an agreement to allow them to talk to WinView's contingent fee counsel, a standard due diligence practice.

132. Rogers interfered with and eliminated a third litigation funder. Rogers responded to an email from Will Marra at Validity Finance on Jan 15, 2020, in which Marra followed up on an NDA. Rogers told Marra that WinView's "patent counsel" had "heavily advised that this would not be a good time to engage in a discussion on patent litigation financing." But given the pending Merger and the Defendant Directors' representations, WinView's Board should have been actively considering Merger alternatives that would provide greater benefit to the shareholders. Instead, the independent committee refused to allow the litigation funder's diligence to go forward.

133. Moreover, Rogers' assertion that he was following advice from "patent litigation counsel" was a false statement, as observed by Lockton when present during Rogers' call with WinView's patent litigation counsel.

134. Lockton immediately brought Rogers' January 15, 2020 email to the attention of WinView's Board in an email that same day. Lockton expressed concern that Rogers, who was conflicted by his ownership and chairmanship of Frankly, was directly inserting himself into the Merger process and terminating alternatives and that other litigation funders had dropped out due to WinView's inaction.

135. The Defendant Directors made no response and took no actions to respond either to Lockton's email or Roger's interference in Merger alternatives.

136. The Defendant Directors also claimed in the Information Statement that:

> [N]one of the litigation financing companies have performed due diligence under signed NDA with WinView, and that [a]ll of the companies that expressed a general interest in potentially providing litigation financing to WinView also indicated that they would be very willing to engage in such financing discussions with Engine Media post-Merger if Engine Media decided that would be desirable.

137. Jacoboski was aware of, and concealed the fact that WinView's Board had, at the time of Merger discussions, received six executed letters of intent from litigation finance firms specializing in financing companies with patent portfolios who had signed nondisclosure agreements. Jacoboski, despite knowing of the multiple letters of intent received by the Board, directly emailed all WinView

stakeholders on December 11, 2019, and made misleading representations to shareholders that no other investor groups evidenced any actionable interest, "even informally," in WinView.

138. To further coerce shareholders not to oppose the Merger, certain Defendants emailed shareholders on December 10 and 11 stating that the alternative to the Merger path approved by the Board would be for the noteholders to foreclose on WinView's assets, including its patents, wiping out the stockholders. This threat was reiterated by Acting CEO Alan Pavlish, by Jacoboski, by Maas, and by the company's lawyers all on information and belief at the direction of Rogers.

139. The Defendant Directors made threats to foreclose on WinView's patents with full knowledge that such threats represented a conflict of interest between their status as noteholders acting for personal benefit and as Board members of WinView with fiduciary duties to act in the best interest of WinView and its shareholders. Further, the Defendant Directors threatened foreclosure on debt with interest of approximately $25 million while simultaneously representing that the value of WinView exceeded $175 million.

140. The Defendant Directors failed to properly conduct due diligence into Torque/Frankly, were grossly negligent in doing such due diligence, or made misleading representations regarding such diligence. Jacoboski, a former securities analyst, represented in a December 11, 2019 email that Torque and Frankly

"generate combined run-rate revenues of approximately $30 million that are growing rapidly." The Information Statement claimed that, as of the time of the Business Combination Agreement, "revenues for Torque and Frankly … were projected to be approximately $45 to $50 million." Both statements were deliberately misleading and inaccurate.

141. Frankly and Torque's financial documents revealed that each company's respective auditors had expressed significant doubt about their respective ability to continue as a going concern. Torque's revenues as of its year end August 31, 2019, were only $4.2 million but expenses were $18 million, leaving a $14 million loss. What Torque did not disclose publicly until July 2020, after the Merger closed, but that WinView's directors should have discovered in diligence, is that Torque's finances for the six months after August 31, 2019, were even worse. Torque's six-month revenues after August 31 declined from $3.2 million the prior year to a paltry $1.4 million while its expenses had climbed from $5.6 million to $12 million for the same period, leaving a staggering $10.6 million loss for just six months.

142. Frankly's financials were equally abysmal. Its results for the three and nine months ended September 30, 2019, showed it with revenues for the nine-month period of only $9.9 million, a tiny fraction of the $30 to $50 million in revenues promised by the Defendant Directors even when combined with Torque's meager

revenues. Absent a massive, one-time debt forgiveness, Frankly too had massive, multi-million-dollar ongoing losses from operations.

143. In addition, the business advantages of Torque touted by the Defendant Directors before the Merger in fact performed horribly. Torque's Eden Games' division's latest game had dropped to a ranking of 205 for all free mobile racing themed games, generating revenues of $10,000 a month. UMG Gaming, the highly touted Esports gaming platform, generated just $26,585 in revenues in the two months since Torque acquired it. The highly touted "Let's Go Racing" televised esports subsidiary had virtually no revenues with $6 million in operating costs and was ultimately given to the employees in an attempt to stem mounting operational losses.

144. The delayed financials on the actual state of the company before the close of the Merger was or should have been known by the Defendant Directors and the purported independent committee through standard due diligence. When released after the close Merger, showed matters were even worse. On September 21, 2020, Engine disclosed that its interim consolidated financials for the nine months ended May 31, 2020. These showed Engine with only $11 million in current assets and $39 million in current liabilities and disclosed a working capital deficiency of $15,828,608. Engine also reported only $3.9 million in total revenues during that period against $26.3 million in expenses for a $22.3 million loss.

145. The Defendant Directors knew or should have known, in the exercise of reasonable diligence, what the true state of the merged entity would be and disclosed this information to WinView's shareholders or cancelled the Merger.

146. Notably, Hank Ratner, now on the Board of Engine, touted the esports racing divisions in an Engine press release on August 13, 2020, stating, "Engine Media is undoubtedly a market leader when it comes not only to racing esports but real-world motor sports." However, Ratner, as a Board member of Engine, well understood that Engine's esports business had paltry revenues and no presence whatsoever in real automobile racing.

147. WinView's Board approved the Merger on March 11, of 2020.

148. By keeping WinView in a financially perilous condition, ignoring investment opportunities, threatening foreclosure on the patents, and failing to utilize best efforts in seeking out alternative financing or alternative opportunities for financing or sale, Rogers, Ratner, Jacoboski, Goodroe and Maas (as representative of Graham) were able to unilaterally force WinView to enter the Merger.

THE MERGER WAS SUBJECT TO ENTIRE FAIRNESS

149. Rogers was the controlling shareholder of WinView prior to and during the Merger. Rogers had *de facto* control over WinView as evidenced by, among other things: (1) his effective control over the sham committee that was tasked with vetting the Merger despite having a conflict of interest and claiming he abstained

from the process; (2) his involvement in eliminating alternatives to the Merger; (3) his complete control over the C financing round and failure to in good faith attempt to secure alternative financing; (4) his interference with Lockton's efforts to secure financing; and (5) his repeated threats of foreclosure on WinView's patents in an effort to force shareholders to agree to personally favorable terms for loans and eventually the Merger; (7) his refusal to raise funds or engage with investors unless he was granted more favorable investment terms and additional incentives. All supported by the board without opposition.

150. As *de facto* controlling shareholder, Rogers had the power and exercised said power, to force WinView into entering the Merger that did not reflect the fair value of WinView's stock and cut out WinView's Common Stockholders from any consideration while benefitting Rogers, Ratner, Jacoboski and Maas (as representative of Graham) and the other note holders and Preferred Stockholders.

151. The Merger constitutes a conflicted transaction because Rogers stands on both sides of the transaction. Rogers is the chairman of the Board of Frankly, one of the entities involved in the Merger other than WinView.

152. Additionally, as a result of the Merger, Rogers became the Executive Chairman of the Board of directors of Engine Media, the new overarching entity.

153. Rogers also derived a unique benefit from the Merger, not shared with the Common Stockholders. Rogers, as a noteholder and Preferred Stockholder, was

eligible to convert his secured loan and WinView Preferred shares directly into Torque shares. WinView's Common Stockholders, including the plaintiffs, did not share this right.

154. As such, the transaction is subject to the exacting entire fairness standard under which Defendants must establish both fair price and fair dealing.

155. In the alternative, entire fairness is the appropriate standard of review because WinView's Board operated as a controller of WinView. The Board, consisting of Thomas Rogers, Hank Ratner, Bryan Jacoboski, Steve Goodroe, Jake Maas (as Graham's representative), and Eric Vaughn, a direct report to Rogers, acted as a single unit and controlled WinView both generally and with respect to the Merger transaction. The Board routinely voted together, invested together, and manipulated financing efforts to secure more control and equity in WinView.

156. Each member of the Board was conflicted in the Merger transaction and forced the Merger through to secure their conflicted benefit. As for Board member Vaugh, he was totally dependent on Rogers for his job and his position on the Board.

157. Further in the alternative, entire fairness is also the appropriate standard of review here because a majority of the directors on WinView's Board were interested in the outcome of the transactions. Directors Thomas Rogers, Hank Ratner, Bryan Jacoboski, Steve Goodroe and Jake Maas made up a majority of the

directors on WinView's Board. Each, as a noteholder, was self-interested in the Merger and realized a benefit not shared by the Common Stockholders of WinView.

ENGINE'S FINANCIAL FAILURE AND REFUSAL TO PURSUE MONETIZATION OF PATENTS

158. Engine has failed to raise money sufficient to make it solvent or bring in profits since the Merger sufficient to fund and initiate the patent litigation.

159. Based on Engine's public financials, Engine is nothing like the opportunity represented by Rogers, is suffering extensive operating losses on declining income, and its pre-Merger representations regarding its ability to raise funds and adequately pursue patent litigation were entirely false.

160. In the Information Statement, the Defendant Directors advocated for the Merger on the ground that Engine would "fund out of pocket expenses of the [patent] litigation" on behalf of WinView and even that Engine was obligated to do so.

161. Instead, Engine failed to comply with its promises to WinView's shareholders. It failed to file any lawsuits for 14 months, has never announced a licensing deals, and has never made any payments to WinView's Common Stockholders.

162. The Merger provided WinView's shareholders the ability to seek a return of the control, ownership, and financing of the patent portfolio if certain

events occurred following the closing. These events are called "takeback triggering events."

163. One takeback triggering event is the failure by Engine to use commercially reasonable terms to prosecute, enforce or take similar actions to monetize the patent portfolio.

164. Under the terms of the Merger, Engine was responsible for prosecuting, enforcing or otherwise seeking to monetize the patent portfolio and compensate WinView's shareholders, including those who were divested of their interest because of the Merger.

165. For example, the "takeback" is triggered by ". . . the enforcement efforts…being hampered, or becoming reasonably likely to cease or be materially hampered, because of any failure of Engine to pay expenses of Enforcement Counsel; which … occur following the 6 month anniversary of the closing." The Merger closed May 11, 2020.

166. Instead, Engine entirely failed to prosecute, enforce, or generate the $6-$10 million required to take any other actions to monetize the patent portfolio for more than 14 months.

167. This monetization is the only means by which the Plaintiffs and Common Stockholders can see a return on their investments in WinView.

168. Due to Engine's failure to fulfill its obligations under the Merger, the Securityholder Representative, Bryan Jacoboski, should have complied with his duty to act for the Common Stockholders to enforce the Merger's "takeback" provision and request that the patent portfolio be turned over to an entity that will, in fact, monetize the patents.

169. However, as described herein, Jacoboski has an actual conflict of interest in acting for the WinView Common Stockholders in that, like the other Defendants, he owns Torque stock and has a conflict of interest against taking an act that could decrease the value of Torque stock, particularly while some of his Torque stock is in the lock-up period, by depriving Engine of direct control of WinView's patent portfolio.

170. Engine's failure to file timely patent infringement litigation caused damages claims to be lost to the statute of limitations and its failure to honor the "takeback" requirements of the Merger agreement deprived the Plaintiffs of the benefits of a fulsome assertion of WinView's patents against all infringers, as well as the increased recovery from their ownership of common stock in WinView over the promised contractual payments.

171. Plaintiffs have not received any return on their Common WinView shares.

First Count: ***(Breach of Fiduciary Duty Against Thomas Rogers)***

172. Plaintiffs incorporate each and every allegation set forth above as though fully set forth herein.

173. As WinView's Chairman, Board member and *de facto* controlling shareholder, Rogers had a fiduciary duty of loyalty to WinView's shareholders.

174. Rogers breached his duty of loyalty to Plaintiffs when he proposed, orchestrated, advocated for, and ultimately ensured the approval of the Merger which was not entirely fair to WinView's shareholders.

175. The Merger did not provide fair value for WinView and WinView's Common Stockholders, including Plaintiffs, were completely divested of their shares.

176. Rogers was aware that the Merger did not provide fair value for WinView and that WinView's Common Stockholders, including Plaintiffs, would be completely divested of their shares.

177. Rogers proposed, orchestrated, advocated for, and ultimately ensured the Merger's approval because he received a unique benefit. First, his ability to convert his notes and some Preferred WinView shares into Torque shares. Second, the ability to save Frankly and Torque from insolvency by leveraging the huge potential of Engine's ownership of WinView's patents and platform which added a potential $175 million and $35 million in value to otherwise worthless entities. That benefit was not shared by WinView's Common Stockholders.

178. Rogers also proposed, orchestrated, advocated for, and ultimately ensured the Merger's approval because he was Chairman of the Board of Frankly, Inc., one of the other merged entities, and therefore had a presence and interests on both sides of the Merger transaction.

179. Rogers, through his influence and control over WinView's Board and his role as Executive Chairman of WinView was the *de facto* controlling shareholder of WinView.

180. Rogers exercised control over WinView and the Board by the following: refusing to seek new capital unless granted more incentives and beneficial investment terms; threatening to cancel investor presentations if not given more power and compensation; threatening to let the company run out of money and then lead a cram down if not offered additional money and compensation and by demanding control over marketing and operational decision making.

181. Rogers controlled and orchestrated an unfair Merger process, in which he and the Board purported to take steps to protect WinView's shareholders but in fact did not.

182. Rogers further breached his duty of loyalty to Plaintiffs when he failed to consider or evaluate reasonable alternatives to the Merger, which alternatives would not have completely divested Plaintiffs of their shares.

183. As a result of Rogers' breach, Plaintiffs have suffered harm in the amount of the fair market value of their uncompensated shares of WinView stock.

Second Count: ***(Breach of Fiduciary Duty Against All Defendants)***

184. Plaintiffs incorporate each and every allegation set forth above as though fully set forth herein.

185. As members of WinView's Board, Defendants had a fiduciary duty of loyalty to WinView's shareholders.

186. Defendants were a controlling and self-interested group of shareholders of WinView who exercised their influence and control over WinView both through the ability to control 51% of the company and as a *de facto* control group. Defendants operated as a single bound unit (the "Board") as they orchestrated the fifth bridge loan to seize control of WinView, collectively ignored litigation financing and other capital raising opportunities, threatened to use their position as secured lenders to foreclose on WinView's patents to command adherence to their prerogatives, and ultimately forced through the Merger.

187. Defendants breached their duties of loyalty to Plaintiffs when they approved the Merger (excepting Rogers who acted as set forth above) which was not entirely fair to WinView's shareholders.

188. The Merger did not provide fair value for WinView and WinView's Common Stockholders, including Plaintiffs, were completely divested of their shares.

189. Defendants were aware that the Merger did not provide fair value for WinView and that WinView's Common Stockholders, including Plaintiffs, would be completely divested of their shares.

190. Defendants approved the Merger because they received a unique benefit, their ability to convert their notes and Preferred WinView shares into Torque shares. That benefit was not shared by the Common Stockholders.

191. Defendants conducted an unfair process, in which they purported to take steps to protect WinView's shareholders but in fact did not.

192. Defendants further breach their duties of loyalty to Plaintiffs when they failed to consider or evaluate reasonable alternatives to the Merger, which alternatives would not have completely divested Plaintiffs of their shares.

193. As a result of Defendants' breach, Plaintiffs have suffered harm in the amount of the fair market value of their uncompensated shares of WinView stock.

Third Count: ***(Civil Conspiracy Against All Defendants)***

194. Plaintiffs incorporate each and every allegation set forth above as though fully set forth herein.

195. Defendants had a meeting of the minds and conspired to breach their fiduciary duty of loyalty to Plaintiffs by forcing through the unfair and inequitable Merger, regardless of the position of WinView's other shareholders.

196. The Merger did not provide fair value for WinView and WinView's Common Stockholders, including Plaintiffs, were completely divested of their shares.

197. Defendants unlawfully devalued WinView, threatened WinView shareholders to coerce their assent or quell resistance and approved the Merger in furtherance of their conspiracy.

198. As a result of Defendants' conspiracy, Plaintiffs have suffered harm in the amount of the fair market value of their uncompensated shares of WinView stock.

Fourth Count: ***(Unjust Enrichment Against All Defendants)***

199. Plaintiffs incorporate each and every allegation set forth above as though fully set forth herein.

200. The Merger was unfair to Plaintiffs and was the product of breaches of fiduciary duty by all Defendants.

201. The Merger did not provide fair value for WinView and WinView's Common Stockholders, including Plaintiffs, were completely divested of their shares.

202. The Merger provided improper, disproportionate, and valuable benefits to Defendants, because Defendants received a unique benefit, their ability to convert their notes and Preferred WinView shares into Torque shares. That benefit was not shared by the Common Stockholders.

203. Defendants continue to be the direct recipients of the improper, disproportionate, and valuable benefits flowing from the Merger.

204. Defendants were not justified in approving the Merger.

205. It would be unconscionable to permit Defendants to retain the benefits they received because of the Merger.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment against Defendants, jointly and severally, as follows:

A. Rescinding the Merger and setting it aside and returning all of WinView's assets to WinView[3];

[3] Rescission is particularly appropriate here because WinView is a wholly-owned subsidiary of Engine whose limited operations have not been merged into Engine's. WinView's main asset are its freely transferable patents. Further, the Business Combination Agreement explicitly recognized that rescission of this Merger was available and possible and provided that under certain circumstances, Torque must transfer WinView's patents to a company designated by the stubholders. Lastly, rescissory damages would be inadequate to replace non-fungible patents created through the lifetime efforts of Plaintiff Lockton.

B. Awarding compensatory damages against Defendants, individually and severally, in an amount to be determined at trial, together with pre-judgment and post-judgment interest at the maximum rate allowable by law, arising from the Merger;

C. Awarding Plaintiffs costs and disbursements and reasonable allowances for fees of Plaintiffs' counsel and experts and reimbursement of expenses; and

D. Granting Plaintiffs such other and further relief as the Court may deem just and proper.

Respectfully Submitted,

WHITEFORD, TAYLOR & PRESTON LLC

/s/ Daniel A. Griffith
Daniel A. Griffith, Esquire (#4209)
The Renaissance Centre
405 N. King Street, Suite 500
Wilmington, DE 19801
Telephone: (302) 357-3254
Facsimile: (302) 357-3274
dgriffith@wtplaw.com

Attorneys for David Lockton and Kathy Lockton, as Trustees of the Lockton Family Trust 2019, C. Gordon Wade, David P. Hanlon, Bartley Fritzsche, Richard A. Lockton, Jennifer Barker, Dr. Frederick Hendricks, and Mary W. Marshall

Dated: July 8, 2021

EFiled: Jul 08 2021 05:07PM EDT
Transaction ID 66750900
Case No. 2021-0058-SG

EXHIBIT A

IN THE COURT OF CHANCERY IN THE STATE OF DELAWARE

DAVID LOCKTON AND KATHY LOCKTON AS TRUSTEES OF THE LOCKTON FAMILY TRUST 2019, C. G ORDON WADE, DAVID P. HANLON, BARTLEY FRITZSCHE, RICHARD A. LOCKTON, JENNIFER BARKER, DR. FREDERICK HENDRICKS, and MARY W. MARSHALL	)	
Plaintiffs,	)	
v.	)	C.A. No. 2021-0058-SG
THOMAS S. ROGERS, HANK J. RATNER, R. BRYAN JACOBOSKI, JAKE MAAS, STEVE GOODROE and GRAHAM HOLDINGS COMPANY	)	
Defendants.	)	

FIRST AMENDED VERIFIED COMPLAINT
FOR BREACH OF FIDUCIARY DUTIES

NOW COME Plaintiffs David B. Lockton and Kathy A. Lockton, as Trustees of the Lockton Family Trust 2019, C. Gordon Wade, David P. Hanlon, Bartley Fritzsche, Richard A. Lockton, Jennifer Barker, Dr. Frederick Hendricks, and Mary W. Marshall, by and through their undersigned counsel, for their complaint against Defendants, alleging upon personal knowledge as to themselves and upon information and belief as to all other allegations herein, as follows:

PRELIMINARY STATEMENT

This is a textbook merger squeeze-out. In 2019, WinView, Inc. was poised to

institute a series of ~~massive~~significant patent infringement lawsuits to monetize its foundational portfolio of over seventy-five patents covering In-Play, and mobile sports betting, online gaming, and ~~mobile~~ Daily Fantasy Sports.

At the time of the ~~merger~~Merger squeeze-out in 2019, WinView had negotiated contingent fee terms with first-tier patent infringement counsel and signed Letters of Intent from multiple third-party patent litigation funders that would have enabled the company to file timely patent infringement suits and licensing actions without financial risk or diluting its existing shareholders.

But WinView's controlling shareholder and secured note holders, who also controlled the Board of Directors (the "Board"), chose to advance their personal interests to the exclusion of WinView's common stockholders. In breach of their fiduciary duties, the Defendant Directors approved an "interested party" three-way ~~merger~~Merger between WinView, Frankly, a Canadian company partly owned and led by WinView's controlling shareholder and ~~board~~Board chairman, Thomas Rogers, and Torque, a thinly- traded public company on the Toronto Venture exchange. In the Merger, WinView contributed all its patents and its industry-leading mobile sports platform developed over five years using tens of millions of investment capital from shareholders. Rogers and the Defendant Directors exchanged their secured notes and a portion of their Preferred shares for stock in Torque. Meanwhile, WinView's Common Stockholders received no cash,

no stock, and no potential earnings from

WinView's business or software. Instead, Common Stockholders received only a contractual promise of a contingent cash payment in the future of half of the net proceeds from the monetization of the patents, should the merged entity recover on a patent lawsuit enforcing WinView's patents. There is no circumstance wherein WinView's Common Stockholders will receive anything from the monetization of the WinView platform. ~~While the~~The Defendant Directors, as WinView's controlling secured noteholders and Preferred Stockholders, converted their ~~notes and preferred stock~~ investments into stock they could sell on the open market~~,~~. WinView's Common Stockholders got nothing.

PARTIES

1. Plaintiff David Lockton ~~("Dave Lockton")~~ is the founder of WinView and is the former CEO, President and Secretary of WinView from 2009 through 2017.

2. At the time of the Merger, Dave Lockton and Kathy Lockton served as Trustees of the Lockton Family Trust 2019, which held WinView Common stock.

3. Plaintiff C. Gordon Wade is a co-founder and former ~~board~~Board member and former shareholder of WinView. At the time of the Merger, he held Common stock.

4. Plaintiff David P. Hanlon is a former Advisory Board member and

Common Stockholder of WinView. At the time of the Merger, he held Common stock.

5. Plaintiff Richard A. Lockton is a former Common Stockholder of WinView. At the time of the Merger, he held Common stock.

6. Plaintiff Jennifer Barker is a former Common Stockholder of WinView. At the time of the Merger, she held Common stock.

7. Plaintiff Bartley Fritzsche is a former director and Common Stockholder of WinView. At the time of the Merger, he held Common stock.

8. Plaintiff Mary W. Marshall is a former Common Stockholder of WinView. At the time of the Merger, she held Common stock.

9. Plaintiff Dr. Frederick Hendricks is a former Common Stockholder of WinView. At the time of the Merger, he held Common stock.

10. Defendant Thomas S. Rogers was, at the time of the Merger and throughout WinView's consideration and exploration of the Merger, the Executive Chairman of WinView, and at the same time the Chairman of the Board of Frankly, Inc., one of the merged entities. At the time of the Merger, Rogers was WinView's ~~*defacto*~~*de facto* controlling shareholder. At the time of the Merger, Rogers was a holder, directly or indirectly, of Common shares and restricted share units of Frankly. Rogers also held secured debt in WinView. As a result of the Merger Rogers proposed and effected, Rogers became the Executive Chairman of the

~~board~~Board of directors of newly renamed, combined entity, Engine Media Holdings after the Closing.

11. Defendant Hank J. Ratner, a close associate brought into WinView by Rogers, was, at the time of the Merger and throughout WinView's consideration and exploration of the Merger, a director of WinView and is presently a ~~board~~Board member of Engine. Ratner also held secured debt in WinView.

12. Defendant R. Bryan Jacoboski was, at the time of the Merger and throughout WinView's consideration and exploration of the Merger, a director of WinView and a required ~~board~~Board representative for Abingdon Capital Management, Ltd. Jacoboski also held secured debt in WinView.

13. Defendant Jake Maas was, at the time of the Merger and throughout WinView's consideration and exploration of the Merger, a director of WinView and the Series B Preferred Stockholder representative in his capacity as the agent of Graham Holdings, WinView's largest stockholder. Maas was appointed Chairman of "the independent committee", the five ~~board~~Board members other than Rogers, which was represented to have performed the Delaware requirements for interested party sales of corporations. Maas was, and remains, an agent and representative of Graham Holdings. Maas' role on the Board of WinView existed for the sole purpose of providing Graham Holdings a representative on the Board to further its interests and effectuate its commands. Maas, through Graham, also held secured debt in

WinView.

14. Defendant Graham Holdings Company, a Delaware corporation, at the time of the ~~merger~~Merger, had an agent representative serving on the Board, Jake Maas. The actions taken by Maas, in his role as director of WinView and the Series B Preferred Stockholder representative, occurred at the direction and sole discretion of Graham Holdings as principal. Graham also held secured debt in WinView.

15. Defendant Steve Goodroe was, at the time of the Merger and throughout WinView's consideration and exploration of the Merger, a director of WinView, and Series A Preferred Stockholder representative starting with the close of the "A" equity financing in May 2016. Goodroe also held secured debt in WinView.

JURISDICTION AND VENUE

16. ~~15.~~Jurisdiction is appropriate in Delaware Chancery court over this action pursuant to 10 Del. C. § 341.

17. ~~16.~~Jurisdiction is appropriate in Delaware Chancery court over all Defendants pursuant to 10 Del. C. § 3114 as each Defendant, was, at the time of the challenged actions, a director and/or officer of WinView, Inc., a Delaware corporation.

ALLEGATIONS
FACTUAL BACKGROUND

18. ~~17.~~ WinView, Inc. ("WinView") was a privately held Delaware Corporation founded in 2009 by Dave Lockton, his wife Kathy Austin Lockton, and Gordon Wade. WinView initially focused on real-time televised sports games and advertising on the second screen and was the leading skill-based sports prediction mobile games platform in the world.

19. ~~18.~~ After forming WinView around nine pending patents he filed in 2005, Dave Lockton built the company on two tracks. WinView's business plan involved leveraging Lockton's extensive experience in pioneering real-time interactive television games played on the mobile second screen along with its numerous foundational patents. Lockton worked to build and develop a unique mobile live proposition betting service, build a team, and raise ~~funds~~startup capital to develop the sports applications of WinView's mobile patents.

20. ~~19.~~ Lockton pursued additional patents to broaden WinView's intellectual property assets related to its core business. WinView held the foundational patents, with Lockton as the sole or primary inventor, on the synchronized second screen experience, mobile sports betting, online gaming, and ~~mobile~~foundational aspects of Daily Fantasy ~~leagues~~Sports. Lockton grew WinView's portfolio from twenty-four patents at the close of the "A" round to

seventy-five in 2019.

21. ~~20.~~Over the next few years, Lockton built up WinView and funded its operations through "seed" capital financing provided by friends and family, offering convertible notes and Common shares of WinView, Inc. to investors or in lieu of cash to suppliers.

22. ~~21.As a result of the continuing failure of~~WinView raised the A round of equity and launched the WinView application and service. But then Rogers and WinView's ~~board~~Board failed to obtain ~~sufficient~~the required operating equity~~, by~~ to grow the company. By mid-2018, WinView's ~~value as a company~~focus on obtaining equity funding became almost entirely dependent on its patent portfolio. Those patents were, and remain, foundational to among other mobile market segments, conducting mobile and live sports betting, on-line casino gambling, and daily fantasy sports.

23. ~~22.~~At multiple points in its history, WinView retained outside advisors to evaluate its patent portfolio for breadth, depth, and the quality of its patents for the live and mobile sports betting and on-line gaming business. In examining the portfolio as it existed beginning 2019, the outside advisors concluded that WinView's patent portfolio was not only legally defensible ~~and~~but "foundational" to the operation of live and mobile sports betting and on-line gaming. One advisor conducted a coverage analysis that showed that the industry segments covered by

WinView's patents are projected to generate 85% of all sports related gaming, a market estimated to grow to tens of billions of dollars annually in the next few years.

ROGERS TAKES CONTROL OF WINVIEW

24. ~~23.~~In January 2016, with a successful Alpha test of its football game, WinView's capital needs had advanced. WinView began to raise "A" round Preferred equity, which led to the addition of Defendants Rogers and Ratner.

25. ~~24.~~During this period, Lockton approached Rogers, who had recently been replaced as CEO of TiVo, to act as Chairman of WinView in return for investing $1 million in the company. Rogers agreed to join WinView as Chairman and invest the requested $1 million on the condition that close friend and former business partner Hank Ratner, who had recently been replaced as CEO of Madison Square Garden, would also invest $1 million and serve as a ~~board~~Board member and co-Chairman.

26. ~~25.~~But during prolonged negotiations, Rogers and Ratner continually decreased their investment commitments down to just $~~450,000 each. Rogers and Ratner also negotiated~~400,000 each, while continually negotiating a consulting agreement that paid substantial stock options vesting piecemeal at various milestones. The milestones included the signing of sponsorships for the football, basketball or baseball applications, acquisition of any major advertising contracts or affiliated co-market agreements with the sports leagues~~, the timely~~. Most importantly, they included the required financing closing dates of ~~the necessary~~sensitive equity financings at various amounts and pre-financing

valuations, and several additional specific conditions. Rogers would, upon the close of the "A" financing, use the consulting agreement and stock vesting milestones as justification

for demanding and exerting complete control over critical aspects of WinView's business to insure his and Ratner's option vesting milestones would be met. As described below, the ability to raise new capital was the essential requirement of building a startup company like WinView.

27. ~~26.~~Defendant Bryan Jacoboski, who had made a convertible loan to WinView early on, agreed to convert his existing secured loan to WinView into Series "A" Preferred shares on the condition that WinView's ~~By Laws~~Bylaws and Certificate of Incorporation be amended to provide him with a permanent ~~board~~Board seat. Despite demanding and receiving that ~~board~~Board seat, Jacoboski uniformly acquiesced to any request by Rogers whether such requests were in the company's best interest or otherwise.

28. ~~27.~~A few short months later in September 2016, Ratner resigned as co-Chairman of WinView to take full time employment but continued to remain on WinView's ~~board~~Board. Rogers then took over and demanded the title of executive chairman of the ~~board~~Board, demanded that he also receive Ratner's compensation, a total of $150,000 annually for what he promised would be 50% of his time, and demanded full and exclusive authority and control over raising money and securing

corporate sponsorships, and contracts~~, and demanded~~ along with increased consulting fees and more stock options.

29. ~~28.~~Upon the close of the A round, Rogers also demanded, obtained, and exercised sole responsibility for obtaining co-marketing deals, league sponsorships, and strategic marketing arrangements essential to the financings and launch of the business. ~~This occurred despite the fact that Lockton, as CEO, and with years of successful experience in these areas was supposed~~In so doing, Rogers usurped the chain of command and management of WinView from Lockton and other managers. This occurred even though Lockton, as CEO, was represented to investors to be solely responsible for the management of WinView. Rogers also regularly inserted himself into the day-to-day business decisions of WinView, ignoring the chain of command. Additionally, although he had no expertise in marketing, Rogers forced the ~~board~~Board to direct Lockton to cede control of WinView's experienced five-person marketing team, engaged in, among other things, approving and changing copy, and orchestrating media buys, and drafting press releases.

30. ~~29.~~In May 2017, Rogers directed his personal PR agent be hired to supplement and then replace WinView's PR firm. When WinView's Chief Marketing Officer Kathy Lockton advised Rogers that additional resources were unnecessary and would be outside the budget, Rogers directed her to "do as you're told."

31. ~~30.~~To further memorialize his control and to quash resistance to his micromanagement, Rogers had WinView's ~~board~~Board sign off on a memo on August 8, 2017, requiring ~~the CEO~~Lockton to follow Rogers' specific directions in marketing and

public relations. Specifically, the memo stated that "the board instructed Mr. Lockton to follow any and all specific direction given by Mr. Rogers as Executive Chairman in the areas of marketing and PR…" Rogers used this control to minimize contact between potential investors and WinView's operating team., When potential investors requested a call with the operating team as part of due diligence, Rogers would introduce Lockton not as the Chief Executive Officer, but as the "founder" or "inventor" and instructed Lockton to remain silent unless asked a question specifically pertaining to the patent technology.

32. ~~31.~~Led by Rogers, on January 1, ~~2018~~2018, the ~~board~~Board also exercised its contractual ~~rights~~option to replace Lockton as CEO under his employment agreement and reduced his role to Chief Innovation Officer ("CIO"), a role which left him in charge of expanding and monetizing WinView's patent portfolio. Rogers replaced Lockton with the Vice President of engineering in an "acting CEO" position that would be beholden to and report exclusively to Rogers, a title that continued until the sale of WinView's assets. He now reports to Rogers as an executive of Engine.

33. ~~32.~~In April 2018, ~~in connection with issuing~~as a condition to providing WinView with additional capital through a new issuance of secured debt and to further expand control, Rogers and the Defendant Directors ~~amended~~demanded and obtained an amendment to the corporate charter to remove the requirement of majority vote by class, to a vote of a majority of all shares, removing the Common Stockholders' right to disapprove of a sale or ~~merger~~

Merger. Rogers and the Defendant Directors also amended the corporate charter to remove Lockton as the named Common Stockholder representative on the ~~board~~Board and appoint the new "acting CEO" to serve on the Board in his place as representative of the common shareholders. Having removed the only person likely to voice dissent, Rogers' control was complete.

34. ~~33.~~Despite total control over new sponsorships and marketing, Rogers ~~continued to fail~~failed to obtain a single sponsorship, advertising agreement, or league license agreement, or co marketing agreement much less the critical "C" round equity financing. Meanwhile, competitors to WinView, some of which were, and remain, in violation of WinView's patents, secured sponsorship and financing from the very same entities that Rogers and Ratner allegedly approached.

35. ~~34.~~Other than Lockton, no ~~board~~Board member expressed opposition or voted against Rogers' strategies, actions or positions from the time Rogers became Executive Chairman in May 2016 and throughout the effectuation of the

Merger. Despite his intrusive management of even the most minute of business decisions, Rogers ~~failed~~continued to fail to meet any of the goals in the Board approved business plan ~~as outlined above. But WinView's board~~which repeatedly put WinView on the brink of insolvency, a situation which Rogers, as described below, would repeatedly use to his benefit. But WinView's Board took no steps to check or limit Rogers' control over the business or remove

him as executive chairman over his continued failure to meet ~~critical objectives~~the key requirements of WinView's business plan for over 40 months.

ROGERS DOMINATES AND CONTROLS WINVIEW'S CAPITAL RAISING

36. ~~35.As with many~~New capital is the lifeblood of a tech startup ~~companies, WinView's ability to develop its~~. Developing complex intellectual property, software ~~platform and business required the timely raising~~applications, and business takes time, money, and expertise. For WinView to fund these cash needs, it required a regular infusion of additional capital~~, which~~. WinView and similarly situated companies typically obtain this capital through a series of equity investments, often called "rounds", and denoted using letters, A round, B round, etc. Bridge or temporary loans, convertible into the pending equity round, are typically used to provide operational funding ~~in order~~on a short- term basis to extend the time to close a new round of equity financing so that interested parties can perform due diligence. ~~But WinView instead went through~~

37. Lockton has substantial experience raising equity funding in various companies and was successful doing so for WinView. Before Rogers joined WinView, WinView had successfully raised over $3 million between 2009 and 2016 before the "A" Round. Rogers joined WinView at or near the close of the "A" Round and at that time, took control over future fundraising.

38. Once under Rogers's control, WinView raised only one other "round" of equity. Rogers instead leveraged his failure to provide for WinView's continued operations and his control over the board to implement a series of five bridge loans ~~in a row~~ without any new equity financing. These loans were atypical because, in addition to a right to convert debt to stock, warrants, and/or liquidation preferences, ~~they~~four were secured directly by liens filed against each patent with the US Patent Office, with Jake Maas, Graham's ~~board~~Board representative, designated sole Power of Attorney for all secured creditors.

39. Rogers routinely acted in bad faith and used threats to control the Board and force it to engage in a series of atypical, fully-secured bridge loans. He would refuse to raise money, refuse to meet with potential investors, and even subvert business opportunities if the Board did not acquiesce to his litany of demands, which often included disproportionately favorable investment terms and incentives. Rogers thus demonstrated his potent retributive capacity and control over WinView.

The First Bridge

40. ~~36.As reported by the board in an addendum to the Consent Solicitation and Information Statement sent in connection with the Merger, WinView engaged in four such debt offerings in the last three years, referred to as "non-brokered private~~

placements" on March 12, 2018, August 22, 2018, April 8, 2019, and August and December 2019. For each, WinView issued Convertible Promissory Notes secured directly by patents valued at many times more than the amount borrowed.When the A Round of Preferred stock closed on or about May 24, 2016, Lockton sent the board a memo noting the long lead time needed to raise equity meant WinView needed to begin work immediately obtaining investors for the "B" Round, which would allow WinView to build on its progress and launch a football application in the fall. Instead, by fall of 2016 Rogers had made no meaningful effort to raise financing. Lockton anticipating that WinView would run out of funds was forced to scale back its product launch to preserve its ability to continue in business.

- March 12, 2018 – $6 million in secured convertible promissory notes, together with WinView series B Warrants at an exercise price of $1.35963 per share of WinView Series B Preferred Stock.
- August 22, 2018 – $8 million in secured convertible promissory notes.
- April 8, 2019 – $2 million in secured convertible promissory notes, together with WinView Common Warrants at an exercise price of $0.01 per share of WinView Common Stock.
- August 2019/December 2019 – WinView issued an additional $2.4 million in secured convertible promissory notes together with WinView Common Warrants at an exercise price of $0.01 per share.

WinView planned to compensate for Rogers' failure (intentional or otherwise) by raising a short term, bridge loan financing using many interested, existing investors. Rogers and Ratner had continually represented to shareholders that they had led the "A" financing and were leading the "B." It was apparent that if WinView was to raise bridge funds from its existing investors, those investors would expect Rogers and Ratner to participate.

41. Instead, Rogers used the dire financial position he had created to take further control of WinView. In late November 2016 and at a Board meeting on or about November 19, 2016, Rogers informed Lockton and the other Board members that he and Ratner would not invest in the Bridge Loan and that if forced to be on calls with investors about it, they would relay their plans not to invest and that Rogers had concerns with WinView's management not responding to their suggestions on marketing and development. Had Rogers made good on this threat it would have ended any chance of financing and left WinView with no money and imminent risk of insolvency. But Rogers agreed not to tank the company and agreed that he and Ratner would invest if the Board granted him additional compensation by changing terms of his prior warrants, by changing other compensation terms to lower the thresholds, and by giving Rogers more direct authority over WinView's business.

42. As conditions to not tank WinView, Rogers demanded that: (a) the threshold for the financing incentives be reduced from a $50 million valuation to $30 million; (b) the language awarding 1% of the company for signing the first license with a league be modified to include 1% for each license signed; and c) the

vesting requirement 0.5% of the stock for signing a major $3-$6 million sponsorship for A WinView football game, i.e. "The Verizon Football Challenge," be considered met by a $150k in-app advertising buy from Pepsi sold by WinView's VP of Advertising Sales.

43. In emails with Lockton on November 18, 2016, Jacoboski referred to Rogers' demands as "slimy" and Goodroe called it "greedy" and wondered if Rogers and Ratner "already have verbal commitments from investors who will come in soon and are trying to get a little more for themselves in the process?"

44. But with the survival of the company at stake, and Rogers now completely in control of the financing process, and therefore the company itself, the Board complied. Rogers would repeat this pattern repeatedly in future financings. In December 2016, WinView raised its first bridge of $2,535,000, of which Rogers and Ratner each invested $200,000.

45. ~~37.~~While this first bridge loan was closing, WinView was introduced by an existing investor to Graham Holdings Company WinView's Series "B" financing introduced Graham Holdings ~~Company~~ ("Graham"). Graham agreed to commit $10 million of the $12 million raised in the Series B financing. Graham conditioned its participation on WinView amending its corporate charter, giving Graham a permanent

representative on WinView's ~~board~~Board. Graham assigned Jake Maas to be its

designated ~~board~~Board member. Despite demanding and receiving a ~~board~~Board seat, Maas, as Graham's designee, uniformly acquiesced to and supported any request by Rogers, whether in the company's best interest or otherwise.

46. ~~38.~~After the series B share issuance, Rogers, Ratner, and the ~~defendants~~Director Defendants failed to meet financing commitments to raise the C series financing five consecutive times. Instead, WinView's ~~board~~Board proposed more short-term secured bridge loan agreements with conversion rights and warrants.

47. After the close of the "B" round, in April 2017, it was again imperative that WinView close the "C" round by the beginning of the 2018 NFL Football season. This deadline was important because it would ensure that the marketing expenditures projected in the Business Plan would be sufficient to quicken growth and dramatically drive down costs. Both Rogers and the Board were aware of the pivotal nature of this timeline. However, by October 2018, one month after the start of the NFL Football season, Rogers had once again failed to raise any funds to finance WinView's operating budget, causing another curtail of WinView's marketing efforts.

48. On a Board call on or around October 2, 2017, Rogers once again held WinView's Board hostage by refusing to raise any more funds unless he and Ratner's stock agreements were amended again to grant significant new stock

options. This was despite the fact that Rogers had demanded and been granted sole responsibility and authority for all financing and critical management decisions. Rogers threatened on a board call that, if he were not awarded the additional stock, he would simply cancel investor meetings and let WinView run out of money, and then lead a cram-down financing.

49. The Board expressed general opposition and outrage to Rogers' renewed effort to subvert WinView. In response to the Board's dismay, Rogers sent an email to the Board on October 3, 2017, at 2:11 p.m. reminding them that he had a meeting with Brian Roberts, CEO of Comcast in two days, and that without new stock grants, he had no incentive to help raise more funds. He even threated to postpone his "purportedly scheduled" meetings with Brian Roberts, Les Moonves and other investor meetings if his demands were not granted.

50. On October 4, 2017, Rogers repeated his demand in an email sent at 6:30 p.m., saying that he wanted to "know incentive in place." When the Board informed Rogers that it was discussing his demands with WinView's attorneys, he responded in an email sent at 6:59 p.m. stating, [i]f need be, I will postpone the Brian meeting."

51. The Board again acquiesced to Rogers' demands and granted him the beneficial stock options he demanded to perform his duties. But none of the investor meetings that Rogers threatened to cancel resulted in any investment for WinView.

Rogers was rewarded for his threats and obtained zero funds for WinView in return.

The Second Bridge

52. By late January of 2018, Rogers' failure to raise new equity left WinView out of cash and forced to suspend payments to its suppliers. WinView had no alternative but to seek a second bridge loan. Conversations with participants in the first bridge indicated a willingness to provide a second short term secured loan on the same terms as the first bridge.

53. But instead of a bridge on the same terms as the first bridge, Rogers related to Lockton on a board meeting call on or about February 1, 2018, that the other five members of the Board, including Ratner, Jacoboski, Goodroe, and Maas (representing Graham) had met separately, regarding the terms of the new bridge loan.

54. Rogers informed Lockton that the five Board member/note holders rejected Lockton and the shareholders' proposal to use the same terms as the first bridge. Instead, Rogers said that for them to participate, the terms of the note would need to offer 100% warrant coverage for themselves and any other investors, in effect demanding for themselves additional benefits beyond what was required to obtain a new bridge.

55. The final terms of the second bridge, in addition to the 100% warrant, included: (a) a 2x liquidation preference upon change of control; (which became

effective as no "C" round was ever raised; (b) a conversion into series "B" preferred instead of common; (c) that Lockton immediately resign from the Board; (d) the corporate charter replace the requirement that Lockton represent the common holders, naming Eric Vaughn, Rogers direct report, as the common shareholders representative; (e) the Charter be amended from requiring a vote of a majority of each class for approval of financings and major transactions, to all shareholders voting as one class, a change which gave Graham virtual control of the company; and; (f) Rogers proposed the unpreceded step that the bridge loan be separately secured by a direct lien against the patents filed at the patent office, with Graham granted sole Power of Attorney to foreclose on the portfolio in the event of a default and take ownership, with just 10-days' notice.

56. Rogers also threatened to let the company go under if Lockton did not immediately agree.

57. The second bridge closed on March 12, 2018, with 26 investors, including Rogers, Ratner, Jacoboski, Goodroe, and Maas (as representative of Graham) taking advantage of their increased power and leverage. Graham invested $2 million in the bridge. Rogers, Ratner, and other Board members invested $250,000 each to reach a total of $5.2 million.

58. ~~39.~~In late 2018, ~~WinView again faced an urgent need for a substantial investment to fund the operations and development costs needed to get their paid entry platform ready for deployment. There~~there was growing interest in WinView's

patent portfolio following the Supreme Court decision that left legalization of sports betting to the states. This was because WinView's paid entry mobile games of skill utilized patents that also explicitly covered: games of chance such as mobile betting, online gaming, and real time "in play" sports betting. Although no longer CEO, Lockton, concerned about WinView's complete failure to connect with the gaming community, on his own contacted MGM's CEO through advisory ~~board~~Board member and plaintiff Dave Hanlon to seek capital and a working partnership. After a series of meetings between MGM and Lockton, MGM's VP of Development and his team came to WinView's headquarters for an all-day due diligence session with the management team and informed Lockton that he would make a positive recommendation to proceed further.

59. ~~40.~~When the process with MGM slowed, Lockton visited with the responsible MGM executives, only to learn that MGM had just ~~worked with~~been approached by Rogers and Ratner on behalf of a different mobile technology company and potential competitor WinView called Tunity ~~to invest~~and obtained a $12 million investment. On information and belief based on statements by Rogers, one or both of Rogers and Ratner were compensated by Tunity ~~as a result~~because of this $12 million investment. Soon after this event, MGM told Lockton it was no longer interested in investing in WinView.

60. ~~41.~~Without new capital from MGM, and with no prospects for new

equity financing, WinView lacked sufficient operating capital and was again forced to reduce marketing efforts and overall operations to a skeleton schedule and crew and cut salaries dramatically. WinView's only capital came from the short-term secured loan agreements.

61. ~~42. With~~Again, with scaled-back operations and limited funds, Rogers, while still responsible for raising equity, directed Lockton to pursue a parallel course of financing for patent litigation and operations by filing patent infringement suits to enforce WinView's IP and funding for litigation and licensing ~~related~~and operational expenses from a rapidly exploding patent litigation funding industry.

The Third Bridge

62. Funds from the second bridge loan ran out by August of 2018. At this point, the management team had not participated in any presentations to potential investors for its series "C" financing round, which remained under the sole control of Rogers. None of the meetings Rogers had represented to shareholders in the fall of 2017 in connection with his demands increased payment led to new equity for WinView.

63. As a result of the Rogers' and the Board's continued inability (whether intentionally or otherwise) to secure funding, WinView was once again forced to pursue a bridge loan financed by members of the Board. The third bridge loan, which closed on August 22, 2018, amounted to $7,750,000, and included, $200,000 investments from Rogers and Ratner. This third bridge loan once again provided

significantly advantageous terms to Rogers, Ratner and the other investors and members of the Board.

64. Following the close of the third bridge loan, Rogers, once again, made no visible efforts to raise Series "C" funding. Other than two preliminary calls with major companies in the gaming space arranged through Lockton's efforts, no other potential investors received presentations.

The Fourth Bridge

65. On February 22, 2019, Rogers informed Lockton that WinView would need to raise a fourth bridge.

66. Rogers told the shareholders on a call in March 2019, that the bridge funds were necessary to give the company time to conclude financing discussions with interested parties. This was untrue. Although Rogers mentioned various major companies as potential investors such as Apple, Verizon, and AT&T, Rogers knew from prior interactions that each had either passed already or were not prospects for an investment in WinView.

67. Rogers then reminded the shareholders that if the bridge was not raised, it was the intention of the secured creditors, including Rogers, Ratner, Jacoboski and

Maas (as representative of Graham) all of whom were on the Board, to foreclose on the patents on 10 days' notice and pursue patent monetization on their own behalf.

68. The Board, without utilizing any interested party procedural requirements, provided themselves and participating WinView shareholders with terms of 6% interest, and an unprecedented liquidation preference on the amount loaned and the right to purchase common stock warrants for a penny a share.

69. Following the close of the fourth bridge loan, the Board made little to no effort to raise operating equity, as their strategy almost entirely centered on Lockton securing contingent fee representation and litigation cost financing including funds for operations offered by several patent litigation funds, to monetize the anticipated patent litigation.

70. As reported by the Board in an addendum to the Consent Solicitation and Information Statement sent in connection with the Merger, WinView engaged in four additional debt offerings in the last three years, referred to as "non-brokered private placements" on March 12, 2018, August 22, 2018, April 8, 2019, and August and December 2019. For each, WinView issued Convertible Promissory Notes secured directly by patents valued at many times more than the amount borrowed.

- March 12, 2018 - $6 million in secured convertible promissory notes, together with WinView series B Warrants at an exercise price of $1.35963 per share of WinView Series B Preferred Stock.
- August 22, 2018 - $8 million in secured convertible promissory notes.

- April 8, 2019 - $2 million in secured convertible promissory notes, together with WinView Common Warrants at an exercise price of $0.01 per share of WinView Common Stock.
- August 2019/December 2019 - WinView extended the April 2019 financing for an additional $2.4 million in secured convertible promissory notes together with WinView Common Warrants at an exercise price of $0.01 per share.

ROGERS AND THE BOARD REJECT LITIGATION FINANCING OPPORTUNITIES IN FAVOR OF THEIR OWN SELF-INTEREST

71. ~~43.~~To pursue monetizing its intellectual property instead of operations, WinView needed patent litigation counsel that could represent WinView on a contingent fee basis. WinView also needed litigation financing to cover the costs of bringing such lawsuits. Contingent fee patent counsel would eliminate the need for WinView to pay its lawyers the substantial fees incurred with cash. Litigation funding had become a significant specialized form of finance in which lenders made non-recourse loans for lawsuit and licensing related costs relying on their assessment of the value of the patents ~~because litigation funding was~~ repayable only from funds received from litigation. These funds also could provide operating capital and debt refinancing if the risk/reward calculation met ~~the Litigation Funder's~~their criteria.

72. ~~44.~~Lockton, as CIO since ~~2018,~~2018 was responsible for enforcement of the patent portfolio and obtaining financing for costs. At Rogers' direction and with the knowledge and approval of WinView's ~~board~~Board, Lockton worked with law firms that were considering representing WinView in their due diligence process, which often lasted from 6- 8 months for each patent firm. Lockton also made presentations to and pursued discussions with several patent litigation funders that were ready and waiting to move forward once WinView signed an engagement with contingent fee counsel and ~~provided~~gave the litigation funders ~~with the necessary due diligence information~~permission to complete their due diligence process by communicating directly with litigation counsel. In discussions with Rogers and the Board, the Board recognized and orally agreed that contingent patent litigation and litigation financing required either conversion of the secured loans, the removal of liens against the patents, or an agreement not to foreclose during litigation as foreclosure would lead to dismissal of any patent lawsuits.

73. ~~45.~~Lockton kept WinView's ~~board~~Board updated on these patent litigation funders' interests, their process, timing, and their non-recourse compensation structure for funding the millions in cash expenses required to launch WinView's patent litigation. As this progressed, Rogers informed shareholders on shareholder calls that litigation funding was the best solution for a cash-strapped WinView.

74. ~~46.~~By mid-2019, WinView and a first-tier law firm had reached an agreement for a contingent fee representation of WinView to pursue patent infringement litigation. On information and belief, based on statements disclosed by Rogers to shareholders on a call in November 2019, this law firm executed "an unprecedented full contingent fee agreement" with WinView. But WinView could not file patent infringement lawsuits until it also had financing for an estimated $6-$10 million in litigation and licensing costs.

75. ~~47.~~On a Nov 16, ~~2019~~2019, call ~~where~~during which Lockton informed Rogers of the success in finalizing litigation funding, Rogers informed Lockton, for the first time, that instead of utilizing litigation funders that Rogers and WinView's ~~board~~Board had authorized and touted to the shareholders, the ~~board~~Board had executed a binding Term Sheet to sell WinView's assets, the platform and ownership of the patents, to a new business through a ~~merger~~Merger. Rogers stated he planned to merge WinView with two small public companies listed on the Toronto Venture Exchange: (1) Frankly, a cash- strapped company with declining revenues of which Rogers had been Chairman for over three years, and (2) Torque Esports Corp, a failing Canadian company controlled by Frankly's largest investor and trading on the Toronto Venture Exchange, a stock market for small, ~~emerging~~speculative companies.

76. ~~48.~~Rogers explained to Lockton that Frankly's largest shareholder,

later determined to be Andy Defrancesco, was also, indirectly, ~~a major~~the largest stockholder of Torque, which claimed to be a promising esports business. Rogers stated that the deal was fully supported by the ~~board~~Board (namely, Rogers, Ratner, Jacoboski , Goodroe

and Maas, as Graham's representative, collectively the "Defendant Directors") because, as secured creditors, the ~~board~~Board wanted liquidity and a public market valuation ~~of the assets~~ for their secured loans.

77. ~~49.~~Rogers further explained that his and the other Defendant Directors' plan was to merge Frankly and Torque, then merge WinView into Torque, with the final entity being renamed Engine Media. The ~~merger~~Merger would also convert secured loans ~~to WinView~~ and a portion of ~~WinView's~~ Preferred stock into Torque equity.

78. ~~50.~~The Defendant Directors hailed the ~~merger~~Merger as a solution to WinView's cash shortage, claiming Torque had revenues ~~that could~~sufficient to fund WinView's patent litigation costs with dilution much smaller than an outside funder while fully funding WinView's operations. In truth, Frankly and Torque were both insolvent with increasing losses, no profits, and no apparent financial ability to survive much less to monetize the patents without leveraging their prospective ownership of them.

The Pump-and-Dump Scheme

79. ~~51.~~Rogers ~~further planned~~informed shareholders that the merged companies would then "raise $50 million in equity to qualify for a listing on NASDAQ". Rogers implied that once ~~Torque filed~~ the patent lawsuit~~, its~~ was filed, the Engine stock would significantly appreciate. This pump and dump scheme would benefit the Defendants, who could sell their Engine stock based on the news of filing a patent lawsuit and without regard

to whether the patent lawsuits were ultimately successful or generated even a penny for the common stockholders.

80. ~~52.~~The Merger would allow Rogers, Ratner, Jacoboski, and Graham to avoid trying to enforce their secured debt by foreclosing on WinView's assets, where, as directors, they would have a simultaneous and contrary duty to protect the Company from the attempt to seize patents they represented to be worth $175 million for just $25 million in debt. It also allowed the Defendant Directors to benefit, as stockholders in the merged entity, from ownership of WinView's patent portfolio and its software platform. Simultaneously, the Defendant Directors could capitalize on any patent- lawsuit-related stock appreciation in Engine or its platform by selling their shares once any hype began.

81. ~~53.The~~Rogers, the Defendant Directors, and Engine also intended for WinView to continue its operations after the Merger as the Merger would allow secured note holders and Preferred Stockholders that received Torque stock to

benefit from any future success of WinView's operations and its fully-developed, patent-protected platform including a possible sale.

82. ~~54.~~The Common Stockholders received very different treatment. The Merger would eliminate their long-held stock in WinView (and the right to long term capital gains treatment on any return) and they would receive zero shares and zero cash. Instead, the Merger would only provide them a contractual right to a percentage

of recoveries on patent litigation on WinView's patents if ~~Torque ever initiated~~ such lawsuits ever occurred and after legal fee deductions and splits of such proceeds with the merged entity. Common Stockholders would receive nothing for WinView's business or patented platform. The Merger would turn the Common Stockholders into a group colloquially referred to as the "stub" holders, with no stock, no interest in the business, and only a possible payment ~~stream from~~of royalties in the patents.

83. ~~55.~~Rogers was exercising his ~~*defacto*~~*de facto* control over WinView ~~and its board~~through his complete control of financing and other necessary third-party agreements and his complete control of the Board to orchestrate a financial transaction that would inure to the benefit of the other Defendant Directors and Rogers himself as the Chairman and major shareholder in Frankly and CEO of the combined companies. This transaction would do nothing but harm WinView's Common Stockholders.

84. ~~56.~~On November 22, 2019, Rogers held a call with all shareholders to announce the sale of the company and to explain the general terms and conditions of the ~~merger~~Merger.

85. ~~57.~~Rogers, Ratner, Jacoboski, and Graham, each held significant debt and stock in WinView as of the November 22, ~~2019~~2019, announcement~~. As~~, as later reported in the March 30, 2020 Information Statement soliciting votes:

a. Rogers held WinView Notes with an aggregate principal amount of US$700,328.77, Rogers held 188,074 shares of WinView Series B Preferred Stock and WinView Warrants to purchase 879,656 shares of WinView Common Stock and 183,873 shares of WinView Series B Preferred Stock.

b. Ratner held WinView Notes with an aggregate principal amount of US$700,350.68. Ratner held 188,074 shares of WinView Series B Preferred Stock, WinView Warrants to purchase 183,873 shares of WinView Series B Preferred Stock, and 398,927 shares of WinView Series A Preferred Stock and 879,656 shares of WinView Common Stock.

c. Jacoboski held WinView Notes with an aggregate principal amount of US$475,000.00 and WinView Warrants to purchase 183,873 shares of WinView Series B Preferred Stock, 602,323 shares of WinView Series A Preferred Stock, and 792,821 shares of WinView Common Stock.

d. Graham held WinView Notes with an aggregate principal

amount of US$2,000,000.00. Graham Holdings held 5,883,953 shares of WinView Series B Preferred Stock and WinView Warrants to purchase 1,470,988 shares of WinView Series B Preferred Stock, and 1,103,241 shares of WinView Common Stock.

e. Goodroe [1] held WinView Notes with an aggregate principal amount of $700,438.36. Goodroe also held 763,585 shares of WinView Series

A Preferred Stock, 188,074 shares of WinView Series B Preferred Stock, and WinView Warrants to purchase 879,656 shares of WinView Common Stock, 87,067 shares of WinView Series A Preferred Stock and 183,873 shares of WinView Series B Preferred Stock.

The Fifth Bridge

86. ~~58.~~During the November 22, 2019 call, Rogers stated that it was essential to the completion of the Merger for WinView to raise $1.2 million through a fully secured bridge loan to cover WinView's expenses until the projected March 2020 close of the Merger. The targeted amount later increased to $1.4 million.

87. ~~59.~~The ~~board~~Board proposed to obtain this $1.2 to $1.4 million of additional funds by offering prospective lenders ~~secured~~ notes that would be repaid

[1] Entries for Goodroe reported conflicted holdings of stock. In some places he reported 487,270 common shares, in others he appeared to include shares held by a Trust he controlled and reported the higher total listed here. He also failed to

with Torque stock when the ~~merger~~Merger closed just a few months later. ~~On information and belief, based~~Based on various offering related spreadsheets and documents~~, lenders~~ from WinView, anyone that lent would receive their loan principal and interest and ~~also~~ a massive change of control payment for a total of approximately $3 in Torque stock for each $1 dollar loaned. This would be fully secured by patents worth, by their own estimate, as much as $150 million more than the ~~total~~$25 million of secured debt. In addition, the Board included warrants that gave each lender the right to purchase 3.3 shares of WinView's Common stock for $0.01

include disclosure of 128,227 shares of Series A Preferred Stock held by a family member, leaving shareholders confused and misled.

per share for each $~~1~~1.37 loaned. Thus, when the Board sought to persuade Common stockholders to support the Merger, it represented that the Merger implied an enterprise value for WinView between $127 million and $216 million, with the Merger giving Common Stockholders the right to receive patent proceeds worth tens of millions of dollars. But when the Board members intended to invest their own money, they ignored their proffered Merger valuations of WinView and gave themselves the right to purchase those same Common shares (and same residual rights) for only $0.01 per share. In fact, when extrapolated to the whole company, the $0.01 per share price valued all 47 million fully diluted shares ~~of WinView~~ at only $470,000.

88. ~~60.On information and belief, Board members took advantage of the offer they created and loaned at least $300,000 to WinView between the fall of 2019 and~~With this drastically reduced valuation of WinView of just $470,000, and the ability to acquire shares for just a penny each, the final bridge loan was more than a means of financing WinView's supposed cash needs until the merger closed, it also appears to have been a strategic move by the Defendant Board members to make loans to WinView that just so happened to be sufficient to ensure that Defendants could control 51% of the voting stock and vote the merger through whether they had votes from other stockholders or not.

~~early 2020. They were thereby able to further increase their share of the WinView Merger proceeds at virtually zero risk while simultaneously obtaining a large number of new Common shares that would become part of the "stub" at near zero cost. The overall effect of the Board's fundraising effort was to add millions of new Common shares to the "stub" for virtually no consideration, thus badly diluting any possible payout to the Common Stockholders.~~

89. ~~61.Through changes in the charter~~ The information statement reported that approval of the merger required a majority of the Preferred stock and a majority of the preferred and common, voting together. Defendants had removed the power of the common stock to approve independently through changes in the charter required by Graham and

evidenced by WinView's April 27, ~~2017~~2017, Second Restated and Amended Certificate of Incorporation and restated in the Information Statement~~, holders of Preferred stock and the holders of Common stock were required to vote together and not as separate classes~~. Thus, Defendants ~~merely~~ needed to control a majority of the preferred and a majority of the total votes, irrespective of class, to push through any agenda they desired.

90. ~~62.~~Through this carefully structured and orchestrated bridge loan, ~~proposed and executed by Rogers,~~ Defendants were ~~able~~now in the position to secure ~~the leverage~~50% voting control necessary to ensure that the Merger would be approved. Defendants were able to ignore the multitude of warnings and concerns identified by Lockton and push through a Merger that would benefit them while harming WinView's Common Stockholders.

91. Based on a capitalization table circulated in December 2019 and subsequent records of cash receipts by WinView, the Defendant directors, including the family members, trusts, and entities they used to make investments, held 59% of the total preferred stock and 45% of the total common and preferred stock voting together. Thus, Defendants already had the requisite majority control of the preferred stock. In the fourth and fifth bridge loans, Defendants collectively loaned $1,275,000 to WinView, including at least $300,000 in December 2019 alone. Because these funds included warrants to purchase three common shares for $0.01

each, the Defendants obtained in total, the right to purchase 3,0674.46 common shares for only $30,674. As described in the information statement, these warrants could be

exercised at any time. Nothing stopped Defendants from exercising these warrants and voting the resulting common shares in favor of the merger.

92. The addition of 3,0674.46 common shares in the hands of Defendants would have increased Defendants overall ownership of the common and preferred shares voting together to 51%. Making these final self-serving bridge loans guaranteed that Defendants could vote to approve the merger. And the change of control payments meant that the money they loaned, without risk, would be repaid at a massive premium just a few short months later. The warrants for common shares, whether ultimately exercised or not, became part of "stub" at near zero cost. The overall effect of the Board's fundraising effort was to add millions of new Common shares to the "stub" for virtually no consideration, thus badly diluting any possible payout to the Common Stockholders. And at the same time, Defendants could vote the merger through regardless of the votes of others. Neither WinView nor Defendants have ever disclosed the final capitalization table or disclosed the count of the vote in favor of the merger. But as directors, they were uniquely positioned to determine if they needed to exercise additional warrants to control the outcome or if their threats of foreclosure and seizure of the patents had been sufficient.

93. ~~63.~~On December 1, 2019, Lockton sent WinView's ~~board~~Board a detailed memo reminding the ~~board~~Board of WinView's pending and superior alternative opportunity to fund patent litigation and licensing expenses with one of several

patent financing litigation funds he had been updating Rogers and the ~~board~~Board on. Lockton pointed out that WinView would receive four more, for a total of six signed Letters of Intent in the next few days, as litigation financers were now competing to fund WinView's patent litigation and were waiting for the chance to have discussions with WinView's contingent fee patent counsel.[2] A competition among potential financing alternatives could have presented better alternatives to the merger for WinView and its common stockholders. Lockton also included a financial analysis comparing the economics of litigation financing versus the effects of the Merger on the patents' potential and the interests of the various classes of shareholders. Lockton pointed out that the financing could be completed, and the litigation launched as planned in January 2020, a schedule important to the litigation strategy. ~~Bringing suit~~Suing by January 2020 using the existing plan of contingent fee counsel and litigation financing offered a key litigation advantage to WinView ~~and an additional value to the company that it~~because a potential defendant was in the midst of a business deal that would likely have been unsuccessful with pending

[2] The names of the six entities that supplied letters of intent are withheld to preserve any confidentiality obligations contained therein.

patent litigation. But WinView could not realize this advantage if it waited even a few months.

94. ~~64.~~Lockton's memo also objected to the Defendant Directors' conflicts of interest. The Defendant Directors had repeatedly threatened to foreclose in their capacity as secured creditors and take WinView's patents, despite the fact their fiduciary obligations to the company as directors would require that they take available actions that would protect shareholders from any attempt to foreclose on the patents and protect the excess value in the patents above the amount of secured debt for the unsecured creditors and shareholders because, as noted above, WinView had approximately $25 million in notes while the patent portfolio was represented as being valued at $175 million. Lockton objected that they were advancing their interest as secured creditors by structuring a ~~merger~~Merger deal that repaid their loans with stock in Torque and ignoring ~~their~~the conflict of each Defendant Director that held secured notes, Rogers' conflicts, Rogers' control, and failing to investigate all viable alternatives.

95. ~~65.~~Notwithstanding Lockton's memo, neither WinView's ~~board~~Board nor the "independent committee" took meaningful steps to evaluate the alternative options ~~or~~to the merger that they understood to be available prior to executing a binding term sheet or to address their conflicts of interest. The ~~board~~Board did not

commission a fairness opinion or retain other outside advisors to evaluate the options or to evaluate the benefits of different options to WinView's various classes of stockholders. And the ~~board~~Board peremptorily refused to allow litigation funders to contact contingent patent litigation firm as the Defendant Directors understood was a required standard

procedure to enable ~~them~~the funder to submit a competing binding Term Sheet that might have revealed a better alternative to the ~~merger~~Merger.

96. ~~66.~~The Defendant Directors' direct~~,~~ or indirect, or ~~*defacto*~~*de facto* control of a majority of the secured debt and control of enough WinView shares to ~~approve~~force the Merger through meant they had no practical obligation to consider Lockton's arguments out of concern that he could convince the shareholders to reject the Merger.

THE MERGER DAMAGED THE COMMON STOCKHOLDERS WHILE BENEFITING THE DEFENDANTS AS NOTEHOLDERS AND PREFERRED STOCKHOLDERS

97. ~~67.~~The terms of the Merger resulted in an unfair benefit to Rogers, the other Defendant Directors, and other WinView noteholders and Preferred Stockholders.

98. ~~68.~~Graham Holdings controlled 83% of the Series B Preferred shares.

99. ~~69.~~All stock consideration paid to WinView in the ~~merger~~Merger would be distributed to the note holders and Preferred Stockholders, which included

multiple ~~board~~Board members.

100. ~~70.~~WinView's Common Stockholders would receive nothing for the platform and the patent portfolio developed by virtue of their nine-year investment. These "~~stubholders~~stub holders" would only receive a contractual right to a speculative share of

the allotted portion of the proceeds from future monetization of the patent portfolio, if they were paid at all.

101. ~~71.~~The ability to convert debt into publicly traded Torque shares was a paramount benefit that the defendant noteholders and Preferred Stockholders held but that was not shared by the Common Stockholders.

102. ~~72.~~The noteholders and those of the Preferred Stockholders who converted their shares into shares of Torque were able to benefit from a potential sale of Engine or could sell these shares on the public stock market. As such, the noteholders and Preferred Stockholders had an opportunity to profit from the new company's acquisition of WinView assets that did not exist for the Common Stockholders.

103. Defendants' Merger agreement was also designed to pay them a grossly disproportionate share of the total shares and value being paid to WinView. In total, with their various note holdings and the change of control payments they were entitled to receive, a capitalization table from WinView in December 2019 shows

Defendants (directly and indirectly through various vehicles) would receive $6,968,608.91 in Engine stock for their notes. In addition, based on cash deposit records, the Director Defendants loaned $300,000 more to WinView in December 2019, entitling them to $900,000 more in Engine stock. Finally, Defendants, including their spouses, relatives, and retirement accounts, controlled 59.4% of the preferred stock.

104. The premerger waterfalls showing the allocation of the merger proceeds showed that the preferred stockholders would be able to receive approximately $10 million of the merger proceeds, entitling defendants to 59% of those funds, or an additional $5.9 million. In total then, Defendants would realize $13.8 million of the total $35 million in merger consideration, while simultaneously leaving them with an equal or larger percentage of the residual stub units.

105. ~~73.~~Additionally, the Common Stockholders' (hereafter called "~~Stubholders~~Stub holders") interest in monetization of the patent portfolio was not guaranteed. Over a year after WinView originally planned to close litigation financing and file the patent litigation, Engine ~~has done~~did nothing. ~~Additionally, there was and remainsno guarantee that Engine can or will follow through with litigation financing, patent lawsuits, or maximize the patent portfolio in any way.~~

106. ~~74.~~Moreover, Engine retained the ability to sell the patent portfolio at its own discretion. Thus, it could sell the patent portfolio, along with the company,

prior to monetizing the patents, and leave the ~~Stubholders~~Stub holders without recourse or opportunity to realize ~~a~~any return on their investments.

107. ~~75.~~By the terms of the ~~merger~~Board-drafted Merger agreement, there is only one barrier to Engine completely eliminating Plaintiffs' potential recovery through the patent portfolio. Ostensibly, Engine can only do so with the consent of a supposed representative that was appointed by the Defendant Directors in the Merger documents to represent the interest of "~~Stubholders~~Stub holders" that received nothing in the Merger. This "representative" is tasked in the Merger document with protecting ~~"Stubholders~~

"Stub holders" by ensuring that Engine undertakes the promised reasonable efforts to monetize the entire patent portfolio, by demanding information from Engine on its efforts, and if Engine fails to fulfill its promises, by demanding return of the ownership of the patents to any entity controlled the ~~Stubholders~~Stub holders.

108. ~~76.~~However, the appointment of the securityholder representative to protect the "~~Stubholders~~Stub holders" was done by the Defendant Directors, and, like the Merger process, was a sham. The Board proposed the appointment of a Board member, defendant Jacoboski, as the representative. But Jacoboski has continuing conflicts of interest that materially impede his ability to represent the Common Stockholders.

109. ~~77.~~First, Jacoboski was a note holder and from the ~~merger~~Merger

received shares in Engine and thus has a direct conflict of interest in taking a position to enforce the rights of "~~Stubholders~~Stub holders" that would be detrimental to his interests as a holder of Torque stock.

110. ~~78.~~Second, on information and belief based on conversations with current WinView executives, Jacoboski elected to maintain his liquidation preference for his Preferred shares. This means ~~that for any shares Jacoboski held that became part of the stub,~~ he would receive a fixed payout per share from the first dollars of patent proceeds paid to the "~~Stubholders~~Stub holders" and then have no further upside. Jacoboski did not convert his ~~remaining WinView preferred stock~~ownership into Common stock that would have no cap on its upside. With an incentive only to get enough patent proceeds to repay

his liquidation preference, Jacoboski has no incentive to maximize the returns on the patents.

111. ~~79.~~The arrangement chosen by the Defendant Directors for WinView's Common Stockholders also stripped them of the organization and rights they held as shareholders. Unlike their status as shareholders in a Delaware corporation, as holders of a contractual right to some residual payment, they are entitled to none of the information rights and protection rights afforded shareholders. These residual interest holders do not know and have no way of getting, under Delaware corporate law, a list of the other members, and no way of communicating with each other.

Requests by shareholders for a cap table of the "Stub" have been summarily rejected. Despite purported voting rights to remove Jacoboski, only Jacoboski, as the representative, along with Engine, appears to know the identity of the residual interest holders or how to contact them. All these elements disadvantage and deprive the Common Stockholders of the value of their shares.~~80.Since the Merger, Engine has taken no visible actions to enforce the WinView patent portfolio. On~~ The refusal to provide a cap table or other information ~~and belief, based on public press and securities filings, Engine has not filed any patent infringement lawsuits. Further, it~~on the Merger vote also deprives Plaintiffs of the ability to ascertain who voted in favor of the Merger and the vote of the Defendant Directors along with their stock holdings for voting purposes.

112. Furthermore, Engine has taken specific actions that meet the definitions in the ~~merger~~Merger agreement as a "takeback triggering event" and has not remitted to WinView's Common Stockholders any licensing or other payments. Nor has Engine

provided any information to WinView's former Common Stockholders identifying any actions taken ~~seven months~~long after it represented to shareholders these efforts would commence.

113. ~~81.~~On information and belief, based on the absence of any announcement to the Common Stockholders to the contrary, Jacoboski has failed to

enforce promises to the Common Stockholders in the ~~merger~~Merger agreement or seek to enforce their rights in breach of his obligations as the representative and his fiduciary duty to the Common Stockholders.

114. ~~82.~~Jacoboski's bad faith and false loyalties notwithstanding, the Common Stockholders have still received an unfairly low benefit from the Merger because any monetization of the patent portfolio will only result in a distribution of 50% of the net recovery for WinView shareholders taxed as ordinary income, while the other fifty percent goes to Engine's shareholders.

THE MERGER SIGNIFICANTLY UNDERVALUED WINVIEW

115. ~~83.~~In justifying the ~~merger~~Merger proposal to the Common Stockholders, the Defendant Directors significantly undervalued WinView. Additionally, the consideration paid for WinView in the Merger was significantly less than the value of WinView's patents and platform.

116. ~~84.~~Leading up to and during the Merger negotiations, Rogers repeatedly indicated that WinView's patents alone had a value of at least $175 million. Yet, Rogers and the Defendant Directors agreed to a Merger which valued WinView at just $35 million.

117. ~~85.~~Furthermore, the $~~175~~ 35million was far below the true value of WinView based on the value of its software applications. WinView owned a paid-entry, game of skill platform synchronized with televised sports in the U.S. WinView's ~~board~~Board created and presented conservative projections showing

that WinView would break even at 120,000 users and net $100 Million for ~~every one~~everyone million users based on achieved KPI's (key performance indicators). These ~~board~~Board projections were based on over three years of marketing results and data~~,~~ and were confirmed by several gaming companies who analyzed WinView's results under NDAs.

118. ~~86.~~WinView's ~~board~~Board also knew that it could explore the possibility of selling WinView or WinView's patent portfolio to a third party or conduct an auction and possibly receive a higher value for WinView's assets. But the Defendant Directors failed to explore that option or obtain bids. Additionally, WinView could have explored ~~mergers~~Mergers or sales of its business and software application to synergistic buyers like gaming companies that could have promoted WinView to their customers, but the Defendant Directors refused to do so even when repeatedly recommended in writing by Lockton.

119. ~~87.~~Accordingly, WinView's ~~board~~Board possessed ample evidence that the price paid for WinView's assets was vastly below their true value or else failed to

take steps to determine if the value received in the Merger was the highest price possible for WinView's assets.

THE BOARD WAS CONFLICTED, DISHONEST AND FAILED TO FOLLOW PROPER PROCEDURES

120. ~~88.~~Rogers and the Defendant Directors acted in bad faith as they

pretended to vet the Merger and its terms by creating a sham "independent committee." The committee consisted of all ~~five board~~six Board members other than Rogers, ~~four~~five of whom were noteholders that ~~held~~controlled WinView's secured debt ~~in WinView~~, including Ratner, Jacoboski and Maas (as representative of Graham)~~.~~ and Goodroe Each stood to receive a benefit of Torque stock that would not be received by Common Stockholders.

121. ~~89.~~Maas was appointed chairman of the supposed committee and claimed that he negotiated the Merger agreement with Frankly and Torque and was representing WinView in all matters involving Rogers' conflict of interests as both Chairman of the Board of WinView and Chairman of the Board of Frankly. But in fact, Rogers had represented in a call to Lockton as early as November that he had negotiated the Merger.

122. ~~90.~~The ~~independent~~sham committee did not retain any independent advisors, consultants or other professional assess or vet the Merger terms ~~in light of~~considering the alternatives or provide a fairness opinion to WinView.

123. ~~91.~~Although Rogers claimed he would abstain from participation on the committee~~, he~~ and Maas assured shareholders this was the case, Rogers continued to control the company~~,~~ in seeking the merger over any other alternatives. For example, Rogers was involved in calls with ~~board~~Board members about ~~merger~~Merger issues, and members of the committee and WinView's corporate counsel acted at Rogers' direction in efforts to eliminate other sources of funding which were alternative to his own personal interests.

124. ~~92.For example, on~~On December 4, 2019, after Lockton prepared a

memo to WinView's ~~board~~Board on December 1, WinView's corporate counsel, Damien Weiss called Lockton and said he had just had a conversation with Rogers. He told Lockton that Rogers had said the ~~board~~Board was "furious," and unless by Friday of that week Lockton: (a) executed a signed a consulting agreement to represent ENGINE in the patent litigation at a 30% reduction in his previous salary; (b) Lockton and his family signed a release of the ~~board~~Board from all fiduciary obligations and agreement not to communicate with fellow shareholders, or assist them in any way in matters relating to the ~~board~~Board's actions in this financing; and (c) sign a proxy giving the ~~board~~Board the right to vote his and his family shares in favor of selling WinView to Rogers' Company, and threatened that "the ~~board~~Board would immediately foreclose on the patents, and pursue the patent litigation on their own behalf." Weiss then emailed Lockton's lawyer execution copies of these three documents on Wednesday for execution and Weiss repeated in writing the ~~board~~Board's threat of foreclosure and seizure of the patents if the ~~board~~Board demands were not met within 48 hours. Rogers and the company later deliberately mischaracterized the release they ~~required in later emails~~demanded in formal disclosure documents as "a non-disclosure agreement."

125. ~~93.~~After the ~~merger~~Merger announcement, Rogers and the Defendant Directors regularly shared false and misleading information with WinView's shareholders on shareholder calls and emails while concealing other material details.

This bad faith behavior included representations that Torque and Frankly had large and growing revenues, that those revenues would fund patent lawsuit and licensing and WinView's business operations and provide opportunities for its software platforms. They exaggerated descriptions of Torque and Frankly's business and valuation. They also represented that WinView was receiving a fair and adequate value for the company, that WinView had no adequate alternative financing options or had explored all such options and made misleading threats that WinView's secured noteholders (including ~~board~~Board members) could foreclose and take the patents leaving the company with nothing.

126. ~~94.~~When the WinView ~~board~~Board sent the Information Statement to all ~~of~~ WinView shareholders on March 30, 2020, it reiterated many of the misrepresentations made informally to shareholders.

127. ~~95.~~For example, the Information Statement asserted that the Merger was the best alternative because WinView had made prior unsuccessful fundraising efforts. The Information Statement said: "[t]hroughout the period from October 2018

through early October 2019, WinView management arranged meetings with at least 15 potential investors to discuss a significant minority investment in WinView...."

128. ~~96.~~This assertion was false. From October 2018 through October 2019, Rogers obtained only five preliminary pitches, three for litigation funding, and just

one management arranged meeting with ATT, which was specifically limited to sponsorship. The Board had failed to consider or pursue alternative funding options.

129. ~~97.~~The Defendant Directors also claimed in the Information Statement that:

> [F]rom December 19, 2019 through December 23, 2019, WinView met with at least four financing firms to discuss potential financing to fund litigation and licensing activities in the event WinView were to continue as a standalone company. These meetings were arranged by Dave Lockton and WinView met with these firms at Dave Lockton's request. None of the firms that management met with expressed an interest in providing equity capital sufficient to fund the company beyond litigation and licensing, which financing would have been insufficient for WinView to continue to operate on a standalone basis, nor pay off WinView's substantial outstanding debt from its convertible notes, which would remain unpaid and past due and in default.

130. ~~98.~~The above assertion was false. No meetings were held by the committee with any of the six companies who presented Letters of Intent. Furthermore, one company that had been in communication with WinView, specifically indicated in writing to WinView's ~~board~~Board its willingness to fund up to $10 million in operating expenses beyond licensing and litigation costs. Each of the remaining five

companies expressed similar interest to Lockton. The committee refused to allow the required conversation with patent litigation counsel, with full knowledge that refusal would prevent funders from submitting a term sheet.

131. ~~99.~~In addition, during this same period, ~~Rogers~~instead of refraining from participation in the transaction as required, Rogers directly inserted himself in

the ~~merger~~Merger process to criticize and actively eliminate alternatives to the ~~merger~~Merger. Rogers, not the purported independent committee, had calls with two of the prospective litigation funding firms. In contradiction to the Defendant Directors' representations in the Information Statement above, each litigation funder separately related to Lockton that they had told Rogers they were interested and had sought an agreement to allow them to talk to WinView's contingent fee counsel, a standard due diligence practice.

132. ~~100.~~Rogers interfered with and eliminated a third litigation funder. Rogers responded to an email from Will Marra at Validity Finance on Jan 15, ~~2020~~2020, in which Marra followed up on an NDA. Rogers told Marra that WinView's "patent counsel" had "heavily advised that this would not be a good time to engage in a discussion on patent litigation financing." But given the pending ~~merger~~Merger and the Defendant Directors' representations, WinView's ~~board~~Board should have been actively considering ~~merger~~Merger alternatives that would provide greater benefit to the shareholders. Instead, the independent committee refused to allow the litigation funder's diligence to go forward.

133. ~~101.~~Moreover, Rogers' assertion that he was following advice from "patent litigation counsel" was a false statement, as observed by Lockton when present during Rogers' call with WinView's patent litigation counsel.

134. ~~102.~~Lockton immediately brought Rogers' January 15, 2020 email to

the attention of WinView's ~~board~~Board in an email that same day. Lockton expressed concern that Rogers, who was conflicted by his ownership and chairmanship of Frankly, was directly inserting himself into the ~~merger~~Merger process and terminating alternatives and that other litigation funders had dropped out due to WinView's inaction.

135. ~~103.~~The Defendant Directors made no response and took no actions to respond either to Lockton's email or Roger's interference in ~~merger~~Merger alternatives.

136. ~~104.~~The Defendant Directors also claimed in the Information Statement that:

> [N~~[~~]one of the litigation financing companies have performed due diligence under signed NDA with WinView, and that [a]ll of the companies that expressed a general interest in potentially providing litigation financing to WinView also indicated that they would be very willing to engage in such financing discussions with Engine Media post-Merger if Engine Media decided that would be desirable.

137. ~~105.~~Jacoboski was aware of, and concealed the fact that WinView's ~~board~~Board had, at the time of Merger discussions, received six executed letters of intent from litigation finance firms specializing in financing companies with patent portfolios who had signed nondisclosure agreements. Jacoboski, despite knowing of the

multiple letters of intent received by the ~~board~~Board, directly emailed all WinView stakeholders on December 11, ~~2019~~2019, and made misleading representations to shareholders that no other investor groups evidenced any actionable interest, "even

informally," in WinView.

138. ~~106.~~To further coerce shareholders not to oppose the ~~merger~~Merger, certain Defendants emailed shareholders on December 10 and 11 stating that the alternative to the ~~merger~~Merger path approved by the ~~board~~Board would be for the noteholders to foreclose on WinView's assets, including its patents, wiping out the stockholders. This threat was reiterated by Acting CEO Alan Pavlish, by Jacoboski, by Maas, and by the company's lawyers all on information and belief at the direction of Rogers.

139. ~~107.~~The Defendant Directors made threats to foreclose on WinView's patents with full knowledge that such threats represented a conflict of interest between their status as noteholders acting for personal benefit and as ~~board~~Board members of WinView with fiduciary duties to act in the best interest of WinView and its shareholders. Further, the Defendant Directors threatened foreclosure on debt with interest of approximately $~~20~~25 million while simultaneously representing that the value of WinView exceeded $175 million.

140. ~~108.~~The Defendant Directors failed to properly conduct due diligence into Torque/Frankly, were grossly negligent in doing such due diligence, or made misleading representations regarding such diligence. Jacoboski, a former securities analyst, represented in a December 11, 2019 email that Torque and Frankly

"generate combined run-rate revenues of approximately $30 million that are growing rapidly." The Information Statement claimed that, as of the time of the

Business Combination Agreement, "revenues for Torque and Frankly … were projected to be approximately $45 to $50 million." Both statements were deliberately misleading and inaccurate.

141. ~~109.~~Frankly and Torque's financial documents revealed that each company's respective auditors had expressed significant doubt about their respective ability to continue as a going concern. Torque's revenues as of its year end August 31, ~~2019~~2019, were only $4.2 million but ~~costs~~expenses were $18 million, leaving a $14 million loss. What Torque did not disclose publicly until July 2020, after the ~~merger~~Merger closed, but that WinView's directors should have discovered in diligence, is that Torque's finances for the six months after August 31, ~~2019~~2019, were even worse. Torque's six-month revenues after August 31 declined from $3.2 million the prior year to a paltry $1.4 million while its expenses had climbed from $5.6 million to $12 million for the same period, leaving a staggering $10.6 million loss for just six months.

142. ~~110.~~Frankly's financials were equally abysmal. Its results for the three and nine months ended September 30, ~~2019~~2019, showed it with revenues for the nine-month period of only $9.9 million, a tiny fraction of the $30 to $50 million in revenues promised by the Defendant Directors even when combined with Torque's meager

revenues. Absent a massive, one-time debt forgiveness, Frankly too had massive,

multi- million-dollar ongoing losses from operations.

143. ~~111.~~In addition, the business advantages of Torque touted by the Defendant Directors before the ~~merger~~Merger in fact performed horribly. Torque's Eden Games' division's latest game had dropped to a ranking of 205 for all free mobile racing themed games, generating revenues of $10,000 a month. UMG Gaming, the highly touted Esports gaming platform, generated just $26,585 in revenues in the two months since Torque acquired it. The highly touted "Let's Go Racing" televised esports subsidiary had virtually no revenues with $6 million in operating costs and was ultimately given to the employees in an attempt to stem mounting operational losses.

144. ~~112.~~The delayed financials ~~released after the merger~~on the actual state of the company before the close of the Merger was or should have been known by the Defendant Directors and the purported independent committee through standard due diligence. When released after the close Merger, showed matters were even worse. On September 21, 2020, Engine disclosed that its interim consolidated financials for the nine months ended May 31, 2020. These showed Engine with only $11 million in current assets and $39 million in current liabilities and disclosed a working capital deficiency of

$15,828,608. Engine also reported only $3.9 million in total revenues during that period against $26.3 million in expenses for a $22.3 million loss.

145. ~~113.~~The Defendant Directors knew or should have known, in the exercise of reasonable diligence, what the true state of the merged entity would be and disclosed this information to WinView's shareholders or cancelled the ~~merger~~Merger.

146. ~~114.~~Notably, Hank Ratner, now on the Board of Engine, touted the esports racing divisions in an Engine press release on August 13, 2020, stating, "Engine Media is undoubtedly a market leader when it comes not only to racing esports but real-world motor sports." However, Ratner, as a ~~board~~Board member of Engine, well understood that Engine's esports business had paltry revenues and no presence whatsoever in real automobile racing.

147. ~~115.~~WinView's ~~board~~Board approved the Merger on March 11, of 2020.

148. ~~116.~~By keeping WinView in a financially perilous condition, ignoring investment opportunities, threatening foreclosure on the patents, and failing to utilize best efforts in seeking out alternative financing or alternative opportunities for financing or sale, Rogers, Ratner, Jacoboski, Goodroe and Maas (as representative of Graham) were able to unilaterally force WinView to enter ~~into~~ the Merger.

THE MERGER WAS SUBJECT TO ENTIRE FAIRNESS

149. ~~117.~~Rogers was the controlling shareholder of WinView prior to and during the Merger. Rogers had ~~*defacto*~~*de facto* control over WinView as evidenced

by, among other things: (1) his effective control over the sham committee that was tasked with

vetting the Merger despite having a conflict of interest and claiming he abstained from the process; (2) his involvement in eliminating alternatives to the Merger; (3) his complete control over the C financing round and failure to in good faith attempt to secure alternative financing; (4) his interference with Lockton's efforts to secure financing; and (5) his repeated threats of foreclosure on WinView's patents in an effort to force shareholders to agree to personally favorable terms for loans and eventually the Merger; (7) his refusal to raise funds or engage with investors unless he was granted more favorable investment terms and additional incentives. All supported by the board without opposition.

150. ~~118.~~As ~~*defacto*~~*de facto* controlling shareholder, Rogers had the power and exercised said power, to force WinView into entering ~~into~~ the Merger that did not reflect the fair value of WinView's stock and cut out WinView's Common Stockholders from any consideration while benefitting Rogers, Ratner, Jacoboski and Maas (as representative of Graham) and the other note holders and Preferred Stockholders.

151. ~~119.~~The Merger constitutes a conflicted transaction because Rogers stands on both sides of the transaction. Rogers is the chairman of the ~~board~~Board of Frankly, one of the entities involved in the Merger other than WinView.

152. ~~120.~~Additionally, as a result of the Merger, Rogers became the Executive Chairman of the ~~board~~Board of directors of Engine Media, the new overarching entity.

153. ~~121.~~Rogers also derived a unique benefit from the Merger, not shared with the Common Stockholders. Rogers, as a noteholder and Preferred Stockholder,

was

eligible to convert his secured loan and WinView Preferred shares directly into Torque shares. WinView's Common Stockholders, including the plaintiffs, did not share this right.

154. ~~122.~~As such, the transaction is subject to the exacting entire fairness standard under which Defendants must establish both fair price and fair dealing.

155. ~~123.~~In the alternative, entire fairness is the appropriate standard of review because WinView's Board operated as a controller of WinView. The Board, consisting of Thomas Rogers, Hank Ratner, Bryan Jacoboski, Steve Goodroe, Jake Maas (as Graham's representative), and Eric Vaughn, a direct report to Rogers, acted as a single unit and controlled WinView both generally and with respect to the Merger transaction. The Board routinely voted together, invested together, and manipulated financing efforts to secure more control and equity in WinView.

156. Each member of the Board was conflicted in the Merger transaction and forced the Merger through to secure their conflicted benefit. As for Board member Vaugh, he was totally dependent on Rogers for his job and his position on the Board.

157. Further in the alternative, entire fairness is also the appropriate standard of review here because a majority of the directors on WinView's ~~board~~Board were interested in the outcome of the transactions. Directors Thomas Rogers, Hank Ratner, Bryan Jacoboski, Steve Goodroe and Jake Maas made up a majority of the

directors on WinView's ~~board~~Board. Each, as a noteholder, was self-interested in the Merger and realized a benefit not shared by the Common Stockholders of WinView.

ENGINE'S FINANCIAL FAILURE AND REFUSAL TO PURSUE MONETIZATION OF PATENTS

158. ~~124.~~Engine has failed to raise money sufficient to make it solvent or bring in profits since the Merger sufficient to fund and initiate the patent litigation.

159. ~~125.~~Based on Engine's public financials, ~~it is clear that~~ Engine is nothing like the opportunity represented by Rogers, is suffering extensive operating losses on declining income, and its pre-~~merger~~Merger representations regarding its ability to raise funds and adequately pursue patent litigation were entirely false.

160. ~~126.~~In the Information Statement, the Defendant Directors advocated for the Merger on the ground that Engine would "fund out of pocket ~~cash~~ expenses of the [patent] litigation" on behalf of WinView and even that Engine was obligated to do so.

161. ~~127.~~Instead, Engine failed to comply with its promises to WinView's shareholders. ~~Engine has done nothing. It has filed no~~It failed to file any lawsuits~~,~~ ~~entered into no~~ for 14 months, has never announced a licensing deals, and has never made ~~no~~any payments to WinView's Common Stockholders.

162. ~~128.~~The Merger provided WinView's shareholders the ability to seek a return of the control, ownership, and financing of the patent portfolio if certain

events occurred following the closing. These events are called "takeback triggering events."

163. ~~129.~~One takeback triggering event is the failure by Engine to use commercially reasonable terms to prosecute, enforce or take similar actions to monetize the patent portfolio.

164. ~~130.~~Under the terms of the Merger, Engine was responsible for prosecuting, enforcing or otherwise seeking to monetize the patent portfolio and compensate WinView's shareholders, including those who were divested of their interest ~~as a result~~because of the Merger.

165. ~~131.~~For example, the "takeback" is triggered by ". . . the enforcement efforts…being hampered, or becoming reasonably likely to cease or be materially hampered, ~~as a result~~because of any failure of Engine to pay expenses of Enforcement Counsel; which … occur following the 6 month anniversary of the closing." The ~~merger~~Merger closed May 11, 2020.

166. ~~132.~~Instead, Engine ~~has~~ entirely failed to prosecute, enforce, or generate the $6-

$10 million required to take any other actions to monetize the patent portfolio for more than 14 months.

167. ~~133.~~This monetization is the only means by which the Plaintiffs and Common Stockholders can see ~~even a partial~~a return on their investments in WinView.

168. ~~134.~~Due to Engine's failure to fulfill its obligations under the Merger, the Securityholder Representative, Bryan Jacoboski, should have complied with his duty to act for the Common Stockholders to enforce the Merger's "takeback" provision and request that the patent portfolio be turned over to an entity that will, in fact, monetize the patents.

169. ~~135.~~However, as described herein, Jacoboski has an actual conflict of interest in acting for the WinView Common Stockholders in that, like the other Defendants, he owns Torque stock and has a conflict of interest against taking an act that could decrease the value of Torque stock, particularly while some of his Torque stock is in the lock-up period, by depriving Engine of direct control of WinView's patent portfolio.

170. ~~136.~~Engine's failure to file timely patent infringement litigation ~~deprives the Plaintiffs of even a chance of payment on their contractual right to patent proceeds~~caused damages claims to be lost to the statute of limitations and its failure to honor the "takeback" requirements of the Merger agreement deprived the Plaintiffs of the benefits of a fulsome assertion of WinView's patents against all infringers, as well as the increased recovery from their ownership of common stock in WinView over the promised contractual payments.

171. ~~137.~~Plaintiffs have not received any return on their Common WinView shares.

First Count: ***(Breach of Fiduciary Duty Against Thomas Rogers)***

172. ~~138.~~Plaintiffs incorporate each and every allegation set forth above as though fully set forth herein.

173. ~~139.~~As WinView's Chairman, ~~board~~Board member and ~~defacto~~*de facto* controlling shareholder, Rogers had a fiduciary duty of loyalty to WinView's shareholders.

174. ~~140.~~Rogers breached his duty of loyalty to Plaintiffs when he proposed, orchestrated, advocated for, and ultimately ensured the ~~Merger's~~ approval of the Merger which was not entirely fair to WinView's shareholders.

175. ~~141.~~The Merger did not provide fair value for WinView and WinView's Common Stockholders, including Plaintiffs, were completely divested of their shares.

176. ~~142.~~Rogers was aware that the Merger did not provide fair value for WinView and that WinView's Common Stockholders, including Plaintiffs, would be completely divested of their shares.

177. ~~143.~~Rogers proposed, orchestrated, advocated for, and ultimately ensured the Merger's approval because he received a unique benefit. First, his ability to convert his notes and some Preferred WinView shares into Torque shares. Second, the ability to save Frankly and Torque from insolvency by leveraging the huge potential of Engine's ownership of WinView's patents and platform which added a potential $175 million and $35 million in value to otherwise worthless

entities. That benefit was not shared by WinView's Common Stockholders.

178. ~~144.~~Rogers also proposed, orchestrated, advocated for, and ultimately ensured the Merger's approval because he was Chairman of the Board of Frankly, Inc., one of the other merged entities, and therefore had a presence and interests on both sides of the Merger transaction.

179. ~~145.~~Rogers, through his influence and control over WinView's ~~board~~Board and his role as Executive Chairman of WinView was the ~~*defacto*~~*de facto* controlling shareholder of WinView.

180. ~~146.~~Rogers exercised control over WinView and the Board by the following: refusing to seek new capital unless granted more incentives and beneficial investment terms; threatening to cancel investor presentations if not given more power and compensation; threatening to let the company run out of money and then lead a cram down if not offered additional money and compensation and by demanding control over marketing and operational decision making.

181. Rogers controlled and orchestrated an unfair Merger process, in which he and the ~~board~~Board purported to take steps to protect WinView's shareholders but in fact did not.

182. ~~147.~~Rogers further breached his duty of loyalty to Plaintiffs when he failed to consider or evaluate reasonable alternatives to the Merger, which alternatives would not have completely divested Plaintiffs of their shares.

183. ~~148.~~As a result of Rogers' breach, Plaintiffs have suffered harm in the amount of the fair market value of their uncompensated shares of WinView stock.

Second Count: ***(Breach of Fiduciary Duty Against All Defendants)***

184. ~~149.~~Plaintiffs incorporate each and every allegation set forth above as though fully set forth herein.

185. ~~150.~~As members of WinView's ~~board~~Board, Defendants had a fiduciary duty of loyalty to WinView's shareholders.

186. Defendants were a controlling and self-interested group of shareholders of WinView who exercised their influence and control over WinView both through the ability to control 51% of the company and as a *de facto* control group. Defendants operated as a single bound unit (the "Board") as they orchestrated the fifth bridge loan to seize control of WinView, collectively ignored litigation financing and other capital raising opportunities, threatened to use their position as secured lenders to foreclose on WinView's patents to command adherence to their prerogatives, and ultimately forced through the Merger.

187. ~~151.~~Defendants breached their duties of loyalty to Plaintiffs when they approved the Merger (excepting Rogers who acted as set forth above) which was not entirely fair to WinView's shareholders.

188. ~~152.~~The Merger did not provide fair value for WinView and WinView's Common Stockholders, including Plaintiffs, were completely divested

of their shares.

189. ~~153.~~Defendants were aware that the Merger did not provide fair value for WinView and that WinView's Common Stockholders, including Plaintiffs, would be completely divested of their shares.

190. ~~154.~~Defendants approved the Merger because they received a unique benefit, their ability to convert their notes and Preferred WinView shares into Torque shares. That benefit was not shared by the Common Stockholders.

191. ~~155.~~Defendants conducted an unfair process, in which they purported to take steps to protect WinView's shareholders but in fact did not.

192. ~~156.~~Defendants further breach their duties of loyalty to Plaintiffs when they failed to consider or evaluate reasonable alternatives to the Merger, which alternatives would not have ~~completed~~completely divested Plaintiffs of their shares.

193. ~~157.~~As a result of Defendants' breach, Plaintiffs have suffered harm in the amount of the fair market value of their uncompensated shares of WinView stock.

Third Count: ***(Civil Conspiracy Against All Defendants)***

194. ~~158.~~Plaintiffs incorporate each and every allegation set forth above as though fully set forth herein.

195. ~~159.~~Defendants had a meeting of the minds and conspired to breach their fiduciary duty of loyalty to Plaintiffs by forcing through the unfair and

inequitable Merger, regardless of the position of WinView's other shareholders.

196. ~~160.~~The Merger did not provide fair value for WinView and WinView's Common Stockholders, including Plaintiffs, were completely divested of their shares.

197. ~~161.~~Defendants unlawfully devalued WinView, threatened WinView shareholders to coerce their assent or quell resistance and approved the Merger in furtherance of their conspiracy.

198. ~~162.~~As a result of Defendants' conspiracy, Plaintiffs have suffered harm in the amount of the fair market value of their uncompensated shares of WinView stock.

Fourth Count: *(Unjust Enrichment Against All Defendants)*

199. Plaintiffs incorporate each and every allegation set forth above as though fully set forth herein.

200. The Merger was unfair to Plaintiffs and was the product of breaches of fiduciary duty by all Defendants.

201. The Merger did not provide fair value for WinView and WinView's Common Stockholders, including Plaintiffs, were completely divested of their shares.

202. The Merger provided improper, disproportionate, and valuable benefits to Defendants, because Defendants received a unique benefit, their ability to convert

their notes and Preferred WinView shares into Torque shares. That benefit was not shared by the Common Stockholders.

203. Defendants continue to be the direct recipients of the improper, disproportionate, and valuable benefits flowing from the Merger.

204. Defendants were not justified in approving the Merger.

205. It would be unconscionable to permit Defendants to retain the benefits they received because of the Merger.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment against Defendants, jointly and severally, as follows:

A. Rescinding the Merger and setting it aside and returning all of WinView's assets to WinView[3];

~~B.~~

B. Awarding compensatory damages against Defendants, individually and

[3] Rescission is particularly appropriate here because WinView is a wholly-owned subsidiary of Engine whose limited operations have not been merged into Engine's. WinView's main asset are its freely transferable patents. Further, the Business Combination Agreement explicitly recognized that rescission of this Merger was available and possible and provided that under certain circumstances, Torque must transfer WinView's patents to a company designated by the stubholders. Lastly, rescissory damages would be inadequate to replace non-fungible patents created through the lifetime efforts of Plaintiff Lockton.

severally, in an amount to be determined at trial, together with pre-judgment and post-judgment interest at the maximum rate allowable by law, arising from the Merger;

C. Awarding Plaintiffs costs and disbursements and reasonable allowances for fees of Plaintiffs' counsel and experts and reimbursement of expenses; and

D. Granting Plaintiffs such other and further relief as the Court may deem just and proper.

Respectfully Submitted,

WHITEFORD, TAYLOR & PRESTON LLC

/s/ Daniel A. Griffith
Daniel A. Griffith, Esquire (#4209)
The Renaissance Centre 405 N.
King Street, Suite 500 Wilmington,
DE 19801 Telephone: (302)
357-3254
Facsimile: (302) 357-3274
dgriffith@wtplaw.com

Attorneys for David Lockton and Kathy Lockton, as Trustees of the Lockton Family Trust 2019, C. Gordon Wade, David P. Hanlon, Bartley Fritzsche, Richard A. Lockton, Jennifer Barker, Dr. Frederick Hendricks, and Mary W. Marshall

Dated: July 8, 2021

~~Dated: January 21, 2021~~

Document comparison by Workshare 9.5 on Thursday, July 8, 2021 2:56:10 PM

Input:	
Document 1 ID	file://H:\DGriffith\7.8.2021\2021.01.20 Lockton Complaint (FINAL) (534pm).pdf
Description	2021.01.20 Lockton Complaint (FINAL) (534pm)
Document 2 ID	file://H:\DGriffith\7.8.2021\2021.07.07 Amended Complaint Draft (FINAL).pdf
Description	2021.07.07 Amended Complaint Draft (FINAL)
Rendering set	Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	638
Deletions	406
Moved from	9
Moved to	9
Style change	0
Format changed	0
Total changes	1062

IN THE COURT OF CHANCERY IN THE STATE OF DELAWARE

DAVID LOCKTON AND KATHY LOCKTON AS TRUSTEES OF THE LOCKTON FAMILY TRUST 2019 C. GORDON WADE, DAVID P. HANLON, BARTLEY FRITZSCHE, RICHARD A. LOCKTON, JENNIFER BARKER, DR. FREDERICK HENDRICKS, and MARY W. MARSHALL	)	
Plaintiffs,	)	**C.A. No. 2021-0058**
THOMAS S. ROGERS, HANK J. RATNER, R. BRYAN JACOBOSKI, JAKE MAAS, STEVE GOODROE, and GRAHAM HOLDINGS COMPANY	)	
Defendants.	)	

UNSWORN DECLARATION OF DAVID LOCKTON IN SUPPORT OF THE FIRST AMENDED VERIFIED COMPLAINT FOR BREACH OF FIDUCIARY DUTIES PURSUANT TO 10 DEL.C. §3927

I, DAVID LOCKTON, hereby declare as follows:

1. I am a Plaintiff in the above-captioned action. I make this affidavit and Verification pursuant to Court of Chancery Rule 3(aa) in connection with the filing of the First Amended Verified Complaint (the "Amended Complaint") in the above-captioned action.

2. I have reviewed the Amended Complaint. To the extent the allegations in the Amended Complaint concern me, or matters of which I have direct personal knowledge, I know those allegations to be true and correct.

3. I hereby verify, on personal knowledge, the contents of paragraphs 1-29, 31-50, 52-87, 89, 93-109, 111-171 of the Amended Complaint.

4. To the extent the allegations of the Amended Complaint concern the actions of parties other than me, or matters of which I do not have direct personal knowledge, I believe those allegations to be true and correct.

I DECLARE under penalty of perjury under the laws of Delaware that the foregoing is true and correct.

Executed on the 7 day of July, 2021.

David B. Lockton (Printed Name)

(Signature)

IN THE COURT OF CHANCERY IN THE STATE OF DELAWARE

DAVID LOCKTON AND KATHY LOCKTON AS TRUSTEES OF THE LOCKTON FAMILY TRUST 2019 C. GORDON WADE, DAVID P. HANLON, BARTLEY FRITZSCHE, RICHARD A. LOCKTON, JENNIFER BARKER, DR. FREDERICK HENDRICKS, and MARY W. MARSHALL	)	
Plaintiffs,	)	**C.A. No. 2021-0058**
THOMAS S. ROGERS, HANK J. RATNER, R. BRYAN JACOBOSKI, JAKE MAAS, STEVE GOODROE, and GRAHAM HOLDINGS COMPANY	)	
Defendants.	)	

UNSWORN DECLARATION OF KATHY LOCKTON IN SUPPORT OF THE FIRST AMENDED VERIFIED COMPLAINT FOR BREACH OF FIDUCIARY DUTIES PURSUANT TO 10 DEL.C. §3927

I, KATHY LOCKTON, hereby declare as follows:

1. I am a Plaintiff in the above-captioned action. I make this affidavit and Verification pursuant to Court of Chancery Rule 3(aa) in connection with the filing of the First Amended Verified Complaint (the "Amended Complaint") in the above-captioned action.

2. I have reviewed the Amended Complaint. To the extent the allegations in the Amended Complaint concern me, or matters of which I have direct personal knowledge, I know those allegations to be true and correct.

3. I hereby verify, on personal knowledge, the contents of paragraphs 1-34, 36-47, 49-58, 60-63, 65-71, 73, 74, 78-87, 89, 93-109, 111, 113-171 of the Amended Complaint.

4. To the extent the allegations of the Amended Complaint concern the actions of parties other than me, or matters of which I do not have direct personal knowledge, I believe those allegations to be true and correct.

I DECLARE under penalty of perjury under the laws of Delaware that the foregoing is true and correct.

Executed on the 7 day of July, 2021.

Kathy A. Lockton (Printed Name)

Kathy A. Lockton (Signature)

IN THE COURT OF CHANCERY IN THE STATE OF DELAWARE

DAVID LOCKTON AND KATHY LOCKTON AS TRUSTEES OF THE LOCKTON FAMILY TRUST 2019 C. GORDON WADE, DAVID P. HANLON, BARTLEY FRITZSCHE, RICHARD A. LOCKTON, JENNIFER BARKER, DR. FREDERICK HENDRICKS, and MARY W. MARSHALL	)	
Plaintiffs,	)	**C.A. No. 2021-0058**
THOMAS S. ROGERS, HANK J. RATNER, R. BRYAN JACOBOSKI, JAKE MAAS STEVE GOODROE, and GRAHAM HOLDINGS COMPANY	)	
Defendants.	)	

UNSWORN DECLARATION OF C. GORDON WADE IN SUPPORT OF THE FIRST AMENDED VERIFIED COMPLAINT FOR BREACH OF FIDUCIARY DUTIES PURSUANT TO 10 DEL.C. §3927

I, C. GORDON WADE, hereby declare as follows:

1. I am a Plaintiff in the above-captioned action. I make this affidavit and Verification pursuant to Court of Chancery Rule 3(aa) in connection with the filing of the First Amended Verified Complaint (the "Amended Complaint") in the above-captioned action.

2. I have reviewed the Amended Complaint. To the extent the allegations in the Amended Complaint concern me, or matters of which I have direct personal knowledge, I know those allegations to be true and correct.

3. I hereby verify, on personal knowledge, the contents of paragraphs 23-28, 31-35, 45, 60, 73, 74, 82 and 93 of the Amended Complaint.

4. To the extent the allegations of the Amended Complaint concern the actions of parties other than me, or matters of which I do not have direct personal knowledge, I believe those allegations to be true and correct.

I DECLARE under penalty of perjury under the laws of Delaware that the foregoing is true and correct.

Executed on the 7th day of JULY, 2021.

C. GORDON WADE (Printed Name)

C Gordon Wade (Signature)

IN THE COURT OF CHANCERY IN THE STATE OF DELAWARE

DAVID LOCKTON AND KATHY LOCKTON AS TRUSTEES OF THE LOCKTON FAMILY TRUST 2019 C. GORDON WADE, DAVID P. HANLON, BARTLEY FRITZSCHE, RICHARD A. LOCKTON, JENNIFER BARKER, DR. FREDERICK HENDRICKS, and MARY W. MARSHALL	)	
Plaintiffs,	)	**C.A. No. 2021-0058**
THOMAS S. ROGERS, HANK J. RATNER, R. BRYAN JACOBOSKI, JAKE MAAS, STEVE GOODROE, and GRAHAM HOLDINGS COMPANY	)	
Defendants.	)	

UNSWORN DECLARATION OF DAVID P. HANLON IN SUPPORT OF THE FIRST AMENDED VERIFIED COMPLAINT FOR BREACH OF FIDUCIARY DUTIES PURSUANT TO 10 DEL.C. §3927

I, DAVID P. HANLON, hereby declare as follows:

1. I am a Plaintiff in the above-captioned action. I make this affidavit and Verification pursuant to Court of Chancery Rule 3(aa) in connection with the filing of the First Amended Verified Complaint (the "Amended Complaint") in the above-captioned action.

2. I have reviewed the Amended Complaint. To the extent the allegations in the Amended Complaint concern me, or matters of which I have direct personal knowledge, I know those allegations to be true and correct.

3. I hereby verify, on personal knowledge, the contents of paragraphs _ 4, and 58 _____ of the Amended Complaint.

4. To the extent the allegations of the Amended Complaint concern the actions of parties other than me, or matters of which I do not have direct personal knowledge, I believe those allegations to be true and correct.

I DECLARE under penalty of perjury under the laws of Delaware that the foregoing is true and correct.

Executed on the 7th day of JULY, 2021.

DAVID HANLON (Printed Name)

(Signature)

IN THE COURT OF CHANCERY IN THE STATE OF DELAWARE

DAVID LOCKTON AND KATHY LOCKTON AS TRUSTEES OF THE LOCKTON FAMILY TRUST 2019 C. GORDON WADE, DAVID P. HANLON, BARTLEY FRITZSCHE, RICHARD A. LOCKTON, JENNIFER BARKER, DR. FREDERICK HENDRICKS, and MARY W. MARSHALL	)	
Plaintiffs,	)	**C.A. No. 2021-0058**
THOMAS S. ROGERS, HANK J. RATNER, R. BRYAN JACOBOSKI, JAKE MAAS, STEVE GOODROE, and GRAHAM HOLDINGS COMPANY	)	
Defendants.	)	

UNSWORN DECLARATION OF BARTLEY FRITZSCHE IN SUPPORT OF THE FIRST AMENDED VERIFIED COMPLAINT FOR BREACH OF FIDUCIARY DUTIES PURSUANT TO 10 DEL.C. §3927

I, BARTLEY FRITZSCHE, hereby declare as follows:

1. I am a Plaintiff in the above-captioned action. I make this affidavit and Verification pursuant to Court of Chancery Rule 3(aa) in connection with the filing of the First Amended Verified Complaint (the "Amended Complaint") in the above-captioned action.

2. I have reviewed the Amended Complaint. To the extent the allegations in the Amended Complaint concern me, or matters of which I have direct personal knowledge, I know those allegations to be true and correct.

3. I hereby verify, on personal knowledge, the contents of paragraphs _1, 7, 18, 19, 21, 24, 25, 74, 82, 84, 86, 100, 102, 125, 137, 138, 139, 140_ _____ of the Amended Complaint.

4. To the extent the allegations of the Amended Complaint concern the actions of parties other than me, or matters of which I do not have direct personal knowledge, I believe those allegations to be true and correct.

I DECLARE under penalty of perjury under the laws of Delaware that the foregoing is true and correct.

Executed on the 7th day of July, 2021.

Bartley Fritzsche (Printed Name)

(Signature)

EFiled: Jul 08 2021 05:07PM EDT
Transaction ID 66750900
Case No. 2021-0058-SG

IN THE COURT OF CHANCERY IN THE STATE OF DELAWARE

DAVID LOCKTON AND KATHY LOCKTON AS TRUSTEES OF THE LOCKTON FAMILY TRUST 2019 C. GORDON WADE, DAVID P. HANLON, BARTLEY FRITZSCHE, RICHARD A. LOCKTON, JENNIFER BARKER, DR. FREDERICK HENDRICKS, and MARY W. MARSHALL	)	
Plaintiffs,	)	**C.A. No. 2021-0058**
THOMAS S. ROGERS, HANK J. RATNER, R. BRYAN JACOBOSKI, JAKE MAAS, STEVE GOODROE, and GRAHAM HOLDINGS COMPANY	)	
Defendants.	)	

UNSWORN DECLARATION OF RICHARD LOCKTON IN SUPPORT OF THE FIRST AMENDED VERIFIED COMPLAINT FOR BREACH OF FIDUCIARY DUTIES PURSUANT TO 10 DEL.C. §3927

I, RICHARD LOCKTON, hereby declare as follows:

1. I am a Plaintiff in the above-captioned action. I make this affidavit and Verification pursuant to Court of Chancery Rule 3(aa) in connection with the filing of the First Amended Verified Complaint (the "Amended Complaint") in the above-captioned action.

2. I have reviewed the Amended Complaint. To the extent the allegations in the Amended Complaint concern me, or matters of which I have direct personal knowledge, I know those allegations to be true and correct.

3. I hereby verify, on personal knowledge, the contents of paragraphs 1, 2, 5, 18, 21 of the Amended Complaint.

4. To the extent the allegations of the Amended Complaint concern the actions of parties other than me, or matters of which I do not have direct personal knowledge, I believe those allegations to be true and correct.

I DECLARE under penalty of perjury under the laws of Delaware that the foregoing is true and correct.

Executed on the 7th day of July, 2021.

Richard A. Lockton (Printed Name)

(Signature)

IN THE COURT OF CHANCERY IN THE STATE OF DELAWARE

DAVID LOCKTON AND KATHY LOCKTON AS TRUSTEES OF THE LOCKTON FAMILY TRUST 2019 C. GORDON WADE, DAVID P. HANLON, BARTLEY FRITZSCHE, RICHARD A. LOCKTON, JENNIFER BARKER, DR. FREDERICK HENDRICKS, and MARY W. MARSHALL	)	
Plaintiffs,	)	**C.A. No. 2021-0058**
THOMAS S. ROGERS, HANK J. RATNER, R. BRYAN JACOBOSKI, JAKE MAAS, STEVE GOODROE, and GRAHAM HOLDINGS COMPANY	)	
Defendants.	)	

UNSWORN DECLARATION OF JENNIFER BARKER IN SUPPORT OF THE FIRST AMENDED VERIFIED COMPLAINT FOR BREACH OF FIDUCIARY DUTIES PURSUANT TO 10 DEL.C. §3927

I, JENNIFER BARKER, hereby declare as follows:

1. I am a Plaintiff in the above-captioned action. I make this affidavit and Verification pursuant to Court of Chancery Rule 3(aa) in connection with the filing of the First Amended Verified Complaint (the "Amended Complaint") in the above-captioned action.

2. I have reviewed the Amended Complaint. To the extent the allegations in the Amended Complaint concern me, or matters of which I have direct personal knowledge, I know those allegations to be true and correct.

3. I hereby verify, on personal knowledge, the contents of paragraphs 6 and 18 _____ of the Amended Complaint.

4. To the extent the allegations of the Amended Complaint concern the actions of parties other than me, or matters of which I do not have direct personal knowledge, I believe those allegations to be true and correct.

I DECLARE under penalty of perjury under the laws of Delaware that the foregoing is true and correct.

Executed on the 7 day of July, 2021.

Jennifer L. Barker (Printed Name)

(Signature)

IN THE COURT OF CHANCERY IN THE STATE OF DELAWARE

DAVID LOCKTON AND KATHY LOCKTON AS TRUSTEES OF THE LOCKTON FAMILY TRUST 2019 C. GORDON WADE, DAVID P. HANLON, BARTLEY FRITZSCHE, RICHARD A. LOCKTON, JENNIFER BARKER, DR. FREDERICK HENDRICKS, and MARY W. MARSHALL	)	
Plaintiffs,	)	**C.A. No. 2021-0058**
THOMAS S. ROGERS, HANK J. RATNER, R. BRYAN JACOBOSKI, JAKE MAAS, STEVE GOODROE, and GRAHAM HOLDINGS COMPANY	)	
Defendants.	)	

UNSWORN DECLARATION OF DR. FREDERICK HENDRICKS IN SUPPORT OF THE FIRST AMENDED VERIFIED COMPLAINT FOR BREACH OF FIDUCIARY DUTIES PURSUANT TO 10 DEL.C. §3927

I, DR. FREDERICK HENDRICKS, hereby declare as follows:

1. I am a Plaintiff in the above-captioned action. I make this affidavit and Verification pursuant to Court of Chancery Rule 3(aa) in connection with the filing of the First Amended Verified Complaint (the "Amended Complaint") in the above-captioned action.

2. I have reviewed the Amended Complaint. To the extent the allegations in the Amended Complaint concern me, or matters of which I have direct personal knowledge, I know those allegations to be true and correct.

3. I hereby verify, on personal knowledge, the contents of paragraphs __ 1 and 9 _____ of the Amended Complaint.

4. To the extent the allegations of the Amended Complaint concern the actions of parties other than me, or matters of which I do not have direct personal knowledge, I believe those allegations to be true and correct.

I DECLARE under penalty of perjury under the laws of Delaware that the foregoing is true and correct.

Executed on the 7th day of JULY, 2021.

FREDERICK B HENDRICKS (Printed Name)

Frederick B Hendricks (Signature)

IN THE COURT OF CHANCERY IN THE STATE OF DELAWARE

DAVID LOCKTON AND KATHY LOCKTON AS TRUSTEES OF THE LOCKTON FAMILY TRUST 2019 C. GORDON WADE, DAVID P. HANLON, BARTLEY FRITZSCHE, RICHARD A. LOCKTON, JENNIFER BARKER, DR. FREDERICK HENDRICKS, and MARY W. MARSHALL	)	
Plaintiffs,	)	**C.A. No. 2021-0058**
THOMAS S. ROGERS, HANK J. RATNER, R. BRYAN JACOBOSKI, JAKE MAAS, STEVE GOODROE, and GRAHAM HOLDINGS COMPANY	)	
Defendants.	)	

UNSWORN DECLARATION OF MARY W. MARSHALL IN SUPPORT OF THE FIRST AMENDED VERIFIED COMPLAINT FOR BREACH OF FIDUCIARY DUTIES PURSUANT TO 10 DEL.C. §3927

I, MARY W. MARSHALL, hereby declare as follows:

1. I am a Plaintiff in the above-captioned action. I make this affidavit and Verification pursuant to Court of Chancery Rule 3(aa) in connection with the filing of the First Amended Verified Complaint (the "Amended Complaint") in the above-captioned action.

2. I have reviewed the Amended Complaint. To the extent the allegations in the Amended Complaint concern me, or matters of which I have direct personal knowledge, I know those allegations to be true and correct.

3. I hereby verify, on personal knowledge, the contents of paragraphs___ 8, 18, ~~72 (through "counsel.")~~ are _____ of the Amended Complaint.

4. To the extent the allegations of the Amended Complaint concern the actions of parties other than me, or matters of which I do not have direct personal knowledge, I believe those allegations to be true and correct.

I DECLARE under penalty of perjury under the laws of Delaware that the foregoing is true and correct.

Executed on the 7 day of July, 2021.

Mary W. Marshall (Printed Name)

Mary W. Marshall (Signature)

SUPPLEMENTAL INFORMATION PURSUANT TO RULE 3(A)
OF THE RULES OF THE COURT OF CHANCERY

The information contained herein is for the use by the Court for statistical and administrative p only. Nothing stated herein shall be deemed an admission by or binding upon any party.

1. Caption of Case: *David Lockton and Kathy Lockton, as Trustees of the Lockton Family Trust 2019, C. Gordon Wade, David P. Hanlon, Bartley Fritzsche, Richard A. Lockton, Jennifer Barker, Dr. Frederick Hendricks and Mary W. Marshall v. Thomas S. Rogers, Hank J. Ratner, R. Bryan Jacoboski, Jake Maas, Steve Goodroe and Graham Holdings Company*

2. Date Filed: July 8, 2021

3. Name and address of counsel for plaintiff(s): Daniel A. Griffith, Esquire, WHITEFORD TAYLOR & PRESTON, LLC, 405 North King Street, Suite 500, Wilmington, Delaware 19801.

4. Short statement and nature of claim asserted: Breach of Fiduciary Duty arising out of corporate merger.

5. Substantive field of law involved (check one):

____Administrative law	____Labor law	____Trusts, Wills and Estates
____Commercial law	____Real Property	____Consent trust petitions
____Constitutional law	____348 Deed Restriction	____Partition
_X__Corporation law	____Zoning	____Rapid Arbitration (Rules 96,97)
____Trade secrets/trade mark/or other intellectual property		____Other

6. Related cases, including any Register of Wills matters (this requires copies of all documents in this matter to be filed with the Register of Wills): N/A

7. Basis of court's jurisdiction (including the citation of any statute(s) conferring jurisdiction):
10 *Del. C.* § 341 and 10 *Del. C.* § 3114

8. If the complaint seeks preliminary equitable relief, state the specific preliminary relief sought.
N/A

9. If the complaint seeks a TRO, summary proceedings, a Preliminary Injunction, or Expedited Proceedings, check here ___. (If #9 is checked, a Motion to Expedite must accompany the transaction.)

10. If the complaint is one that in the opinion of counsel should not be assigned to a Master in the first instance, check here and attach a statement of good cause. ____

/s/ Daniel A. Griffith (#4209)
Signature of Attorney of Record & Bar ID