



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

DENNIS PALKON and HERBERT
WILLIAMSON,

Plaintiffs,

v.

C.A. No. 2023-____-____

GREGORY B. MAFFEI, ALBERT E.
ROSENTHALER, MATT GOLDBERG,
JAY C. HOAG, BETSY MORGAN,
GREG O'HARA, JEREMY PHILIPS,
TRYNKA SHINEMAN BLAKE, JANE
JIE SUN, ROBERT S. WISENETHAL,
LARRY E. ROMRELL, J. DAVID
WARGO, MICHAEL J. MALONE,
CHRIS MUELLER, and CHRISTY
HAUBEGGER,

Defendants,

and

TRIPADVISOR, INC. and LIBERTY
TRIPADVISOR HOLDINGS, INC.,

Nominal Defendants.

VERIFIED COMPLAINT

Plaintiffs Dennis Palkon ("Palkon") and Herbert Williamson ("Williamson" and, together with Palkon, "Plaintiffs"), (i) on behalf of Palkon and similarly situated holders of common stock of TripAdvisor, Inc. ("TRIP"), and Williamson and similarly situated holders of common stock of Liberty TripAdvisor Holdings, Inc. ("Liberty TripAdvisor" and, together with TRIP, the "Companies"), or (ii) in the alternative, derivatively on behalf of TRIP and Liberty TripAdvisor, bring this

Verified Complaint (the “Complaint”) against the Defendants named herein. The allegations herein are based on Plaintiffs’ knowledge as to themselves and, as to all other matters, on information and belief, including counsel’s investigation and review of publicly available information.

I. NATURE OF THE ACTION

1. This case involves a controlling stockholder, Gregory Maffei (“Maffei”), who has a unique history of using multi-class capital structures to achieve voting control despite far smaller economic interests in the companies he runs, and employing sophisticated financial engineering to serve his personal interests at the expense of his minority investors. Maffei has a well-deserved track record of being sued for breaching his fiduciary duties and this Court repeatedly denying motions to dismiss those claims.

2. Those stockholder lawsuits were anything but frivolous. Regardless of the boilerplate disclaimers in litigation settlements, controlling stockholders do not personally give up valuable economic and voting power, while causing their D&O insurers to pay out well over \$300 million, to resolve strike suits.

3. In theory, being held legally accountable for fiduciary misconduct would make some controllers less cavalier about compliance with their duties. Other controllers, unfortunately, simply choose to further abuse their power to insulate themselves from judicial review.

4. In this Action, Maffei, the controlling stockholder of both Liberty TripAdvisor and TRIP, has caused his controlled boards to propose re-domesticating both Companies to Nevada (the “Conversions”). Section 266 of the Delaware General Corporation Law (“DGCL”) requires a stockholder vote to change a company’s state of incorporation from Delaware to anywhere else. Both Companies’ Boards have approved the Conversions and set the votes to take place at their respective annual meetings, both on June 6, 2023.

5. There is no indication that either of the Companies employed a special committee or similar independent evaluation process, and neither Company is conditioning the Conversions on a majority-of-the-minority vote. Maffei effectively controls Liberty TripAdvisor through personally held supervoting shares. And Liberty TripAdvisor, in turn, controls TRIP through its holdings of supervoting shares. So the stockholder votes are a *fait accompli*.

6. Defendants do not offer any consideration to the minority stockholders to induce them to support the Conversions or even to make the Conversions fair. Defendants have publicly stated that the purpose of the Conversions is to advance their own self-interest: “greater protection from unmeritorious litigation” by stockholders. In truth, they will be insulated from almost any stockholder litigation, including claims that would be highly meritorious under Delaware law.

7. Nevada’s corporate code¹ was recently amended to “foreclose the inherent fairness standard that previously allowed a shareholder to automatically rebut the business judgment rule” in conflicted transactions.² This builds on Nevada legislators’ ongoing project of deliberately crafting Nevada’s corporate law to provide a “*no-liability corporate safe haven*. ... Nevada has reformed its laws to free officers and directors from virtually any liability arising from the operation and supervision of their companies. This strategy has allowed Nevada to attract ... firms with a preference for strong management protection that is not satisfied by Delaware law.”³ It is for this reason that many observers recognize that Nevada sells itself as offering a “no liability regime.” As prominent corporate law professor Ann Lipton recently observed, “I tell my students, Nevada is where you incorporate if you want to do frauds.”⁴

8. Plaintiffs respect the Nevada legislature’s prerogative to distinguish its corporate law from that of Delaware (and the dozens of legal systems around the world that structure their corporate law on Delaware’s model) by appealing to

¹ Nev. Rev. Stat. § 78.138.

² *Guzman v. Johnson*, 483 P.3d 531, 534 (Nev. 2021).

³ Michal Barzuza, *Market Segmentation: The Rise of Nevada As A Liability-Free Jurisdiction*, 98 VA. L. REV. 935, 938 (2012).

⁴ Ann Lipton, Tweet (April 10, 2023), <https://twitter.com/AnnMLipton/status/1645544410665435137>

fiduciaries who prefer a no-liability regime. But no rational minority stockholder would voluntarily agree to give up the benefits of the duty of loyalty, particularly in a controlled company where they face an omnipresent risk of self-dealing by a controller who has a history of abusive transactions. Yet that is effectively what Maffei and the other Defendants are imposing on their minority stockholders.

9. It is unfair for a controller to unilaterally eliminate public stockholders' ability to sue the controller and their directors. "[A] share of stock carries three basic rights: the right to vote, the right to sell, and the right to sue."⁵ The right to sue is, in many ways, the "most important baseline power, essential for the others to exist[.]"⁶ The Conversions essentially deprive Plaintiffs and other public stockholders of that right without any fair process and without providing the minority any consideration.

10. While it is hard to see how any controller could, consistent with its fiduciary duties, unilaterally move a corporation from almost any other state to Nevada, this Court need not issue any such blanket ruling. Until Defendants actually move the Companies to Nevada, their actions remain subject to Delaware law. Defendants admit that the Conversions will benefit them and take rights away from

⁵ *Electrical Workers Pension Fund, Local 103, I.B.E.W v. Fox Corporation/In re Snap Inc. Section 242 Litig.*, 2022-1007-JTL, 2022-1032-JTL (Del. Ch. Mar. 29, 2023) (TRANSCRIPT) at 8.

⁶ *Id.* at 66.

stockholders. It also appears that Defendants are making the move from Delaware to Nevada with the intent to effect a future transaction that would not pass muster here but would escape meaningful judicial scrutiny there. That decision is one that is still subject to Delaware law and, under that law, Defendants are plainly breaching their fiduciary duties.

11. Importantly, the TRIP and Liberty TripAdvisor proxies use nearly identical language to describe the effect of the Conversion proposals on future transactions, but with one critical difference—the TRIP proxy says that the Conversion “is expected to provide corporate flexibility *in connection with certain corporate transactions.*”⁷

TRIP Proxy	Liberty TripAdvisor
<p><i>Further, the Redomestication is expected to provide corporate flexibility in connection with certain corporate transactions.</i> However, note that the Redomestication is not being effected to prevent a change in control, nor is it in response to any present attempt known to our Board to acquire control of the Company or obtain representation on our Board. In connection with the Redomestication, the Nevada Corporation will opt out of certain Nevada statutes that may discourage unsolicited takeovers. Nevertheless, certain effects of the proposed Redomestication may be considered to have anti-takeover</p>	<p>The conversion is not being effected to prevent a change in control, nor is it in response to any present attempt known to our Board of Directors to acquire control of the company or obtain representation on our Board of Directors. In connection with the conversion, the company will opt out of two Nevada statutes that have the direct effect of discouraging unsolicited takeovers. Nevertheless, certain effects of the proposed conversion may be considered to have anti-takeover implications by virtue of making the company subject to Nevada law.</p>

⁷ TRIP Proxy at 30.

implications by virtue of being subject to Nevada law.	
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12. The Proxies do not describe *which* “certain corporate transactions” stockholders should “expect” to be affected by the TRIP Conversion. But it seems clear that one or more are coming and that Maffei would prefer to be governed by Nevada law when that happens.

13. The core question in this case is whether fiduciaries of a Delaware corporation—still bound by Delaware law and the duty of loyalty—can use their control over the corporation to force the company and its minority investors to give up all of Delaware law’s protections, with the sole purpose being to insulate the conflicted controller and insiders from accountability.

14. The answer to that question is no.

II. PARTIES

A. PLAINTIFFS

15. **Plaintiff Dennis Palkon** (as previously defined, “Palkon”) is, and has been at all relevant times, a stockholder of TRIP.

16. **Plaintiff Herbert Williamson** (as previously defined, “Williamson”) is, and has been at all relevant times, a stockholder of Liberty TripAdvisor.

B. NOMINAL DEFENDANTS

17. **Nominal Defendant TripAdvisor, Inc.** (previously defined as “TRIP”) is a Delaware corporation headquartered in Needham, Massachusetts.

TRIP is the world's largest travel guidance platform. Travelers across the globe use the TripAdvisor site and app to discover where to stay, what to do, and where to eat based on guidance from those who have been there before. TRIP helps hundreds of millions of people each month plan, book, and take trips. As detailed below, TRIP is controlled by Liberty TripAdvisor, which, in turn, is controlled by Defendant Maffei.

18. **Nominal Defendant Liberty TripAdvisor Holdings, Inc.** (previously defined as "Liberty TripAdvisor") is a Delaware corporation headquartered in Englewood, Colorado. Liberty TripAdvisor's sole operations are its controlling interest in TRIP. Liberty TripAdvisor is controlled by Maffei.

C. DEFENDANTS

19. **Defendant Gregory B. Maffei** (previously defined as "Maffei") is the Chairman, President, and CEO of Liberty TripAdvisor. Maffei serves on the executive committee of the Liberty TripAdvisor Board (the "Executive Committee"), which "may exercise all the powers and authority of the [the company's] Board of Directors in the management of [the company's] business and affairs (except as specifically prohibited by the General Corporation Law of the State of Delaware)." Maffei is also the Chairman of the Board of Directors of TRIP. Additionally, Maffei serves as the President and CEO of Liberty Media Corporation ("Liberty Media") and Liberty Broadband Corporation ("Liberty Broadband").

20. **Defendant Albert E. Rosenthaler** (“Rosenthaler”) serves as the Chief Corporate Development Officer of Liberty TripAdvisor and has served on the Liberty TripAdvisor Board of Directors since 2014. Rosenthaler serves on the Liberty TripAdvisor Executive Committee. He also serves as a director of TRIP. Additionally, Rosenthaler serves as the Chief Corporate Development Officer of Qurate Retail Group (“Qurate Retail”), Liberty Media, and Liberty Broadband.

21. **Defendant Matt Goldberg** (“Goldberg”) has served as President and CEO of TRIP since July 2022 and serves as a director on the TRIP Board.

22. **Defendant Jay C. Hoag** (“Hoag”) has served as a TRIP director since 2018.

23. **Defendant Betsy Morgan** (“Morgan”) has served as a TRIP director since 2019.

24. **Defendant Greg O’Hara** (“O’Hara”) has served as a TRIP director since 2020.

25. **Defendant Jeremy Philips** (“Philips”) has served as a TRIP director since 2011.

26. **Defendant Trynka Shineman Blake** (“Blake”) has served as a TRIP director since 2019.

27. **Defendant Jane Jie Sun** (“Sun”) has served as the CEO of Trip.com since November 2016 and has served as a TRIP director since 2020.

28. **Defendant Robert S. Wiesenthal** (“Wiesenthal”) has served as a TRIP director since 2011.

29. **Defendant Larry E. Romrell** (“Romrell”) has served as a Liberty TripAdvisor director since 2014. Romrell currently serves as a director of Liberty Media, Qurate Retail, and Liberty Global plc and formerly served as a director of Liberty Global, Inc. and Liberty Media International, Inc. Romrell held numerous executive positions with Tele-Communications, Inc. (“TCI”) when John Malone, the controller of the Liberty complex of companies, was TCI’s president and CEO.

30. **Defendant J. David Wargo** (“Wargo”) has served as a director of Liberty TripAdvisor since 2014. Wargo also currently serves as a director of Liberty Broadband and Liberty Global plc and formerly served as a director of Liberty Global, Inc., Liberty Media International, Inc., Discovery, Inc., and Discovery Holding Company.

31. **Defendant Michael J. Malone** (“M. Malone”) has served as a Liberty TripAdvisor director since 2014.

32. **Defendant Chris Mueller** (“Mueller”) has served as a Liberty TripAdvisor director since 2014. Mueller serves on the Liberty TripAdvisor Executive Committee.

33. **Defendant Christy Haubegger** (“Haubegger”) has served as a Liberty TripAdvisor director since 2021.

34. Defendants Maffei, Goldberg, Hoag, Morgan, O'Hara, Philips, Rosenthaler, Shineman, Sun, and Wiesenthal comprise the TRIP Board and are collectively referred to herein as the "TRIP Director Defendants."

35. Defendants Maffei, Rosenthaler, Romrell, Wargo, M. Malone, Mueller, and Haubegger comprise the Liberty TripAdvisor Board and are collectively referred to herein as the "Liberty TripAdvisor Director Defendants."

36. Collectively, the TRIP Director Defendants and Liberty TripAdvisor Director Defendants are referred to as the "Director Defendants."

III. SUBSTANTIVE ALLEGATIONS

A. MAFFEI CONTROLS TRIP AND LIBERTY TRIPADVISOR

37. TRIP and Liberty TripAdvisor are both publicly traded Delaware corporations with the same human controller, Maffei. Liberty TripAdvisor owns a majority of TRIP's outstanding voting power through its ownership of all of TRIP's super-voting Class B common stock. In turn, Maffei is Liberty TripAdvisor's Chairman and CEO. He controls 43% of Liberty TripAdvisor's outstanding voting power through (a) his ownership of almost all of Liberty TripAdvisor's super-voting Series B stock and (b) the fact that a majority of the Liberty TripAdvisor Board lacks independence from Maffei.

i. TRIP

38. TRIP has a dual-class capital structure. TRIP common stock is entitled to one vote per share and TRIP Class B common stock is entitled to ten votes per

share. The shares have equivalent economic rights. As of February 10, 2023, TRIP had 128,164,615 Class A shares and 12,799,999 Class B shares outstanding.

39. Liberty TripAdvisor owns all of TRIP's outstanding super-voting Class B common stock and approximately 20.6% of TRIP's outstanding Class A common stock. In total, Liberty TripAdvisor holds 56.2% of TRIP's total outstanding voting power. In addition to his interests in TRIP through his controlling position in Liberty TripAdvisor, Maffei also personally owns 107,186 TRIP Class A shares.

40. TRIP's public filings concede that the company is controlled by Liberty TripAdvisor. *See* TRIP's proxy statement filed with the SEC on April 10, 2023, at 15 ("We are a 'controlled company' as defined under the Nasdaq Stock Market Listing Rules"); *id.* at 22 ("Given the ownership structure of [TRIP] and our status as a 'controlled company' . . ."); *see also* TRIP's Form 10-K filed with the SEC on February 17, 2023, at 24 ("Liberty TripAdvisor . . . currently is a controlling stockholder. Liberty TripAdvisor . . . effectively controls the outcome of all matters submitted to a vote or for the consent of our stockholders . . ."); *id.* ("We currently rely on the controlled company exemption for certain of the above requirements.").

ii. Liberty TripAdvisor

41. Liberty TripAdvisor has a dual-class capital structure. Liberty TripAdvisor Series A common stock is entitled to one vote per share and Liberty TripAdvisor Series B common stock is entitled to ten votes per share. The shares

have equivalent economic rights. As of January 31, 2023, Liberty TripAdvisor had 72,641,163 Series A shares and 3,370,368 Series B shares outstanding.

42. Maffei does not own any Liberty TripAdvisor Series A common stock, but he owns 97.5% of Liberty TripAdvisor's Series B common stock, which provides him with 43.1% of Liberty TripAdvisor's total voting power.

43. Moreover, Maffei wields control over Liberty TripAdvisor through means other than just his potent voting power. Maffei serves as Liberty TripAdvisor's Chairman and CEO.

44. Maffei has also stocked the seven-member Liberty TripAdvisor Board with himself and loyalists, including Defendants Rosenthaler, Romrell, and Wargo.

In addition:

- Maffei serves as Liberty TripAdvisor's Chairman.
- Rosenthaler reports to Maffei at other companies in the Liberty family. Rosenthaler is the Chief Corporate Development Officer of Liberty Media, Qurate Retail, and Liberty Broadband. Maffei is the CEO of Liberty Media and Liberty Broadband and the Executive Chairman of Qurate Retail.
- Romrell serves as a director of Liberty Media, Qurate Retail, and Liberty Global plc and formerly served as a director of Liberty Global, Inc., and Liberty Media International, Inc. Romrell held numerous executive positions with TCI when John Malone, a Maffei ally and the controller of the Liberty complex of companies, was TCI's president and CEO.
- Wargo serves as a director of Liberty Broadband and Liberty Global plc and formerly served as a director of Liberty Global, Inc., Liberty

Media International, Inc., Discovery, Inc., and Discovery Holding Company.

45. Maffei and Rosenthaler also serve on Liberty TripAdvisor's three-member Executive Committee, which "may exercise all the powers and authority of the [the company's] Board of Directors in the management of [the company's] business and affairs (except as specifically prohibited by the General Corporation Law of the State of Delaware)."

B. THE TRIP AND LIBERTY TRIPADVISOR BOARDS AGREE TO THE CONVERSIONS

46. On April 7, 2023, Liberty TripAdvisor filed its preliminary proxy statement for its annual stockholder meeting, which was scheduled for June 6, 2023 (the "Liberty TripAdvisor Proxy"). Proposal 3 on the Liberty TripAdvisor Proxy, approved unanimously by the Liberty TripAdvisor Board, asks stockholders to approve the redomestication of Liberty TripAdvisor from Delaware to Nevada.

47. Similarly, on April 10, 2023, TRIP filed its preliminary proxy statement for its annual stockholder meeting, which was also scheduled for June 6, 2023 (the "TRIP Proxy" and, together with the Liberty TripAdvisor Proxy, the "Proxies"). Proposal 3 on the TRIP Proxy, unanimously approved by the TRIP Board, asks stockholders to approve the redomestication of TRIP from Delaware to Nevada.

48. Pursuant to the terms the Conversions, all shares of TRIP Class A and Class B common stock and all shares of Liberty TripAdvisor Class A and Class B

common stock will be converted, on a one-to-one basis, into the same class of shares in the resulting Nevada corporations. The Conversions are to take effect “as soon as practicable following the Annual Meeting[,]” upon the filing of certificates of conversion with both the Delaware and Nevada secretaries of state, pursuant to Section 266 of the DGCL and Section 92A.205 of the Nevada Revised Statutes.

49. As discussed below in Section III.C, the Conversions would plainly harm the Companies’ public stockholders—they will eliminate stockholders’ ability to sue Maffei and the other Defendants for future self-dealing/interested/entrenching conduct and will reduce firm value. But given Liberty TripAdvisor’s majority voting power in TRIP and Maffei’s near-majority voting power in Liberty TripAdvisor, the outcome of the Conversion votes are a *fait accompli* absent judicial intervention.

50. Maffei controls 43.1% of Liberty TripAdvisor’s total voting power. As this Court has previously acknowledged, the size of Maffei’s block is outcome-determinative in a Liberty TripAdvisor vote.⁸ Liberty TripAdvisor also holds 56.2% of TRIP’s total outstanding voting power. Accordingly, “regardless of the vote of any other [TRIP] stockholder, [Liberty TripAdvisor] has control over the vote relating to . . . the approval of the redomestication of [TRIP] to the State of Nevada by conversion.”

⁸ *Voigt v. Metcalf*, 2020 WL 614999, at *18-19 (Del. Ch. Feb. 10, 2020).

51. Given that the Conversions would insulate each of the Defendants from liability, as discussed in more detail below in Section III.C, all of the Defendants are self-interested in the redomestications. Indeed, the TRIP Proxy admits “[t]he directors and officers of the Company have an interest in the Redomestication to the extent that they will be entitled to such limitation of liability,” *i.e.*, “the elimination of any liability of an officer or director for a breach of the duty of loyalty unless arising from intentional misconduct, fraud or a knowing violation of law.” Likewise, the Liberty TripAdvisor Proxy admits: “Our directors’ and executive officers’ interests may also differ from those of our stockholders in general relating to the greater protections provided to our directors and officers from liability for their service as directors and executive officers pursuant to Nevada law and the Nevada Charter. These interests may present such persons with actual or potential conflicts of interests.”

52. Yet, neither the TRIP Board nor the Liberty TripAdvisor Board tried to (a) inject any semblance of independence or other measures to protect minority stockholders into the processes culminating in the Conversion proposals⁹ or

⁹ There is no suggestion that in the Proxies that either Board even attempted to secure independent legal advice. Baker Botts L.L.P. (“Baker Botts”) advised the Liberty TripAdvisor Board in connection with its proposed Conversion, and, given the clearly related nature of the Conversions, it seems likely that Baker Botts advised the TRIP Board in connection with its Conversion as well.

(b) negotiate anything of value for the public stockholders as consideration for effectively stripping them of valuable rights. Moreover, neither the TRIP Board nor the Liberty TripAdvisor Board conditioned the Conversions on approval by a majority of minority stockholders.

C. THE CONVERSIONS EFFECTIVELY INSULATE MAFFEI AND THE COMPANIES' OTHER DIRECTORS AND OFFICERS FROM STOCKHOLDER LITIGATION FOR FUTURE SELF-DEALING

53. Because Maffei's voting power diverges sharply from his underlying equity interest,¹⁰ Plaintiffs confront a pervasive risk of tunnelling at the Companies.¹¹ Delaware law is designed to address that risk and protect stockholders from controller self-dealing without generating frivolous litigation. Delaware's nuanced law incentivizes controllers to impose procedural protections that replicate

Baker Botts has deep and long-standing ties to the Liberty complex of companies, as well as to Maffei and John Malone, and the firm is currently representing Maffei in multiple actions pending in this Court. At a minimum, a Board seeking to protect the interests of minority public stockholders would not select counsel that has an extensive history with a controller to oversee and advise on Conversion proposals that would insulate fiduciaries from future legal liability for breaches of fiduciary duty.

¹⁰ See ¶¶38-39, 41-42 *supra*.

¹¹ See *In re EZCORP Inc. Consulting Agreement Deriv. Litig.*, 2016 WL 301245, at *2 (Del. Ch. Jan. 25, 2016) (“As control rights diverge from equity ownership, the controller has heightened incentives to engage in related-party transactions and cause the corporation to make other forms of non-*pro rata* transfers. Economists call this ‘tunneling.’”); *In re Appraisal of Regal Entm’t Grp.*, 2021 WL 1916364, at *26 (Del. Ch. May 13, 2021) (“[I]n an efficient market, participants will perceive the possibility that the controller will act in its own interests and discount the minority shares accordingly.”).

arm's-length dealing¹² and imposes entire-fairness review on controllers who ignore the “ground rules of good corporate governance in conflict transactions.”¹³

54. Nevada has taken a decidedly different path. It has “raced to the bottom” and modified its corporate code to effectively eliminate stockholders’ ability to protect themselves in court through a “no-liability regime.”¹⁴ Nevada legislators have deliberately¹⁵ crafted Nevada’s corporate law to provide a “no-liability corporate safe haven. . . . Nevada has reformed its laws to free officers and directors from virtually any liability arising from the operation and supervision of

¹² *Kahn v. M & F Worldwide Corp.*, 88 A.3d 635, 639 (Del. 2014), *overruled in limited part on unrelated grounds by Flood v. Synutra Int’l, Inc.*, 195 A.3d 754 (Del. 2018).

¹³ *See In re Tesla Motors, Inc. Stockholder Litig.*, 2022 WL 1237185, at *49 (Del. Ch. Apr. 27, 2022) (“Elon likely could have avoided the need for judicial review of his conduct as a Tesla fiduciary had he simply followed the ground rules of good corporate governance in conflict transactions. He declined to do so.”).

¹⁴ *See* Pierluigi Matera, *Delaware’s Dominance, Wyoming’s Dare: New Challenge, Same Outcome?*, 27 FORDHAM J. CORP. & FIN. L. 73, 100 (2022) (“Nevada intended to carve out and become the leader of a specific segment of the corporate charters market: namely, that of firms with a preference for a no-liability regime concerning directors and officers.”).

¹⁵ *See* Michal Barzuza, *Inefficient Tailoring: The Private Ordering Paradox in Corporate Law*, 8 HARV. BUS. L. REV. 131, 168–69 (2018) (“As the legislative history of Nevada’s new corporate law system shows, Nevada clearly intended to differentiate itself from Delaware by providing its corporations with minimal liability exposure. Accordingly, Nevada has been marketing its services by highlighting the greater protections afforded to managers, directors and officers under Nevada law. For example, the Nevada Secretary of State’s website explains under the heading ‘Why Nevada?’ that Nevada provides stronger personal liability protection to officers and directors.”).

their companies. This strategy has allowed Nevada to attract . . . firms with a preference for strong management protection that is not satisfied by Delaware law.”¹⁶

55. Indeed, the prominent corporate law professor, Ann Lipton, recently commented: “I tell my students, Nevada is where you incorporate if you want to do frauds.”¹⁷

56. As the Proxies acknowledge, Nevada law “provides broader protection from personal liability for directors and officers than the DGCL.” This is an understatement. Among other things:

- a. Delaware law prohibits a certificate of incorporation or bylaws from exculpating officers or directors from breaches of the duty of loyalty. Nevada law contains no such prohibition¹⁸ and the Companies’ proposed Nevada charters would exculpate Maffei

¹⁶ Michal Barzuza, *Market Segmentation*, 98 VA. L. REV. at 938; *see also* Ofer Eldar, *Can Lax Corporate Law Increase Shareholder Value? Evidence from Nevada*, 61 J.L. & ECON. 555, 556 (2018) (“The migration of firms to Nevada seems to be driven by the laxity of its corporate law with respect to managers, particularly a 2001 legal reform that exempted managers from liability for violation of the duty of loyalty without requiring shareholders’ approval[.]”).

¹⁷ Ann Lipton, Tweet (April 10, 2023), <https://twitter.com/AnnMLipton/status/1645544410665435137>.

¹⁸ Nev. Rev. Stat. § 78.138.

and the other Defendants to the fullest extent permitted by Nevada law.

- b. A recent amendment to Nevada's corporate code¹⁹ "foreclose[d] the inherent fairness standard that previously allowed a shareholder to automatically rebut the business judgment rule" in conflicted transactions.²⁰ Following that amendment, the "*sole avenue* to hold directors and officers individually liable for damages arising from official conduct" under Nevada law is overcoming the business judgment rule.²¹
- c. Inspection rights under Nevada law are substantially more limited than those under Delaware law. In practical terms, Nevada allows a person who has been a stockholder of record of a corporation for at least six months immediately preceding the demand, or any person holding, or thereunto authorized in writing by the holders of, at least 5% of all of its outstanding shares, upon at least five days' written demand the right to inspect only (i) the articles of incorporation and all amendments

¹⁹ Nev. Rev. Stat. § 78.138(3), (7).

²⁰ *Guzman*, 483 P.3d at 534.

²¹ *Id.* (cleaned up).

thereto, (ii) the bylaws and all amendments thereto, and (iii) a stock ledger or a duplicate stock ledger.²²

57. Unsurprisingly, Nevada’s radical no-liability approach has a negative impact on stockholders. “Although the growth of Nevada’s share of reporting companies appears impressive, most of the . . . ‘public’ companies incorporated in Nevada are ‘penny stock companies’ with little significance. Indeed, the annual reports of 69% of Nevada public companies contain text referring to ‘penny stock,’ ‘blank check company,’ or ‘shell company,’ all terms used by the SEC to refer to securities with abuse potential.”²³

58. According to one study, “[u]sing accounting restatements as a dependent variable, Nevada firms fare poorly Compared with Delaware and other states, the restatement likelihood for Nevada-incorporated firms is nearly double on an unconditional basis and is up to 40% higher after controlling for firm-level characteristics.”²⁴ Another study’s “findings demonstrate a cost to

²² Additionally, a stockholder who owns at least 15% of the corporation’s issued and outstanding shares may inspect the books of account and all financial records of the corporation but only if the corporation neither (i) furnishes to its stockholders a detailed, annual financial statement nor (ii) has filed during the preceding 12 months all reports required to be filed pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934. This exception would not apply to either of the Companies, and no stockholder of either Company would have these inspection rights.

²³ Robert Anderson IV, *The Delaware Trap: An Empirical Analysis of Incorporation Decisions*, 91 S. CAL. L. REV. 657, 710 n.76 (2018).

²⁴ Barzuza, *Market Segmentation*, 98 Va. L. Rev. at 989.

shareholders [of Nevada-incorporated firms] in the form of increased agency costs due to the legal change.”²⁵ A third study found that “the legislative change increase[d] loan spread, covenant restrictiveness, and the use of performance-pricing provisions for Nevada-incorporated firms compared with the matched non-Nevada-incorporated firms.”²⁶

59. Conversely, there is a Delaware premium: “Delaware firms are worth more than similar firms incorporated elsewhere The effect is economically and statistically significant, and robust to controls for company size, industry, growth opportunities, diversification, financial performance, managerial ownership, and firm-specific effects. This result is consistent with the theory that Delaware law improves firm value.”²⁷

²⁵ Dain C. Donelson & Christopher G. Yust, *Litigation Risk and Agency Costs: Evidence from Nevada Corporate Law*, 57 J.L. & ECON. 747, 750 (2014).

²⁶ Zhihong Chen *et. al.*, *Litigation Risk and Debt Contracting: Evidence from A Natural Experiment*, 63 J.L. & ECON. 595, 623 (2020).

²⁷ Robert Daines, *Does Delaware law improve firm value?*, 62 J. Fin. Econ. 525, 527 (2001); *see also* Ronald J. Gilson *et. al.*, *Regulatory Dualism As A Development Strategy: Corporate Reform in Brazil, the United States, and the European Union*, 63 STAN. L. REV. 475, 512–13 (2011) (“Companies whose managers or controlling shareholders wish to . . . protect their personal interests . . . have an incentive to incorporate in their headquarters state. Companies whose managers or controlling shareholders, in contrast, are more interested in establishing a high market value for their shares prefer to incorporate in Delaware[.]”); John Armour and David A. Skeel, Jr., *Who Writes the Rules for Hostile Takeovers, and Why?—The Peculiar Divergence of U.S. and U.K. Takeover Regulations*, 95 GEO. L.J. 1727, 1766 (2007) (“There is also strong empirical evidence that reincorporating in Delaware increases a company’s value, rather than undermining it.”).

60. Maffei's history leaves little doubt about the true motivations behind the Companies' westward migration. Maffei continues to engage in conflicted transactions favoring his own interests at the expense of public stockholders. And this Court continues to hold him accountable:

- In *GCI*, Vice Chancellor Glasscock granted plaintiffs' motion to expedite their claims against Maffei and other defendants²⁸ and the action settled for \$110 million, plus substantial corporate governance relief that reduced the post-closing voting power of Maffei and his mentor, John Malone, from 61% to 47%.
- In *Starz*, Maffei and other defendants answered the complaint without moving to dismiss and the action ultimately settled for \$92.5 million.²⁹
- In *Charter*, Vice Chancellor Glasscock denied Maffei's and most other defendants' motions to dismiss and their motions for summary judgment,³⁰ and the action settled for \$87.5 million (final approval pending).
- In *SiriusXM I*, former-Chancellor Bouchard denied Maffei's and other defendants' motions to dismiss³¹ and the action settled for a cash recovery of \$8.25 million.

²⁸ *Hollywood Firefighters Pension Fund, et al. v. Malone, et. al.*, 2020-0880-SG (Del. Ch. Oct. 27, 2020) (TRANSCRIPT).

²⁹ *In re Starz S'holder Litig.*, 12584-VCG (Del. Ch.)

³⁰ *Sciabacucchi v. Liberty Broadband Corp.*, 2017 WL 2352152, at *1 (Del. Ch. May 31, 2017); *Sciabacucchi v. Liberty Broadband Corp.*, 2018 WL 3599997 (Del. Ch. July 26, 2018); *Sciabacucchi v. Liberty Broadband Corp.*, 2022 WL 1301859, at *1 (Del. Ch. May 2, 2022).

³¹ *Rux v. Meyer*, 11577-CB (Del. Ch. Nov. 18, 2016) (TRANSCRIPT).

- In *Pandora*, former-Chancellor Bouchard denied Maffei’s and other defendants’ motions to dismiss³² and the action is headed to trial in May 2023.
- In *Sirius XM II*, Chancellor McCormick denied Maffei’s and other defendants’ motions to dismiss³³ and the action is headed to trial in October 2023.

61. It unlikely that any contingent-fee law firm would have filed these cases if they were governed by Nevada law, let alone obtain significant value for stockholders. In substance, the Conversions will eliminate stockholders’ ability to sue Maffei and the other Defendants for future self-dealing.

D. DEFENDANTS FREELY ADMIT THE PRIMARY PURPOSE OF THE CONVERSIONS ARE TO INSULATE FIDUCIARIES FROM LIABILITY

62. Each of the Proxies admits that the primary purpose of the Conversions is to insulate the Director Defendants from future stockholder litigation.

63. For instance, under “Reasons for the Redomestication,” the TRIP Proxy states: “[T]he Redomestication will provide potentially greater protection for unmeritorious litigation for directors and officers of the Company.” It goes on to say that “[t]he Redomestication will result in the elimination of any liability of an officer or director for a breach of the duty of loyalty unless arising from intentional

³² *Tornetta v. Maffei*, 2019-0649-AGB (Del. Ch. Feb. 23, 2021) (TRANSCRIPT).

³³ *Fishel v. Liberty Media Corporation*, 2021-0820-KSJM (Del. Ch. Nov. 1, 2022) (TRANSCRIPT).

misconduct, fraud, or a knowing violation of law.”³⁴ Accordingly, the TRIP Proxy acknowledges that “we believe that in general, Nevada law provides greater protection to our directors, officers, and the Company than Delaware law.”

64. Similarly, under “Reasons for the Conversion,” the Liberty TripAdvisor Proxy states: “We believe that . . . Nevada law generally provides greater protection against liability for our directors, officers and the company than Delaware law.” The Liberty TripAdvisor Proxy also admits that “[t]he conversion will therefore result in the elimination of liability of an officer or director for breaches of fiduciary duties to the company, including its stockholders unless, [sic] involving intentional misconduct, fraud or knowing violation of law.”

65. The only non-self-interested justifications that the Proxies provide for the Conversions is the saving of approximately \$250,000 per company per year on Delaware franchise taxes. Such savings are plainly immaterial for TRIP—which has a market capitalization of over \$2.6 billion—and for Liberty TripAdvisor—which has a market capitalization of over \$132 million. Moreover, the purported “get” of the Conversions (annual savings of \$250,000 per year) pales in comparison to the “give” (a broad liability shield for fiduciaries who have agreed to pay nearly \$300 million to resolve breach of fiduciary duty claims in the last few years alone, in addition to valuable corporate governance relief).

³⁴ TRIP Proxy at 29.

66. Moreover, the Proxies appear to telegraph an impending transaction that would subject the TRIP Director Defendants to entire fairness judicial review (and potential liability) under Delaware law, but not under Nevada law. Specifically, the TRIP Proxy discloses that “the Redomestication is expected to provide corporate flexibility in connection with certain corporate transactions.” That language is notably omitted from an otherwise substantively identical paragraph in the Liberty TripAdvisor Proxy, suggesting that its inclusion is deliberate and not merely boilerplate. Yet the TRIP Director Defendants do not include any further disclosure about what those “certain corporate transactions”³⁵ might be:

TRIP Proxy	Liberty TripAdvisor
<p><i>Further, the Redomestication is expected to provide corporate flexibility in connection with certain corporate transactions.</i> However, note that the Redomestication is not being effected to prevent a change in control, nor is it in response to any present attempt known to our Board to acquire control of the Company or obtain representation on our Board. In connection with the Redomestication, the Nevada Corporation will opt out of certain Nevada statutes that may discourage unsolicited takeovers. Nevertheless, certain effects of the proposed Redomestication may be considered to have anti-takeover implications by virtue of being subject to Nevada law.</p>	<p>The conversion is not being effected to prevent a change in control, nor is it in response to any present attempt known to our Board of Directors to acquire control of the company or obtain representation on our Board of Directors. In connection with the conversion, the company will opt out of two Nevada statutes that have the direct effect of discouraging unsolicited takeovers. Nevertheless, certain effects of the proposed conversion may be considered to have anti-takeover implications by virtue of making the company subject to Nevada law.</p>

³⁵ TRIP Proxy at 30.

67. The Liberty TripAdvisor Proxy does not include the language about the Conversion being “expected to provide corporate flexibility in connection with certain corporate transactions” but it does bemoan that “[t]he increasing frequency of claims and litigation directed towards directors and officers of public companies, including in the context of ‘change of control’ and controlling stockholder transactions, has, in general, greatly expanded the risks facing directors and officers in exercising their duties.”³⁶

68. Put differently, the Proxies themselves include disclosures suggesting that Defendants anticipate effectuating a transaction after completion of Conversions that would shield the Director Defendants from being held accountable by Delaware law and this Court.

69. At bottom, the Conversions are self-interested transactions aimed to benefit the Companies’ directors, officers, and controlling stockholder to the clear detriment of minority public stockholders. Absent prompt judicial intervention, interested fiduciaries will be able to unilaterally push through the Conversions, the result of which will allow Defendants to act with near-complete impunity.

³⁶ Liberty TripAdvisor Proxy at 40.

IV. CLASS ACTION ALLEGATIONS

70. Plaintiff Palkon brings this action as a class action, pursuant to Court of Chancery Rule 23, on behalf of himself and all other similarly situated stockholders of TRIP (the “TRIP Class”). Plaintiff Williamson brings this action as a class action, pursuant to Court of Chancery Rule 23, on behalf of himself and all other similarly situated stockholders of Liberty TripAdvisor (the “Liberty TripAdvisor Class,” and together with the TRIP Class, the “Classes”). Excluded from the Classes are Defendants and any person, firm, trust, corporation, or other entity related to or affiliated with any Defendant, and their successors in interest.

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

72. The TRIP Class and the Liberty TripAdvisor Class are each so numerous that joinder of all members is impracticable. According to TRIP’s Form 10-K filed with the SEC on February 17, 2023, as of February 10, 2023, TRIP had 128,164,615 shares of common stock outstanding and 12,799,999 shares of Class B common stock outstanding. According to Liberty TripAdvisor’s Form 10-K filed with the SEC on February 17, 2023, as of January 31, 2023, Liberty TripAdvisor had 72,641,163 shares of Series A common stock outstanding and 3,370,368 shares of Series B common stock outstanding.

73. There are questions of law and fact common to each Class, including, among others, whether (a) Maffei, as a controlling stockholder, breached his

fiduciary duties owed to the Classes, (b) the Director Defendants breached their fiduciary duties owed to the respective Classes, and (c) Plaintiffs and the other members of each Class are entitled to relief.

74. A class action is superior to other available means for the fair and efficient adjudication of this controversy.

75. Plaintiffs' claims are typical of the claims of the other members of each Class.

76. Plaintiff Palkon will fairly and adequately protect the interests of the TRIP Class and Plaintiff Williamson will fairly and adequately protect the interests of the Liberty TripAdvisor Class. Neither Plaintiff has any interests contrary to or in conflict with the Class he seeks to represent. Plaintiffs are committed to prosecuting this action and have retained competent counsel experienced in litigation of this nature. Plaintiffs anticipate that there will not be any difficulties in the management of this litigation as a class action.

77. The prosecution of separate actions by individual members of each Class would create the risk of inconsistent or varying adjudications with respect to individual members of each Class that would establish incompatible standards of conduct for the parties opposing each Class, or adjudications with respect to individual members of each Class that would as a practical matter be dispositive of

the interests of the other members not parties to the adjudications or would substantially impair or impede their ability to protect their interests.

78. Defendants have acted, or refused to act, on grounds generally applicable to each Class as a whole, thereby making appropriate the relief sought herein with respect to each Class as a whole.

V. DEMAND FUTILITY ALLEGATIONS

79. Plaintiffs allege and believe the claims asserted here, which seek to vindicate the rights of stockholders, are direct. In the alternative, and only to the extent that the Court deems the claims derivative, Plaintiffs also bring the claims as derivative claims. Plaintiffs have not made demands on the Liberty TripAdvisor or TRIP Boards to assert these claims against the Defendants. Such a demand would be futile and useless, and is thereby excused, because the allegations contained herein, at a minimum, permit the inference that the directors lack disinterest to determine fairly whether the claims should be pursued.

80. The Director Defendants constitute all of the members of each Companies' current Board. Because the Conversions are being effectuated for the primary purpose of effectively stripping stockholders of their right to hold fiduciaries accountable for misconduct, the Director Defendants are directly interested in the Conversions and thus could not disinterestedly determine whether to pursue claims challenging the Conversions. Moreover, as detailed elsewhere

herein, the Director Defendants are dominated, controlled, and/or have disabling ties to Maffei who controls both companies and is interested in the Conversions. Accordingly, to the extent that the Court deems the claims derivative, demand is excused as futile.

COUNT I
**Breach of Fiduciary Duty Against Maffei as
TRIP's Controlling Stockholder**

81. Plaintiff Palkon repeats and realleges each and every allegation above as if set forth in full herein on behalf of himself and the TRIP Class.

82. Maffei, as TRIP's controlling stockholder, owed and owes the TRIP Class fiduciary duties. In connection with the TRIP Conversion, Maffei owed and owes a fiduciary duty to the TRIP Class to only enter into such a transaction on terms that are entirely fair to TRIP's public stockholders.

83. Maffei breached his fiduciary duties by, among other things, causing TRIP to enter the TRIP Conversion which will effectively eliminate TRIP public stockholders' ability to sue him or the company's other fiduciaries over future self-dealing. Further compounding his breaches, Maffei caused TRIP to enter into the TRIP Conversion pursuant to an inadequate process and without providing any material consideration to TRIP's public stockholders.

84. By reason of the foregoing acts, practices, and courses of conduct, Maffei has failed to lawfully discharge his fiduciary obligations toward Plaintiff Palkon and the other members of the TRIP Class.

85. As a result of Maffei's breaches of fiduciary duty, Plaintiff Palkon and the TRIP Class have and will be harmed.

COUNT II
Breach of Fiduciary Duty Against the TRIP Director Defendants

86. Plaintiff Palkon repeats and realleges each and every allegation above as if set forth in full herein on behalf of himself and the TRIP Class.

87. The TRIP Director Defendants, as directors of TRIP, owed and owe the Class fiduciary duties of care and loyalty. The TRIP Director Defendants breached their fiduciary duties by approving the self-interested TRIP Conversion to insulate Maffei and themselves from future liability and without providing any material consideration to TRIP's public stockholders.

88. By reason of the foregoing acts, practices, and courses of conduct, the TRIP Director Defendants failed to lawfully discharge their fiduciary obligations toward Plaintiff Palkon and the other members of the TRIP Class.

89. As a result of the TRIP Director Defendants' breaches of fiduciary duty, Plaintiff Palkon and the TRIP Class have and will be harmed.

COUNT III
**Breach of Fiduciary Duty Against Maffei as
Liberty TripAdvisor's Controlling Stockholder**

90. Plaintiff Williamson repeats and realleges each and every allegation above as if set forth in full herein on behalf of himself and the Liberty TripAdvisor Class.

91. Maffei, as Liberty TripAdvisor's controlling stockholder, owed and owes the Liberty TripAdvisor Class fiduciary duties. In connection with the Liberty TripAdvisor Conversion, Maffei owed and owes a fiduciary duty to the Liberty TripAdvisor Class to only enter into such a transaction on terms that are entirely fair to Liberty TripAdvisor's public stockholders.

92. Maffei breached his fiduciary duties by, among other things, causing Liberty TripAdvisor to enter the Liberty TripAdvisor Conversion which will effectively eliminate Liberty TripAdvisor public stockholders' ability to sue him or the company's other fiduciaries over future self-dealing. Further compounding his breaches, Maffei caused Liberty TripAdvisor to enter into the Liberty TripAdvisor Conversion pursuant to an inadequate process and without providing any material consideration to Liberty TripAdvisor's public stockholders.

93. By reason of the foregoing acts, practices, and courses of conduct, Maffei has failed to lawfully discharge his fiduciary obligations toward Plaintiff Williamson and the other members of the Liberty TripAdvisor Class.

94. As a result of Maffei's breaches of fiduciary duty, Plaintiff Williamson and the Liberty TripAdvisor Class have and will be harmed.

COUNT IV
**Breach of Fiduciary Duty Against
the Liberty TripAdvisor Director Defendants**

95. Plaintiff Williamson repeats and realleges each and every allegation above as if set forth in full herein on behalf of himself and the Liberty TripAdvisor Class.

96. The Liberty TripAdvisor Director Defendants, as directors of Liberty TripAdvisor, owed and owe the Class fiduciary duties of care and loyalty. The Liberty TripAdvisor Director Defendants breached their fiduciary duties by approving the self-interested Liberty TripAdvisor Conversion to insulate Maffei and themselves from future liability and without providing any material consideration to Liberty TripAdvisor public stockholders.

97. By reason of the foregoing acts, practices, and courses of conduct, the Liberty TripAdvisor Director Defendants failed to lawfully discharge their fiduciary obligations toward Plaintiff Williamson and the other members of the Liberty TripAdvisor Class.

98. As a result of the Liberty TripAdvisor Director Defendants' breaches of fiduciary duty, Plaintiff Williamson and the Liberty TripAdvisor Class have and will be harmed.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment and relief in their favor and in favor of the Classes, and/or in favor of TRIP and Liberty TripAdvisor and against Defendants, as follows:

- A. Declaring that this action is properly maintainable as a class action and certifying the proposed Classes;
- B. In the alternative, declaring that this action is properly maintainable as a stockholder derivative action and declaring that demands against the TRIP Board and Liberty TripAdvisor Board are excused as futile;
- C. Finding that Defendants breached their fiduciary duties;
- D. Enjoining the Conversions;
- E. Awarding Plaintiffs and the members of the Classes their reasonable attorneys' and experts' witness fees and other costs; and
- F. Awarding Plaintiffs and the Class and/or TRIP and Liberty TripAdvisor such other relief as this Court deems just and equitable.

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