



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

TEAMSTERS UNION LOCAL  
No. 142 PENSION FUND, on Behalf  
of Itself and All Others Similarly  
Situated,

Plaintiff,

v.

C.A. No.

BARRY DILLER, PETER M. KERN,  
SUSAN C. ATHEY, A. GEORGE  
BATTLE, COURTNEE CHUN,  
CHELSEA CLINTON, PAMELA L.  
COE, JONATHAN L. DOLGEN,  
CRAIG A. JACOBSON, VICTOR  
KAUFMAN, DARA  
KHOSROSHAHI, MARK  
OKERSTROM, SCOTT RUDIN,  
CHRISTOPHER W. SHEAN,  
ALEXANDER VON  
FURSTENBERG, and EXPEDIA  
GROUP, INC.,

Defendants.

**VERIFIED CLASS ACTION COMPLAINT**

Plaintiff Teamsters Union Local No. 142 Pension Fund brings this action on behalf of itself and all other similarly situated holders of Expedia Group, Inc. (“Expedia Group” or the “Company”) common stock other than Defendants (as defined below), Liberty Expedia Holdings, Inc. (“Liberty Expedia”), and their affiliates (the “Class”). The Class does not include Barry Diller, Liberty Expedia, or other holders of Expedia Group’s high vote Class B common stock. Plaintiff

alleges the following based upon knowledge as to itself, and upon information and belief as to all other matters, including the investigation of Plaintiff's counsel and review of publicly available information as to all other matters.

### **NATURE OF THE ACTION**

1. Virtually from the Company's inception, Barry Diller ("Diller") has employed manipulative devices designed to enable him to have significant influence over Expedia Group while having a relatively small equity interest in the Company. Originally granted an irrevocable proxy over certain securities of IAC/InterActiveCorp ("IAC") (a predecessor of the Company), Diller managed to negotiate similar devices while the Company went through various iterations and multiple transactions. Whether or not those earlier transactions were fair to stockholders is not at issue here. Rather, Plaintiff challenges Diller's recent behavior to secure direct and lasting voting control of the Company in conjunction with the proposed business combination of Expedia Group and Liberty Expedia (the "Merger"). At a time when Liberty Expedia wished to relinquish its majority voting control over Expedia Group, Diller and his conflicted counsel extracted direct voting control of Expedia Group for Diller under the guise that such control was contractually due to Diller. It was not. The Merger could allow Expedia Group to become an independent corporation without a controlling stockholder where election of directors and decisions on fundamental corporate transactions and other matters

rest with the publicly held common shares representing the majority of the Company's equity. Instead, Expedia Group's board of directors (the "Expedia Group Board") has approved a series of transactions and agreements that will entrench Diller, who is seventy-seven years old, with voting control of the Company essentially for life. In so doing, the Expedia Group directors have also entrenched themselves. The virtually meaningless "equal treatment" and "sunset" protections the directors supposedly "negotiated" with Diller are a transparent fig leaf that cannot cover up the naked transfer of direct voting control to Diller. Defendants' behavior is patently unfair to Expedia Group's current common stockholders.

2. Diller and the Expedia Group Board have violated their fiduciary duties by contractually granting Diller direct voting control of Expedia Group, while deliberately structuring the Merger and other transactions so that the Expedia Group common stockholders get no vote on these transactions.

### **PARTIES**

3. Plaintiff Teamsters Union Local No. 142 Pension Fund is a beneficial owner of Expedia Group common stock and has beneficially owned shares of Expedia Group common stock at all relevant times.

4. Defendant Expedia Group is a Delaware corporation headquartered in Bellevue, Washington. Expedia Group is one of the world's largest online travel companies. As of April 30, 2019, there were 136,102,491 shares of Expedia Group

common stock and 12,799,999 shares of Expedia Class B common stock outstanding. Expedia Group stockholders are entitled to one (1) vote for each share of common stock and ten (10) votes for each share of Class B common stock outstanding. Expedia Group common stock is listed on NASDAQ under the ticker symbol “EXPE”.

5. Defendant Diller has been Chairman of the Expedia Group Board and Senior Executive of Expedia Group since the completion of the Company’s spin-off from IAC on August 9, 2005 (the “Expedia Group Spin-Off”). Diller has been Chairman of the Board of Directors of IAC (and its predecessors) since August 1995 and was Chief Executive Officer (“CEO”) of IAC from August 1995 to November 2010. According to a March 30, 2016 article entitled “This Is What Oligarchy Looks Like,” “IAC faces frequent criticism for the sky-high compensation showered by Diller on his company’s executives.” The same article cites Daily Finance as saying “Diller has a tendency to populate his board with ‘cronies,’ which is just one reason The Corporate Library gives [IAC] a near-failing ‘D’ grade for its corporate governance.” Diller also served as Special Advisor to TripAdvisor, Inc. (“TripAdvisor”) from April 2013 through at least April 2018, was Chairman of the board of directors and Senior Executive of TripAdvisor from December 2011, when it was spun off from the Company (the “TripAdvisor Spin-Off”), until December 2012, and served as a member of the board of directors of TripAdvisor until April

2013. Diller served as Chairman of the board of directors of Ticketmaster Entertainment, Inc. (“Ticketmaster”) from 2008 to 2010, when it merged with Live Nation, Inc. (“Live Nation”) to form Live Nation Entertainment, Inc. (“Live Nation Entertainment”). Diller served as Chairman of the board of directors of Live Nation Entertainment from January 2010 to October 2010 and was a member of its board of directors until January 2011. Diller is a director of The Diller – von Furstenberg Family Foundation (the “Family Foundation”) along with his wife, Diane von Furstenberg, and her two children, Alexander and Tatiana. Diller is also a director of the Diane von Furstenberg Studio, LLC, along with his wife and her two children. Diller received approximately \$21 million in compensation from Expedia Group for the years 2016-2018. The Company admitted in its April 29, 2019 10-K Amendment (“10-K/A”) that Diller is not an independent director under NASDAQ listing rules. Diller is personally interested in the transactions challenged in this action.

6. Like Diller, Defendant Peter M. Kern (“Kern”) has been a member of the Expedia Group Board since the completion of the Expedia Group Spin-Off on August 9, 2005. He has been an Expedia Group employee as Vice Chairman of the Expedia Group Board since June 2018. Kern has also been a member of the Advisory Board of trivago N.V., a majority-owned subsidiary of Expedia Group, since 2016. He has served on the Tribune Media Company (“Tribune”) board with Defendant Jacobson. For 16 years, Kern advised a variety of large media companies,

including Liberty Media Corporation (“Liberty Media”).<sup>1</sup> Additionally, Kern’s father, Jerome Kern, was John Malone’s (“Malone”) long-time outside counsel. By the year 2000, Jerome Kern had reportedly spent “23 years as one of the top deal-negotiating colleagues of [TCI] chairman John Malone.” Kern received approximately \$6.9 million in compensation from Expedia Group in 2018. The Company, following his appointment as Vice Chairman, admitted in the 10-K/A that Kern was not an independent director under NASDAQ listing rules. Because of his employment and directorship at Expedia Group and his ties to Malone and Liberty, Kern was not disinterested and independent with respect to the challenged transactions and agreements.

7. Defendant Susan C. Athey (“Athey”) has been a director of Expedia Group since December 2015. She is a professor at Stanford University’s Graduate School of Business. Athey has also provided consulting services to the Company. Because of these interests and her interest in her incumbency as a director of Expedia Group, Athey was not disinterested and independent with respect to the challenged transactions and agreements. She was paid \$294,927 in compensation by Expedia Group in 2018. Given the salaries of professors, her income from Expedia Group is material to her.

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<sup>1</sup> There have been and are numerous companies affiliated with John Malone with “Liberty” in their name. For convenience, the generic term “Liberty” is sometimes used herein in reference to one or more of these companies.

8. Defendant A. George “Skip” Battle (“Battle”) has been a member of the Expedia Group Board, along with Diller, since the completion of the Expedia Group Spin-Off on August 9, 2005. Battle served as the Executive Chairman of Ask Jeeves, Inc. (“Ask Jeeves”) from January 2004 until it was acquired by IAC in July 2005. Battle was placed on the Expedia Group Board in connection with the Expedia Group Spin-Off. In nearly 14 years on the Expedia Group Board, Battle has received millions in compensation. Because of his interest in his incumbency as a director of Expedia Group, Battle was not disinterested and independent with respect to the challenged transactions and agreements.

9. Defendant Courtnee Chun (“Chun”) has been a member of the Expedia Group Board since December 2017. Chun has served as Senior Vice President of Investor Relations for Qurate Retail, Inc. (“Qurate”) (where John Malone is on the Board of Directors), formerly Liberty Interactive Corporation (“Liberty Interactive”). Qurate is a signatory to several of the agreements related to the Merger. Chun also served as Senior Vice President of Investor Relations for Liberty Media (where John Malone is Chairman of the board) when Liberty Interactive acquired the remaining equity of HSN in a stock for stock merger. Liberty Expedia nominated Chun to serve on the Expedia Group Board pursuant to an Amended and Restated Governance Agreement among the Company, Liberty Interactive, and Diller dated December 20, 2011 (the “Existing Governance Agreement”), which was

subsequently assigned by Liberty Interactive and assumed by Liberty Expedia via an Assignment and Assumption of Governance Agreement, dated as of November 4, 2016. The Company admitted in the 10-K/A that Chun is not an independent director under NASDAQ listing rules. Because of her affiliations with Liberty and her interest in her incumbency as a director of Expedia Group, Chun was not disinterested and independent with respect to the challenged transactions and agreements.

10. Defendant Chelsea Clinton (“Clinton”) has been a member of the Expedia Group Board since March 2017. Clinton has been a member of the board of directors of IAC, along with Victor Kaufman and Alexander von Furstenberg, since September 2011, when she was thirty-one years old and still a graduate student. Clinton’s background is in running her family’s foundations and in public health. Her directorships in IAC and Expedia Group result from the close personal and political ties, which are publicly documented, between Clinton and her family and Diller, Diane von Furstenberg, and their family. Politically, Diller and Diane von Furstenberg have been notable Hillary Clinton supporters, donating a combined \$816,000 to the 2016 Hillary Clinton campaign or its surrogates. In September 2016, Diller and Diane von Furstenberg hosted a major fundraising dinner for the campaign at their home in Los Angeles. In 2015, Clinton and her husband reportedly boated off the shore of Sardinia, Italy with Diller and Diane von Furstenberg. Diller

and Hillary Clinton are also personal friends. A 2018 article “‘All Men Are Guilty,’ Says Mega-Mogul Barry Diller” explained that one of the topics of the interview was “how [Diller’s] friend Hillary Clinton is faring.” The same report cited Diller as saying that he had gone “to a couple of Broadway shows recently with Hillary Clinton,” confirming other reports that, in June 2017 and January 2019, Clinton and Diller attended Broadway plays together (along with Hillary Clinton). In 2018, Clinton received \$302,880 of compensation from Expedia Group and \$299,957 from IAC, which represented material income. Because of her dual directorships at IAC and Expedia Group, interest in incumbency, and ties to Diller and his family, Clinton was not disinterested and independent with respect to the challenged transactions and agreements.

11. Defendant Pamela L. Coe (“Coe”) has been a member of the Expedia Group Board since November 2012. Coe has served as Senior Vice President, Deputy General Counsel, and Secretary of Liberty Expedia (where John Malone, Christopher Shean, and Alexander von Furstenberg sit on the board) since it was spun-off from Liberty Interactive in November 2016 (the “Liberty Expedia Spin-Off”). Coe has been Senior Vice President, Deputy General Counsel, and Secretary of Qurate, Liberty Media, and Liberty Broadband Corporation (“Liberty Broadband”), where John Malone is Chairman of the Board, since January 2016. Prior to that, Coe was Vice President, Deputy General Counsel, and Secretary of

those companies. Coe also held those positions with Liberty TripAdvisor Holdings, Inc. (“Liberty TripAdvisor”) from August 2014 to April 2016. Prior to joining Liberty Media, Ms. Coe served as Senior Counsel at Liberty Media’s predecessor, Tele-Communications, Inc. (“TCI”), long controlled by John Malone. Liberty Expedia nominated Coe to serve on the Expedia Group Board pursuant to the Existing Governance Agreement. The Company admitted in the 10-K/A that Coe is not an independent director under NASDAQ listing rules. Because of her affiliations with Liberty and her interest in her incumbency as a director of Expedia Group, Coe was not disinterested and independent with respect to the challenged transactions and agreements.

12. Defendant Jonathan L. Dolgen (“Dolgen”) was a member of the Expedia Group Board from the completion of the Expedia Group Spin-Off in August 2005 until June 5, 2019. Dolgen was a director of Ticketmaster, along with Diller, Craig Jacobson, and Victor Kaufman, from August 2008 through its merger with Live Nation in January 2010. Prior to the LiveNation merger, Liberty Media was the largest stockholder of Ticketmaster, owning a 29% position. Following the merger, Diller became Chairman of Live Nation and Liberty Media was its largest stockholder. Dolgen became a director of Live Nation, along with Diller and Kaufman, and served through June 2018. Because of his long associations with

Diller and Liberty, Dolgen was not disinterested and independent with respect to the challenged transactions and agreements.

13. Defendant Craig A. Jacobson (“Jacobson”) has been a member of the Expedia Group Board since December 4, 2007. Jacobson is a founder of a twenty-eight lawyer Beverly Hills boutique law firm that specializes in transactional entertainment law. He acts as an advisor to media executives. On information and belief that includes Diller. Jacobson has a long history of serving as a director for companies affiliated with Diller, Malone, and Liberty. Jacobson was a director of Ticketmaster, along with Diller, Dolgen, and Kaufman, from August 2008 until its merger with Live Nation in January 2010. He has been a director of Charter Communications, Inc. (“Charter”) since July 27, 2010. He received \$319,962 in compensation from Charter in 2018. Liberty Broadband (where John Malone is chairman) is Charter’s largest stockholder with over 25% of its stock, and Gregory B. Maffei, the CEO and a director of Liberty Media and several other Liberty entities, is a Charter director. Malone was a Charter director until recently, and other Liberty executives and affiliates serve on the Charter Board. Jacobson touts that he was a founder and director of New Form Digital, “a venture with Discovery Communications.” Discovery Communications is owned by Discovery, Inc. (“Discovery”). Malone owns 93.6% of the high vote stock of Discovery (28.2% of the voting power) and is a director of Discovery. Executives and directors of various

Liberty entities, including Malone's nephew, are also on the Discovery board. New Form Digital has been described as "established by Discovery Communications," which provided a significant part of New Form Digital's capital. In January 2019, New Form Digital was acquired by Whistle and Jacobson and Discovery became stockholders of Whistle. Jacobson serves on the Tribune board with Kern. Jacobson is also a partner in Whisper Advisors along with a former executive of Tribune and a former executive "in Barry Diller's IAC corporation." Because of his longstanding relationships with Diller, Malone, and Liberty, his interest in past and potential business with them, and his interest in his incumbency as a director of Expedia Group, Jacobson was not disinterested and independent with respect to the challenged transactions and agreements.

14. Defendant Victor Kaufman ("Kaufman") has been a member of the Expedia Group Board since completion of the Expedia Group Spin-Off on August 9, 2005 and served as Vice Chairman of Expedia Group from the Expedia Group Spin-Off through June 2018, when Kern assumed that job. Kaufman has been a member of the board of directors of IAC and its predecessors (where Diller is Chairman of the Board and had been CEO) since December 1996 and has served as the Vice Chairman of IAC since October 1999. He received \$564,221 in compensation from IAC in 2018 for services as an employee director. Kaufman served in the Office of the Chairman of IAC from January 1997 to November 1997

and as Chief Financial Officer of IAC from November 1997 to October 1999. Kaufman also served as Vice Chairman of the Board of Ticketmaster, along with Diller, Jacobson, and Dolgen, from August 2008 through January 2010, and as a director of Live Nation Entertainment, for a time along with Diller and Dolgen, from January 2010 through December 2010. Kaufman served, with Diller and Dara Khosrowshahi, as a director of TripAdvisor from the completion of the TripAdvisor Spin-Off until February 2013. He received \$294,927 in compensation from Expedia Group in 2018. The Company has admitted in its 10-K/A that Kaufman is not an independent director under NASDAQ listing rules. Because of his dual directorships at IAC and Expedia Group, employment at IAC, long associations with Diller and Liberty, and his interest in his incumbency as a director of Expedia Group, Kaufman was not disinterested with respect to the challenged transactions and agreements.

15. Defendant Dara Khosrowshahi (“Khosrowshahi”) has been a member of the Expedia Group Board since completion of the Expedia Group Spin-Off on August 9, 2005. Khosrowshahi served as the CEO and President of Expedia Group from the completion of the Expedia Group Spin-Off until August 2017. Khosrowshahi served as the CEO of IAC Travel, a division of IAC, from January 2005 to the completion of the Expedia Group Spin-Off. Prior to his tenure as CEO of IAC Travel, Khosrowshahi served as (1) Executive Vice President and Chief Financial Officer of IAC from January 2002 to January 2005, (2) Executive Vice

President, Operations and Strategic Planning of IAC from July 2000 to January 2002 and (3) President, USA Networks Interactive, a division of IAC, from 1999 to 2000. Khosrowshahi joined IAC in 1998 as Vice President of Strategic Planning and was promoted to Senior Vice President in 1999. Khosrowshahi also served as director of TripAdvisor, with Diller and Kaufman, from the TripAdvisor Spin-Off until February 2013. Mr. Khosrowshahi has been called one of Diller's protégés. The Company admitted in its 10-K/A that Khosrowshahi is not an independent director under NASDAQ listing rules. Because of his work for Expedia Group and IAC, long associations with Diller, and his interest in his incumbency as a director of Expedia Group, Khosrowshahi was not disinterested and independent with respect to the challenged transactions and agreements.

16. Defendant Mark Okerstrom has been a member of the Expedia Group Board, and President and CEO of Expedia Group, where Diller is Chairman of the Board and Senior Executive, since August 2017. Prior to his appointment to the position of President and CEO, Okerstrom served as (1) Executive Vice President of Operations and Chief Financial Officer from October 2014 to August 2017, (2) Chief Financial Officer and Executive Vice President from September 2011 to October 2014, (3) Secretary from October 2011 to April 2012, and (4) Senior Vice President of Corporate Development from February 2009 to September 2011. Okerstrom joined Expedia Group in 2006. From 2016-2018 he received approximately \$62

million in compensation from Expedia Group. The Company has admitted in the 10-K/A that Okerstrom is not an independent director under NASDAQ listing rules. Because of his interest in continuing his employment at Expedia Group and his interest in his incumbency as a director of Expedia Group, Okerstrom was not disinterested and independent with respect to the challenged transactions and agreements.

17. Defendant Scott Rudin (“Rudin”) was a member of the Expedia Group Board from June 21, 2016 until his resignation effective March 19, 2019. Concurrent with his election to the Expedia Group Board, Expedia Group expanded the size of the Board from thirteen to fourteen members. In the 1980s, Rudin had worked for Diller at Twentieth Century Fox as head of production. In 2012, Rudin and Diller’s IAC teamed up to launch a multi-platform book publishing venture. In 2016, Rudin and Diller co-produced (with others) the one-act off and on Broadway drama, *The Humans*. According to a February 22, 2019 report, Rudin and Diller, along with Eli Bush, run the IAC Films division of IAC. Rudin also was lead producer of *Hillary and Clinton*, a Broadway play about Diller’s friends Hillary and Bill Clinton. Rudin was paid director compensation by Expedia Group of \$294,927 in 2018, \$294,890 in 2017, and \$273,815 in 2016. On information and belief, Rudin’s service on the Expedia Group Board was a means for Diller indirectly to help fund Rudin’s production of *Hillary and Clinton* and other plays using Expedia

Group funds. *Hillary and Clinton* cost \$4.2 million to produce and closed on June 23, 2019, four weeks earlier than scheduled, after thirty-seven previews and seventy-seven regular performances. On March 19, 2019, concurrent with Rudin's resignation, the Board eliminated the Board seat held by Mr. Rudin, decreasing the size of the Board from fifteen to fourteen directors.

18. Defendant Christopher W. Shean has been a member of the Expedia Group Board since December 2015. Shean has served as the CEO and President of Liberty Expedia since March 2016 and as member of the Board of Directors of Liberty Expedia (the "Liberty Expedia Board") since completion of the Liberty Expedia Spin-Off. Shean has also served as a Senior Advisor of Qurate, Liberty Media, and Liberty Broadband since October 2016. Shean served as the Chief Financial Officer of (1) Liberty Media (including its predecessor) from November 2011 to October 2016, (2) Liberty Interactive from November 2011 to October 2016, and (3) Liberty Broadband from June 2014 to October 2016. Shean also served as a Senior Vice President of Liberty Broadband from June 2014 to December 2015. Shean has held a number of executive positions with Liberty Media since May 2007 and Liberty Interactive since October 2000. In addition, Shean served as Senior Vice President and Chief Financial Officer of Liberty TripAdvisor from July 2013 to January 2016. Shean served as a director of TripAdvisor, along with Diller, from February 2013 to December 2015. Liberty Expedia nominated Shean to serve on

the Expedia Group Board pursuant to the Existing Governance Agreement. The Company has admitted in its 10-K/A that Sean is not an independent director under NASDAQ listing rules. Because of his affiliations with Liberty and his interest in his incumbency as a director of Expedia Group, Sean was not disinterested and independent with respect to the challenged transactions and agreements.

19. Defendant Alexander von Furstenberg has been a member of the Expedia Group Board since December 2015. Alexander von Furstenberg has served as a member of the Board of Directors of IAC, alongside Diller, since 2008 and Liberty Expedia from November 2016 until April 15, 2019. Alexander von Furstenberg is the son of Diane von Furstenberg and Diller's stepson. Alexander von Furstenberg is the Chief Investment Officer of Arrow Investments, Inc., a private investment office that serves the Diller – von Furstenberg family. Along with Diller, Alexander von Furstenberg is a member of the Board of Directors and Secretary of the Family Foundation. Alexander von Furstenberg also serves as a director of Diane von Furstenberg Studio, LLC along with Diller. In 2018 he received compensation of \$294,927 from Expedia Group, \$299,957 from IAC, and \$153,213 from Liberty Expedia. The Company has admitted in its 10-K/A that Alexander von Furstenberg is not an independent director under NASDAQ listing rules. Because of his directorships at IAC, Expedia Group, and Liberty Expedia, family and business relationships to Diller, and interest in his incumbency as a

director of Expedia Group, Alexander von Furstenberg was not disinterested with respect to the challenged transactions and agreements.

20. Defendants Diller, Kern, Athey, Battle, Chun, Clinton, Coe, Dolgen, Jacobson, Kaufman, Khosrowshahi, Okerstrom, Rudin, Shean, and Alexander von Furstenberg are referred to collectively herein as the “Director Defendants.”

21. The Director Defendants and Expedia Group are referred to collectively herein as the “Defendants.”

## **SUBSTANTIVE ALLEGATIONS**

### ***Background of Expedia Group and Liberty Expedia***

22. In April 2005, Expedia Group was incorporated in Delaware as Expedia, Inc.<sup>2</sup> in connection with the Expedia Group Spin-Off. At the time, Expedia Group consisted of (i) IAC’s travel and travel-related businesses, subsidiaries and investments, and (ii) TripAdvisor. The Expedia Group Spin-Off was completed on August 9, 2005, and Expedia Group began trading as an independent public company on that date. Because Liberty objected to a single-tier spin-off, Expedia Group was given a dual stock structure with Liberty receiving high vote stock.

23. At the time of the Expedia Group Spin-Off, Diller was Chairman and CEO of IAC. Through various entities, Liberty was the beneficial owner of

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<sup>2</sup> The Company changed its named from Expedia, Inc. to Expedia Group, Inc. in March 2018.

approximately 29% of IAC's equity and 55.6% of IAC's voting power.<sup>3</sup> Diller, however, controlled the voting rights of Liberty's IAC stock through an irrevocable proxy.

24. The Expedia Group Spin-Off was effectuated through a reclassification of each share of IAC common stock and IAC Class B common stock into one share of IAC common or Class B stock, respectively, plus a fractional share of IAC preferred stock that would automatically exchange into one share of Expedia Group common stock or Expedia Group Class B common stock, respectively. Thus, IAC common stockholders ended up with IAC common stock and Expedia Group common stock and IAC Class B stockholders, including Liberty, ended up with IAC Class B stock and Expedia Group Class B stock. The Expedia Group Spin-Off contemplated that "[t]he capital structure and ownership of Expedia [Group] immediately following the spin-off will mirror the capital structure and ownership of IAC; as a result, Mr. Diller will have similar voting control of Expedia [Group]."<sup>4</sup>

25. In connection with the Expedia Group Spin-Off, Expedia Group, Diller and Liberty Media entered into two agreements governing their relationship vis-à-vis Expedia Group: (1) a Stockholders Agreement between Diller and Liberty

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<sup>3</sup> IAC, Amendment No. 3 to the Registration Statement (Form S-4/A) (June 17, 2005), at 141.

<sup>4</sup> IAC, Amendment No. 3 to the Registration Statement (Form S-4/A) (June 17, 2005), at 21.

Media, dated as of August 9, 2005 (the “Original Stockholders Agreement”), and (2) a Governance Agreement among IAC, Diller, and Liberty Media, dated as of August 9, 2005. These agreements reflected Diller’s *modus operandi* of extracting elements of corporate control while having a limited equity interest in the corporation.

26. Among other things, Section 3.3 of the Original Stockholders Agreement granted Diller an irrevocable proxy with respect to all shares of Expedia Group common stock and Class B common stock beneficially owned by Liberty Media and its subsidiaries, subject to certain conditions (the “Diller Proxy”).

27. In 2011, Expedia Group consummated the TripAdvisor Spin-Off through which Expedia Group was separated into two publicly traded companies: (1) TripAdvisor, and (2) Expedia Group. Similar to the Expedia Group Spin-Off, the TripAdvisor Spin-Off involved a reclassification of Expedia Group common stock and Expedia Group Class B common stock into Expedia Group preferred stock that exchanged into TripAdvisor common stock and TripAdvisor Class B common stock, respectively. The TripAdvisor Spin-Off closed on December 20, 2011.

28. In connection with the TripAdvisor Spin-Off, Liberty Interactive (formerly Liberty Media) and Diller entered into an Amended and Restated Stockholders Agreement, dated as of December 20, 2011 (the “Existing Stockholders Agreement”), and Expedia Group, Liberty Interactive, and Diller

entered into an Amended and Restated Governance Agreement, dated as of December 20, 2011 (the “Existing Governance Agreement”), each of which took effect upon completion of the TripAdvisor Spin-Off.

***Rights Under Existing Stockholders Agreement  
and Existing Governance Agreement Regarding Transfers***

29. The Existing Stockholders Agreement and Existing Governance Agreement provided certain rights to Diller and Liberty [Expedia] in connection with the “Transfer” of shares of Expedia Group common stock and Class B common stock owned by Liberty [Expedia].

30. The definition of “Transfer” in Section 1.1 of the Existing Stockholders Agreement specifically excludes: “a merger or consolidation in which a Stockholder is a constituent corporation shall not be deemed to be the Transfer of any Common Shares beneficially owned by such Stockholder (provided, that a significant purpose of any such transaction is not to avoid the provisions of this Agreement).”<sup>5</sup> Liberty Expedia is a Stockholder.

31. Section 6.54 of the Existing Governance Agreement contains a nearly-identical definition of “Transfer” that excludes:

[A] merger or consolidation in which a Stockholder is a constituent corporation shall not be deemed to be the Transfer of any [Expedia Group] Common Shares Beneficially Owned by such Stockholder

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<sup>5</sup> Expedia Group, Annual Report for the fiscal year ended December 31, 2018 (Form 10-K), Ex. 10.3 at 5.

(provided, that a significant purpose of any such transaction is not to avoid the provisions of this Agreement).<sup>6</sup>

32. Section 4.1(a) of the Existing Stockholders Agreement provides that neither Liberty [Expedia] nor Diller could Transfer shares of Expedia Group common stock or Expedia Group Class B common stock, other than for certain enumerated purposes.

33. Section 4.1(b) of the Existing Stockholders Agreement provides, however, that notwithstanding the restrictions and exceptions contained in subsection (a), Liberty [Expedia] and Diller “may Transfer all or any portion of the Common Shares beneficially owned by its Stockholder Group to *an unaffiliated third party*” provided that any Transfer of Expedia Group Class B common stock to *an unaffiliated third party* shall be subject to certain tag-along rights provided in Section 4.2 of the Stockholders Agreement (the “Tag-Along Right”), and only after complying with the right of first refusal found in Section 4.3 (the “Right of First Refusal) and the swap rights found in Section 4.4(a) (the “Swap Rights”).

34. Thus, Diller has a Right of First Refusal and the Swap Rights only with respect to any sale of Expedia Group Class B stock held by Liberty [Expedia] *to an unaffiliated third party*.

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<sup>6</sup> Expedia Group, Annual Report for the fiscal year ended December 31, 2018 (Form 10-K), Ex. 10.1 at 18.

35. Further, only if Liberty [Expedia] proposes to Transfer shares of Expedia Group Class B stock to an unaffiliated third party would Diller's Swap Rights allow him to swap any shares of Expedia Group common stock he owns for an equal number of shares of Expedia Group Class B stock proposed to be transferred. Moreover, if the Swap Rights applied, any remaining shares of Expedia Group Class B stock that Liberty [Expedia] held after the swap would, under Section 4.4(b)(i) of the Existing Stockholders Agreement, be converted or exchanged into shares of Expedia Group common stock.

36. Section 4.4(b)(ii) of the Existing Stockholders Agreement provides that, in the event Liberty [Expedia] engages in a (1) a Block Sale, or (2) a Transfer involving all of the shares of Expedia Group common stock and Class B common stock owned by it to an unaffiliated third party, then instead of converting such shares of Expedia Group Class B common stock to common stock, Liberty [Expedia] will exchange with Expedia Group any remaining shares of Expedia Class B common stock not acquired by Diller for an equal number of shares of Expedia Group common stock that it would have received upon conversion of such shares of Expedia Group Class B common stock.

37. The Purchase/Exchange Right in Section 5.02(c) of the Existing Governance Agreement provides that, if Diller does not acquire from Liberty [Expedia] all shares of Expedia Group Class B common stock proposed to be

transferred in a Block Sale or in a Transfer of all of the Expedia Class B common stock and Expedia Group common stock owned by Liberty [Expedia] through the exercise of the Swap Right or Right of First Refusal, then for a period of two years after the Block Sale or Transfer, Diller will have the right from time to time to acquire from Expedia Group an equal number of shares of Expedia Group Class B common stock held in treasury, either by purchase at fair market value, through an exchange of an equivalent number of shares of Expedia Group common stock, or a combination thereof. The Purchase/Exchange Right, however, is only triggered by a sale to an unaffiliated third party, not by a merger to which Liberty Expedia is a party.

38. Diller's contractual rights are directed to Liberty's sale of Class B stock to an unaffiliated third party. In a merger between Liberty [Expedia] and Expedia Group, Diller has **no contractual rights** under the Existing Stockholders Agreement or Existing Governance Agreement to either acquire Liberty [Expedia]'s Expedia Group shares or retain the right to vote those shares post-merger. Because the definitions of "Transfer" in those two agreements both explicitly state: "a merger or consolidation in which [Liberty Expedia] is a constituent corporation shall not be deemed to be the Transfer of any Company Common Shares Beneficially Owned by [Liberty Expedia]," and the Merger does not involve a sale of shares to an

unaffiliated third party, Diller had no right to obtain Class B shares, no Right of First Refusal, no Swap Rights, and no Purchase/Exchange Right triggered by the Merger.

***Liberty Expedia Spin-Off Generates  
Investment Company Concerns and the Proxy Swap***

39. In November 2015, at Malone’s behest, Liberty Interactive announced plans to spin off Liberty Expedia in the Liberty Expedia Spin-Off: Series A and Series B common stockholders of Liberty Expedia’s predecessor entity ultimately received corresponding Series A and Series B common shares in Liberty Expedia. Upon the Liberty Expedia Spin-Off’s November 4, 2016 consummation, Liberty Expedia’s only assets were its holdings of Expedia Group stock and the few assets related to Bodybuilding.com, LLC.

40. Under federal law, because Liberty Expedia’s assets were primarily stock in publicly traded Expedia Group, without adjustments to Liberty Expedia’s governance structure Liberty Expedia disclosed it would have to register under, and otherwise become subject to, the Investment Company Act of 1940 (the “40 Act”). Among other things, the 40 Act would (i) impose heightened disclosure and registration requirements on Liberty Expedia, (ii) prohibit certain related-party transactions and subject others to heightened regulatory scrutiny, (iii) require that at least 75% of Liberty Expedia’s directors be independent of Malone, and (iv) subject Liberty Expedia to minimum-capital requirements.

41. As Liberty Expedia has disclosed, as recently as its February 8, 2019

Annual Report on Form 10-K:

If, at any time, we become primarily engaged, directly or through one or more of our subsidiaries, in a business of investing, reinvesting, owning, holding or trading in securities, we could become subject to regulation under the 40 Act. Following any such change in our business, or the termination of the assignment to us of the Diller Proxy, and after giving effect to any applicable grace periods, we may be required to register as an investment company, which could result in significant registration and compliance costs, could require changes to our corporate governance structure and financial reporting, could place limitations on our capital structure and prohibit transactions with affiliates, and could otherwise restrict our activities going forward. In addition, if we were to become inadvertently subject to the 40 Act and failed to register as an investment company in violation of the 40 Act, such violation could subject us to material adverse consequences, including potentially significant regulatory penalties and the possibility that some or all of our contracts could be deemed unenforceable.

42. Treatment as an investment company under the 40 Act was (and remains) an unpalatable option for Liberty Expedia.

43. In connection with the Liberty Expedia Spin-Off, Malone and Diller devised a temporary solution to Liberty Expedia's 40 Act concerns: a side-deal "Proxy Swap," the purpose of which was to grant Liberty Expedia the right to vote its shares of Expedia Group stock so that it could avoid investment company status.

44. In correspondence with the U.S. Securities and Exchange Commission, Liberty Expedia admitted that absent an assignment of the Diller Proxy to Liberty Expedia, Liberty Expedia would be subject to the 40 Act.

45. In connection with the Liberty Expedia Spin-Off, Liberty Interactive, Liberty Expedia, Malone, Leslie Malone (Malone's wife), and Diller entered into a series of agreements, including (i) a Transaction Agreement, dated as of March 24, 2016 and amended and restated on September 22, 2016 (the "Transaction Agreement"), (ii) an Assignment Agreement between Diller and Liberty Expedia, dated as of the Liberty Expedia Spin-Off's consummation, November 4, 2016, and (iii) a Proxy and Voting Agreement, dated as of November 4, 2016, between Diller, Malone, and Leslie Malone. Under these agreements, immediately following the Liberty Expedia Spin-Off's effective time and until the termination or expiration of the Proxy Swap (discussed below), (i) Diller would irrevocably assign the Diller Proxy to Liberty Expedia (the "Diller Assignment"), and (ii) Malone and his wife (hereinafter, the "Malones") would grant Diller an irrevocable proxy (the "Malone Proxy") to vote all shares of Liberty Expedia Series A common stock and Series B common stock beneficially owned by the Malones upon completion of the Liberty Expedia Spin-Off (the "Proxy Swap").

46. As a result of the Diller Assignment, Diller ceased to control a majority voting interest in Expedia Group. Because Liberty Expedia controlled a majority voting interest in Expedia Group, it began consolidating Expedia Group as part of its financial results. While Diller would elect and replace directors who could determine how Liberty Expedia's shares in Expedia Group would be voted, Malone

retained the ability to remove such directors. Moreover, the Liberty Expedia directors would have a fiduciary duty to vote the shares in the best interests of Liberty Expedia and its stockholders, not Diller.

47. Section 15 of Transaction Agreement provided that the Proxy Swap would terminate upon the earlier of 18 months after the Liberty Expedia Spin-Off's consummation (i.e., May 4, 2018) or the occurrence of certain events, including in Section 15(b)(v), the signing of a transaction that would result in Liberty Expedia merging into Expedia Group.

48. The parties entered into a number of additional agreements regarding the governance of Liberty Expedia and its interest in Expedia Group in connection with the closing of the Liberty Expedia Spin-Off. Those agreements – intended to apply post-spin-off the same governance and voting arrangements as existed pre-spin-off – included, but were not limited to:

(a) an Assignment and Assumption of Governance Agreement, dated November 4, 2016, among Liberty Expedia, Liberty Interactive, Diller and Expedia to effect the assignment by Liberty Interactive and assumption by Liberty Expedia of Liberty Interactive's rights, benefits and obligations under the Existing Governance Agreement;

(b) an Assignment and Assumption of Stockholders Agreement, dated November 4, 2016, among Liberty Expedia, Liberty Interactive and Diller to

effect the assignment by Liberty Interactive and assumption by Liberty Expedia of Liberty Interactive's rights, benefits and obligations under the Existing Stockholders Agreement;

(c) Amendment No. 1 to the Existing Stockholders Agreement, dated November 4, 2016, between Diller and Liberty Expedia, which provides for certain agreements relating to the voting of Diller's and the Company's shares of Expedia Group common stock and Expedia Group Class B common stock; and

(d) an Assignment Agreement, dated November 4, 2016, between Diller and Liberty Expedia Holdings, Inc., concerning the Diller Assignment.

49. The Transaction Agreement explicitly contemplates the possibility of Expedia Group acquiring Liberty Expedia. The agreements executed in 2016 by Diller, Malone, and their affiliates in connection with the Liberty Expedia Spin-Off did not alter the definition of "Transfer" in the Existing Stockholders Agreement or Existing Governance Agreement.

***Diller Had Only an Indirect and Partial Influence Over Expedia Group***

50. Diller personally owns only approximately 5.1 million shares of Expedia Group common stock, a mere 3% of Expedia Group's equity and 2% of Expedia Group's total voting power. The Diller Proxy granted Diller a proxy over Liberty Expedia's 11,076,672 shares of Expedia Group common stock and 12,799,999 shares of Expedia Group Class B common stock, which equated to

approximately 53% of the total Expedia Group stockholder voting power. By the Diller Assignment, however, the Diller Proxy was assigned to Liberty Expedia in exchange for the Malone Proxy.

51. The Malone Proxy granted Diller an irrevocable proxy to vote all shares of Liberty Expedia Series A common stock and Series B common stock beneficially owned by the Malones. The Malones own 404,659 shares of Liberty Expedia Series A stock, and 2,680,783 shares of Series B stock, which is entitled to ten votes per share, comprising approximately 32.9% of the combined stockholder voting power at Liberty Expedia. Pursuant to Liberty Expedia's Certificate of Incorporation (the "Liberty Expedia Certificate"), Liberty Expedia has a seven-member board, comprised of five "Common Stock Directors" (which are elected by Series A and Series B stockholders voting together), and two "Series B Directors" (which are elected by the Series B stockholders only). Thus, until the expiration of the Malone Proxy, Diller had 32.9% voting power with respect to the Common Stock Directors, and could elect Liberty Expedia's Series B Directors, Robert Hammond and Alexander von Furstenberg.

52. As a result, Diller did not have direct voting control of Expedia Group. Instead he had only voting rights in Liberty Expedia. The Liberty Expedia directors, who owed a fiduciary duty to Liberty Expedia and all its stockholders, would control the voting of the Expedia Group stock Liberty Expedia holds.

### *Liberty Expedia Pursues a Merger with Expedia Group*

53. According to the Form S-4 filed by Expedia Group and Liberty Expedia with the SEC on May 1, 2019 (the “S-4”),<sup>7</sup> in mid-November 2017 Liberty Expedia initiated discussions of a potential business combination transaction with Expedia Group.<sup>8</sup>

54. According to the S-4, that month, the Liberty Expedia Board and Liberty Expedia management determined to initiate merger talks because of “the risks and uncertainty of remaining an independent public company and the potential risk that Liberty Expedia could be required to register as an investment company under the Investment Company Act . . . following the termination of the [P]roxy [S]wap arrangements.”<sup>9</sup> To that end, Liberty Expedia management, including Malone, as well as Liberty Expedia’s legal counsel at Baker Botts L.L.P. (“Baker Botts”) engaged in “preliminary and informal conversations” with Expedia Group management, including Diller, and legal counsel for Expedia Group *and* Mr. Diller

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<sup>7</sup> On June 5, 2019, Expedia Group filed an amended registration statement (“the S-4/A”). Except as otherwise described herein, the S-4 and the S-4/A are identical in all respects material to this action. On June 21, 2019, Expedia Group filed a second amended registration statement. It included a date for the Liberty Expedia Special Meeting and disclosure of a lawsuit filed against Liberty Expedia concerning the Merger. Except as otherwise described herein, the second amended registration statement is otherwise identical in all respects material to this action.

<sup>8</sup> See S-4 at 38.

<sup>9</sup> *Id.*

at Wachtell, Lipton, Rosen & Katz (“Wachtell Lipton” or “Wachtell”) “regarding a potential combination transaction.”<sup>10</sup>

55. On January 8, 2018, the Expedia Group Board purportedly formed a special committee (the “Original Special Committee”), comprised “solely of independent and disinterested members . . . each of whom had been elected by the holders of Expedia Group common stock, voting together as a single class.”<sup>11</sup> The S-4 does not identify the members of the Original Special Committee. The Company’s proxy statements, however, identify Athey, Battle, Jacobson, and Kern as directors elected by the common stockholders. The Expedia Group Board delegated to the committee “*exclusive authority* to consider and negotiate a potential transaction involving Expedia Group, Liberty Expedia and Mr. Diller, and, ultimately, to make a recommendation to the Expedia Group Board with regard to any such transaction.”<sup>12</sup> This authority purportedly included “the consideration and negotiation . . . of the appropriate governance arrangements with respect to Expedia Group and Mr. Diller—in recognition and in lieu of Mr. Diller’s existing rights under the existing governance agreement and the existing stockholders agreement—to apply following any such transaction . . . .”<sup>13</sup>

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 39.

<sup>12</sup> *Id.* (Emphasis added.)

<sup>13</sup> *Id.*

56. Diller, however, had no contractual right to inject himself into merger discussions between Liberty Expedia and Expedia Group and extract personal benefits for himself. His rights under the Existing Governance Agreement and Existing Stockholder Agreement did not have to be “recognized” because they had no application to a Liberty Expedia/Expedia Group merger. He was not entitled to new or similar rights “in lieu” of his existing rights.

57. Diller breached his duty of loyalty by failing to allow Expedia Group to negotiate with Liberty Expedia without his interference. The other Director Defendants breached their duty of loyalty by failing to reject Diller’s demands for personal benefits and governance measures that entrench him and them.

58. From the outset, Diller and his counsel, Wachtell Lipton, controlled the discussions with Liberty Expedia. Indeed, the S-4 indicates that, after its formation, the Original Special Committee did absolutely nothing.

59. Without any approval of the Original Special Committee or Board, Diller entered into a letter agreement with Liberty Expedia, Qurate, and the Malones extending the termination date for the Proxy Swap by one year, from May 4, 2018 to May 4, 2019.<sup>14</sup>

60. Liberty Expedia renewed business combination discussions in late 2018.

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<sup>14</sup> *Id.*

61. On November 15, 2018, the Expedia Group Board “again formed a special committee” consisting of directors elected by the common stockholders. The S-4 does not explain why a new committee was established or what directors were on it. By this point, Kern had become Vice Chairman of Expedia Group and could not be considered disinterested and independent. Thus, the Special Committee likely consisted of Athey, Battle, and Jacobson, who, as discussed above, were not truly “independent.” This committee (the “Special Committee” or “Expedia Group Special Committee”) purportedly possessed the same “exclusive authority” as the Original Special Committee.<sup>15</sup> The Special Committee engaged Paul, Weiss, Rifkind, Wharton & Garrison LLP (“Paul Weiss”) as its legal counsel and PJT Partners LP (“PJT”) as its financial advisor.<sup>16</sup>

62. In practice, the Special Committee’s purported “exclusive authority” to negotiate a potential transaction was anything but that. Diller and conflicted legal counsel at Wachtell Lipton continued to dominate the negotiation process. For example, after November 30, 2018, Wachtell exchanged legal and business diligence request lists with Baker Botts. In this same time period, the Special Committee purportedly “authorized” Wachtell, rather than the Special Committee’s counsel, to

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<sup>15</sup> *Id.* at 40.

<sup>16</sup> *Id.*

meet “on several occasions” with Baker Botts to discuss “the possible terms and structure of a potential transaction.”<sup>17</sup>

63. Diller, through conflicted counsel at Wachtell, began demanding the right to exchange his shares of Expedia Group’s common stock for shares of Class B held by Liberty Expedia and the right to acquire additional Class B shares. The S-4 states that:

Representatives of Wachtell Lipton communicated to the Expedia Group [S]pecial [C]ommittee a number of proposals made by Mr. Diller, including that, in recognition and in lieu of Mr. Diller’s existing rights under the existing stockholders agreement and existing governance agreement, a transaction would involve the exchange by Mr. Diller of shares of Expedia Group common stock for shares of Expedia Group Class B common stock held by Liberty Expedia immediately prior to the closing of a transaction . . . , as well as the ability for Mr. Diller to acquire additional shares of Expedia Group Class B common stock currently held by Liberty Expedia for a period of time following the closing of a transaction . . . .<sup>18</sup>

64. There was no contractual basis for Diller’s demands and he breached his fiduciary duty by injecting them into the Liberty Expedia merger discussions.

65. According to the S-4, the Special Committee, rather than telling Diller he had no existing contractual rights with respect to a Liberty Expedia merger, “made a number of counter-proposals to Mr. Diller, including a proposal for the inclusion of an equal treatment provision in any new governance agreement” which

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

would purportedly restrict Diller from receiving disparate consideration for his Expedia Group Class B common stock in connection with a change of control transaction.<sup>19</sup> Diller, however, had no right or basis to demand direct voting control of Expedia Group. These new control rights were not in lieu of his inapplicable “existing rights.”

66. Once again, the Special Committee supposedly authorized Wachtell, Diller’s counsel, to discuss Diller’s demand with Liberty Expedia. Wachtell informed Liberty Expedia’s counsel concerning the Special Committee’s discussions of Diller’s demands.

67. The S-4 indicates an unidentified “member of Expedia Group management” conducted negotiations over the merger exchange rate with Liberty Expedia. Prior to market open on February 4, 2019, Diller filed a Schedule 13D/A with respect to Liberty Expedia, Malone filed a Schedule 13D/A with respect to Liberty Expedia, and Liberty Expedia and Diller filed a joint Schedule 13D/A with respect to Expedia Group (the “13D Amendments”) disclosing the range of exchange ratios that had been discussed that prior weekend. The 13D Amendments stated:

In addition, in connection with the consummation of any such transaction, **as would be permitted under certain circumstances by the governance and shareholder agreements**, relating to Expedia currently in effect, Mr.

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<sup>19</sup> *Id.*

Diller expects to exchange shares of Expedia Common Stock beneficially owned by him for shares of Expedia Class B Common Stock currently owned by Liberty and a charitable foundation formed by Mr. Diller may likewise exchange shares of Expedia Common Stock it owns for shares of Expedia Class B Common Stock currently owned by Liberty, and that **Mr. Diller and Expedia may enter into certain amendments to the governance agreement currently in effect relating to Mr. Diller's ability to exchange for or purchase in the future additional shares of Expedia Class B Common stock,** as well as other governance arrangements and transfer restrictions.

The 13D Amendments misleadingly indicated that in connection with a business combination between Liberty Expedia and Expedia Group, Diller had existing rights to exchange Expedia Group common shares for Class B shares. The 13D Amendments said Diller had such exchange rights under the Existing Governance Agreement and Existing Stockholder Agreement “under certain circumstances,” but failed to mention that a Liberty Expedia/ Expedia Group merger was not one of those circumstances. The 13D Amendments began a pattern of misleading partial disclosure, which has continued in the S-4 and S-4/As, intended to deliberately obscure that Diller did not have exchange or other rights with respect to such a merger. The 13D Amendments also misleadingly indicate that Diller and Expedia Group may enter into “amendments” to the Existing Governance Agreement relating to Diller’s existing exchange rights, when a new governance agreement was under discussion granting Diller new exchange rights.

68. Later on February 4, Wachtell Lipton, “as authorized by counsel to the Expedia Group [S]pecial [C]ommittee,” sent Baker Botts, among other things, a draft of an exchange agreement for Diller’s proposed exchange of Expedia Group common stock for shares of Expedia Group Class B common stock held by Liberty Expedia.<sup>20</sup> Then, “[o]ver the course of the next few days,” Baker Botts and Wachtell Lipton (“as authorized by” the Special Committee) “met on multiple occasions to discuss the potential transaction and negotiate key terms of the potential transaction documents . . . .”<sup>21</sup> So again, the Special Committee allowed Diller’s counsel to negotiate key terms.

69. Liberty Expedia and “representatives” of Expedia Group whom the S-4 does not identify continued negotiations on an exchange ratio. On February 11 and 13, 2019, the Special Committee met for discussions “based upon the most recent discussions that had been held with representatives of Liberty Expedia and Mr. Diller, including with respect to the proposed exchange ratio, the exchange, and the purchase/exchange right.”<sup>22</sup> Wachtell and Baker Botts continued to negotiate the merger terms and the exchange rights for several weeks. Wachtell also negotiated Malone’s Voting Agreement. Wachtell sent Baker Botts a draft new governance

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<sup>20</sup> *Id.* at 43.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

agreement containing a so-called equal treatment provision and so-called sunset provisions.

70. Following several more weeks of discussions, on April 15, 2019, the final open issues were resolved, including that Liberty Expedia options would be cancelled in exchange for the merger consideration (i.e., Expedia Group stock) based on the spread value of the options.

71. Later that day, the Special Committee held a meeting and approved the Merger, voting agreement, and New Governance Agreement. The full Board then approved the Merger, voting agreement, and New Governance Agreement.

72. Later that day, the Liberty Expedia Transaction Committee and Board held meetings and approved the transaction documents.<sup>23</sup>

73. Qurate, Liberty Expedia, Diller, and the Malones executed Amendment No. 2 to the Transaction Agreement which terminated the Proxy Swap at 11:25 p.m. on April 15, 2019.<sup>24</sup>

74. Shortly thereafter, Expedia Group, Liberty Expedia, LEMS I LLC (“Merger LLC”), a wholly-owned subsidiary of Expedia Group, and LEMS II Inc. (“Merger Sub”), a wholly owned subsidiary of Merger LLC, executed the Agreement and Plan of Merger (the “Merger Agreement”).

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<sup>23</sup> *Id.* at 45.

<sup>24</sup> *Id.*

75. At the closing of the Merger, former holders of Liberty Expedia Series A common stock and Series B common stock are expected to own in the aggregate shares of Expedia Group common stock and Expedia Group Class B common stock representing approximately 14% of the total number of outstanding shares of Expedia Group, based on approximately 140 million shares of Expedia Group common stock and approximately 5.7 million shares of Expedia Group Class B common stock currently expected to be outstanding at the closing of the Merger.<sup>25</sup>

76. Simultaneously with the entry into the Merger Agreement, Diller, the Family Foundation, Liberty Expedia, and the Company entered into an Exchange Agreement. According to the Exchange Agreement, immediately prior to and conditioned upon the closing of the Combination, Diller and, if the Family Foundation so elects, the Family Foundation are expected to exchange with Liberty Expedia up to a number of shares of Company Common Stock equal to the sum of (1) 5,523,452 shares of Expedia Group common stock (which is equal to the total number of shares of Expedia Group common stock held by Diller and the Family Foundation, in the aggregate, as of April 15, 2019) plus (2) the number of shares of Expedia Group common stock acquired by Diller prior to the exchange pursuant to the exercise of up to 537,500 vested options to purchase shares of Expedia Group common stock held by Diller as of April 15, 2019, for the same number of shares of

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<sup>25</sup> See S-4 at 2, 31.

Expedia Group Class B common stock held by Liberty Expedia (the shares of Expedia Group Class B common stock acquired by Diller and the Family Foundation pursuant to the Exchange Agreement, collectively referred to as the “Original Shares,” and the exchange referred to as the “BD Exchange”).<sup>26</sup>

77. It is anticipated that Diller will exchange up to approximately 5.7 million Original Shares, representing approximately 29% of the total voting power of Expedia Group, based on an estimate of the Expedia Group common stock and Expedia Class B common stock expected to be outstanding at the closing of the Merger.<sup>27</sup>

78. Simultaneously with the entry into the Merger Agreement, Expedia Group and Diller entered into a Second Amended and Restated Governance Agreement (the “New Governance Agreement”), which provides, among other things, that Diller may exercise a right (the “New Purchase/Exchange Right”) during the nine month period following the closing of the Merger to (1) exchange with the Company (or its wholly owned subsidiary) an equivalent number of shares of Expedia Group common stock for, or (2) purchase from the Company (or its wholly owned subsidiary), at a price per share equal to the average closing price of Expedia Group common stock for the five trading days immediately preceding notice of

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<sup>26</sup> Exchange Agreement, § 2(a); S-4 at 78.

<sup>27</sup> S-4 at 12, 32, 78.

exercise, up to a number of shares of Expedia Group Class B common stock equal to (1) 12,799,999 minus (2) the number of Original Shares (the shares acquired pursuant to the Purchase/Exchange Right, the “Additional Shares”).<sup>28</sup>

79. According to the S-4/A, Diller will acquire 5.6 million shares of Class B stock from Liberty Expedia in the exchange immediately prior to the Merger, representing voting power of approximately 29%. Under the New Governance Agreement, he will have the right to purchase 7.2 million additional Class B shares from the Company which will raise his voting power to approximately 48 or 49%, depending on whether he exchanges common shares or pays cash. The Original Shares and Additional Shares would collectively represent approximately 48 to 49% of the total voting power of all outstanding shares of Expedia Group common stock and Expedia Group Class B common stock.<sup>29</sup> With Expedia Group shares and options currently owned by the Director Defendants and Expedia Group officers and with further shares and options to be issued to them, Diller and other insiders will control a majority of Expedia Group’s outstanding voting power.

80. On information and belief, Defendants structured the challenged transactions and agreements to avoid having the Expedia Group stockholders vote on any part of those transactions and agreements. In particular, they sought to avoid

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<sup>28</sup> New Governance Agreement, § 3.01; S-4 at 12-13, 85-87.

<sup>29</sup> S-4 at 12, 32.

NASDAQ Rule 5635, which requires stockholder approval prior to an issuance of securities in connection with a change of control or the acquisition of stock of another company where the present or potential issuance of common stock will equal or exceed 20% of the voting power outstanding prior to the issuance or the number of shares of common stock to be issued will equal or exceed 20% of the common shares outstanding prior to the issuance. The Expedia Group common shares issuable pursuant to the Merger, Exchange Agreement and New Governance Agreement exceeds the 20% threshold.

***The Exchange Agreement and Governance Agreement Grant Diller Voting Control He Would Not Otherwise Have in Connection with the Merger***

81. As described above, under the Existing Stockholders Agreement and Existing Governance Agreement, a merger between Liberty Expedia and Expedia Group was explicitly carved out of the definition of Transfer in each of those agreements. Thus, Diller has no Right of First Refusal, no Swap Rights, and no Purchase/Exchange Right that is triggered by the Merger.

82. As a result of a merger in which Expedia Group acquired 100% of the stock of Liberty Expedia, the Expedia Group Class B shares and common shares owned by Liberty Expedia would, under 8 *Del. C.* § 160(c), not be entitled to vote or not counted for quorum stock. Those shares would either be treasury stock or be retired. Therefore, these shares would no longer represent voting control of Expedia Group and voting control would rest with the publicly held common stock. Instead,

Defendants created agreements transferring control to Diller. As a result of the Merger and Exchange Agreement, Diller will immediately have 29% voting power, which, with his entrenched position as Chairman of the Board and Rights under the New Governance Agreement, will give him control of Expedia Group.

***The Equal Treatment Provision of the New Governance Agreement Does Not Mitigate the Harm to Expedia Group and its Common Stockholders***

83. The New Governance Agreement provides for a so-called Equal Treatment Provision in Section IV. But the “Equal Treatment Provision” does nothing to protect Expedia Group’s common stockholders.

84. Section 4.01 of the New Governance Agreement states the following:

(a) For so long as the Stockholder Beneficially Owns any shares of Covered Class B Stock, the Stockholder shall not, directly or indirectly, in any way participate in a Change of Control Transaction, unless such Change of Control Transaction provides for the same per share consideration (in type and amount) and mix of consideration (in type and amount), as the case may be, **or (as applicable) the right to receive (or to elect to receive) the same consideration (in type and amount) and mix of consideration (in type and amount)**, in respect of shares of Company Common Stock and shares of Company Class B Stock that are subject to such Change of Control Transaction; provided, that, with respect to any such Change of Control Transaction involving less than 100% of the Company Common Shares, each holder of Company Common Shares (whether of Company Common Stock or Company Class B Stock) must have **the same right to participate in such Change of Control Transaction, including with respect to the election to participate in such transaction (if any) on the same economic terms and to proportionate treatment (based on economic ownership) in the case of any cut-back mechanics or offer limitations (a Change of Control Transaction that does not meet the foregoing conditions, a “Disparate Transaction”)**; provided, that, notwithstanding the foregoing, a bona fide share exchange,

merger, recapitalization or other business combination involving the Company and a Third Party in which

(i) the stockholders of the Company, immediately prior to such transaction, continue to hold, immediately following such transaction, (and receive no consideration in the applicable transaction other than) shares of capital stock of the successor or resulting entity in substantially the same relative proportions and classes as their ownership of the Company's capital stock immediately prior to such transaction and the two-class capital structure and pro rata economics of the two classes of capital stock are substantially replicated,

(ii) each Beneficial Owner of shares of Covered Class B Stock as of immediately prior to the effective time of such transaction enters into a written agreement with such successor or resulting entity providing for the application, following the effective time of such transaction, of terms and conditions substantially equivalent to this Article IV to the securities received in such transaction by such Person in respect of such shares of Covered Class B Stock and

(iii) immediately following the effective time of such transaction, such successor or resulting entity has in effect a Certificate of Incorporation (or other equivalent organizational document) that in all material respects reflects, mutatis mutandis, the terms contemplated by Section 6.09(a), shall not be deemed a Disparate Transaction.

(b) For so long as the Stockholder Beneficially Owns any shares of Covered Class B Stock, the Stockholder shall not vote or tender (or cause to be voted or tendered) any Company Common Shares in favor of or pursuant to any Disparate Transaction, or enter into any agreement or arrangement with any Person agreeing to do any of the foregoing in respect of any Disparate Transaction.

(c) The provisions of this Section 4.01 shall be binding on any transferee of any Covered Class B Stock (so long as such shares remain high-vote shares).

(Emphasis added.)

85. This so-called equal treatment provision does not apply to fundamental corporate transactions that are internal to Expedia Group, such as stock and option

issuance, certificate amendments, reclassifications, recapitalizations, share exchanges, spin-off, split-offs, or numerous other transactions that could enable Defendants to evade the supposed “equal treatment.”

86. “Change of Control Transaction” is defined in Section 5.12 as

(a) any merger, tender or exchange offer, consolidation, amalgamation or similar transaction between the Company **and another Person (other than a Subsidiary of the Company)** pursuant to which the stockholders of the Company immediately prior to such merger, tender or exchange offer, consolidation, amalgamation or similar transaction would own, as of immediately after such transaction, **less than fifty percent (50%) of the total economic or voting power** of all outstanding Voting Securities of the Company (or resulting or surviving entity), or

(b) any sale, lease or other disposition of all or substantially **all of the assets of the Company to another Person (other than a Subsidiary of the Company)**, in each of the foregoing clauses (a) and (b), whether in any single transaction or series of related transactions, regardless of the amount of consideration.

(Emphasis added.)

87. The definition of Change of Control does not include a self-tender by the Company or a repurchase of the Class B stock at a premium above the Common Stock public trading price. Moreover, it does not apply to mergers or asset sales involving subsidiaries, or to transactions involving sale of less than substantially all assets or transfer of less than 50% of total economic interests or voting power.

88. Section 6.02 provides for how the New Governance Agreement can be modified. It states that

(a) Subject to the last sentence of this paragraph (a), any provision of this Agreement may be amended or waived if, and only if, such amendment or waiver is in writing and signed, in the case of an amendment, **by Mr. Diller and the Company**, or in the case of a waiver, by Mr. Diller, if the waiver is to be effective against any member of the Stockholder Group, or **the Company, if the waiver is to be effective against the Company**. Any amendment or waiver by the Company shall be authorized by a majority of the members of the Board of Directors who are

(i) “independent directors” as defined by applicable stock exchange listing rules,

(ii) independent of Mr. Diller and his Affiliates and

(iii) not members of the management of the Company or any Person over which Mr. Diller exercises direct or indirect control (“Independent Directors”). Following Mr. Diller’s death or at such time as Mr. Diller has become Disabled, any amendment or waiver hereunder on the part of any member(s) of the Stockholder Group shall be in writing and signed by members of the Stockholder Group owning in the aggregate a majority of the Covered Class B Stock then outstanding.

(Emphasis added.)

89. The Agreement allows Diller and the Company to amend or waive provisions with no input from the Expedia Group common stockholders. A vote by the same directors who transferred control to Diller is no protection for the common stockholders.

90. Section 6.09 requires Expedia Group stockholder approval of a certificate amendment (the “Certificate Amendment”) at the next annual stockholders meeting that amends the certificate to “reflect, *mutatis mutandis*, the terms set forth in Article IV.” Of course, Diller and Expedia Group can amend or

waive terms of the New Governance Agreement before those terms are translated into the Certificate Amendment. *Mutatis mutandis* means they also can make whatever changes they claim are necessary. While the Certificate Amendment must be reasonably satisfactory to Diller and the same Special Committee that already approved giving away control to Diller, it does not have to be reasonably satisfactory to the Expedia Group common stockholders.

91. Section 6.09(b) requires that Diller vote all his shares in favor of the Certificate Amendment. The text of the Certificate Amendment was not included in the S-4 or S-4/A and has not been publicly disclosed.

92. Stockholders do not have a meaningful say in the Certificate Amendment. The Certificate Amendment has not been provided to the common stockholders and, even when it is, Diller agreed in the New Governance Agreement to vote his shares in favor of the amendment. Mover, the New Governance Agreement will be in effect and remain in effect regardless of the outcome of the vote on the Certificate Amendment. Thus, stockholders will have no meaningful vote on the Certificate Amendment.<sup>30</sup>

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<sup>30</sup> The Certificate Amendment will not be voted on until the annual stockholders meeting that follows the close of the Merger. Expedia Group has not held its 2019 annual meeting nor has a proxy statement for the annual meeting been filed. Last year's meeting was held on June 20, 2018 and the proxy statement was filed on April 30, 2018. The Merger will not be voted on until July 26, 2019. Thus, Defendants are using the Merger as an excuse to violate 8 *Del. C.* § 211 by failing to hold the 2019 annual meeting within thirteen months of the 2018 annual meeting.

93. Although purportedly given “equal protection,” the common stockholders cannot protect their Equal Treatment Provision rights because future amendments to the Certificate to modify or eliminate the Equal Treatment Provision are not subject to a class vote by the common stockholders and Diller is not required to vote his shares in proportion to the vote of the common shares.

94. Instead, the Board and Diller can modify or waive the Equal Treatment Provision and agree to a Change in Control Transaction that would pay the Class B stock more than the common stock or a different form of consideration. Diller can then use his voting power to modify or eliminate the Equal Treatment Provision in the Certificate. The other stockholders will be presented with a choice of approving a Change in Control transaction in which they get a lesser premium or different consideration than Diller or they get no transaction at all.

95. The Mandatory Conversion provision and transfer restrictions in the New Governance Agreement only apply to the “Additional Shares” Diller receives from the Company, not the Original Shares Diller acquires under the Exchange Agreement.

96. Expedia Group’s Certificate provides that dividends on the Common Stock and Class B stock must be declared to treat both classes equally and identically. Expedia Group may, however, pay stock dividends in the form of common and Class B stock. Thus, the Company could issue stock dividends or

execute stock splits as dividends to increase the number of Class B shares Diller owns and/or allow him to maintain his control while selling Class B stock, which would convert to common stock in the sale.<sup>31</sup>

97. Furthermore, Diller’s voting control may enable him to amend the Certificate to permit differential dividends of cash or other property.

98. Even the Director Defendants that Expedia Group identifies as “independent” have relationships with Diller that render them beholden to Diller, as discussed above.

***The “Sunset Provision” of the New Governance Agreement Does Not Mitigate the Harm to Expedia Group and Its Common Stockholders***

99. The S-4 says the New Governance Agreement includes a “sunset” provision for mandatory conversion of the Additional Shares upon certain events including (a) Mr. Diller’s dies or becomes disabled, (b) Mr. Diller voluntarily ceasing to serve as Chairman or a Senior Executive of Expedia Group, or (c) Mr. Diller and/or his Family Foundation transferring Original Shares representing more than 5% of the outstanding voting power of Expedia Group. This “sunset provision” essentially gives Diller control for life and provides no protection to the common stockholders against Diller’s control and entrenchment. It can be evaded by many of the same techniques such as amendment or waiver applicable to the Equal

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<sup>31</sup> Expedia Group is authorized to issue up to 100,000,000 shares of Class B stock.

Treatment Provision. The definition of Disabled invites retention of control by (or in the name of) Diller even when he is seriously impaired. Moreover, the 5% limit does not include transfers to a Permitted Transferee, which includes the personal representatives of Diller's estate. Consequently, the "sunset provision" provides no solace for common stockholders.

### **CLASS ACTION ALLEGATIONS**

100. Plaintiff brings this action individually and as a class action pursuant to Court of Chancery Rule 23 on behalf of all holders of Expedia Group common stock except Defendants herein and any person, firm, trust, corporation or other entity related to or affiliated with any of the Defendants (the "Class").

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

102. The Class is so numerous that joinder of all members is impracticable. As of April 30, 2019, there were over 136,102,491 shares of Expedia Group common stock outstanding, of which over 100 million shares are unaffiliated with Defendants.

103. There are questions of law and fact which are common to Plaintiff and the Class, including:

(a) Whether Diller and the other Director Defendants breached their fiduciary duties to Plaintiff and the Class by formulating and approving the Exchange Agreement and New Governance Agreement and agreeing to the Merger;

(b) Whether the Class is entitled to declaratory relief that Diller had no right to interfere with the Merger and demand the Exchange Agreement and New Governance Agreement; and

(c) Whether Plaintiff and the Class are entitled to equitable relief and/or damages.

104. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature. Plaintiff's claims are typical of claims of the other members of the Class and Plaintiff has the same interests as the other members of the Class. Accordingly, Plaintiff is an adequate representative of the Class and will fairly and adequately protect the interests of the Class.

105. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class that would establish incompatible standards of conduct for defendants, or adjudications with respect to individual members of the Class that would as a practical matter be dispositive of the interests of the other members not party to the adjudications or substantially impair or impede their ability to protect their interests.

106. Defendants have acted, or refused to act, on grounds generally applicable to and causing injury to the Class, and therefore declaratory or injunctive relief on behalf of the Class as a whole is appropriate.

107. The holders of Expedia Group Common stock are affected by the challenged transactions differently than the Class B holders, Diller and Liberty Expedia.

108. To the extent any of Plaintiff's claims are determined to be derivative, the allegations in this complaint demonstrate that demand under Chancery Court Rule 23.1 is excused.

## **CAUSES OF ACTION**

### **Count I**

#### **Declaratory Judgment That Diller Had No Contractual Right to Prevent or Interfere with a Merger Between Expedia Group and Liberty Expedia (Against All Defendants)**

109. Plaintiff repeats and realleges the paragraphs above as if fully set forth herein.

110. The Existing Governance Agreement, the Existing Stockholder Agreement, the Diller Proxy, the Diller Assignment, and the Malone Proxy are governed by Delaware law. The parties to the agreements have consented to jurisdiction in courts of Delaware for actions arising out of the agreements. Under 8 *Del. C.* §111 (a)(1)-(6), the Delaware Court of Chancery has jurisdiction to

interpret, apply, enforce or determine the validity of the provisions of the various agreements and proxies.

111. Under Section 6.54 of the Existing Governance Agreement and Section 1.1 of the Existing Stockholder Agreement, a merger in which Liberty Expedia is a constituent corporation is not a Transfer of Common Shares of Expedia Group unless a significant purpose of the transaction is to avoid those agreements. Therefore, the provisions of the Existing Governance Agreement (e.g. Sections 2.06, 5.01(a), 5.02) and Existing Stockholder Agreement (e.g. Sections 4.1-4.8, 5.1) which restrict or impose conditions on Transfers or grant Diller rights triggered by Transfers do not apply.

112. The Existing Governance Agreement (Section 5.02 (c)-(e)) contained a limited Purchase/Exchange Right for Diller that was only triggered if Liberty was required to exchange Expedia Group Class B Stock for Expedia Group securities “pursuant to Section 4.4 (b)(ii) of the Stockholders Agreement.” That section of the Existing Stockholder Agreement only applied to a “proposed Transfer” that is a Block Sale or Transfer of all Expedia Group Common Shares beneficially owned by Liberty Expedia to someone “other than [Expedia Group].” Moreover, the definition of Transfer in Section 1.1 of the Existing Stockholder Agreement specifically provides that a merger in which Liberty Expedia is a constituent corporation is not a

Transfer unless a significant purpose is to avoid the provisions of the Expedia Stockholder Agreement.

113. There is nothing in the S-4, other public filings, or transaction documents indicating that avoiding the Existing Governance Agreement or the Existing Stockholder Agreement was a significant purpose of the Merger. Rather, Liberty Expedia wanted the Merger to avoid potential 40 Act problems and for other business reasons. Therefore, Diller's purchase/exchange right under the Existing Governance Agreement/Existing Stockholder Agreement was not triggered by the Merger.

114. Moreover, under Section 2(a)(i) of the Malone Proxy, Diller's irrevocable proxy for Malone's Liberty Expedia stock does not include Excluded Matters. The definition in Section 1 of Excluded Matters includes a vote to "approve any agreement . . . between [Liberty Expedia] or any of its Affiliates, on the one hand, and, Expedia or its subsidiaries, on the other hand."<sup>32</sup> Therefore, Diller was not entitled to vote Malone's Liberty Expedia stock on a merger between Expedia Group and Liberty Expedia.

115. The Existing Governance Agreement, Existing Stockholder Agreement, and Malone Proxy did not give Diller the contract right or ability to prevent a merger between Liberty Expedia and Expedia Group.

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<sup>32</sup> Liberty Expedia, Current Report (Form 8-K) (Nov. 7, 2016), Ex. 10.11 at 4, 6.

116. Notwithstanding these facts, in Section 6.11 of the New Governance Agreement, Section 6(d) of the Exchange Agreement, and at pages 14, 32, 39, 40, 78, and 83 of the S-4, it is represented that Diller’s rights under the Exchange Agreement and New Governance Agreement are “in recognition and in lieu of” Diller’s existing rights under the Existing Governance Agreement and Existing Stockholder Agreement.<sup>33</sup> Diller, however, had no existing contractual or other rights that would have been triggered by the Merger. Therefore, he had no basis to receive, and the Expedia Group Board had no basis to create, contractual rights in connection with the Merger giving him control of Expedia Group. Such rights were not “in recognition and in lieu of” Diller’s existing rights because the existing agreements did not provide him any rights to any exchange or purchase of Class B stock if there was a merger between Expedia Group and Liberty Expedia.

117. While denominated a “Second Amended and Restated Governance Agreement,” the New Governance Agreement is a new and different agreement, not merely an amendment and restatement of the Existing Governance Agreement among Expedia Group, Liberty Expedia as Expedia Group’s controlling stockholder and Diller. The New Governance Agreement is solely between Expedia Group and Diller. While it contains a notice provision, representation and warranties, and

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<sup>33</sup> Expedia Group, Registration Statement (Form S-4) (May 1, 2019), Annex B (Exchange Agreement), § 6(d) at B-11; Exhibit C (New Governance Agreement), § 6.11 at C-21.

boilerplate miscellaneous provisions similar to the Existing Governance Agreement, the substantive provisions of the New Governance Agreement are significantly different from the terms of the Existing Governance Agreement. The Existing Governance Agreement (Sections 2.01-2.05, 3.01, 5.01-5.02) contained provisions concerning Liberty Expedia's right to Board and Board Committee representation, to preemptive rights, to approve certain transactions, and to engage in hedging transactions and distribution transactions and sales; the New Governance Agreement does not contain such provisions.

118. Under the Existing Governance Agreement and Existing Stockholder Agreement, Diller had no right to interfere with the Merger.

119. Diller's irrevocable proxy for Malone's Liberty Expedia stock does not include a vote to "approve any agreement . . . between [Liberty Expedia] or any of its Affiliates, on the one hand, and, Expedia or its subsidiaries, on the other hand." Therefore, Diller was not entitled to vote Malone's Liberty Expedia stock on a merger between Expedia Group and Liberty Expedia.

120. The Existing Governance Agreement, Existing Stockholder Agreement, and Malone Proxy did not give Diller the contractual right or ability to prevent a merger between Liberty Expedia and Expedia Group.

121. Plaintiff seeks declaratory judgment that Diller had no contractual right to prevent or interfere with a merger between Expedia Group and Liberty Expedia.

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

**Count II**

**Claim for Breach of Duty of Loyalty  
(Against Diller)**

123. Plaintiff repeats and realleges the paragraphs above as if fully set forth herein.

124. Diller, as an Expedia Group director, owes the Class a fiduciary duty of loyalty.

125. Diller had no contractual right to prevent or interfere with the Merger. He had no contractual rights to demand contractual or other consideration related to the Merger in recognition or in lieu of contractual rights under existing agreements. Diller breached his duty of loyalty by inserting himself into the merger negotiations and demanding contractual rights and agreements giving him control of Expedia Group or an option for control of Expedia Group.

126. Diller also structured the Merger in order to avoid a stockholder vote. Diller breached his fiduciary duties by depriving the Class of the ability to vote on the Merger.

127. Whatever contractual rights Diller claims to have had pursuant to existing agreements were subject to his duty of loyalty. Diller breached that duty by demanding that he be given agreements conveying control of Expedia Group to him and otherwise placing his self-interests above the interests of Expedia Group and the

Expedia Group stockholders and obtaining rights and benefits in which the other Expedia Group stockholders will not share.

128. As a result of Diller's breaches of fiduciary duty, Plaintiff and the Class have been and continue to be harmed.

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

### **Count III**

#### **Claim for Breach of Fiduciary Duty of Loyalty and Breach of Duty of Care (Against the Director Defendants)**

130. Plaintiff repeats and realleges the paragraphs above as if fully set forth herein.

131. The Exchange Agreement gives Diller and his Family Foundation the right to exchange approximately 5.6 million shares of common stock for the same number of shares of Expedia Group Class B stock held by Liberty Expedia. This will give Diller 29% of the total voting power of Expedia Group. The New Governance Agreement gives Diller the right for nine months following the Merger to purchase shares of Expedia Group Class B stock at the five trading day average closing price of Expedia Group common stock or exchange Expedia Group common stock for Expedia Group Class B stock. The number of Class B shares received in the purchase or exchange will be 12,799,999 minus the approximately 5.6 million Class B shares Diller receives pursuant to the Exchange Agreement. Diller can exercise the right together with third parties while retaining sole voting control over

the shares with the additional shares, Diller will hold 48% to 49% of the voting power in Expedia Group.

132. The Special Committee and Board transferred control of Expedia Group to Diller even though Diller's contractual rights under the Existing Stockholders Agreement and the Existing Governance Agreement would not have been triggered by the Merger. There is no indication in the S-4 that the Special Committee ever considered, or had any analysis done concerning, the immense value that Diller would recognize through the Exchange Agreement and New Governance Agreement at the expense of the Company and its stockholders.

133. The S-4 admits that the Exchange Agreement and New Governance Agreement will put Diller "in a position to influence, and potentially control, significant corporate actions, including corporate transactions such as mergers, business combinations or dispositions of assets." S-4, p. 33. It further concedes that:

This concentrated control could discourage others from initiating any potential merger, takeover or other change of control transaction that may otherwise be beneficial to Expedia Group stockholders.

134. Absent the Exchange Agreement and New Governance Agreement, in the Merger, Expedia Group would acquire all the Expedia Group Class B stock held by Liberty Expedia. That stock would be issued but not outstanding and could not be voted. 8 *Del. C.* § 160. Thus, the holders of Expedia Group Common stock

would have full control of Expedia Group, including the election of directors. As a result of the Exchange Agreement and New Governance Agreement, however, the Expedia Group Board has enabled Diller to control Expedia Group, including the retention and election of the incumbent directors who gave him that power.

135. The arrangements with Diller constitute change-in-control and anti-takeover measures that implicate the Directors' fiduciary duty of loyalty. The Directors breached their fiduciary duty of loyalty because there was no reasonably perceived threat to control that justified conveying effective control to Diller. Moreover, the arrangements for Diller are not reasonable in relation to any potential threat the Directors may have imagined. Because the agreements with Diller are an anti-takeover device, the Directors' actions relating to those agreements are subject to strict scrutiny.

136. The Equal Treatment and Sunset provisions do not effectively protect the stockholders from Diller's control or otherwise justify that control.

137. As a result of the Directors' breaches of fiduciary duty, Plaintiff and the Class have been and continue to be harmed.

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

## **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff demands judgment as follows:

- A. Declaring that this action is properly maintainable as a class action and, to the extent any of Plaintiff's claims are determined to be derivative, as a derivative action;
- B. Declaring that Diller had no contractual right to prevent or interfere with a merger between Expedia Group and Liberty Expedia;
- C. Declaring that Diller breached his fiduciary duty of loyalty;
- D. Declaring the New Governance Agreement invalid and unenforceable and enjoining any issuance of Class B stock under that agreement;
- E. Declaring that the voting power and control granted Diller are invalid and unenforceable as unreasonable anti-takeover devices;
- F. Converting all Class B shares owned by Diller into shares of common stock or, in the alternative, enjoining or otherwise preventing Diller from having ten vote per share voting power as to those Class B shares;
- G. Awarding monetary damages for Defendants' breaches of the fiduciary duty of loyalty;
- H. Awarding Plaintiff reasonable attorneys' fees, expenses, and costs; and
- I. Granting such other and further relief as the Court deems just and equitable.

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Dated: June 26, 2019

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