



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ERIC GILBERT, derivatively on behalf of
CHEWY, INC.,

Plaintiff,

v.

BC PARTNERS LLP, BC PARTNERS
ADVISERS LP, BC PARTNERS HOLDINGS
LIMITED, CIE MANAGEMENT IX
LIMITED, ARGOS HOLDINGS GP LLC,
ARGOS HOLDINGS L.P., CITRUS
INTERMEDIATE HOLDINGS L.P., CITRUS
INTERMEDIATE TOPCO LLC, BUDDY
CHESTER SUB LLC, RAYMOND SVIDER,
SUMIT SINGH, FAHIM AHMED, MATHIEU
BIGAND, MARCO CASTELLI, MICHAEL
CHANG, DAVID LELAND, LISA SIBENAC,
MARTIN H. NESBITT, and JAMES A. STAR,

Defendants,

and

CHEWY, INC., a Delaware corporation,

Nominal Defendant.

C.A. No. 2024-1165-KSJM

Redacted Version Dated:

November 20, 2024

VERIFIED DERIVATIVE COMPLAINT

Plaintiff Eric Gilbert (“Plaintiff”), derivatively on behalf of Chewy, Inc. (“Chewy” or the “Company”), brings this Verified Derivative Complaint (the “Complaint”) against Defendants BC Partners LLP, BC Partners Advisers LP, BC Partners Holdings Limited, CIE Management IX Limited, Argos Holdings GP LLC, Argos Holdings L.P., Citrus Intermediate Holdings L.P., Citrus Intermediate Topco LLC, Buddy Chester Sub LLC, Raymond Svider, Sumit Singh, Fahim Ahmed,

Mathieu Bigand, Marco Castelli, Michael Chang, David Leland, Lisa Sibenac, Martin H. Nesbitt, and James A. Star. The allegations herein are based on Plaintiff's knowledge as to himself and, as to all other matters, on information and belief, including counsel's investigation, the review of publicly available information, and the review of certain books and records produced by Chewy in response to Plaintiff's demand pursuant to 8 *Del. C.* § 220 (the "Section 220 Production") as to all other matters.

INTRODUCTION

1. This action (the "Action") challenges a downstream merger (the "Merger") through which affiliates of Chewy's controlling stockholder, BC Partners LLP ("BC Partners"), merged into Chewy. The transaction was effectuated for the sole purpose of allowing BC Partners to liquidate a portion of its investment in another BC Partners portfolio company, PetSmart LLC ("PetSmart"), as the BC Partners fund holding the PetSmart investment was set to expire. Through a process that was procedurally and financially unfair to the Company and its public stockholders, the Merger provided BC Partners with unique, non-ratable benefits while simultaneously saddling Chewy with a substantial tax burden.

2. Beginning in 2021, BC Partners began exploring ways to divest all or a portion of its investment in PetSmart. However, any sale of its PetSmart equity would necessarily create a sizeable tax liability for BC Partners. Thus, BC Partners

approached Chewy about a series of transactions whereby the BC Partners entity that held BC Partners' PetSmart and Chewy equity, would (i) divest its PetSmart equity, thereby generating a substantial tax liability, and (ii) then merge downstream into Chewy. As a result of the downstream merger structure, Chewy would be liable for the tax burden associated with the PetSmart divestiture based on Chewy's then-trading price plus additional costs and contingent liabilities. In other words, by utilizing the downstream merger structure, BC Partners sought to shoehorn its tax liability from monetizing its PetSmart investment downstream into Chewy.

3. In light of the obvious conflicts of interest associated with a potential merger, the Board formed a special committee of directors (the "Special Committee" or "Committee"). The Committee was not independent: one of its three members shared a decades-long relationship with BC Partners Chairman and Chewy Chairman (and PetSmart Chairman) defendant Raymond Svider ("Svider"). As detailed herein, the Special Committee also retained financial and legal advisors that harbored material conflicts involving BC Partners, among others.

4. The Special Committee then failed to appropriately leverage the substantial negotiating power it held in light of the significant benefits BC Partners would reap by passing its liabilities onto Chewy. The Committee's failure to wield its leverage is underscored by the dichotomy between BC Partners' and Chewy's need (or lack thereof) to consummate a downstream merger. In other words, because

the transaction alternatives available to BC Partners were less desirable than the Merger—and thus, BC Partners needed Chewy’s cooperation, whereas Chewy could have continued its business without ever entering into the Merger—Chewy could have sought fair terms that would have adequately compensated it and/or its minority stockholders, but nevertheless failed to do so.

5. The Special Committee agreed, *inter alia*, that in exchange for assuming BC Partners’ tax liability, along with other contingent liabilities, BC Partners would indemnify a limited amount of the liabilities generated through the PetSmart sale and install certain governance provisions at Chewy, which were of questionable value in light of the unique facts present here.

6. Furthermore, in July 2023, BC Partners announced that private equity firm Apollo would acquire a portion of BC Partners’ PetSmart equity in a transaction in which a new BC Partners fund and PetSmart management would retain majority ownership and control over PetSmart (the “PetSmart Sale”). The parties to the PetSmart Sale entered into a tax receivables agreement (the “TRA”) through which BC Partners was able to pass the benefits of the TRA upstream to itself immediately before funneling the tax liability downstream to Chewy.

7. On October 30, 2023, Chewy announced that it consummated the Merger for which Chewy would be liable for tax payments attributable to the

PetSmart Sale and other contingent liabilities. Stockholders were never given the opportunity to vote the Merger.

8. Plaintiff brings this Action on behalf of the Company to recover damages as a result of Defendants' breaches of fiduciary duty.

PARTIES

9. Plaintiff Eric Gilbert is a stockholder of Chewy Class A common stock and has owned his shares continuously since March 30, 2022.

10. Nominal defendant Chewy is a Delaware corporation with its headquarters in Plantation, Florida. Chewy is an online retailer for pet products, supplies and prescriptions. Chewy trades on the New York Stock Exchange ("NYSE") under the ticker symbol "CHWY."

11. Defendant BC Partners LLP is an alternative investment manager focused on private equity, credit and real estate organized under the laws of England and Wales. BC Partners, through its affiliates, beneficially owned, in aggregate, approximately 68.6% of the outstanding shares of Chewy's common stock, representing approximately 95.6% of the total voting power at the time of the Merger.¹ BC Partners currently owns approximately 60% of Chewy's outstanding shares, representing approximately 94% of the total voting power.

¹ For ease of reference, "BC Partners" refers to all BC Partners entities, unless otherwise noted.

12. Defendant BC Partners Advisers LP is a Delaware limited partnership that advises funds through which BC Partners controls Chewy.

13. Defendant BC Partners Holdings Limited is a limited company organized under the laws of Gurnsey and is the controlling shareholder of Defendant CIE Management IX Limited.

14. Defendant CIE Management IX Limited is a limited company organized under the laws of Gurnsey and controls a majority of the equity interests of Defendant Argos Holdings GP LLC.

15. Defendant Argos Holdings GP LLC is a Delaware limited liability company and is the general partner of Defendant Argos Holdings L.P.

16. Defendant Argos Holdings L.P. is a Delaware limited partnership and is the sole common equity holder of Defendant Citrus Intermediate Holdings L.P.

17. Defendant Citrus Intermediate Holdings L.P. is Delaware limited partnership and the sole equity holder of Defendants Citrus Intermediate Topco LLC and Buddy Chester Sub LLC, the direct holders of BC Partners' Chewy Class B common stock.

18. Defendant Citrus Intermediate Topco LLC is a Delaware limited liability company and, with Defendant Buddy Chester Sub LLC, is the direct holder of BC Partners' Chewy Class B common stock.

19. Defendant Buddy Chester Sub LLC is a Delaware limited liability company and, with Defendant Citrus Intermediate Topco LLC, is the direct holder of BC Partners' Chewy Class B common stock.

20. Defendants in paragraphs ¶11 to ¶19 are collectively referred to herein as the "BC Entity Defendants."

21. Article XI, Section B of Chewy's Amended and Restated Certificate of Incorporation (the "Charter") names the Delaware Court of Chancery as the exclusive forum for, among other things, "(i) any derivative action or proceeding brought on behalf of the Company, [or] (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer, or other employee or stockholder of the Company to the Company or the Company's stockholders, creditors or other constituent." This provision was originally included in the Charter that was adopted in connection with Chewy's IPO. In July 2023, BC Partners voted in favor of an amendment to the Charter that added a federal court forum selection provision for claims brought pursuant to the Securities Act of 1933 as well as a provision stating "any person or entity purchasing or otherwise acquiring or holding any interest in shares of capital stock of the Company shall be deemed to have notice of and consented to the provisions of Section B and Section C of Article XI." Thus, the non-Delaware BC Entity Defendants have consented to this Court's personal jurisdiction by causing Chewy to "create an amended and restated certificate of

incorporation that contained a Delaware-exclusive forum provision for fiduciary actions, including against stockholders.”²

22. Defendant Raymond Svider is the current Chairman of the Board and has served in such role since joining the Chewy Board in 2019. Svider is also Partner and Chairman of BC Partners LLP and Chairman of the Management Committee of BC Partners LLP. Svider has also served as the Non-Executive Chairman of PetSmart’s board of directors since March 2015. According to Chewy’s proxy statement filed with the United States Securities and Exchange Commission (“SEC”) on May 24, 2024 (the “2024 Chewy Proxy”), Svider is not an independent director.

23. Defendant Sumit Singh (“Singh”) has served as Chewy’s Chief Executive Officer (“CEO”) since March 2018 and as a director on Chewy’s Board since April 2018. Prior to assuming the role as the Company’s CEO, Singh served as Chewy’s Chief Operating Officer from September 2017 to March 2018. According to the 2024 Chewy Proxy, Singh is not an independent director. Under BC Partners’ control, Singh has been handsomely compensated. According to the Company’s annual meeting proxy statements, Singh has received more than \$204 million in total compensation since 2018:

² *Kormos v. Playtika Holding UK II Ltd.*, C.A. No. 2023-0396-SG, Tr. at 12-13 (Del. Ch. Jan. 18, 2024) (TRANSCRIPT); *see also id.* at 10 (“When a party agrees to litigate in a forum, the party is considered to have implicitly consented to personal jurisdiction in that forum, and the Court can forgo its traditional personal jurisdiction analysis.”).

Year	Total Compensation
2018	\$1,236,095
2019	\$149,851,889 ³
2020	\$3,027,525
2021	\$12,450,388 ⁴
2022	\$2,481,735
2023	\$35,186,195 ⁵
Total:	\$204,233,827

24. Fahim Ahmed (“Ahmed”) has served as a Chewy director since April 2019. Ahmed currently serves as Partner, Chief Operating Officer and on the Management Committee of BC Partners. Ahmed has been employed by BC Partners since 2006. Ahmed also serves as a director on PetSmart’s board. According to the 2024 Chewy Proxy, Ahmed is not an independent director.

25. Mathieu Bigand (“Bigand”) has served as a Chewy director since September 2022. Bigand currently serves as a Director at BC Partners and has been

³ \$147,258,377 of the compensation was comprised of an RSU award.

⁴ \$10,106,250 of the compensation was comprised of an RSU award.

⁵ \$31,048,358 of the compensation was comprised of an RSU award.

employed there since 2019. According to the 2024 Chewy Proxy, Bigand is not an independent director.

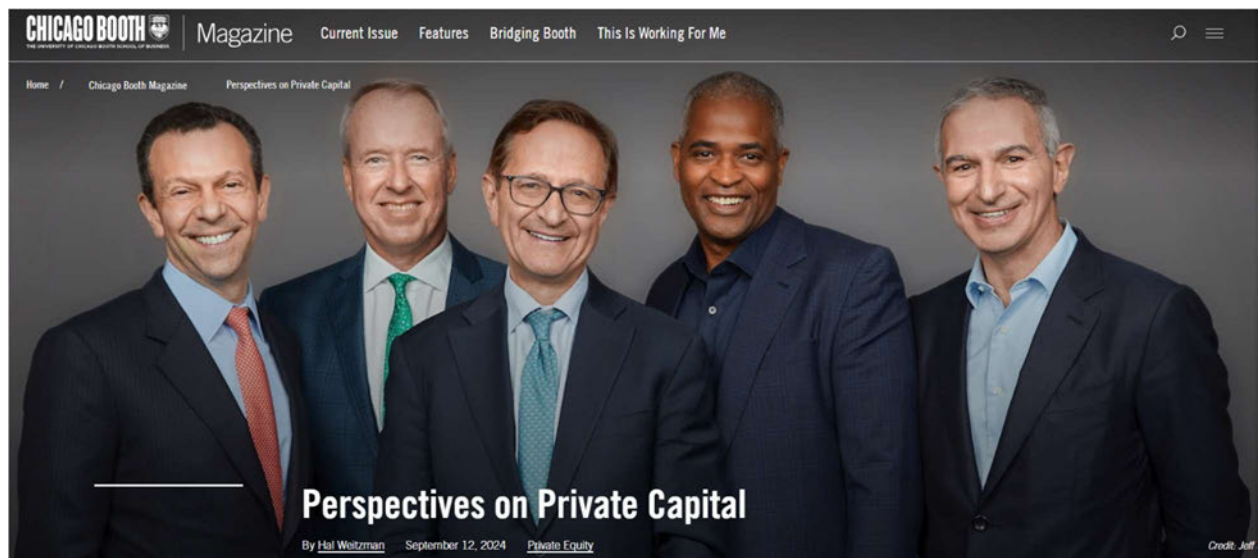
26. Marco Castelli (“Castelli”) has served as a Chewy director since May 2022. Castelli also serves as a Partner at BC Partners and has been employed there since 2006. According to the 2024 Chewy Proxy, Castelli is not an independent director.

27. Michael Chang (“Chang”) has served as a Chewy director since April 2019. Chang also serves as a Partner at BC Partners and has been employed there since 2009. According to the 2024 Chewy Proxy, Chang is not an independent director.

28. David Leland (“Leland”) has served as a Chewy director since September 2019. Leland also serves as a Partner at BC Partners and as the CEO of BC Partners affiliate BC Partners Securities LLC. Leland began his employment with BC Partners in 2018. According to the 2024 Chewy Proxy, Leland is not an independent director.

29. Lisa Sibenac (“Sibenac”) has served as a Chewy director since April 2019. Sibenac also serves as a Managing Director at BC Partners and has been employed by BC Partners since 2017. According to the 2024 Chewy Proxy, Sibenac is not an independent director.

30. Martin H. Nesbitt (“Nesbitt”) has served as a Chewy director since September 2020 and was a member of the Special Committee. Nesbitt shares a longstanding relationship with dual-fiduciary Svider that began at least as early as 1988, when they attended—and graduated from in 1989—the University of Chicago Booth School of Business. Svider and Nesbitt have maintained their affiliation with their alma mater, including by sitting on a “Perspectives on Private Capital” panel at Chicago Booth’s 71st annual Management Conference on May 3, 2024, pictured below:⁶



31. Nesbitt also serves on The Chicago Booth Polsky Private Equity Council, which is comprised of private equity investors who provide guidance and

⁶ Hal Weitzman, *Perspectives on Private Capital*, CHICAGO BOOTH (Sept. 12, 2024), <https://www.chicagobooth.edu/magazine/perspectives-on-private-capital>.

support to the Polsky Center’s Svider Private Equity Program.⁷ In or around 2018, Svider made a donation to The Studio Museum in Harlem where Nesbitt’s wife, Dr. Anita Blanchard, sits on the board of trustees.⁸ Additionally, Svider hired Nesbitt’s son, Alex, to work at BC Partners in 2019, where he remains employed as a Director.

32. James A. Star (“Star”) has served as a Chewy director since June 2019. Prior to his retirement in October 2023, Star served as Executive Chairman, CEO and President of investment firm Longview Asset Management LLC (“Longview”). Longview was invested in Argos Holdings LP, which prior to the Merger, was an affiliate of the BC Partners entity that held Chewy’s super-voting Class B stock. Prior to BC Partners’ acquisition of PetSmart in 2015, Longview held approximately 9% of PetSmart’s outstanding equity and rolled approximately one-third of its equity into the post-acquisition PetSmart. From 2014 to 2019, Star also served as a director of the holding company of PetSmart—*i.e.*, during the period BC Partners acquired

⁷ Chicago Booth and Polsky Private Equity Council Members, POLSKY CENTER FOR ENTREPRENEURSHIP AND INNOVATION AT UNIV. OF CHI., <https://polsky.uchicago.edu/programs-events/private-equity/pe-council/>. The Polsky Center’s Svider Private Equity Program is a program that “supports the aspirations of students interested in a career in private equity” through various advisory and mentorship programs, which is funded by Svider. Svider Private Equity Program, POLSKY CENTER FOR ENTREPRENEURSHIP AND INNOVATION AT UNIV. OF CHI., <https://polsky.uchicago.edu/programs-events/private-equity/>.

⁸ STUDIO, Fall 2018/Winter 2019, at 67, https://app.oarklibrary.com/file/4/d846632f-7e50-4162-a3f0-f95faa47f981**f7629a2e4bfec5ca2449901b4b5883a9/f5fdcf98-0b2a-4870-8eed-3f205e4c06cf.pdf.

PetSmart. Longview has also invested alongside BC Partners in at least one other joint venture: BC Partners' 2016 purchase of certain assets from CenturyLink, Inc.

33. Defendants in paragraphs ¶22 to ¶32 are collectively referred to herein as the "Director Defendants."

RELEVANT NON-PARTIES

34. Kristine Dickson ("Dickson") has served as a Chewy director since July 2021 and was a member of the Special Committee member.

35. James Nelson ("Nelson") has served as a Chewy director since July 2021 and was a member of the Special Committee member.

36. Argos Intermediate Holdco I Inc. ("Argos") was the BC Partners affiliate through which BC Partners held its Chewy shares prior to the Merger. In connection with the Merger, Argos was merged downstream into a Chewy subsidiary and, upon information and belief, ceased to exist as a result of the Merger. Following the Merger, BC Partners' Chewy shares are now controlled through defendant Argos Holdings GP LLC.

SUBJECT-MATTER JURISDICTION

37. This Court has subject-matter jurisdiction over this Action, which asserts claims for, among other things, breaches of fiduciary duty, pursuant to 10 *Del. C.* § 341, which provides that this Court "shall have jurisdiction to hear and determine all matters and causes in equity."

SUBSTANTIVE ALLEGATIONS

A. BC Partners Acquires Chewy Through PetSmart And Then Takes Chewy Public

38. Founded in 2011, Chewy is an online retailer of pet supplies and services, including food, toys, medicine (including pharmacy services), and pet insurance.

39. In March 2015, a consortium led by BC Partners acquired PetSmart—a pet supply retailer and Chewy competitor—for approximately \$8.7 billion in cash. Following the buyout, PetSmart operated as a privately-owned company.⁹

40. On May 31, 2017, BC Partners-controlled PetSmart acquired Chewy in a transaction valued at approximately \$3.35 billion. The *pro forma* company continued to operate as a privately-owned company controlled by BC Partners. While privately owned, PetSmart and Chewy engaged in a series of related-party transactions that allowed them to share, among other things, pharmacy operations. Specifically, PetSmart and Chewy entered into services agreement with a PetSmart subsidiary that held a pharmacy license. With that license, Chewy then conducted both entities' pharmacy operations (the "Pharmacy"), pursuant to which PetSmart

⁹ Investment firm Longview, of which Defendant Star served as Chairman, CEO and President, owned approximately 9% of PetSmart prior to BC Partner's acquisition of the pet supply retailer and Longview rolled over approximately one-third of its holdings into the post-acquisition company.

paid a management fee equal to 25% of the Pharmacy's net sales to Chewy for providing services to the pharmacy operations.

41. On June 18, 2019, Chewy completed its initial public offering ("IPO") in which the Company and PetSmart sold 53,475,000 shares of Class A common stock for \$22.00 per share. Following the IPO, PetSmart and/or BC Partners held approximately 99% of the Company's combined voting power.

42. The Charter adopted in connection with the IPO established a dual-class share structure: Class A shares had one vote per share and Class B shares (owned entirely by BC Partners) held ten votes per share. Class B shares can be converted into Class A shares at any time at the option of the holder. The Charter also provides that Class B shares will automatically convert into Class A shares if they are transferred to third parties not affiliated with BC Partners or when the outstanding shares of Class B stock constitute less than 7.5% of the aggregate number of shares Class A and Class B shares of common stock. As a result, BC Partners cannot sell super-voting Class B shares to a third party and as BC Partners monetizes its investment in Chewy, Chewy's dual class structure will naturally fall away.

43. On February 12, 2021, PetSmart completed a recapitalization in which it spun off Chewy (the "Spinoff"). PetSmart distributed its Chewy shares to BC Partners and the two companies began operating separately. Following the Spinoff, BC Partners maintained its controlling stake in both Chewy and PetSmart.

44. Following the Spinoff and continuing through the Merger, BC Partners controlled approximately 96% of Chewy’s total outstanding voting power at all relevant times prior to the Merger. BC Partners currently controls approximately 94% of the voting power at Chewy. The Chewy 2024 Proxy concedes that Chewy is “a ‘controlled company’ within the meaning of the corporate governance standards of the NYSE.”

B. BC Partners Begins Exploring A PetSmart Sale For Which It Seeks Chewy’s Participation & Chewy Forms a Conflicted Special Committee

45. In late 2020, BC Partners began exploring ways to liquidate some or all of its PetSmart investment and, in October 2020, BC Partners proposed a reorganization transaction in which (i) BC Partners would divest the PetSmart business and (ii) all of the Chewy shares owned by PetSmart and/or BC Partners would be consolidated through a downstream merger.

46. In the proposed downstream merger structure, Chewy, as opposed to BC Partners directly, would have been responsible for any taxes resulting from the PetSmart recapitalization and any additional tax exposure at the BC Partners’ level. In light of BC Partners’ control over Chewy and the unique benefits flowing to BC Partners in a potential downstream merger, Chewy formed a special committee to negotiate the terms of the proposed downstream merger. The special committee,

however, was disbanded on April 6, 2021, when BC Partners and the special committee were unable to reach agreement on transaction terms.

47. Four months later, in August 2021, BC Partners reopened discussions about a potential transaction between Chewy and BC Partners. According to Chewy’s August 18, 2021 Board minutes, Svider updated the Board about a possible transaction, following which, longtime BC Partners counsel Kirkland & Ellis (“K&E”) advised the Board about forming another special committee to consider such transaction.¹⁰ K&E “prepared a questionnaire” that was distributed to Dickson, Nelson and Defendant Nesbitt ahead of the meeting to purportedly “help evaluate any potential conflicts of interest with respect to such directors serving on the special committee.”¹¹

48. During the meeting, the Board discussed potential conflicts impacting Dickson, Nelson and Nesbitt and determined “(a) the disclosed relationships were not material; (b) that Ms. Dickson, Mr. Nelson and Mr. Nesbitt were independent and disinterested, and (c) to proceed with forming a special committee”¹² The Board’s determination that the Special Committee was conflict-free is suspect given Nesbitt’s ties to Chewy and BC Partners Chairman Defendant Svider. As explained

¹⁰ CHEWY220-00000273.

¹¹ *Id.*

¹² *Id.*

above, Svider and Nesbitt's relationship spans more than three decades, including (i) Svider employing Nesbitt's son at BC Partners; (ii) attending the University of Chicago Booth School of Business together as classmates; (iii) participating in collegial events together; (iv) Nesbitt serving on a council that is affiliated with the Svider Private Equity Program at their alma mater; and (v) Svider donating to an organization with which Nesbitt's wife is affiliated.

49. For its part, K&E was ill-suited to advise the Board on whether its directors could be considered to act independently of BC Partners because K&E has a longstanding history of serving as counsel to BC Partners. For example, K&E served as counsel to BC Partners in (i) BC Partners' 2018 acquisition of media and communications service provider United Group, (ii) BC Partners portfolio company United Group's 2019 acquisition of media and communication services provider Tele2 Croatia; (iii) BC Partners' 2019 acquisition of pharmaceutical company Synthon International Holding; (iv) BC Partners' 2020 €2.93 billion investment in machine manufacturer IMA; (v) BC Partners portfolio company Advanced's 2020 acquisition of Mitrefinch; (vi) BC Partners' 2020 acquisition of entertainment company Keesing Media Group; and (vii) BC Partners portfolio company Presidio's 2020 acquisition of IT services company Arkphire.

50. Moreover, at the time of the August 2021 Board meeting, K&E was concurrently advising BC Partners and/or its portfolio companies on (i) BC Partners

portfolio company Davies Group’s 2021 acquisition of consulting group Sionic Group; (ii) BC Partners extending its investment in academic publishing company Springer Nature in 2021, (iii) BC Partners’ 2021 €1.6 billion sale of pharmaceutical company Pharmathen; (iv) BC Partners’ 2021 \$1.4 billion acquisition of digital services company Valtech SE; and (v) BC Partners’ 2021 sale of CeramTec. The promise of future engagements for K&E loomed large: since August 2021 K&E has advised BC Partners and/or its portfolio companies on at least an additional seven transactions.

51. The Board then approved the Special Committee’s establishing resolutions empowering the Special Committee to consider a potential transaction between Chewy and BC Partners and appointing Dickson, Nelson, and Nesbitt as the members of the Special Committee (previously defined as the “Special Committee”).¹³

52. The Special Committee held its first meeting on September 1, 2021. At the meeting, Cleary Gottlieb Steen & Hamilton LLP (“Cleary”) advised the Special Committee with respect to its retention of a financial advisor.¹⁴ Presumably, the

¹³*Id.*

¹⁴ CHEWY220-00000245.

Special Committee retained Cleary in advance of this meeting since Cleary was already serving as the Special Committee's counsel.¹⁵

53. During the meeting, the Special Committee discussed the terms of a proposed engagement letter to retain LionTree Advisors ("LionTree") as the Special Committee's financial advisor.¹⁶ The meeting minutes do not discuss (i) whether LionTree was independent of BC Partners, (ii) how or why LionTree was selected; (iii) who proposed LionTree to serve as the Special Committee's financial advisor; and/or (iv) whether the Special Committee considered any other financial advisors. Had the Special Committee conducted a conflicts check, it would have discovered that LionTree harbored material conflicts vis-à-vis BC Partners.

54. For example, LionTree advised Apollo and the board of directors of Presidio, Inc. ("Presidio"), an Apollo portfolio company, in connection with BC Partners' 2019 acquisition of Presidio. The LionTree/BC Partners relationship was at issue in the action captioned *Firefighters' Pension System of City of Kansas City, Missouri Trust v. Presidio, Inc.*, C.A. No. 2019-0839-JTL (Del. Ch.). By the time

¹⁵ There is no indication that the Special Committee and/or Cleary undertook any analysis as to Cleary's independence vis-à-vis BC Partners. Cleary previously represented BC Partners in connection with a 2005 merger with an Apollo portfolio company before the German Federal Cartel Office, as well as (i) BC Partners' 2007 acquisition of Bureau Van Dijk Electronic Publishing, (ii) BC Partners' \$1.9 billion sale of Thai Union Frozen Products, (iii) BC Partners portfolio company TBU-3 International's 2011 sale of Medica shares, and (iv) GFL Environmental, Inc.'s 2018 recapitalization led by BC Partners.

¹⁶ CHEWY220-00000245.

that the Special Committee was considering LionTree’s retention, this Court had already sustained claims against BC Partners and LionTree for aiding and abetting Apollo’s and the Presidio directors’ breaches of fiduciary duty.¹⁷ Among other things, the Court found that LionTree tipped BC Partners about the price of a competing bid and hid that from Presidio’s board of directors.

55. LionTree also represented BC Partners in its (i) 2014 sale of Multiplan; (ii) 2015 sale of a significant portion of its stake in Cequel Communications Holdings, LLC; (iii) 2016 acquisition of Brainspace, (iv) 2016 purchase of data centers and colocation business from CenturyLink, Inc. (which Longview invested in alongside BC Partners), and (v) 2018 acquisition of majority ownership of United Group, B.V.

56. LionTree also has an extensive business relationship with Apollo, discussed more fully *infra*.

57. Following consideration of the proposed engagement letter, the Special Committee determined to engage LionTree.¹⁸ Under the terms of the engagement letter, LionTree would be paid a one-time “work fee” of \$1 million that was payable

¹⁷ 251 A.3d 212 (Del. Ch. 2021).

¹⁸ CHEWY220-00000245.

at the time of engagement and a \$3 million fee paid upon LionTree's delivery of a fairness opinion.¹⁹

C. The Special Committee Attempts to Negotiate with BC Partners, Eventually Caving to BC Partners' Demands

58. On September 10, 2021, the Special Committee met and received a presentation from LionTree. LionTree highlighted key topics for negotiation with BC Partners, including: (i) the exchange ratio for BC Partners' Chewy shares prior to and after the downstream merger and expense reimbursement to Chewy for the costs associated with effectuating any such merger; (ii) the structure and size of any indemnification coverage that BC Partners would provide Chewy for the costs and tax risks associated with the downstream merger structure; (iii) treatment of the Pharmacy (including whether transferring the Pharmacy to Chewy would be valuable to Chewy and its minority stockholders) and other go-forward commercial arrangements; (iv) the Company's dual class share structure; (v) a post-closing standstill and transfer limitations on BC Partners' Chewy shares; and (vi) a Tax Matters Agreement.

59. Following the presentation, the Special Committee authorized LionTree and Cleary to coordinate due diligence into the potential merger.

¹⁹ CHEWY220-00000260.

60. On September 21, 2021, BC Partners' advisor, JP Morgan, submitted a downstream merger proposal that included: (i) a 1:1 exchange ratio such that BC Partners, through affiliates, would own the same number of Class A and Class B shares following the Merger as it owned before; (ii) a sunset to Chewy's dual-class share structure after ten years; (iii) a standstill agreement; (iv) a commitment to require any acquisition of Chewy by BC Partners to be approved by both a special committee and disinterested stockholders; (v) no change in BC Partners' entitlement to designate directors to the Board until BC Partners' ownership fell below 50%, at which point BC Partners would lose one Board seat for every subsequent 10% sell-down; and (vi) indemnification for taxes and other contingent liabilities in the potential downstream merger.²⁰

61. JP Morgan's proposal also highlighted BC Partners' near-term interest in monetizing its Chewy investment.²¹

62. On September 24, 2021, the Special Committee met to discuss BC Partners' proposal. After Cleary provided an overview of the proposal's tax implications, LionTree presented on the terms of the proposal and select precedent transactions. LionTree reported that although BC Partners could spin off its Chewy shares into a new entity as an alternative, BC Partners' advisors at JP Morgan

²⁰ CHEWY220-00000588.

²¹*Id.*

admitted “that this alternative was not as attractive to BC Partners as it would require them to hold Company shares for a longer period of time.”²² Cleary informed the Committee that this alternative would restrict BC Partners’ ability to sell PetSmart for two years, requiring BC Partners to retain its Chewy shares for two years, which was a “meaningful downside.”²³ LionTree also reported that JPMorgan “was clear that an exchange ratio other than 1:1 was ‘not on the table’ from BC Partners’ perspective.”²⁴

63. Thus, the Committee knew it had substantial negotiating leverage to secure a more favorable exchange ratio (or extract some other valuable benefit for the Company and its public stockholder) since the alternative to a downstream merger with Chewy was less desirable for BC Partners. The Special Committee acknowledged that its “fiduciary duty was to take what leverage the committee had and use it to benefit the public shareholders” and directed its advisors to work on a counter proposal.²⁵ In discussing the proposal, the Special Committee acknowledged the importance of ensuring the Company was appropriately indemnified for potential tax and other contingent liabilities both in scope and time.

²² CHEWY220-0000226.

²³ *Id.* at 227.

²⁴ *Id.* at 227.

²⁵ *Id.* at 227.

64. At the end of the meeting, the Special Committee determined to retain PricewaterhouseCoopers (“PWC”) to assist in tax and accounting diligence.

65. On October 1, 2021, the Special Committee again met to consider the terms of BC Partners’ September 21 offer and a response thereto. The Special Committee decided not to attempt to negotiate a more favorable exchange ratio. Instead, the Special Committee determined to request that BC Partners make a [REDACTED] cash payment to the Company’s unaffiliated stockholders in connection with the potential transaction, which payment equated to approximately [REDACTED] per share. The Special Committee also determined to propose collapsing the Company’s dual class share structure at closing.

66. The Special Committee also decided it needed more information about BC Partners’ plans to sell down its Chewy stock “so that appropriate guard-rails can be put in place to help provide liquidity but also minimize adverse effect in the market.”²⁶

67. The Special Committee directed its advisors to provide a response letter to BC Partners’ Svider and to request a direct meeting to discuss the potential transaction.

²⁶ CHEWY220-0000219 at 220.

68. On October 6, 2021, the Special Committee provided that response letter to BC Partners. In addition to the terms discussed above, the response letter demanded that BC Partners agree “to fully insulate and indemnify the Company from and against all expenses and liabilities (whether known or unknown, actual or contingent) arising out of or in connection with the proposed transaction.”²⁷ The Special Committee also requested that BC Partners pay the Company’s expenses in connection with the potential merger.

69. On October 8, 2021, the Special Committee met and discussed a meeting previously held between Nelson, Dickson, and Svider regarding the Special Committee’s counterproposal.

70. The primary focus of the meeting was to discuss the Special Committee’s proposal that BC Partners include a [REDACTED] payment to unaffiliated stockholders. Svider raised the possibility of transferring ownership of the Pharmacy and the associated pharmacy licenses from PetSmart to Chewy as a way to provide value to disinterested stockholders instead of a cash payment. Nelson explained that the Special Committee would need to determine what value, if any, that had. However, even if the Pharmacy transfer provided value to Chewy (which was dubious), this would benefit *all* Chewy stockholders, including BC Partners,

²⁷ CHEWY220-0000606 at 607.

and not just the minority stockholders on whose behalf the Special Committee sought a cash payment.

71. Svider also said BC Partners would not agree to an immediate sunset of the dual class structure upon closing, but BC Partners would provide a formal counter shortly.

72. On December 7, 2021, BC Partners submitted a counterproposal to the Special Committee. BC Partners completely rejected the Special Committee's demand that it pay (a) ██████████ to disinterested stockholders and (b) the Company's expenses in connection with the potential merger. Instead, it proposed to transfer the Pharmacy from PetSmart to Chewy. BC Partners also proposed that the Company's dual-class structure sunset after seven years, instead of immediately at closing.

73. On December 17, 2021, the Special Committee met to discuss BC Partners' latest proposal and a prior meeting held between Svider, LionTree, Nelson and Nesbitt to discuss the proposal.

74. In their meeting, Nesbitt informed Svider that the Special Committee did not understand the value provided to Chewy by transferring the Pharmacy. Svider admitted that BC Partners expected to receive enormous tax savings if Chewy agreed to the proposed merger. However, Svider claimed those savings decreased from the ██████████ BC Partners expected to save when Chewy's stock was trading

around \$80 per share to approximately [REDACTED] at the then-current share price of \$55. Conflicted Nesbitt also held an additional call with Svider—outside the purview of the other Special Committee members—to discuss “transferring value to the non-affiliated public shareholders.”²⁸

75. The Special Committee then discussed that “it would accord only little value to [BC Partners’ agreement to] a standstill for a transaction had a low probability of occurring because of potential legal risks.”²⁹

76. The Special Committee determined it needed more information about BC Partners’ expected tax savings and the value of the Pharmacy before making further decisions.

77. On January 14, 2022, the Special Committee met to discuss a potential counteroffer. PWC presented an overview of its tax due diligence and analysis.

78. PWC explained its three key findings in connection with a transaction where the BC Partners affiliate that owns Chewy and PetSmart would sell PetSmart to a third-party and then merge into Chewy (*i.e.*, via a downstream merger): (i) Chewy would be liable for the taxes of any PetSmart sale, and recently acquired information indicated the estimated liability was much higher than PWC initially anticipated; (ii) Chewy could become subject to future tax liabilities related to a

²⁸ CHEWY220_00000214.

²⁹ *Id.*

variable prepaid forward contract entered into by Argos, the BC Partners affiliate that held its Chewy shares, in 2020; and (iii) Chewy would assume existing audits of Argos and the resulting potential liabilities, including a then-pending audit of Argos' 2017 tax return.

79. LionTree then presented on the Pharmacy's value and potential governance changes the Special Committee could request. LionTree's presentation indicated the value of the Pharmacy to disinterested stockholders was only approximately [REDACTED].

80. The Special Committee then directed its advisors to send BC Partners a counteroffer, which was delivered on January 15, 2021. The Special Committee's offer included: (i) a transfer of the Pharmacy to Chewy and an agreement that PetSmart would not seek separate pharmacy licenses for five years; (ii) Chewy's dual class share structure would sunset in phases over five years, with 15% of the Class B shares converted to Class A shares on the first anniversary of the close of the potential merger, 15% converted on the second anniversary, 20% converted on the third anniversary, 25% converted on the fourth anniversary, and 25% converted on the fifth anniversary; and (iii) BC Partners would pay for the Company's expenses in connection with the Merger as well as an additional [REDACTED] to disinterested stockholders if Chewy's stock price exceeded \$60 per share for a period after the close.

81. On January 18, 2022, BC Partners submitted a counteroffer that included: (i) alignment on the treatment of the Pharmacy licenses; (ii) an agreement on the structure of phasing out of the dual-class structure, but with 20% of the Class B shares converting on the fourth anniversary of the close and 30% converting on the fifth; (iii) an additional cash payment of [REDACTED] if Chewy's stock traded above \$50 per share after the close and an additional cash payment of [REDACTED] for every additional \$10 per share trading price increase above \$50.

82. With respect to the structure of the indemnification, BC Partners proposed that it would leave a negotiated amount of cash on the balance sheet to cover actual, known liabilities, but would only leave Chewy shares in escrow to cover contingent liabilities. BC Partners also stated that there were certain historical tax positions that it would not indemnify.

83. On January 21, 2022, the Special Committee met to consider BC Partners' latest proposal. The Special Committee agreed that most of the terms of BC Partners' proposal were acceptable in its opinion, but it would need to revisit the indemnity and the economic value transfer after it conducted further diligence.

84. As a result, the parties had reached an agreement on, among other things: (i) the 1:1 stock exchange ratio; (ii) a five-year phase out of the dual-class share structure; (iii) transferring PetSmart's Pharmacy to Chewy; (iv) a potential

additional cash payment dependent on Chewy's trading price; and (v) BC Partners' Board representation.

85. While the Special Committee continued its process, BC Partners was exploring ways to divest some or all of its PetSmart shares by taking PetSmart public. According to a January 25, 2022 *Forbes* article, BC Partners was also considering taking PetSmart public through a potential special purpose acquisition company ("SPAC") sponsored by KKR.³⁰

86. In February 2022, BC Partners' attorneys at K&E sent Cleary a proposed draft Merger Agreement.

87. On February 28, 2022, the Special Committee met and was informed that BC Partners' plan to sell all or a portion of PetSmart through a SPAC transaction was no longer expected to go forward. Instead, BC Partners now planned to distribute its PetSmart shares to a different BC Partners entity. For purposes of the potential downstream merger with Chewy, BC Partners stated that BC Partners would engage a third-party valuation firm to value PetSmart and leave behind sufficient cash to cover the taxes owed on that distribution based on the midpoint of the valuation range determined by the third-party firm (because Chewy would become responsible for those taxes post-closing of the downstream merger). BC

³⁰ Kevin Dowd, *Did PetSmart Wait Too Long To Pursue A SPAC Deal?*, FORBES (Jan. 25, 2022, 11:00 am EST), <https://www.forbes.com/sites/kevindowd/2022/01/23/did-petsmart-wait-too-long-to-pursue-a-spac-deal/>.

Partners would then cover the contingent tax exposure if the IRS claimed the value of PetSmart was higher through an escrow of Chewy shares, the value of which were capped based on the values of the abandoned de-SPAC transaction. Cleary also reported that BC Partners only wanted to indemnify Chewy for the PetSmart disposition and no other contingent exposures.

88. LionTree recommended that the Special Committee counter that: (i) the initial cash indemnity should be based on the high end of the valuation range derived from the third-party valuation, which PWC later calculated to be [REDACTED];³¹ (ii) BC Partners provide an indemnity for all contingent liabilities; and (iii) the assets from the entity that holds BC Partners' Chewy shares be a backstop for the indemnification, rather than the escrowed Chewy shares serving as the sole recourse. The Special Committee agreed to send that counter to BC Partners.

89. On March 25, 2022, the Special Committee met to discuss the status of the downstream merger negotiations. PWC provided the Special Committee with an update on its accounting and financial diligence. According to PWC, after the close of the potential merger, Chewy would have to account for the acquired entities, including the Pharmacy, as if they were always part of Chewy, which would create

³¹ CHEWY220-0000633.

significant finance and accounting work and cost for Chewy. The majority of the impact would come from outstanding mandatory exchangeable securities, which required derivative accounting as a liability that would change by the quarter reflecting Chewy’s share price, which had changed significantly, and which would create earnings impacts. That would require management to effectively guide the market through the accounting changes. The Special Committee recognized the risks associated with this, questioning how the market “would understand the earnings impacts of the derivative accounting[.]”³²

90. Finally, Cleary reported that the main outstanding issue in the transaction documents was the scope and coverage of the indemnity BC Partners would provide to Chewy.

91. On April 8, 2022, the Special Committee met to receive a report from Cleary “that there remained significant issues with respect to the transaction proposed by [BC Partners].”³³ BC Partners was proposing to limit Chewy’s maximum indemnity recovery via the proposed share escrow. BC Partners also changed the previously agreed-upon escrow terms such that it would be able to remove shares from escrow if Chewy’s share price rose, but would have no obligation to add shares into escrow if Chewy’s share price fell. BC Partners also

³² CHEWY220-0000142.

³³ CHEWY220-0000144.

proposed that it have a consent right over the bank retained to monetize any shares that needed to be sold to satisfy the indemnity.

92. On April 29, 2022, the Special Committee met to receive an update from Cleary on the remaining open points of negotiation with BC Partners.

93. Sometime thereafter in the second quarter of 2022, the downstream merger discussions were put on hold as BC Partners evaluated alternatives for PetSmart.

94. By September 2022, BC Partners had finally located a buyer for a portion of its PetSmart stake: longtime LionTree-client Apollo.

95. LionTree has a long track record serving as Apollo's preferred financial advisor. Indeed, this Court has observed that LionTree has "an extensive relationship with Apollo"³⁴ which includes myriad engagements as Apollo's financial advisor, for which LionTree earned nearly \$16 million between 2017 and 2019 alone. Since then, LionTree has advised Apollo on its (i) \$760 million investment in Legendary Entertainment, (ii) purchase of a 25% stake in content recommendation company Taboola, (iii) \$300 million investment in custom marketing products company Cimpres; (iv) \$7.5 billion investment in telecommunications company Lumen; and (v) \$2.7 billion acquisition of Shutterfly.

³⁴ *Presidio*, 251 A.3d at 234.

Apollo and LionTree have also jointly invested in a (i) \$2 billion acquisition of West Corporation in 2017; and (ii) \$5 billion acquisition in media company Oath Inc. and Verizon Media Netherlands B.V.

96. Given LionTree's longstanding history with Apollo and the promise of future engagements, LionTree was motivated to ensure that the downstream merger between Chewy and BC Partners was consummated because the PetSmart sale (and therefore Apollo's financial benefit) was contingent on the downstream merger.

97. Once the BC Partners/Apollo discussions with respect to PetSmart began, BC Partners and the Special Committee—including conflicted LionTree—resumed work on the downstream merger negotiations. It does not appear that the Special Committee ever requested that LionTree provide an updated conflicts check and/or that LionTree ever disclosed these material relationships to the Special Committee.

98. On October 7, 2022, the Special Committee met to discuss a renewed proposal from BC Partners for the potential downstream merger. At the time, the key open points for negotiation included: (i) the size of the tax indemnity escrow; (ii) the mechanism by which Chewy would be protected if the value of the escrowed shared diminished during the escrow period; and (iii) the scope of the transaction expenses to be paid by BC Partners.

99. By the end of December 2022, talks between BC Partners and Apollo on a PetSmart transaction had terminated and the corresponding talks between BC Partners and Chewy regarding a downstream merger were put on hold.

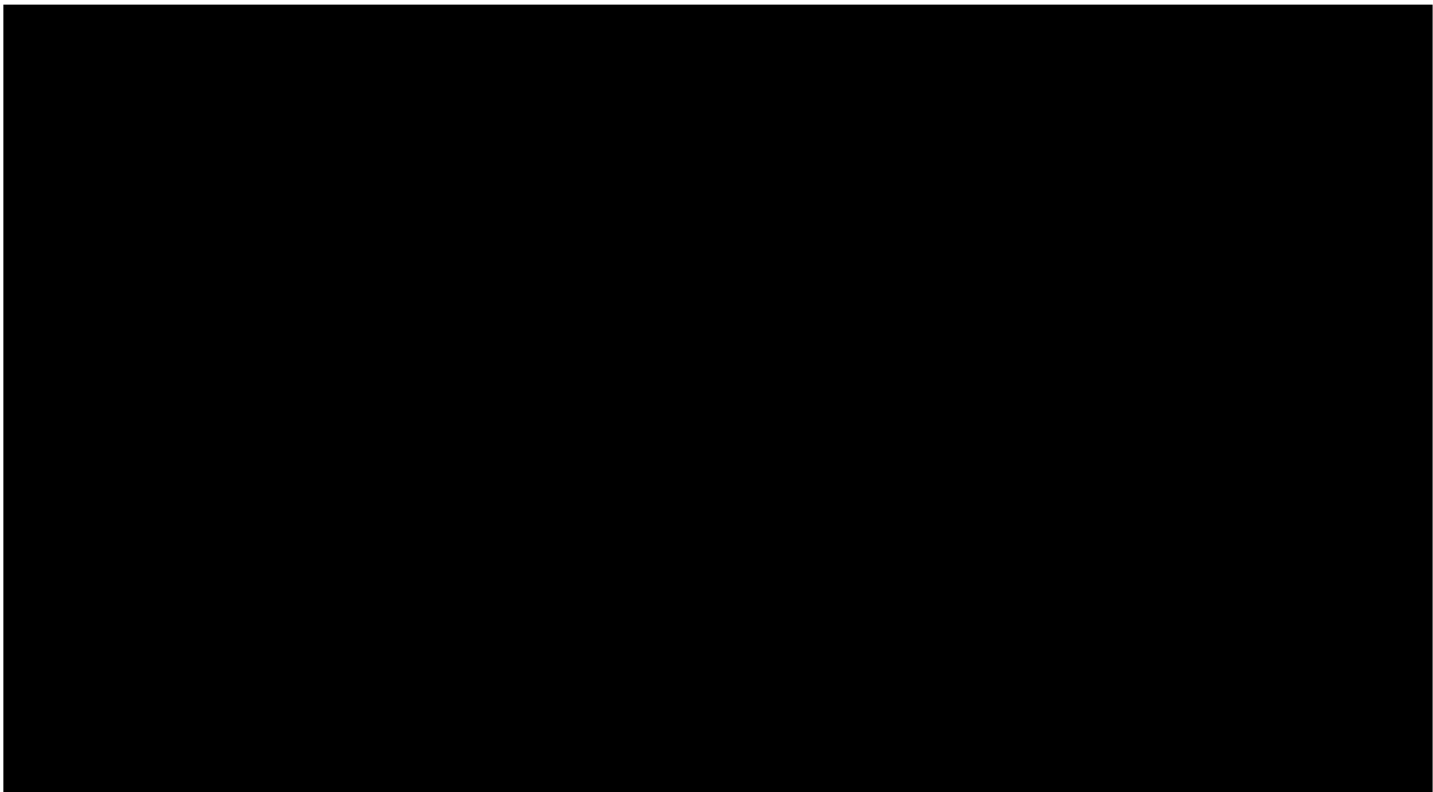
D. BC Partners Agrees to Sell a Portion of Its PetSmart Stake to Apollo; the Special Committee Capitulates to BC Partners & Assumes a Significant Tax Burden

100. In May 2023, BC Partners and Apollo re-engaged and reached an agreement on the high-level terms for a PetSmart sale transaction (the “PetSmart Sale”). PWC then continued its diligence on the potential liabilities created by the PetSmart Sale and subsequent downstream merger.

101. On June 28, 2023, the Special Committee met to receive an update from its advisors.

102. LionTree reported on the updated transaction terms for the PetSmart Sale:³⁵

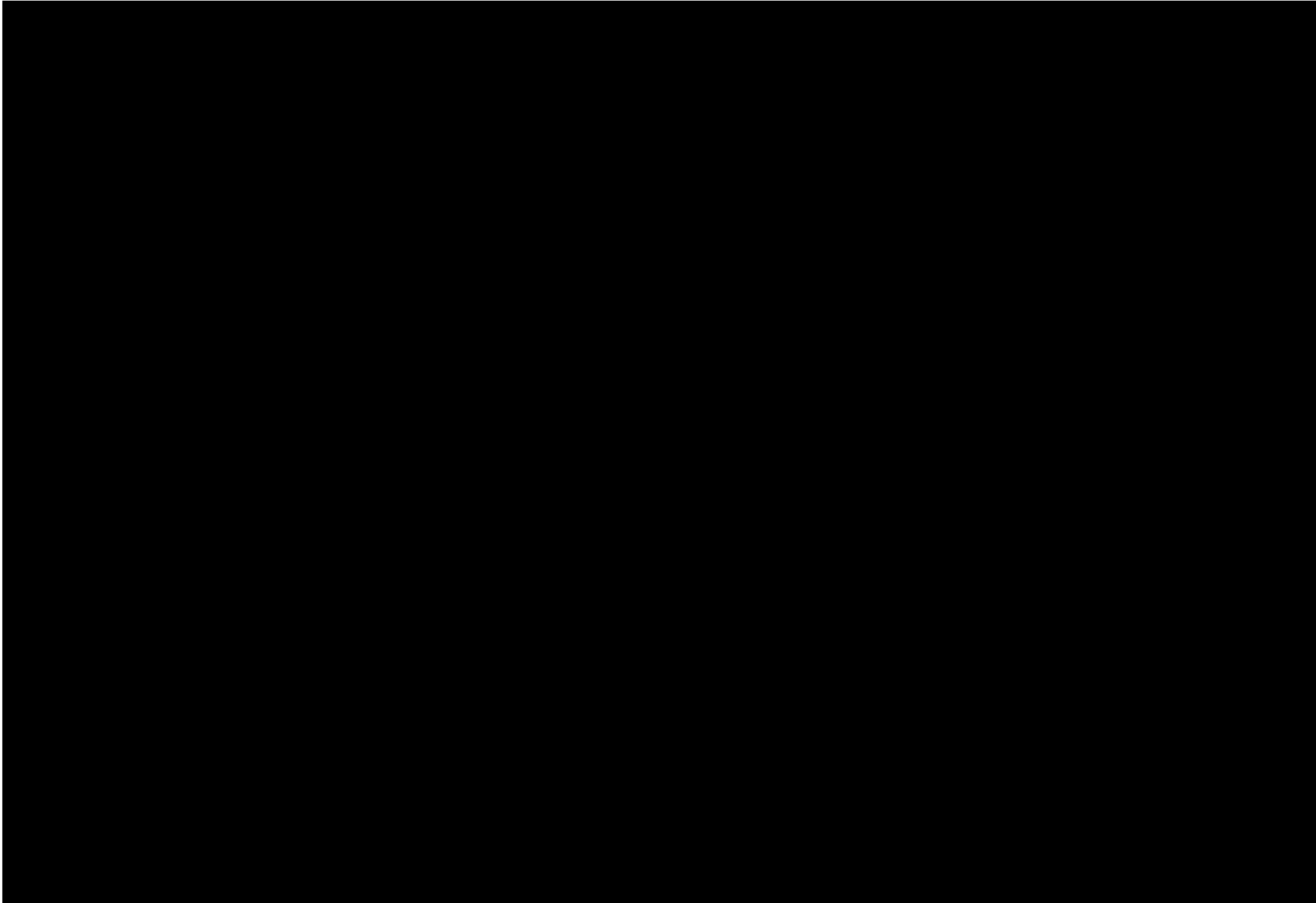
³⁵ CHEWY220-00000040 at 42.



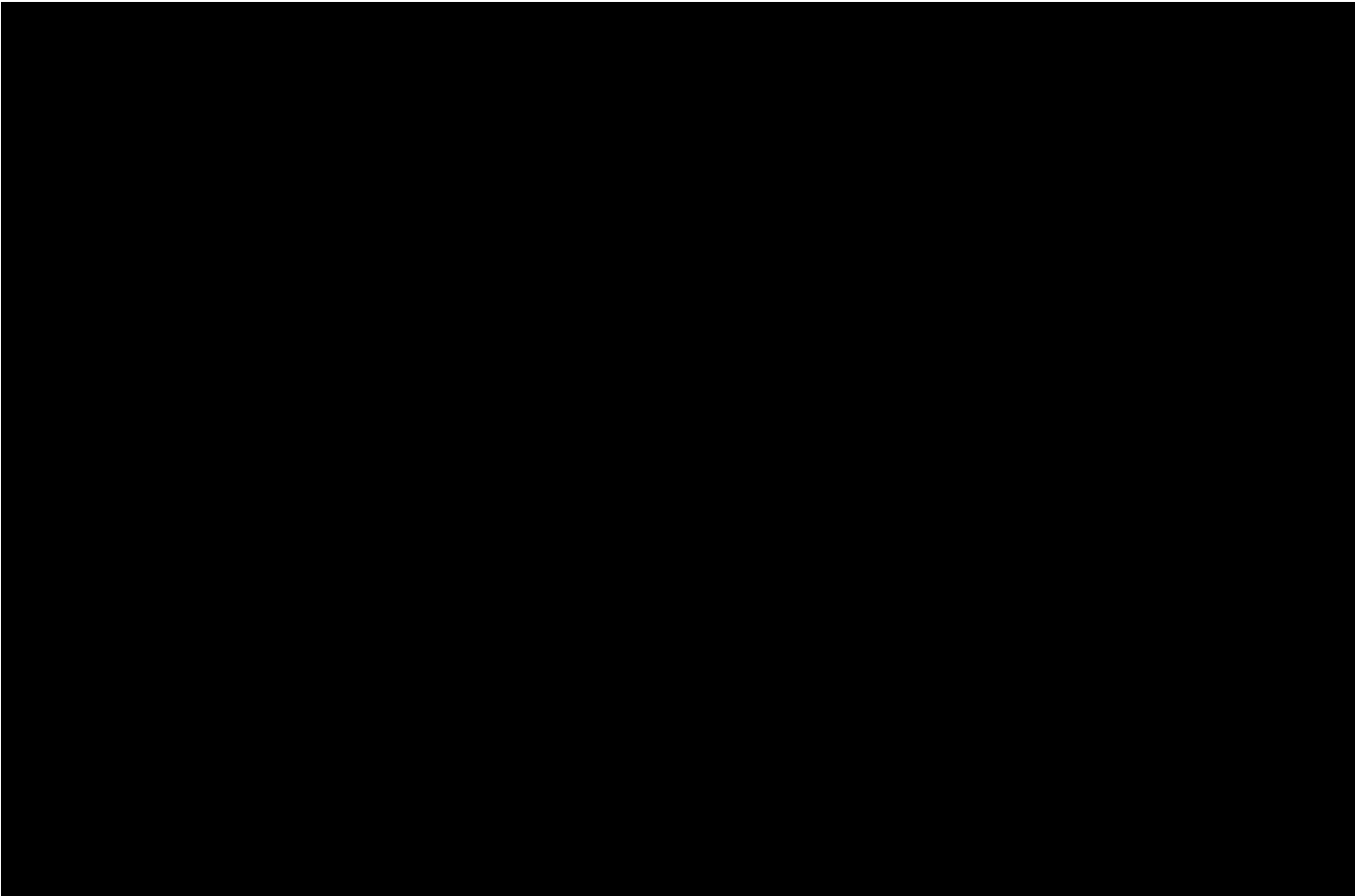
103. These terms included BC Partners Fund IX receiving a potential earnout payment (the “Seller Earnout”), a promissory note for a portion of the consideration (“Seller Note”), and a tax receivable agreement (“TRA”). Each of these would have significant tax implications for Chewy in connection with the Merger. Treatment of the TRA was particularly problematic. BC Partners Fund IX would retain a 100% interest in the TRA. Meanwhile, the tax liability tied to the TRA was transferred to Chewy as part of the downstream merger.

104. Then LionTree updated the Special Committee on the proposed terms for the downstream merger, most of which had previously been agreed to, where a

Chewy subsidiary would acquire the entity that sold PetSmart and held BC Partners' Chewy shares.³⁶



³⁶ CHEWY220-00000040 at 43-44



105. After LionTree’s presentation, PWC then presented on its draft tax diligence report. PWC generally agreed with the models provided by BC Partners with respect to the estimated taxes payable, but warned the Special Committee that uncertainty in key variables remained that would impact the final tax payable. The Special Committee discussed potential mitigation measures, including asking BC Partners to fund the full amount of taxes payable when the initial tax returns were completed. The Special Committee also discussed the risk that the downstream merger itself be treated as a taxable transaction, which could lead to a significant tax liability for Chewy, and obtaining tax insurance to mitigate this risk. PWC then presented its draft financial and accounting due diligence report.

106. Following PWC’s presentations, the Special Committee directed its advisors to prepare a counterproposal that would provide greater protection to Chewy.

E. The Special Committee Approves the Merger

107. In July 2023, Apollo announced it had agreed to invest in PetSmart in a transaction in which a new BC Partners fund, GIC, and PetSmart management would retain majority ownership and control over the PetSmart Board (previously defined as the “PetSmart Sale”). The enterprise value of PetSmart in the PetSmart Sale was \$8.2 billion.

108. On October 26, 2023, the Special Committee met to consider the final terms and approve the Merger.

109. The Special Committee reviewed that, as part of the PetSmart Sale: (i) BC Partners Fund IX received the Seller Earnout; (ii) the parties would implement the TRA, with BC Partners Fund IX as the beneficiary of 100% of the tax asset generated by the transaction; and (iii) \$1.425 billion of the consideration would be provided in the form of the Seller Note.

110. Concurrently with the closing of the PetSmart Sale, a Chewy subsidiary would merge with Argos, the BC Partners affiliate that held BC Partners’ shares of Chewy (previously defined as the “Merger”). Post-close, Chewy would be liable for tax payments attributable to the PetSmart Sale and other contingent liabilities,

including: (i) the taxable gain on the PetSmart Sale at the agreed upon transaction value; (ii) tax attributed to the Seller Note; (iii) tax on the discounted value of the TRA; (iv) tax on the estimated value of the Seller Earnout; and (v) other liabilities.

111. The Merger would be completed based on a 1:1 exchange ratio such that immediately following the Merger, BC Partners affiliates would own the same number of Class A and Class B shares following the Merger as they held immediately prior to the Merger.

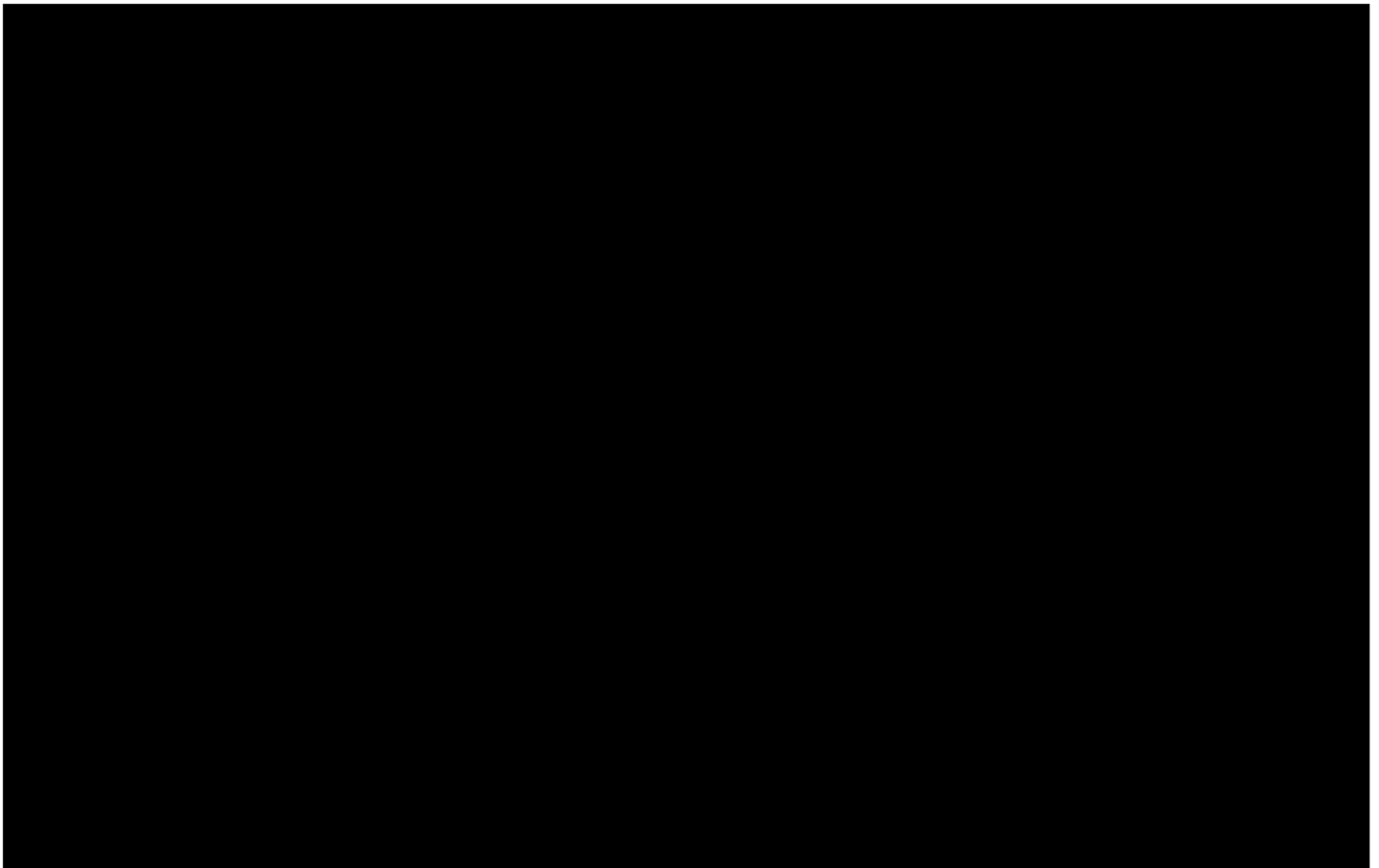
112. BC Partners agreed that Chewy's dual-class share structure would sunset in phases over five years, with 15% of the Class B shares converted to Class A shares on the first anniversary of the close of the Merger, 15% converted on the second anniversary, 20% converted on the third anniversary, 20% converted on the fourth anniversary, and 30% converted on the fifth anniversary.

113. BC Partners agreed to pay the Company's fees and expenses incurred in connection with the Merger and to pay incremental consideration of \$10 million if Chewy's trading price exceeded \$50 per share following the Merger, which amount would increase by an additional \$5 million for every additional \$10 per share increase in Chewy's stock price.

114. The Pharmacy would be transferred to Chewy. However, "LionTree and Chewy management did not ascribe significant value to the transfer of the Pharmacy, but [] some benefit was likely provided to Chewy by virtue of PetSmart

relinquishing this license.”³⁷ BC Partners verbally indicated this was likely worth [REDACTED] to [REDACTED] per unaffiliated Class A share. Moreover, because Chewy would now be required to recognize the full profit and loss impact of the Pharmacy (as opposed to the management fee it previously received), the Pharmacy provided little value, if any, to Chewy’s unaffiliated stockholders.

115. LionTree explained the indemnity and related protections for Chewy negotiated by the Special Committee:³⁸

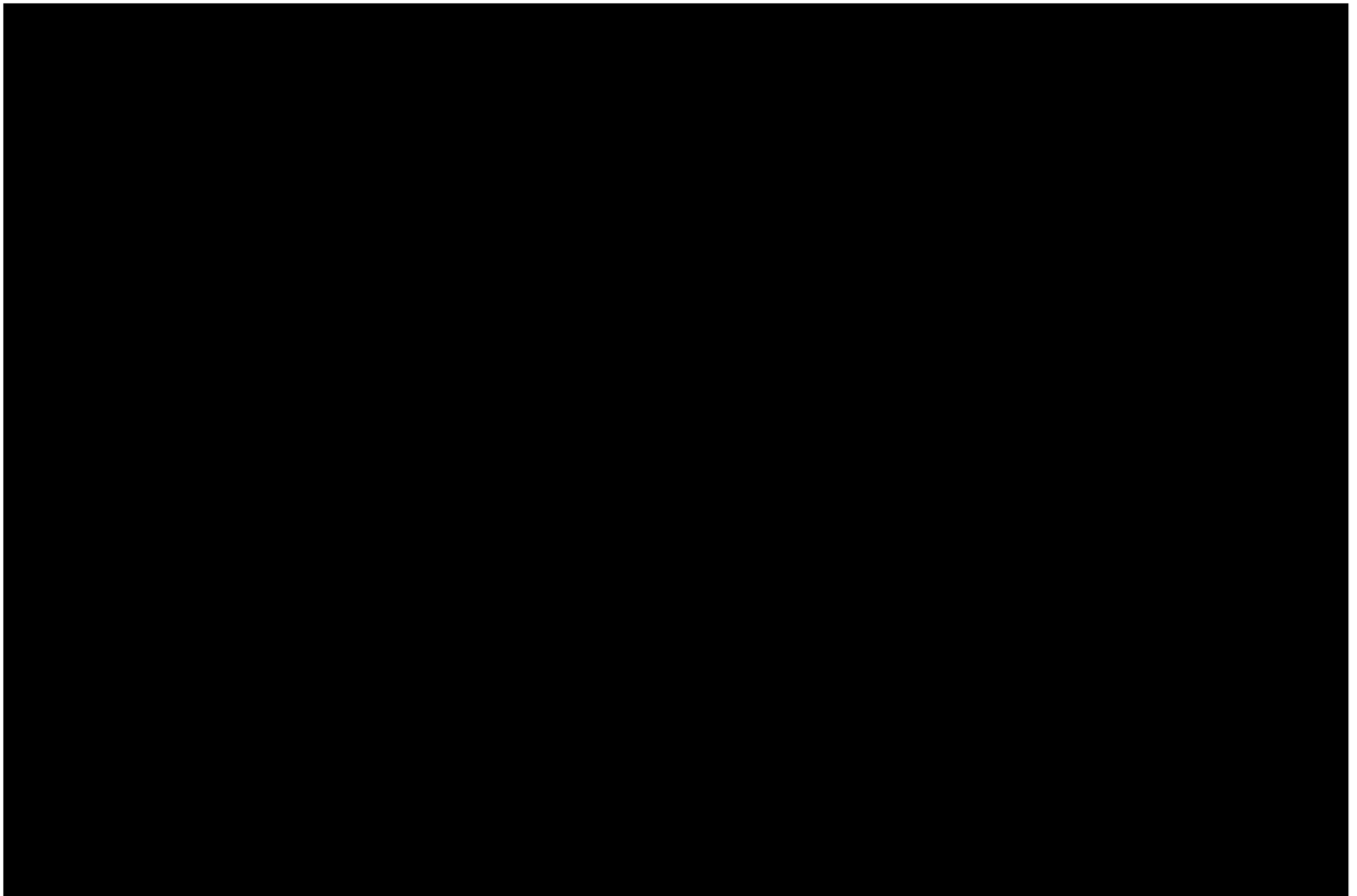


³⁷ CHEWY220-00000001 at 3.


³⁸ CHEWY220-00000010 at 16.

116. Cleary also discussed that BC Partners agreed to standstill obligations and change of control limitations, including that, while it owned 50% of the voting power, it would not accept differential consideration in a change of control transaction and would not acquire Chewy unless such a transaction was approved by an independent special committee and a vote of disinterested stockholders.

117. As part of its presentation, LionTree included a simplified visual representation of the PetSmart and Chewy ownership structure before and after the contemplated transactions:³⁹



³⁹ CHEWY220-00000010 at 33-34.



118. LionTree then provided a purported fairness opinion and the Special Committee adopted resolutions recommending the Board approved the Merger. The full Board approved the Merger by unanimous written consent on October 28, 2023.

119. On October 30, 2023, the Merger closed immediately following the close of the PetSmart Sale.

F. The Merger Was Unfair to Chewy and Its Minority Stockholders

120. The Merger was unfair to Chewy and its minority stockholders from both a financial and procedural basis.

1. The Merger Was Financially Unfair

121. *First*, BC Partners did not provide a sufficient indemnity to Chewy for the potential tax and other contingent liabilities that Chewy was assuming in the Merger.

122. BC Partners' sale of a minority interest in PetSmart to Apollo was taxable to Argos, the BC Partners holdings company prior to the Merger that held BC Partners' Chewy equity. To avoid the approximately \$1.9 billion tax liability from the PetSmart Sale, BC Partners merged Argos downstream into Chewy via the Merger, which passed Argos' (*i.e.*, BC Partners') estimated tax liability and other contingent liabilities onto Chewy.

123. Although BC Partners left behind \$1.9 billion in cash to pay for any liability arising from the PetSmart Sale, Chewy faced the risk that it would not satisfy the actual final obligations from the PetSmart Sale.

124. In the face of that risk, BC Partners agreed to indemnify Chewy for any tax liability and other contingent liabilities that exceeded the \$1.9 billion cash payment. However, the tax liability indemnity was capped at \$196 million and the indemnity for the other contingent liabilities was capped at \$50 million. Compounding the issue further, both of these indemnity agreements were backstopped by Chewy shares and were non-recourse against BC Partners. Thus, if the cash left behind by BC Partners in the Merger was not sufficient to cover all

current and contingent liabilities left behind by PetSmart, Chewy's only option was to recover and then sell the Chewy shares left in escrow, regardless of whether those shares would adequately cover the balance of any liabilities. Moreover, this forced sale of a significant amount of Chewy shares would likely create downward pressure and have a spiraling effect on Chewy's trading price.

125. *Second*, despite shifting the tax risk to Chewy, BC Partners retained the benefits of the TRA with PetSmart.

126. The PetSmart Sale included the TRA, whereby the PetSmart buyer (a roughly 50/50 partnership between BC Partners and Apollo) promised to pay the seller (Argos) 100% of the cash value of any tax savings enjoyed by the buyer from the basis step-up in the taxable sale of PetSmart. However, Argos distributed the TRA upstream to BC Partners before Argos merged downstream into Chewy, so when Argos—and the tax risk attributable to the PetSmart Sale—were shifted to Chewy, the corresponding benefit (*i.e.*, the TRA) stayed behind with BC Partners.

127. *Third*, Chewy and its public stockholders were not adequately compensated for the significant benefits BC Partners received from the Merger.⁴⁰ More specifically, when the Special Committee delivered its October 6, 2021 counteroffer, it proposed a [REDACTED] cash payment to the Company's Class A

⁴⁰ In December 2021, BC Partners estimated that it would save [REDACTED] to [REDACTED] in tax payments based on the fluctuating trading prices of Chewy's stock at the time.

stockholders, thereby recognizing the need to compensate minority stockholders with a substantial cash payment. Indeed, Special Committee member Nelson told Defendant Svider that the Special Committee “expected that any possible transaction include a transfer of value to Chewy for the benefit of the non-affiliated public shareholders[.]”⁴¹ Nevertheless, when BC Partners’ December 7, 2021 counteroffer rejected the [REDACTED] cash payment, the Special Committee readily abandoned this condition. Instead, the Committee accepted the paltry consolation prize of (i) the Pharmacy transfer, the value of which (if any) would flow to *all* Chewy stockholders, rather than the minority, and was nebulous at best; and (ii) a conditional [REDACTED] payment if—and only if—Chewy’s 15-day VWAP prior to the closing exceeded \$50 per share. Since Chewy’s stock was then trading around \$18 per share, stockholders never received the conditional payment.

128. *Fourth*, the Merger terms the value of the governance provisions that the Special Committee purportedly secured to compensate minority stockholders were limited. The Special Committee even acknowledged that little value should be attributed to the standstill provisions since there was “a low probability of [a transaction] occurring because of potential legal risks.”⁴²

⁴¹ CHEWY220-00000217.

⁴² CHEWY220-00000214.

129. Moreover, the provisions providing for the slow collapse of the dual class structure and a commitment to follow the *MFW* conditions in the event of a take-private are largely illusory as BC Partners indicated from the outset that it “wished to begin pursuing a monetization of [its] Chewy shares[.]”⁴³ And, as explained above, any Class B shares BC Partners sells to a third party automatically convert into Class A shares.

130. Additionally, the manner in which the PetSmart Sale was structured suggests that the entire process was driven by an acute need by BC Partners to deliver cash returns to investors in its older funds: the then-current BC Partners Fund that owned PetSmart, BC Partners Fund IX, would completely liquidate its PetSmart holdings, but only 50% of the common equity of PetSmart would be sold to Apollo. The rest would be acquired by a new BC Partners Fund, later identified as Fund XI.

131. Nikos Stathopoulos (“Stathopoulos”), BC Partners’ Chairman of Europe and a member of BC Partners’ Management Committee, confirmed as much in a July 2024 interview with *Private Equity International*. In the interview, Stathopoulos boasted about delivering approximately €9 billion in exit proceeds over the prior eighteen months.⁴⁴ Stathopoulos said BC Partners “set a plan about 18, 24

⁴³ CHEWY220-00000588.

⁴⁴ Carmela Mendoza, *BC Partners Generated Around €9bn of Proceeds Over Past Year and a Half*, PRIVATE EQUITY INT’L (July 10, 2024),
(Footnote continued on next page...)

months ago that we wanted to systematically monetize certain assets, particularly from our 2017 vintage Fund X, in addition to sell-downs of our public companies.”⁴⁵ If BC Partners felt the need to monetize assets in Fund X, it likely had even greater urgency to monetize assets in its older Fund IX, which was a 2010 vintage fund that held Chewy and PetSmart.

132. According to Stathopoulos, “[e]veryone, especially [limited partners], are talking about how [distributed to paid in capital] is the new [internal rate of return]. While we continue to pursue deals in cases where we do have high conviction, I’d say that our first, second, and third priority in the near to mid-terms are exists.”⁴⁶ Stathopoulos added that “[e]veryone is understanding that they need to focus on returning capital to LPs” and that BC Partners “continue[s] to own large stakes in public companies in the US, on which we do sell-downs whenever the markets are open.”⁴⁷

133. Since the closing of the Merger, BC Partners has already begun slowing liquidating its Chewy holdings. For example: (i) on June 26, 2024, Chewy agreed to repurchase 17,550,000 shares from BC Partners for \$500 million; (ii) on

<https://www.privateequityinternational.com/bc-partners-returned-around-e9bn-to-lps-over-past-year-and-a-half/>.

⁴⁵*Id.*

⁴⁶*Id.*

⁴⁷*Id.*

September 18, 2024, Chewy agreed to repurchase 10,204,081 shares from BC Partners for \$300 million; and (iii) on September 19, 2024, Chewy and BC Partners entered into an underwriting agreement providing for the public offering by BC Partners of 16,666,667 Chewy shares with an underwriters option to purchase up to an additional 2,500,000 shares from BC Partners.

134. Given its planned liquidation of its Chewy holdings, the governance “concessions” from BC Partners were not particularly meaningful for Chewy.

2. The Merger Is Procedurally Unfair

135. The Merger provided significant benefits to BC Partners as Chewy’s controller. Nonetheless, BC Partners refused to condition the Merger on the separate approval of a majority of Chewy’s minority stockholders.

136. Additionally, the Special Committee that ostensibly participated in negotiating the Merger was not fully independent.

137. For example, the Special Committee included Nesbitt who has a relationship with Svider that rendered him incapable of considering the Merger disinterestedly and independently. Moreover, Nesbitt and Svider conducted a significant amount of the negotiations concerning the Merger between themselves.

138. The Special Committee also failed to retain an independent financial advisor. LionTree had a long history of advising BC Partners and/or Apollo, generating significant advisory fees from those engagements. LionTree therefore

was incentivized to steer the Special Committee in the direction that BC Partners (and, by extension, Apollo) desired to secure future engagements with BC Partners and/or Apollo. This came to fruition not long after the Merger and PetSmart Sale closed: In April 2024, BC Partners announced it would sell a majority of its Presidio shares to CD&R and that LionTree was acting as BC Partners' financial advisor in the deal.

DERIVATIVE ALLEGATIONS

139. Plaintiff brings this action derivatively in the right and for the benefit of the Company to redress breaches of fiduciary duty.

140. Plaintiff is a stockholder of Chewy and has continuously been a stockholder of Chewy since prior to the announcement of the Merger.

141. Plaintiff will adequately and fairly represent the interests of the Company and its stockholders in enforcing and prosecuting the Company's rights. Plaintiff has retained counsel experienced in the prosecution of derivative actions.

DEMAND FUTILITY

142. Plaintiff did not make a demand on the Board to bring suit asserting the derivative claims set forth herein because pre-suit demand would have been futile. The facts alleged herein show that, at a minimum, reasonable doubt exists as to whether a majority of the Board was disinterested and independent of BC Partners.

143. Because Defendants Svider, Ahmed, Bigand, Castelli, Chang, Leland, and Sibenac (*i.e.*, seven of Chewy's twelve directors) are currently dual BC Partners-Chewy fiduciaries, they could not objectively consider a demand to investigate or prosecute claims adverse to BC Partners' economic interests. The Chewy 2024 Proxy also concedes these individuals' non-independence.

144. Defendant Singh also cannot disinterestedly and independently consider a demand to initiate the claims alleged herein because, as the CEO of BC-Partners-controlled Chewy, Singh is beholden to BC Partners. Between 2018 and 2024, Singh received more than \$204 million in compensation from Chewy, which, upon information and belief, is material to his financial wellbeing. The Chewy 2024 Proxy also concedes Singh's non-independence. Given Singh's reliance on the lucrative compensation he earned during his tenure at BC-Partners-controlled Chewy, Singh could not objectively consider a demand to investigate or prosecute claims adverse to BC Partners' economic interests.

145. Defendant Star cannot disinterestedly and independently consider a demand to initiate the claims alleged herein because such claims would be antithetical to Longview and/or BC Partners' economic interest. Star's professional relationship with Longview dates back to 1994, where he served in a variety of leadership roles, eventually rising to the position of Executive Chairman, President and CEO. Upon information and belief, Star amassed a substantial portion of his net

worth during his twenty-nine-year tenure at Longview. During Star's tenure at Longview, BC Partners purchased Longview's stake of PetSmart and allowed Longview to rollover a portion of its equity into the post-sale company. In connection with that sale, Star was appointed to the board of a PetSmart affiliate, which directorship he continues to maintain. BC Partners also allowed Longview to participate in BC Partners' investment in Chewy. Thus, Star could not objectively consider a demand to investigate or prosecute claims adverse to BC Partners and/or Longview's economic interests.

146. Defendant Nesbitt cannot disinterestedly and independently consider a demand to initiate the claims alleged herein because he lacks independence from defendant Svider. Nesbitt's relationship with Svider began at least as early as 1988, when they attended—and graduated from in 1989—the University of Chicago Booth School of Business. Svider hired Nesbitt's son, Alex, to work at BC Partners in 2019, where Alex Nesbitt currently remains employed as a Director. Svider and Nesbitt have also maintained their affiliation with their alma mater, including by sitting on a “Perspectives on Private Capital” panel at Chicago Booth's 71st annual Management Conference on May 3, 2024.⁴⁸ Nesbitt also serves on The Booth Polsky Private Equity Council, which is comprised of private equity investors who

⁴⁸ <https://www.chicagobooth.edu/magazine/perspectives-on-private-capital>.

provide guidance and support to the Polsky Center’s Svider Private Equity Program.⁴⁹ Svider also made a donation to The Studio Museum in Harlem in 2017 or 2018, on which board of trustees Nesbitt’s wife, Dr. Anita Blanchard, sits.⁵⁰ Given Nesbitt’s decades-long friendship with Svider—and that Nesbitt’s son’s career hangs in the balance—Nesbitt could not objectively consider a demand to investigate or prosecute claims adverse to BC Partners’ interests.

147. Additionally, ten of Chewy’s twelve Board members—Defendants Svider, Ahmed, Bigand, Castelli, Chang, Leland, Sibenac, Singh, Nesbitt and Star—face a substantial risk of personal liability in this Action because they acted disloyally and/or in bad faith by advancing BC Partners’ interests ahead of the Company’s, and, therefore, could not objectively consider a demand to investigate or prosecute claims.

⁴⁹ Chicago Booth and Polsky Private Equity Council Members, <https://polsky.uchicago.edu/programs-events/private-equity/pe-council/>. The Polsky Center’s Svider Private Equity Program is a program that “supports the aspirations of students interested in a career in private equity” through various advisory and mentorship programs, which is funded by Svider. Svider Private Equity Program, <https://polsky.uchicago.edu/programs-events/private-equity/>.

⁵⁰ STUDIO, Fall 2018/Winter 2019 at 67, https://app.oarklibrary.com/file/4/d846632f-7e50-4162-a3f0-f95faa47f981**f7629a2e4bfec5ca2449901b4b5883a9/f5fdcf98-0b2a-4870-8eed-3f205e4c06cf.pdf.

COUNT I

Derivative Count for Breach of Fiduciary Duty Against the BC Entity Defendants

148. Plaintiff repeats and realleges all previous allegations as if they had been set forth in full herein.

149. The BC Entity Defendants, as Chewy's controlling stockholder owed the Company fiduciary duties of due care, loyalty and good faith.

150. The BC Entity Defendants breached their fiduciary duties by, among other things, causing Chewy to enter into the Merger, which unfairly shifted BC Partners' tax liability to the Company without providing adequate consideration in exchange for Chewy's agreement to assume BC Partners' liability.

151. The BC Entity Defendants were conflicted by BC Partners' desire to monetize a portion of its PetSmart equity while avoiding the massive tax liability that it would have been responsible for, absent the Merger. The BC Entity Defendants also reaped the benefits of the TRA in connection with the PetSmart Sale while failing to share those benefits with Chewy who faced massive liabilities in the face of the PetSmart Sale.

152. The BC Entity Defendants' breaches of fiduciary duties have harmed the Company, Plaintiff and the Company's public stockholders.

153. Plaintiff has no adequate remedy at law.

COUNT II

Derivative Count for Breach of Fiduciary Duty Against Director Defendants

154. Plaintiff repeats and realleges all previous allegations as if they had been set forth in full herein.

155. The Director Defendants, as directors and/or officers of Chewy, owe the Company and its stockholders the fiduciary duties of due care, loyalty and good faith.

156. The Director Defendants breached their fiduciary duties by, among other things, (i) forming the Special Committee, which was not independent and approved the unfair Merger; and (ii) approving the unfair Merger.

157. The Director Defendants' breaches of fiduciary duties have harmed the Company, Plaintiff and the Company's public stockholders.

158. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment and relief in his favor and in favor of the Company, against Defendants as follows:

- A. Declaring that demand is futile;
- B. Declaring that the BC Partners Entity Defendants breached their fiduciary duties owed to Plaintiff and the Company;
- C. Declaring that the Director Defendants breached their fiduciary duties owed to Plaintiff and the Company;

D. Awarding damages to Plaintiff and the Company, together with pre- and post-judgment interest;

E. Ordering Chewy to implement corporate governance reforms to increase the Company's independence from BC Partners;

F. Awarding Plaintiff the costs, expenses, and disbursements of this Action, including all reasonable attorneys', accountants' and experts' fees; and

G. Awarding Plaintiff and the Company such other relief as this Court deems just and equitable.

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/s/ Ned Weinberger

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Dated: November 14, 2024

Redacted Version Dated:
November 20, 2024