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Case No. 2022-0689-LWW

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE SANTANDER CONSUMER USA HOLDINGS INC. STOCKHOLDERS LITIGATION	CONSOLIDATED C.A. No. 2022-0689-LWW **PUBLIC [REDACTED] VERSION AS FILED ON MAY 16, 2024**

VERIFIED AMENDED CLASS ACTION COMPLAINT

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Plaintiffs The Liverpool Limited Partnership and Elliott International L.P. (together, "Lead Plaintiffs"), on behalf of themselves and similarly situated former public stockholders of Santander Consumer USA Holdings Inc. ("SCUSA" or the "Company"), bring this Verified Amended Class Action Complaint (the "Complaint") asserting breach of fiduciary duty claims against: (i) the Company's controlling stockholder, Santander Holdings USA, Inc. ("SHUSA"), which owned over 80% of the Company's shares prior to the Squeeze Out (as defined, *infra*), (ii) SHUSA's parent and the Company's ultimate parent, Banco Santander, S.A. (d/b/a "Group" and, together with SHUSA, the "Controller Defendants"), and (iii) members of the Company's board of directors (the "Company Board" or the "Board"), Homaira Akbari, Juan Carlos Alvarez de Soto, Leonard Coleman Jr., Stephen A. Ferriss, Victor Hill, Edith E. Holiday, Javier Maldonado, and Mahesh Aditya (collectively, the "Director Defendants"), related to the January 2022 acquisition of the Company by SHUSA and Group. SHUSA and Group acquired all outstanding Company shares that SHUSA did not previously own through a two-step tender offer and merger pursuant to 8 *Del. C.* § 251(h) ("Section 251(h)"), resulting in the Company becoming a wholly-owned subsidiary of SHUSA (the "Squeeze Out").

The allegations are based on Lead Plaintiffs' knowledge as to themselves and on information and belief as to all other matters, including from counsel's investigation, review of publicly available information, review of books and

records produced by the Company in response to Lead Plaintiffs' demands made under 8 *Del. C.* § 220 ("Section 220"), and review of documents, testimony, and other evidence secured through discovery undertaken in this action, as to all other matters.[1]

I. NATURE OF THE ACTION

1. This action arises from one of the largest minority squeeze-out transactions in history. As detailed below, unwilling to run a fair process and pay a fair price, the Controller Defendants chose to employ their power to impose an unfair squeeze-out, thus seizing for themselves hundreds of millions—if not billions—of dollars of current value that should have been paid to the minority stockholders, in addition to massive synergies. The minority stockholders' only means to protect their interest is this action.

2. Delaware law provides corporate controllers seeking to effect a squeeze-out transaction—*i.e.*, a transaction by a corporation's controlling stockholders that forces the minority stockholders to sell their shares in the corporation—with a clear choice as to how to protect the interests of those minority stockholders. They can employ well-established protections for the minority stockholders, specifically by conditioning the deal on approval by: (i) a well-functioning, independent, and disinterested special committee of the corporation's board of directors; and (ii) a fully informed majority of the minority

[1] Unless noted, all emphases and alterations are added.

stockholders. Or, the controlling stockholders can force the transaction through and accept the heavy burden of proving the deal's entire fairness to the minority stockholders.

3. In this case, the Controller Defendants recognized, *ex ante*, that July 2021 was the most opportune time to squeeze out SCUSA's minority stockholders due to a favorable shift in the Company's financial position and industry and undisclosed expectations of extraordinary net income generation in the second half of 2021 ("2H 2021") and 2022. The Controller Defendants then refused to condition the Squeeze Out on approval of a majority of minority stockholders—*i.e.*, allowing for the approximation of arm's-length negotiation—to effect the Squeeze Out at a price substantially lower than SCUSA's fair value.

4. Rather than pay fair value to the Company's minority stockholders, the Controller Defendants chose to use their control to usurp significant value from those stockholders. The Controller Defendants forced through a tender offer and squeeze-out merger pursuant to Section 251(h) of the Delaware General Corporation Law ("DGCL"), thereby eschewing any argument in favor of judicial deference. The transaction had ***no minimum tender condition***. Thus, the Controller Defendants, with over 80% ownership of the Company, ensured that the deal would close even if every last minority stockholder opposed the Squeeze Out. Indeed, even after multiple extensions, a mere ***23.5%*** of the minority tendered—a stunning rebuke of the $2.4 billion Squeeze Out.

5. Unwilling to live with an arm's-length process, the Controller Defendants elected to submit to this entire fairness lawsuit, presumably in a form of judicial arbitrage, hoping to achieve a lower post-trial net cost to themselves for the Squeeze Out than a procedurally fair process would have cost them.

* * * * *

6. Spain-based Banco Santander, S.A. (as defined above, "Group") owns some of the world's largest consumer and commercial banks. Group organizes its U.S.-based businesses through its wholly owned holding company, Santander Holdings USA, Inc. (as defined above, "SHUSA"). SHUSA, in turn, controlled Santander's U.S.-based auto financing business, Santander Consumer USA Holdings Inc. (as defined above, the "Company" or "SCUSA"), through its ownership of 80.25% of the Company's stock, active management, and representation on the Company Board. At the time of the Squeeze Out, a majority of the Company Board also served as fiduciaries for Group, SHUSA, or their affiliates. SHUSA, and through SHUSA, Group, had complete authority over the composition of the Company Board.

7. The Company's finance business focused on auto finance. When the Company issued an auto loan, it charged rates reflecting the perceived risk of default by the borrower, and maintained a loan loss provision on its income statement to cover anticipated losses due to loan defaults. The size of the Company's loan loss provision (like that of any other subprime lender) was

primarily driven by two factors: (i) perceived risk of default by the borrower (*i.e.*, the car buyer), and (ii) anticipated loss based on the shortfall between the loan balance and post-foreclosure resale value of the automobile. The Company's generally high level of loan loss provisions reflected both the comparatively weak credit ratings of its customer base (which weighted towards nonprime credit ratings) and the expectation that automobiles depreciate more rapidly than many other forms of collateral.

8. The early 2020 onset of the COVID-19 pandemic dramatically altered the core financial prospects for the Company's industry in at least two ways. *First*, individual consumer credit performance exceeded expectations (*i.e.*, there were fewer loan defaults than historical credit ratings predicted) following unprecedented governmental COVID-19 stimulus payments to consumers and lower consumer spending relative to income. *Second*, losses upon loan default were lower than anticipated, as COVID-19 and certain macroeconomic shifts like supply-chain disruptions drastically increased the value of used cars.

9. By early 2021, the Company's business was booming.

10. While the public securities markets recognized certain of the beneficial effects on the Company's business, the Controller Defendants (which had complete visibility into the Company's projections and prerelease earnings) understood that the extraordinary earnings generation from the COVID-19 tailwinds would be far greater and prolonged than the market expected. The

Controller Defendants also recognized that a material portion of the large loan loss provisions that the Company continued to maintain based on excessively conservative assumptions could be released and paid out to shareholders. The Controller Defendants decided to appropriate all of those benefits for themselves.

11. The Company also maintained capital on its balance sheet that far exceeded regulatory requirements, its competitors' practices, and the internal target capital level set by the Company's management. While the market recognized that the Company was over-capitalized, it far underestimated how much additional extra capital the Company expected to be able to generate in 2021 and 2022, and unlike the Controller Defendants, the market did not know when or how the Company would begin returning billions of dollars to stockholders.

12. In late March 2021, Group decided to move forward with "Project Max"—the acquisition (through SHUSA) of all SCUSA shares that SHUSA did not already own. The Controller Defendants expected the Squeeze Out to create massive value for them, even beyond snatching the minority stockholders' rightful share of the extraordinary earnings.

13. *First*, the Controller Defendants expected massive benefits from what was referred to as "unwinding capital dis-arbitrage." SCUSA was consolidated into the SHUSA/Group balance sheets, and therefore were required to hold back regulatory capital for 100% of SCUSA's risk-weighted assets

("RWAs"), despite only receiving approximately 80.25% of the earning stream from those assets. Accordingly, Group effectively lost approximately [REDACTED] of its capital due to this unique circumstance. Unwinding this capital inefficiency was described by the Controller Defendants as [REDACTED] and was highly valuable.

14. *Second*, the Squeeze Out was expected to generate significant synergies. It would bring SCUSA's auto-finance business closer to Group's two U.S. domiciled depository banks—SBNA and BSNY (defined below)—which would allow for significant "funding synergies," as SCUSA loans could be [REDACTED] on which SCUSA traditionally relied. This would allow Group to execute its "One Santander" strategy—*i.e.*, the creation of a global auto business in the United States that would allow it to develop a full-spectrum auto business that could lend to any borrower. The deal also would generate significant cost synergies from items like [REDACTED]

15. Indeed, Group viewed Project Max as [REDACTED]

16. To that end, Group formed the Project Max pricing committee, which it gave the power [redacted]

17. In April 2021, the Controller Defendants advised the Company that SHUSA planned to make an offer to acquire the Company's outstanding shares that it did not already own. The Controller Defendants instructed the Company to create a special committee (the "Special Committee") to prepare for that offer.

18. The Company Board formed the Special Committee, which was far from independent. In around 2015, SHUSA was looking for "better control over each of its affiliates." To that end, SHUSA Board Chairman Timothy Ryan sought to recruit SCUSA directors [redacted] One of his first choices was the eventual *de facto* Special Committee head, William Rainer. Rainer and Ryan had been friends for decades and had various business and personal ties. Rainer [redacted]

19. Ryan also recruited Special Committee member Bob McCarthy, whom he had known for over a decade as [redacted] The final Special Committee member, William Muir, was aided in joining the SCUSA Board by the former Chief Credit Officer of SHUSA. In an email from the time

of his appointment, Muir acknowledged that the

20. The Special Committee immediately retained a financial advisor, Piper Sandler, with troubling ties to the Controller Defendants. Ryan assured Group's Executive Chairman, Ana Botín, that SHUSA would

The Controller Defendants appear to have done exactly that. Ed Herlihy of Wachtell, Lipton, Rosen & Katz ("Wachtell") was a long-time advisor of Group/SHUSA and Botín. Before the initiation of Project Max,

The contemporaneous documents show that, in

Given that no witness in the case could offer an explanation as to

and that Herlihy and Dunne both moved to quash their depositions, it is inferable that the

Indeed,

21. In May 2021, SHUSA decided not to bid on the Company's outstanding stock because [REDACTED]

22. But immediately after learning of two developments in June that narrowed the window within which the Controller Defendants could most opportunistically squeeze out the Company's minority stockholders, SHUSA and Group seized on their informational advantage (relative to the market) and reapproached.

23. *First*, the Controller Defendants learned that the Company was planning to return ***approximately*** [REDACTED] of excess capital to its stockholders through: [REDACTED] Both the [REDACTED] would result in a cash outflow from the Company to its minority stockholders (and would have increased the stock price through equity consolidation). Project Max, however, would let SHUSA and Group immediately impound ***all*** excess cash.

24. *Second*, the Controller Defendants learned that the Company's Q2 2021 financial results, set to be publicly reported by late July, would significantly exceed market expectations. Because, following the publication of those results, investors would better appreciate the true magnitude of improving

macroeconomic factors on the Company's financial performance and resulting capital plans, the Controller Defendants knew that the Company's stock price would likely increase materially following disclosure of the second quarter results, and that they would therefore have to pay for the benefits of the Company's value improvements that they were attempting to appropriate without any consideration.

25. On top of capitalizing on the temporary disconnect between SCUSA's stock price and its intrinsic value, the Squeeze Out was attractive to the Controller Defendants because it was expected to generate [REDACTED] in synergy value and other benefits for the reasons discussed above. Incredibly, the Special Committee and Piper Sandler did not even attempt to calculate the value of expected (and low-execution-risk) synergies or unwinding the capital dis-arbitrage, much less negotiate for a percentage of those benefits as would be expected in arm's-length negotiations. The Special Committee members [REDACTED]

26. On July 1, 2021, SHUSA offered to buy the Company's minority shares for $39 per share, a 7.4% premium over the Company's stock price from the prior day. The offer was not conditioned on a minimum tender, a majority-of-the-minority vote, or a favorable recommendation from the Special Committee

(which was not independent in any event). As recognized by several prominent analysts, it also effectively placed a ceiling on the Company's stock price.

27. By requiring approval only by the Company Board, a majority of which was conflicted through affiliations with the Controller Defendants, one of the largest squeeze-outs in history became a foregone conclusion. Minority stockholders were left with little hope of receiving a fair price and sell-side analysts predictably focused their attention elsewhere (*e.g.*, by dropping coverage and/or not updating financial and valuation models of the Company).

28. The Company Board delegated its negotiating authority to the conflicted Special Committee, which barely pretended to negotiate at arm's length. The Company Board—which had a dual-fiduciary majority—did not even consider or discuss the conflicts that Rainer and McCarthy had with respect to Ryan and SHUSA.

29. Unwilling or unable to protect the minority stockholders, the Special Committee purportedly negotiated price but did not even pretend to negotiate anything else. The Special Committee members conceded in depositions that

30. Piper Sandler

But Piper Sandler's

31. Piper Sandler showed the conflicted Special Committee slides demonstrating that the If the Special Committee had achieved that But the Special Committee abandoned any possibility of achieving anything approaching an by making a tellingly low opening counteroffer of $43.25 per share with no supporting rationale.

32. On July 28, the Company announced its record-setting second quarter 2021 results, beating the consensus earnings per share ("EPS") estimate of Wall Street analysts by 94% and achieving the highest profit in its history. Analysts recognized that the facts driving the beat would persist for some time, and accordingly increased their forecasts for the rest of 2021 and 2022. But the Company's stock price increased by just 0.2% due to the inevitability of the Controller Defendants' low-value Squeeze Out.

33. On August 16, the Company's Board accepted $41.50 per share, *i.e.*, ***below*** the $42 per share at which the Company had contemplated repurchasing

its stock just before SHUSA intervened with its opening offer. In other words, the Special Committee and the Company Board planned to ***buy*** the Company's minority shares from the market at what they knew was a low price (*i.e.*, the motivating rationale for a stock repurchase), but instead agreed to ***sell*** those shares to its controlling stockholder at an ***even lower*** price.

34. On August 23, Piper Sandler opined that the Squeeze Out was fair from a financial perspective to the minority stockholders. Piper Sandler's presentation was flawed in numerous material respects, including that its analyses relied on a set of draft projections that had been created months earlier at the outset of the Company's months-long projection process (the "Stale Projections"). Moreover, the Special Committee instructed [redacted] As discussed below, shortly after the Squeeze Out's signing, the Stale Projections were revised materially upward, rendering the Squeeze Out price unfair by any measure.

35. After receiving Piper Sandler's flawed fairness opinion, the Special Committee recommended accepting the no-minimum-condition tender offer/Section 251(h) merger, and the Company Board unanimously approved the deal. Although the deal price vastly undervalued the Company as a going concern and failed to capture any synergy-related value, none of the minority

stockholders, individually or collectively, could do anything to stop the deal from closing.

36. The Controller Defendants could hardly believe their good fortune. A typical ***target*** internal rate of return ("IRR") on an investment is 20%. The Controller Defendants' investment criteria requires [REDACTED]

Indeed, the Controller Defendants would easily have met their investment criteria and achieved an attractive IRR [REDACTED]

37. In late August, the Company began the process of [REDACTED]

38. As reflected in the chart below, between late August and early October, [REDACTED]—even though there were no material changes to the Company's prospects over that time:

The October projections were presented to the SCUSA Board for approval on October 20 and were ultimately approved by the SCUSA Board on December 17, 2021 (the "Reliable Projections").

39. On September 7, 2021, the Company filed with the SEC its Schedule 14D-9, including its Solicitation/Recommendation Statement (the "Solicitation Statement"). That same day, Group and SHUSA filed the Tender Offer Statement on Schedule TO (the "Schedule TO" and, together with the "Solicitation Statement," the "Proxies"). The Solicitation Statement included the Stale Projections that were provided to Piper Sandler and the Special Committee for purposes of assessing the Squeeze Out's fairness (and Piper Sandler's financial analyses based on those Stale Projections). The Proxies stated that the Special Committee was comprised solely of "independent and disinterested directors," without mentioning any of the ties between Rainer and McCarthy, on the one hand, and Ryan, on the other hand.

40. On the same day, the period for stockholders to tender their shares commenced, with an initial expiration date of October 4. The tender offer deadline was extended fourteen times, ultimately expiring on January 27, 2022. During that period, the Company amended the Solicitation Statement fourteen

times. Yet, Defendants—including dual-fiduciary Defendant Alvarez de Soto, who had pushed to disclose a less detailed set of financials—***never*** caused the Company to disclose the SCUSA Board-approved Reliable Projections, which were materially higher than the Stale Projections and would have resulted in materially higher valuations. Disclosure of the materially higher Board-approved Reliable Projections would have presented a materially different perspective of SCUSA's value, and would have significantly altered the total mix of information available to minority stockholders in considering whether to appraise their shares (the only decision left to stockholders since the Controller Defendants deprived them of the ability to vote down the deal).

41. Even though minority stockholders could not influence the outcome, and even though the Reliable Projections were never disclosed, SCUSA minority stockholders ***overwhelmingly*** opposed the Squeeze Out. Despite the tender offer having been extended fourteen times, just 23.5% of the minority shares were tendered.

42. The Squeeze Out closed on January 31, 2022. At $41.50 per share, the deal was wildly accretive to SHUSA from the outset and significantly improved Group's capital ratios. SCUSA distributed $3.5 billion to the Controller Defendants within six months of the Squeeze Out's close, and further distributed$2.8 billion since then, for a total of ***$6.3 billion.*** In other words, SCUSA has distributed to the Controller Defendants ***more than half of the value***

of the whole Company as implied by the deal price since the Squeeze Out. But for the Squeeze Out, approximately 20% of those distributions or $1.26 billion (approximately $21/share) would have gone to the minority stockholders, who also would have continued to share in the Company's upside. Viewed differently, the Controller Defendants have already recovered far more than the capital they expended to Squeeze Out the minority stockholders.

43. Group continues to trumpet the Squeeze Out's merits. For example, in February 2023, Group CEO Hector Grisi referred to the consumer auto business as Group's "crown jewel," stating that the business has experienced "strong performance." Later in 2023, Grisi stated on an earnings call that the "U.S. auto business that we have has shown a very robust growth in '23" and demonstrated "a continued dominance in the subprime used car segment." Grisi continued, "we expect the performance to continue through '24," including because delinquencies and losses remained "below pre-pandemic levels."

44. In sum, the Controller Defendants avoided the risk and cost of pursuing a fair merger process in favor of a plainly unfair squeeze-out. That decision has consequences. Unable to negotiate or resist the Controller Defendants' raw exercise of power, minority stockholders have no option other than to seek judicial intervention to receive a fair price.

II. JURISDICTION

45. This Court has subject matter jurisdiction over this action pursuant to 10 *Del. C.* § 341, which provides that the "Court of Chancery shall have jurisdiction to hear and determine all matters and causes in equity."

46. This Court has personal jurisdiction over both SHUSA and Group. As the Court found in *In re Pilgrim's Pride Corporation Derivative Litigation*,[2] SHUSA and Group consented to the exercise of jurisdiction by Delaware courts when their representatives on the Board adopted a forum-selection bylaw designating the Delaware Court of Chancery as "the sole and exclusive forum for . . . any action asserting a claim of breach of fiduciary duty owed by any director, officer, employee or agent of the Corporation to the Corporation or the Corporation's stockholders."[3] Because Group controlled the Company through its wholly owned subsidiary SHUSA, when the Board adopted the Company's forum-selection bylaw, both SHUSA and Group consented to personal jurisdiction in Delaware. Indeed, SHUSA and Group's control over the Company, and their role in adopting and maintaining the Company's forum-selection bylaw, despite at all times having the power to alter or amend it, creates sufficient contacts with Delaware such that this Court has personal jurisdiction over both entities.

[2] 2019 WL 1224556, at *1 (Del. Ch. Mar. 15, 2019).

[3] Second Amended and Restated Certificate of Incorporation of the Company, Art. XV.

47. Although not necessary, additional facts make it appropriate for this Court to exercise jurisdiction over both SHUSA and Group. With respect to SHUSA, and as described in more detail in Section IV.A, *infra*, it directly held over 80% of the Company's stock, appointed a majority of the directors to the Board, and exercised operational and strategic control over the Company.

48. Moreover, the Squeeze Out's merger agreement (the "Merger Agreement"), to which SHUSA is party, provides that "all claims and causes of action arising out of or relating to this Agreement shall be governed by and construed in accordance with the laws of the State of Delaware." The Merger Agreement also provides:

> The parties hereto agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby (whether brought by any party or any of its Affiliates or against any party or its Affiliates) shall be brought in the Delaware Court of Chancery . . ., and each of the parties hereby irrevocably consents to the exclusive jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by Applicable Law, any objection that it may now or hereafter have to the laying of venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

49. Additional facts also make it appropriate for this Court to exercise personal jurisdiction over Group. Group was actively involved in the Squeeze Out, including the process leading up to its announcement, approval, and effectuation. Group and SHUSA together filed the Schedule TO with the SEC. Group is one of the signatories of the Schedule TO and is defined therein as the

"Ultimate Parent." The Schedule TO included Group's and SHUSA's Offer to Purchase, which set forth the terms and conditions upon which they offered "to purchase any and all outstanding shares of common stock" of the Company—a Delaware corporation—that SHUSA did not already own. By making this offer to purchase shares of a Delaware corporation, Group "[t]ransact[ed] . . . business" in the State of Delaware and "[c]ause[d] tortious injury in the State by an act or omission in th[e] State," and this Action arises from those acts.[4]

50. Moreover, as a lender to many Delaware entities, Group regularly files UCC financing statements with the Delaware Secretary of State in the State of Delaware. Indeed, a UCC search in Delaware revealed that Group is named as a secured party in at least 64 financing statements. Such regular course of dealing in the State is important to Group's business in that it allows it to perfect the liens they regularly take on collateral of Delaware entities. This is further evidence that Group "[t]ransacts . . . business" and "performs . . . work or service in the State" and "regularly does or solicits business, engages in any other persistent course of conduct in the State or derives substantial revenue from services . . . consumed in the State."[5]

51. Group also had multiple dual fiduciaries who served on the Company Board and approved the Squeeze Out, including Group director,

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[4] 10 *Del. C.* § 3104(c)(1), (3).

[5] 10 *Del. C.* § 3104(c)(1), (4).

Homaira Akbari, and Senior Executive Vice President and Global Head of Cost Control, Javier Maldonado. Instead of recusing themselves, both Akbari and Maldonado voted in favor of the Squeeze Out. Akbari used her Group email address when conducting Company Board business, reflecting that she was either acting in her capacity as a Group fiduciary while serving on the Company Board or saw no distinction between the two roles. Akbari and Maldonado also received weekly updates from the Company's investor relations department during the deal process, including information about what analysts were saying about the Company. Maldonado also sent updates to Group's Internal Governance group following SCUSA Board meetings and forwarded those emails to Group Executive Chairman Botín.

52. Botín, though not a Company director, was a SHUSA director. As discussed herein, Botín led the process leading to the Squeeze Out.

III. PARTIES

A. Plaintiffs

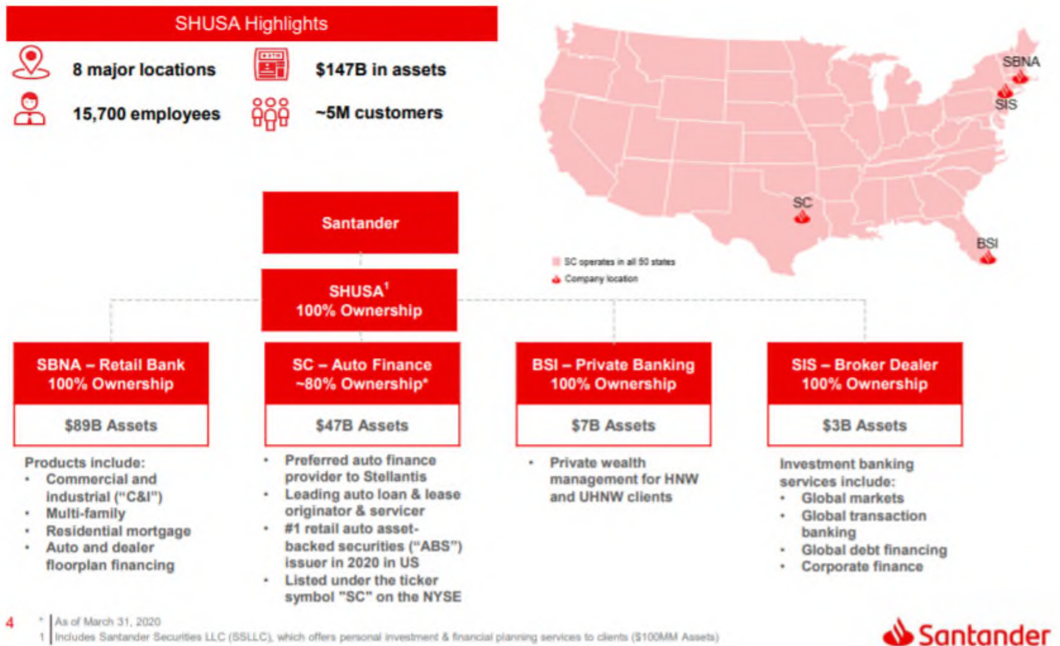
53. **Plaintiffs The Liverpool Limited Partnership and Elliott International L.P.** (as defined above, "Lead Plaintiffs"), were Company stockholders before the Squeeze Out's announcement and through its closing, together holding 19,985,516 shares of Company stock (worth approximately $829.4 million at the Squeeze Out price), constituting approximately 33% of the Company's minority shares and 43% of the untendered shares held by minority stockholders.

54. **Plaintiff Lycoming County Employees' Retirement System** was a Company stockholder prior to the announcement of the Squeeze Out and, at the time of closing of the Squeeze Out, held 2,042 shares of Company stock.

55. **Plaintiff Central Laborers' Pension Fund** was a Company stockholder prior to the announcement of the Squeeze Out and, at the time of the closing of the Squeeze Out, held 329 shares of Company stock.

B. Defendants

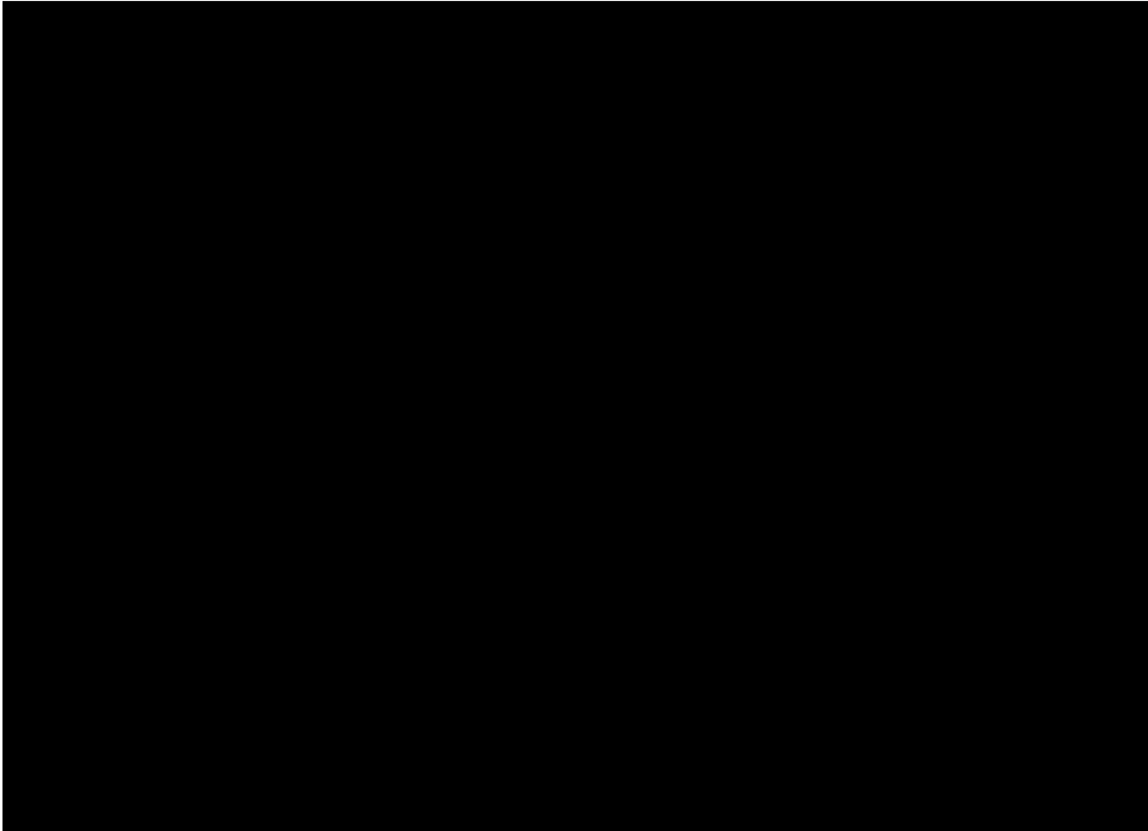
56. **Defendant Santander Holdings USA, Inc.** (as defined above, "SHUSA") is an intermediate holding company for the U.S. businesses of Banco Santander. SHUSA is incorporated in Virginia and is the parent of six entities, including the Company. The slide below depicts SHUSA's organizational structure (prior to the Squeeze Out), including four of its relevant subsidiaries:



57. Since the Company's 2014 initial public offering ("IPO"), SHUSA has owned at least 60% of the Company's outstanding shares. As of the summer of 2021, SHUSA owned 80.25% of the Company and had designated nine of the Company's eleven directors. Indeed, ***seven dual fiduciaries***, including directors and officers of SHUSA and Group, and their affiliates, served on the Company Board and approved the Squeeze Out without recusing themselves.

58. **Defendant Banco Santander, S.A.** (as defined above, "Group"), headquartered in Spain, is the ultimate corporate parent of SHUSA and the Company. Group controls SHUSA through 100% equity ownership, the appointment of all of SHUSA's directors, and setting global strategy across

Santander's U.S. businesses. The graphic below depicts the governance structure of Group's U.S. operations:[6]



59. **Defendant Homaira Akbari** has been a Company director since January 1, 2020. SHUSA nominated Akbari to the Company Board pursuant to its stockholders agreement with the Company (the "Shareholders Agreement"). She is a dual fiduciary, having served on the Group board of directors (the "Group Board") since 2016. Akbari also sits on the board of Temenos, a banking software company that is a significant partner of Group's online banking platform, OpenBank.

[6] SCUSA220_00018615.

60. **Defendant Juan Carlos Alvarez de Soto** has been a Company director since 2019. SHUSA nominated Alvarez de Soto to the Company Board pursuant to the Shareholders Agreement. He is a dual fiduciary, simultaneously serving on the Company Board and acting as SHUSA's CFO since September 2019. Alvarez de Soto has spent almost his entire career at Group or its affiliates, joining the bank in 1996 at the age of 25. Before being promoted to SHUSA's CFO, he was the Company's CFO from October 2017 until September 2019. Before that, he was SHUSA's Corporate Treasurer from 2009 to 2017. From 2005 to 2008, he was Senior Vice President and Head of Treasury and Investments for Santander's International Private Banking at Banco Santander International (a third SHUSA operating subsidiary) and Banco Santander Suisse. From 2000 to 2004, Alvarez de Soto was Directeur Adjoint for Santander Central Hispano Suisse, Geneva and was Head of Treasury, Trading, and Asset-Allocation.

61. **Defendant Leonard Coleman Jr.** has been a Company director since January 2021. SHUSA nominated Coleman to the Company Board pursuant to the Shareholders Agreement. He is a dual fiduciary, simultaneously serving on the Company Board and on the board of directors of the SHUSA-affiliated Santander Bank, N.A. ("SBNA").

62. **Defendant Stephen A. Ferriss** has been a Company director and the Company Vice Chairman since 2013. SHUSA nominated Ferriss to the

Company Board pursuant to the Shareholders Agreement. He is a dual fiduciary, simultaneously serving on the Company Board and as a director of SHUSA (since 2012) and Banco Santander International (since 2018). He has been a long-time member of the Audit & Risk Committees of these companies. Previously, Ferriss was Chairman of the boards of directors of Santander BanCorp and Banco Santander Puerto Rico ("Banco Santander PR") from 2015 to 2020. Ferriss was also a director of SBNA from 2012 to 2015. Before rotating across the boards of SHUSA and various affiliates, Ferriss was President and CEO of Santander Investment Securities, Inc. ("Santander Investment Securities") (SHUSA's fourth major operating subsidiary) from 1999 to 2002.

63. **Defendant Victor Hill** has been a Company director since 2015. SHUSA nominated Hill to the Company Board pursuant to the Shareholders Agreement. He is a dual fiduciary, serving on the Company Board and acting as CEO and a director of Santander Consumer Finance (UK) plc ("Santander Consumer UK"), a Group subsidiary that Hill launched in 2005.

64. **Defendant Edith E. Holiday** has been a Company director since 2016. SHUSA nominated Holiday to the Company Board pursuant to the Shareholders Agreement. She is a dual fiduciary, simultaneously serving on the Company Board and the SHUSA board of directors since 2019.

65. **Defendant Javier Maldonado** has been a Company director since 2015. SHUSA nominated Maldonado to the Company Board pursuant to the

Shareholders Agreement. He is a dual fiduciary, serving on the Company Board and as a SHUSA director since April 2015, and has been the Vice Chairman of SHUSA since October 2015. Maldonado also has served as the Senior Executive Vice President, Global Head of Cost Control at Group since October 2015. He has been on the boards of SBNA, Banco Santander International, and Santander Investment Securities since 2015. Previously, he served on the boards of Santander BanCorp and Banco Santander PR from 2015 to September 2020. Maldonado joined Group in 1995 and also has held several senior management positions at Group and its affiliates since 2011, including:

- Senior Executive Vice President, Head of the General Directorate for Coordination and Control of Regulatory Projects in the Risk Division of Group, and Executive Committee Director and Head of Internal Control and Corporate Development for Santander Consumer UK, from May 2012 to September 2014;

- Vice President in Charge of Closed Funds and Complaints for Banco Santander Brazil from October 2011 to April 2012;

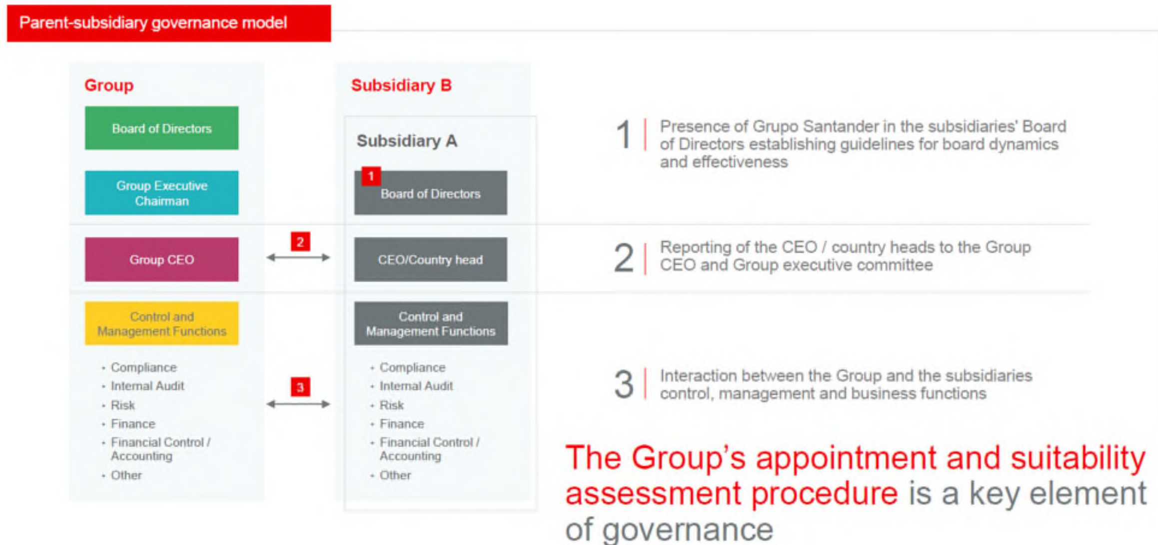
- General Manager of Consumer Finance for Group in China in 2012; and

- General Manager for Group in the Middle East from January 2011 to September 2011.

66. When Botín transitioned from her role as CEO of Santander UK to Executive Chairman of Group upon the death of her father in 2014, [redacted]

67. Defendants Akbari, Alvarez de Soto, Coleman, Ferriss, Hill, Holiday, and Maldonado are referred to collectively as the "Dual-Fiduciary Defendants."

68. **Defendant Mahesh Aditya** was a Company director from 2017 to December 2023 and the Company's President and CEO from December 2019 to March 2023. SHUSA nominated Aditya to the Company Board pursuant to the Shareholders Agreement. Previously, Aditya was Chief Risk Officer at both SHUSA and SBNA from spring 2018 to December 2019. Before that, he was SHUSA's COO from May 2017 to May 2018. He was also previously on the board of Banco Santander PR. According to a 2018 Group presentation, Aditya, as the Company's CEO, reported directly to Group's CEO and executive committee:



Aditya continued to serve as President and CEO of the Company following the Squeeze Out until March 2023. He was appointed Santander Group's Chief

Risk Officer in April 2023. Aditya's compensation was increased by Group while the tender offer was pending and yet again shortly before the Squeeze Out closed.

C. Relevant Nonparties

69. **Robert J. McCarthy** has been a Company director since 2015 and was a member of the Special Committee. McCarthy joined the Board through his friend, SHUSA Chairman Tim Ryan, whom he has known for approximately twenty years and who [REDACTED] The two met through their joint membership at [REDACTED] Beyond golf, Ryan and McCarthy have a shared affection for Villanova University, from which they both graduated. Over the years, McCarthy and Ryan have [REDACTED]

70. In 2014, around the time McCarthy retired from his position as Chief Operations Officer of Marriott International, Inc., Group was looking for [REDACTED] and Ryan was tasked with recruiting SCUSA directors who would [REDACTED] McCarthy, a long-time friend, was one of the candidates. Ryan discussed the opportunity with McCarthy at [REDACTED], and encouraged McCarthy to pursue it.

71. Ryan then referred McCarthy to the then-CEO of SCUSA, Scott Powell, who ultimately supported McCarthy's candidacy. In August 2015, after

Ryan hosted McCarthy for [redacted]

72. **William F. Muir** has been a Company director since 2016 and was a member of the Special Committee.

73. In 2014, Muir retired as President of Ally Financial and was looking for something to do. In 2016, Muir was contacted by Brian Gunn—a former colleague of Muir's at Ally (and then-Chief Credit Officer of SHUSA)—about the possibility of joining SCUSA's Board, and Gunn put him in touch with Ryan who helped him secure the role. As Muir explained at the time to a different former Ally colleague, the [redacted]

74. **William Rainer** has been a Company director since 2015, the Chairman of the Company Board since 2016, and was a member of the Special Committee.

75. Like McCarthy, Rainer came to join the Board through his friendship with SHUSA Chairman Ryan. Ryan first brought the SCUSA Board opportunity to Rainer's attention in late 2014 or early 2015.

76. Rainer, like McCarthy and Ryan, is a [REDACTED] [REDACTED] Rainer first met Ryan in the mid-1990s when Rainer was chairman of U.S. Enrichment Corporation, which retained J.P. Morgan as its financial advisor in connection with selling the company to private investors. Ryan was one of the two J.P. Morgan advisors assigned to the project.

77. Rainer and Ryan connected again when Rainer learned that Ryan was interested in Miami in or around 2009 or 2010, as Rainer was [REDACTED] [REDACTED] Rainer introduced Ryan to [REDACTED] [REDACTED] Rainer and Ryan [REDACTED] [REDACTED] [REDACTED] Rainer has golfed with Ryan dozens of times through the years, including as Ryan's guest on multiple occasions at other clubs.

78. Although characterized as "independent," Rainer has been nominated by SHUSA to the SCUSA Board pursuant to its stockholder agreement every year since 2017.[7] From 2015 to 2016, Rainer also served as Chairman of Santander Investment Securities and as a director of Banco Santander International.

[7] SCUSA Schedule 14A (4/23/2021 Proxy) at 13.

79. SHUSA, and by extension Group, had complete control over the composition of the SCUSA Board, including with respect to McCarthy, Muir, and Rainer, and could remove any of the three at any time.

80. McCarthy, Muir, and Rainer are referred to collectively as the "Special Committee."

81. **Santander Consumer USA Holdings Inc.** (as defined above, "SCUSA" or the "Company") is the holding company for Santander Consumer USA Inc., a specialized consumer finance company focused on vehicle finance and third-party servicing. The Company is a leading originator of nonprime auto loans. The Company is incorporated in Delaware and headquartered in Dallas, Texas. Prior to the Squeeze Out, the Company's stock traded on the New York Stock Exchange ("NYSE") under the ticker "SC."

IV. SUBSTANTIVE ALLEGATIONS

A. SHUSA and Group Control the Company

i. SHUSA and Group Take Control of the Company

82. In 1995, Tom Dundon co-founded the Company's predecessor, Drive Financial, which was based in Dallas, Texas and became one of the United States' leading auto financing companies, with expertise in the "subprime" customer segment.

83. In December 2006, Group paid $636 million for a 90% equity interest in Drive Financial, renaming it Santander Consumer USA Holdings, Inc. Dundon remained CEO and retained a 10% equity interest.

84. In 2009, Group established SHUSA as a wholly owned U.S. subsidiary, transferring to SHUSA its 90% ownership interest in the Company.

85. In January 2014, the Company conducted its IPO on the NYSE. Immediately following the IPO, SHUSA, public stockholders, and Dundon owned approximately 60%, 30%, and 10% of the Company's outstanding shares, respectively.

86. After the IPO, Group appointed Ryan as SHUSA's Chairman. One of his top priorities was [REDACTED] Ultimately, McCarthy, Muir, and Rainer, who had the connections with Ryan and SHUSA described above, were selected.

87. Ryan's preference for directors with whom he had prior social relationships was deliberate and known at the affiliated companies. Later, during a post-Squeeze Out refresh of the U.S. board, Aditya joked with SHUSA CEO Timothy Wennes that [REDACTED]

[REDACTED]

88. In July 2015, SHUSA acquired all of Dundon's SCUSA shares, increasing its ownership stake in the Company to approximately 70%.

89. SHUSA thereafter steadily increased its equity stake in the Company without spending another penny, utilizing a series of Company-funded stock repurchase plans. According to SHUSA's Schedule 13D/A dated August 10, 2020, SHUSA beneficially owned 80.25% of the Company's outstanding stock.

90. Demonstrating their allegiance to the Controller Defendants, the SCUSA Board members (including the Dual-Fiduciary Defendants and Aditya) supported SHUSA's ownership increase to 80%, making ***no effort*** to extract any consideration from SHUSA in exchange for the massive tax benefit that SHUSA received as a result of becoming an 80% stockholder.

91. A stockholder filed a derivative lawsuit against Defendants SHUSA, Aditya, Akbari, Alvarez de Soto, Ferriss, Hill, Holiday, and Maldonado alleging breaches of fiduciary duty relating to the stock repurchases described above that resulted in SHUSA owning over 80% of the Company's shares. That litigation was pending as of the date the Squeeze Out closed.[8]

ii. SHUSA Controls the Company Through Equity Ownership and the Shareholders Agreement

92. The Company's public filings acknowledge SHUSA's control. For example, the Company's 2019 Form 10-K states:

> ***We are a "controlled company"*** within the meaning of the NYSE rules and, as a result, qualify for, and rely on, exemptions from certain corporate governance requirements. Our stockholders do not

[8] *See* Public Version of Verified Stockholder Derivative and Class Action Complaint, *Seattle City Emps.' Ret. Sys. v. Santander Holdings USA, Inc.*, C.A. No. 2020-0977-LWW (Del. Ch. Nov. 18, 2020).

> have the same protections afforded to stockholders of companies that are subject to such requirements.
>
> [SHUSA] owns a majority of the voting power of our outstanding common stock. As a result, we qualify as a "controlled company" within the meaning of the NYSE corporate governance standards.

93. In connection with the IPO, the Company entered into the Shareholders Agreement with SHUSA. Under the terms of the Shareholders Agreement, SHUSA had the right to nominate directors to the Company Board equal to its percentage ownership of the Company's then-outstanding shares. At all relevant times through the Squeeze Out's closing, SHUSA owned approximately 80% of the Company's outstanding shares, and thus was entitled to—and did—nominate nine of the eleven directors.

94. Each of the nine directors at the time of the Squeeze Out who had been nominated by SHUSA—Akbari, Alvarez de Soto, Coleman, Ferriss, Hill, Holiday, Maldonado, Aditya, and Rainer—were interested and lacked independence from the Controller Defendants by virtue of the roles and connections described in Section III.B, *supra*.

95. The Shareholders Agreement obligated the Company to "take all action within its power to cause the individuals nominated under the provisions of the Shareholders Agreement to be included in the slate of nominees recommended by the board" and to fill any vacancies left by any of its nominees. Witnesses, including SHUSA Chairman Ryan, confirmed that SHUSA controlled

the composition of the entire Company Board—including with respect to the Special Committee members McCarthy, Muir, and SHUSA-nominated Rainer.

96. The Shareholders Agreement also gave SHUSA control over certain material Company corporate decisions that would otherwise be made by the Company Board. Provided SHUSA owned at least 20% of the Company, a majority vote of SHUSA's board had to approve changes to the Company's accounting policies, tax policies, and lines of business.

iii. SHUSA and Group Directly Controlled the Company's Executive Management's Compensation

97. SHUSA and Group actively oversaw and controlled Aditya's employment, performance review, and compensation. Specifically, the Group Board and its remuneration committee maintained the power to renew, validate, and approve the compensation provided to "certain members" of the Company executive team, including the CEO, as did the SHUSA compensation committee. Similarly, SHUSA's board participated in a joint annual review of the Company's CEO with the Company Board.

98. During his nearly two-and-a-half years as CEO prior to the Squeeze Out, Aditya—appointed by the SHUSA- and Group-dominated Board—was paid nearly $3,875,000.

B. The Company's Elevated Profitability Caused by COVID-Related Tailwinds Drives Unprecedented Expected Performance and Value

i. The Company's Business and Macroeconomic Tailwinds

99. The Company was a leading consumer finance company focused on used car financing. Leading to and as of the Squeeze Out, two transformational trends flowing from the COVID-19 pandemic greatly improved the near- and medium-term prospects of the Company's business and industry.

100. Core risks to the Company's business were: (i) the risk that a borrower would default on the loan, and (ii) any shortfall between defaulted loan balances and post-foreclosure resale value of the automobile.

101. The pandemic accelerated a preexisting trend of historically weak-credit consumers defaulting at lower rates. Government stimulus packages improved individual consumers' financial position while personal savings levels increased due to diminished consumer spending.

102. On a parallel track, disruptions to the global microchip supply chain dampened new car production. Increased consumer demand for cars when more people were working from home, together with the difficulty of manufacturing new cars, caused an unprecedented spike in used car prices.

103. Manheim, the world's largest wholesale auto marketplace, tracked this extraordinary used car price appreciation:[9]

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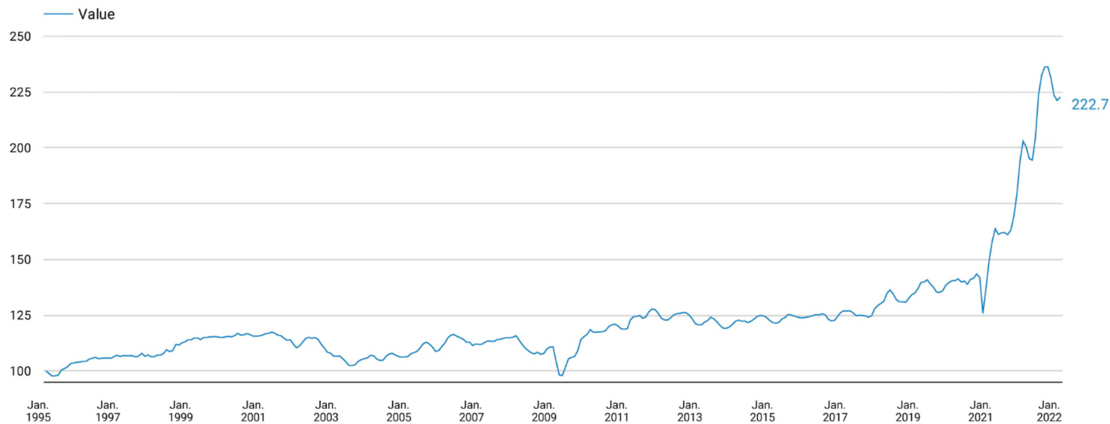
[9] *Manheim Used Vehicle Value Index*, MANHEIM (Mid-June 2022), https://publish.manheim.com/content/dam/consulting/ManheimUsedVehicleValueIndex-LineGraph.png.



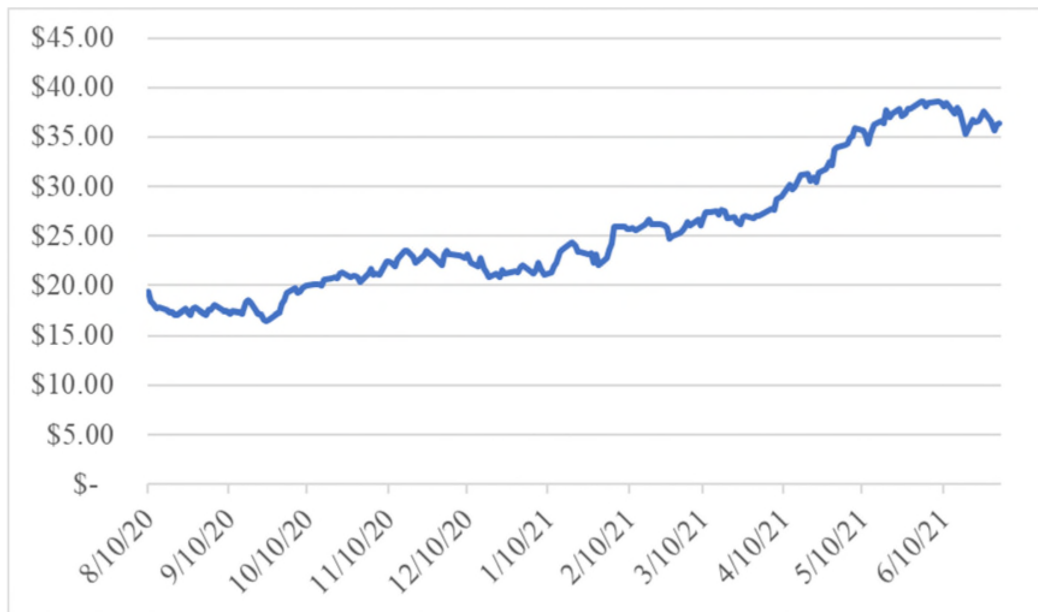
104. As a used car financier, the Company suddenly experienced much lower losses (and even positive returns) on foreclosure sales. And while stimulus packages would only last so long, the other macroeconomic benefits to the Company's business were expected to persist.

105. As Antonio Weiss, a trusted advisor of Group described [REDACTED] Indeed, to this day, consumer credit performance and the Manheim index both remain elevated compared to pre-COVID-19 levels.

ii. The Company Reports Record Financial Performance Ahead of the Squeeze Out

106. As shown in the graph below, between August 10, 2020 (when SHUSA filed an amended Schedule 13D disclosing that it had acquired over 80% of the Company's outstanding shares through its repurchase plan) and July 2, 2021 (when SHUSA publicly announced its initial Squeeze Out proposal), the

Company's stock price steadily increased, largely reflecting the macroeconomic factors described above, to the extent they were publicly recognized:



107. This rise in the Company's stock price tracked several quarters of impressive financial results. On February 3, 2021, the Company held its fourth quarter 2020 and fiscal year 2020 earnings call, announcing EPS and revenue that beat analysts' estimates.[10]

108. On February 4, 2021, the Federal Reserve brought another positive development for the Company, announcing the termination of a 2017 agreement with SHUSA and the Company requiring both to strengthen risk management.[11] The Company viewed this termination as demonstrating "the improvements the Company has made to its board oversight and compliance and risk management

[10] Santander Consumer USA Holdings Inc., FQ4 2020 Earnings Call Transcripts, S&P GLOBAL (Feb. 3, 2021).

[11] Santander Consumer USA Holdings Inc., Current Report (Form 8-K) (Feb. 4, 2021).

program." SHUSA CEO Wennes called it an "important milestone for Santander in the U.S." that "speaks to the hard work and dedication of our colleagues across the U.S. and particularly at [the Company]."[12] The termination meant that the Company faced fewer constraints on its operations. The Company's stock price climbed 7.3% that day, closing at $25.27 per share.

109. On April 28, 2021, the Company held its earnings call for the first quarter of 2021. The Company announced record financial results that well exceeded analysts' estimates, beating EPS estimates by 66%, reflecting dramatically improved profitability.[13]

iii. The Company Hoards Capital as SHUSA and Group Eye a Squeeze-Out

110. Despite stellar financial performance buoyed by macroeconomic tailwinds, the Company continued to: (i) maintain and accrue loan loss provisions ("Loan Loss Provisions") excessively based on outdated historical assumptions, and (ii) hoard capital reserves ("Regulatory Capital") well above minimum regulatory requirements.

111. For lenders like the Company, Loan Loss Provisions and Regulatory Capital are related, but conceptually distinct, line items. Loan Loss Provisions

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[12] Bram Berkowitz, *Why Shares of Santander Consumer USA Holdings Are Trading Higher Today,* NASDAQ (Feb. 4, 2021, 2:54 PM), https://www.nasdaq.com/articles/why-shares-of-santander-consumer-usa-holdings-are-trading-higher-today-2021-02-04.

[13] Santander Consumer USA Holdings Inc., FQ1 2021 Earnings Call Transcripts, S&P GLOBAL (Apr. 28, 2021).

represent an amount of money that a lender sets aside to account for losses the lender expects to incur on ***existing*** loans based on the expectation that some loans will default and the collateral will prove insufficient to cover the amount loaned. Historically, subprime lenders like the Company needed to set aside relatively larger Loan Loss Provisions than lenders to more creditworthy borrowers with better collateral.

112. Given the macroeconomic improvements discussed above, however, in 2021, the Company no longer needed to set aside the same level of Loan Loss Provisions.

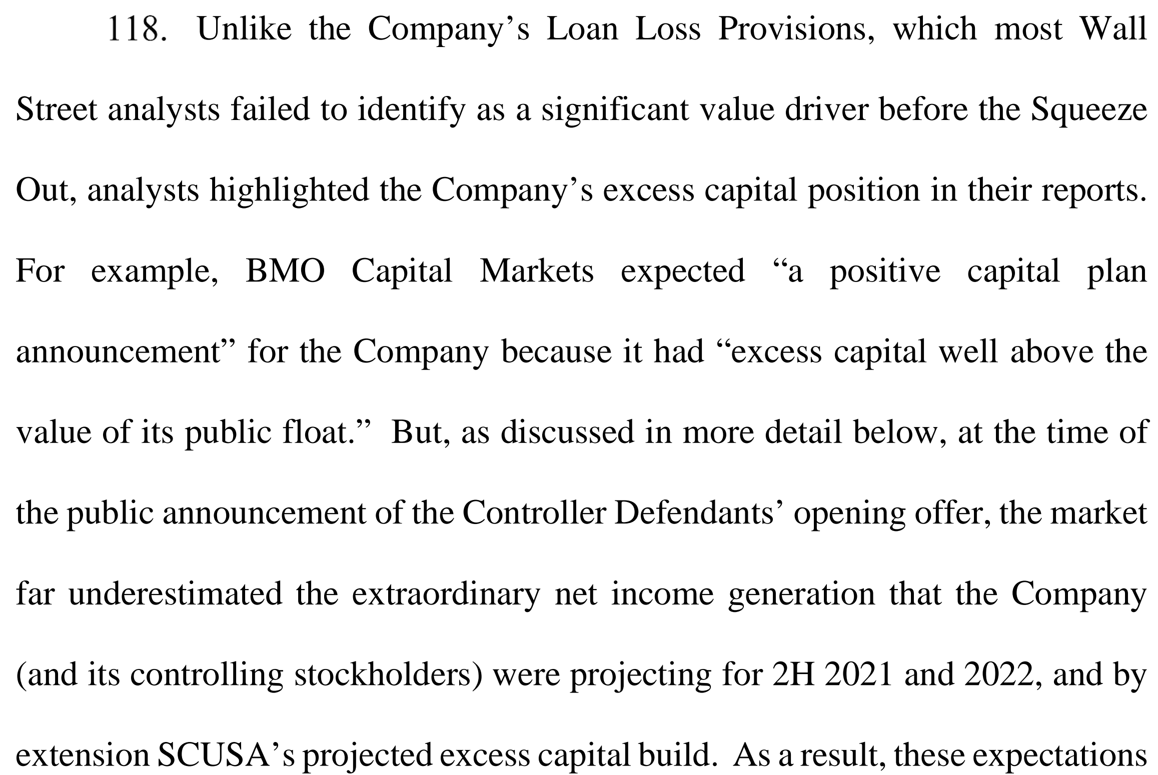
113. Nevertheless, the Company maintained a higher level of Loan Loss Provisions in 2021 than it had reported in the first quarter of 2020, and significantly greater proportionate Loan Loss Provisions (relative to the size of the loan book, adjusted for its riskiness) than the closest peers.

114. Excess Loan Loss Provisions could have been released and returned to stockholders through dividends and/or stock repurchases. If the Company had released the excess Loan Loss Provisions, that release would have significantly increased the Company's market value (and thus the share price), as the Company would have booked a significant one-time gain, and investors would have recognized the improvement in the Company's expected future profitability. Instead, the Company continued to carry excessive Loan Loss Provisions through closing of the Squeeze Out.

115. As Loan Loss Provisions exceeded the Company's foreseeable needs, the Company's excess Regulatory Capital was also ballooning due to the extraordinary net income generation flowing from the macroeconomic trends discussed above.

116. Under current bank regulatory requirements (*i.e.*, Basel III), Regulatory Capital is the amount of capital, mostly composed of stockholder equity, that a financial institution is required to retain as a percentage of total assets weighted by their level of risk (defined above as "RWAs"). The core purpose of Regulatory Capital is to ensure that a lender like the Company has the ability to absorb losses (above and beyond the Loan Loss Provisions described above).

117. As of July 21, 2021, [REDACTED]



118. Unlike the Company's Loan Loss Provisions, which most Wall Street analysts failed to identify as a significant value driver before the Squeeze Out, analysts highlighted the Company's excess capital position in their reports. For example, BMO Capital Markets expected "a positive capital plan announcement" for the Company because it had "excess capital well above the value of its public float." But, as discussed in more detail below, at the time of the public announcement of the Controller Defendants' opening offer, the market far underestimated the extraordinary net income generation that the Company (and its controlling stockholders) were projecting for 2H 2021 and 2022, and by extension SCUSA's projected excess capital build. As a result, these expectations

were not reflected in the pre-announcement stock price.

119. Before the Company could return its excess Regulatory Capital to stockholders, and before the market understood SCUSA's actual and projected excess Regulatory Capital, SHUSA forced through the Squeeze Out.

C. The Controller Defendants Activate Their Plan to Squeeze Out the Minority Stockholders, Without Any Minority Stockholder Approval Mechanism

120. By the first quarter of 2021, the Controller Defendants had long viewed Project Max—the squeeze out of SCUSA minority stockholders—as a strategic priority for maximizing the value of the attractive U.S. auto-finance business. For example, a February 16, 2021 presentation described Project Max as [REDACTED] The "One Santander Auto strategy" was designed to optimize the complicated organizational structure of Group's U.S. affiliates. By doing so, Group could develop a full-spectrum auto business that could lend to non-prime, near-prime, prime, or super-prime borrowers. To be more competitive across the spectrum, Group needed, and was willing to pay for, full ownership of SCUSA.

121. As SHUSA's head of strategy Dan Budington put it, [REDACTED] As Ryan explained to Botín, [REDACTED]

122. But the Controller Defendants were loath to allow the market to pressure test the Squeeze Out price through a minority stockholder approval mechanism. According to a draft January 20, 2021, presentation, [redacted] The presentation went on to state that there were [redacted]

123. The same presentation shows that the Controller Defendants initially [redacted]

[14] A later email from SHUSA's senior director of strategy and corporate development acknowledged the [redacted]

124. Once the Controller Defendants informed the Special Committee that they were unwilling to condition the Squeeze Out on minority stockholder approval, the Special Committee did not push back. As Rainer testified,

According to Group talking points,

D. The Group Board Delegates Authority to Pay Per Share and to Initiate the Process at the Time Most Favorable to the Controlling Stockholders

125. On February 22, 2021, the Group Board met to discuss Project Max. Global head of strategy, "Jose Luis de Mora commented that the Max project was

126. At a March 25, 2021 Group meeting, Tim Wennes explained that the Squeeze Out would be

Wennes explained further that

127. Following discussion, the Group Board approved a squeeze-out price of

The Group Board "delegated powers to the SHUSA Board ***to decide on the most appropriate timing for issuing the bid (which would be in line with the Group's interests*** and its capacity to carry it out in capital terms), and to negotiate and set the final price, in coordination with the Group Chairman and the CEO, in order to ensure that the price was in line with the Group's investment criteria."

128. When Group pursues an acquisition, it has investment criteria: the acquisition must be

Group could have paid and still exceeded its investment criteria. Based on the analysis as of March 25, the deal was expected to

[REDACTED] As discussed below, the deal only got ***better*** for the Controller Defendants at the final price.

129. On April 13, 2021, the SHUSA Board delegated authority to the "Pricing Committee," consisting of Botín, Ryan, Wennes, and Group executive Hector Grisi, "to proceed with Project Max when the Board determines it is in the best interests of SHUSA to execute, provided the pricing meets the Banco … investment criteria and SHUSA executive management liaises with the BSSA Executive Chair and Chief Executive Officer on the final pricing terms."

E. The Company Forms a Conflicted Special Committee that Retains a Conflicted Financial Advisor

130. In mid-April 2021, Ryan informed Rainer that the Company Board should form a special committee to prepare for a proposal by SHUSA to acquire the remaining Company shares it did not already own. SHUSA made clear that it would not sell its Company stake and would only consider a transaction to acquire Company shares it did not already own.

131. On April 26, 2021, the Board met to appoint a special committee. In connection with the formation of the Special Committee, there was no discussion about the interpersonal ties that each Special Committee director had to SHUSA and its senior directors and officers, or SHUSA's role in recruiting each to the Company's Board. The majority dual-fiduciary SCUSA Board concluded that the three were "independent and disinterested," without considering any of the relationships between the committee members and Ryan discussed above:

132. SCUSA's in-house counsel, Christopher Pfirrman, had communicated months earlier to SHUSA Chairman Ryan that [15] But Pfirrman apparently said

133. Indeed, the Controller Defendants went to great lengths to minimize their written communications about the negotiations. In May 2021,

134. The Company Board only granted the Special Committee the authority to evaluate, consider, and negotiate "a possible proposal by [SHUSA] to acquire all of the outstanding equity interests in the Company which are not already owned by" SHUSA. The Special Committee was not allowed to consider, invite, pursue, or negotiate any alternative strategic transactions.

135. After its formation, the Special Committee considered potential financial advisors. Unbeknownst to the Special Committee members,

[15] Rather than testify as to the meaning of his statement, Pfirrman moved to quash his deposition, which motion Plaintiffs intend to oppose.

months earlier, Ryan had assured Botín that the Controller Defendants would

136. The Controller Defendants' lead attorney, Herlihy, When asked whether Dunne or Piper Sandler had been referred to the Special Committee, Rainer testified:

137. Meanwhile, before the Special Committee was formed and two weeks before the Special Committee reached out to Piper Sandler about a potential engagement, No witness has offered an explanation as to how and both Herlihy and Dunne are refusing to testify, supporting the inference that That inference is bolstered by the fact that

138. On May 4, 2021, the Special Committee interviewed two prospective financial advisors, Piper Sandler and Evercore. Evercore's presentation noted the importance of assessing the buyer's willingness to pay as

a component of negotiating the highest value available. Piper Sandler's presentation [redacted] The absence of a [redacted] —in Piper Sandler's presentation proved costly to the minority stockholders.

139. Following the presentations, the Special Committee selected Piper Sandler as its financial advisor. Piper Sandler received: (i) a $1 million retainer, (ii) $3 million to provide a fairness opinion, and (iii) $6 million upon the closing of a transaction.

F. The Controller Defendants Pause the Process Because SCUSA's Stock Price Trades Too High

140. Around May 25, 2021, Ryan told Rainer [redacted] This conversation was not disclosed in the Solicitation Statement and no witness has been willing or able to offer an explanation why.

141. On May 28, 2021, SHUSA abruptly decided not to make an offer after SCUSA's stock price exceeded $38/share in the last week of May. Rather than reflecting some ambivalence to the transaction, internal Group minutes show that [redacted] In other words, [redacted]

[REDACTED] Given that the Company's prospects and value improved considerably through the Squeeze Out agreement in August, the $41.50 deal price was surely inadequate as well.

142. In response, the SCUSA Board temporarily disbanded the Special Committee, but the Controller Defendants continued to assess the opportune time to initiate the process. As Botín's Chief of Staff put it, [REDACTED]

G. The Controller Defendants Move Forward With the Squeeze Out

143. Two subsequent developments caused the Controller Defendants to make an offer just a month later: (i) Company management proposed returning a significant amount of capital to all stockholders, which the Controller Defendants wanted to prevent and (ii) the Controller Defendants received the Company's projected Q2 2021 financial results, which were the highest in company history and nearly 100% above market consensus projections for the quarter.

144. On June 3, 2021, SHUSA CFO J.C. Alvarez presented SCUSA's excess capital deployment options to the Group Board. The Controller Defendants understood that, given the accelerating capital generation—more than [REDACTED] through the end of Q1 2021 and growing rapidly—SCUSA was going to return capital to investors and/or repurchase shares. Absent the Squeeze Out, ***all*** SCUSA stockholders would participate in a dividend *pro rata* and/or benefit from a share repurchase, which would likely increase SCUSA's stock price (and, in turn, the requisite Squeeze Out price).

145. On June 4, 2021, Group's finance team asked SCUSA management for its estimate of the Company's second quarter earnings. Management reported forecasted net income for the second quarter of approximately [REDACTED].

146. On June 16, 2021, SCUSA provided the Controller Defendants an update to their 2021 Capital Plan that contemplated: [REDACTED] The same capital plan was later sent to select SCUSA directors, including Rainer and Muir. SCUSA management contemplated seeking approval for those capital actions from the SCUSA and SHUSA asset-liability committees in late June and from the SCUSA and SHUSA boards in mid-July.

147. Wanting to prevent that outcome, and to avoid the market reaction to Q2 2021 results that beat the consensus by 94%, the Controller Defendants reengaged on Project Max days later.

148. On June 17, 2021, J.C. Alvarez sent a memo to Grisi in preparation for an upcoming Group Board meeting to [REDACTED] Alvarez explained that [REDACTED] In other words, the stock price and analysis consensus [REDACTED]

Thus, at any given purchase price, the projected return for the Controller Defendants was dramatically better than when the Group Board [16]

149. Alvarez further explained that

150. On June 18, 2021, Tim Ryan emailed Wennes, J.C. Alvarez, and others that,

151. On June 29, 2021, the Group Board met and approved an acquisition at per share. Grisi explained that Botín, Grisi, and Group CEO and Vice Chair Jose Antonio Alvarez then:

[16] Per an earlier April 27, 2021 Chair report delivered by Botín, the deal had markedly improved compared to the March 25 analysis.

152. The memorandum presented to the Group Board in connection with the Board's approval of [REDACTED] per share identified the following categories of value creation (including synergies)—worth upwards of [REDACTED]—which made the Squeeze Out extremely profitable for the Controller Defendants at prices ***far*** above the ultimate deal price without even accounting for the Reliable Projections or excess Loan Loss Provisions:

SHUSA management determined that it could deliver the SHUSA Funding

Synergies and Cost Synergies [redacted] Indeed, SHUSA management had "committed" to delivering these synergies, and per an earlier slide deck was [redacted]

153. Finally, the memorandum emphasized the [redacted]

154. At the meeting, the Group Board [redacted]

H. SHUSA Times Its Public Offer to Cap SCUSA's Stock Price in Advance of Blockbuster Quarterly Results

155. On July 1, 2021, Ryan called his friend Rainer with an offer of $39 per share to acquire the shares held by the SCUSA minority shareholders, which he described as a 7.4% premium to the unaffected stock price (the "Initial Proposal"). The Initial Proposal did not include a minimum tender or majority-of-the-minority condition. That day, SHUSA amended its Schedule 13D concerning its SCUSA investment to disclose the offer, including the price. From that point forward, SCUSA's stock price was affected by the market's knowledge of a $39 offer from the 80% controller without a commitment to minority stockholder approval.

156. As noted above, by timing the Initial Proposal's public disclosure between the time the Controller Defendants learned of SCUSA's extraordinary Q2 results and the time the market learned the same, the fulfilled its mandate to time the offer in the manner most advantageous to the Controller Defendants in two ways:

157. *First*, it capped SCUSA's stock price, which traded from July 1 forward based primarily on the market's expectation of the Squeeze Out price (and the knowledge that minority stockholder approval would not be required) rather than SCUSA's fundamentals. This was an important consideration for the Controller Defendants, who knew that (i) SCUSA was primed to announce market-crushing Q2 results, which also would likely affect the market's perception of the Company's future prospects, and (ii) the expected increase in SCUSA's stock price following announcement of the results would require the Controller Defendants to pay more to buyout the minority.

158. *Second*, it prevented SCUSA from going forward with its capital plan to return

159. The Controller Defendants' $39 per share Initial Proposal expressly stated that the Controller Defendants would not consider any other strategic alternatives:

> In considering our Proposal, you should know that, in our capacity as a shareholder of the Company, we are interested only in acquiring the shares not already owned by us and that in such capacity we have no interest in selling any of the shares owned by us nor would we expect, in our capacity as a shareholder, to vote in favor of any alternative sale, merger or similar transaction involving the Company.

160. SHUSA's Initial Proposal was not conditioned on either: (i) approval of a special committee of independent and disinterested directors, or (ii) approval by a majority of the minority stockholders of the Company unaffiliated with SHUSA and Group. Rather, SHUSA conditioned the Squeeze Out only on the approval of the controlled SCUSA Board. Thus, the Controller Defendants did not even attempt to replicate arm's-length bargaining.

161. The SCUSA Board met on July 2, 2021 and reconvened the Special Committee. Yet again, there was no discussion of its members' ties to SHUSA and Ryan. Pfirrman apparently said [REDACTED] The Special Committee formalized its retention of Piper Sandler later that day.

162. Demonstrating that the stock price was no longer tied to SCUSA's fundamentals after public disclosure of the Controller Defendants' offer, [REDACTED] The market's expectations of the final price were informed by their knowledge that the Squeeze Out would not require minority stockholder approval, but not informed by the Company's Q2 earnings or market-

beating forecasts.

163.

I. The Controller Defendants and Conflicted Special Committee Engage in Pseudo Negotiations Before Allowing the Materially Uninformed Public Market to Set the Price at $41.50 Per Share

164. On July 12, 2021, SCUSA's CFO, Fahmi Karam, and Treasurer, Erik Laney, met with Piper Sandler. Karam provided Piper Sandler his July 2021 CFO update, which said that earnings would be per share, approximately 100% above consensus. Karam also provided Piper Sandler SCUSA's current draft projections, which had previously been provided to the Controller Defendants. Karam and Laney explained to Piper Sandler that the projection process was

Piper Sandler and the Special Committee relied on the Stale Projections in assessing the Squeeze Out's fairness.

165. On July 14, 2021, the Special Committee met with Piper Sandler to discuss valuation. Kevin Barker, a Piper research analyst who covered the Company, kicked off the meeting. Barker said that he viewed

166. The M&A investment bankers from Piper Sandler followed. Their presentation included the following slide that [redacted]

[redacted] The slide provided that the [redacted]

167. On July 19, 2021, Piper Sandler was iterating on its valuation materials. Although Piper Sandler's valuations for SCUSA would have been far higher had it used the Reliable Projections,

168. Rather than use these valuations to demand a higher price, Piper Sandler manipulated its analyses to try to support the false conclusion that the

Squeeze Out was fair. On July 20, 2021, a junior investment banker wrote one of his superiors: [redacted]

Following that email, Piper Sandler [redacted]

169. On July 21, 2021, Piper Sandler [redacted]

In other words, Piper Sandler [redacted]

170. On July 22, 2021, despite knowing that (i) the Company's July 1 stock price was artificially low because the market was unaware of the Company's record Q2 2021 results and (ii) the average premium in selected controller squeeze outs was more than 41%, the Special Committee countered the Controller Defendants' offer at $43.25 per share (the "Counteroffer")—a less-than 19% premium to the unaffected stock price. Through its Counteroffer, the Special Committee conceded that it was willing to accept an offer ***far*** below the average controller squeeze out premium even though the Committee knew the Company's stock was under-valued.

171. Notably, when it conveyed its Counteroffer of $43.25 per share, the Special Committee stated that it would not address further proposals from SHUSA until ***after*** the Company's earnings were released. The timing of the Special Committee's Counteroffer was backwards. Rather than waiting to deliver ***any*** counteroffer until ***after*** the Company's imminent disclosure of ***record-breaking*** financial results, including market commentary advocating for a much higher offer price, the Special Committee undercut its own negotiating position by prematurely countering at $43.25 per share.

172. Neither the Special Committee's Counteroffer, its meeting minutes, nor Piper Sandler's presentations articulate a basis for the Counteroffer price. The only reasonable inference is that the Special Committee understood

[REDACTED] and the Counteroffer was made with that range in mind.

173. On July 28, 2021, SCUSA announced its Q2 2021 results, including "record net revenues and income." "More than $1 billion in net income represented the most profitable quarter in the Company's history and $1.8 billion in net income in the first half of the year is greater than any single full year." This result compared to analyst consensus estimates at the time of about $1.87 billion for the ***full*** year. SCUSA's actual Q2 2021 earnings per share beat analyst consensus by ***94%***. But SCUSA's stock price increased by just 11 cents, or 0.3%.

174. Analysts confirmed that SHUSA's Initial Proposal had capped the Company's stock price. For example, in a report dated July 28, 2021, Goldman Sachs observed:

> So when we put it all together, this was an ***excellent quarter*** across the board. That said, ***the focus is likely to be on the parents' previously disclosed pending $39/sh offer*** for the remaining minority shares and whether or not the independent committee is going to accept the offer. We think ***this level of profitability*** is going to lead to ***continued questions whether the price is high enough***.

In another report published later that day, Goldman Sachs further observed:

> While [the Company] reported a ***much better than expected quarter***, shares were only up modestly, mainly as the company didn't disclose additional details regarding the parent's offer to buy the remaining outstanding shares. Given no update, ***it is unlikely that shares will move much from here***.

175. Similarly, on July 28, 2021, Deutsche Bank "downgrad[ed] our rating to Hold, as our price target has been met, and ***upside potential is capped***

given the overhang of the [July 2] nonbinding proposal from [SHUSA] ([the Company]'s majority shareholder, 80.24% stake) to acquire all outstanding common shares for $39/sh." And Morgan Stanley noted that "[w]hile earnings performance looks very strong, the stock price is capped by the outstanding proposal from majority-owner SHUSA to buyout the remaining 20% of shares at $39/share."

176. The fact that the Company's trading range upside had been capped is further highlighted from commentary from various analysts who continued to recognize the enviable position of the Company's business. On July 28 and 29, 2021, analysts observed:

- Morgan Stanley – the "[a]uto environment continues to look very strong, and perhaps with a longer than expected tail."[17]

- Credit Suisse – the Company's "excess capital rose nearly $800mm in the quarter (compared to a management target of 11.5%) and is about $3.2 billion."[18]

- Compass Point – "We continue to believe [the Company] is uniquely positioned with a ***very large excess capital base*** ~660 bps above management[']s 11.5% target in 2Q21," estimating that "[the Company] will have an additional ~$3.2B of excess capital above the 11.5% target at YE22."[19]

- BMO Capital Markets – "[the Company]'s record 2Q21 results and ***rapid excess capital build*** ($3.2 billion and accumulating)

[17] 2Q21 Earnings Day 9: SC, MORGAN STANLEY (July 28, 2021), at 1.

[18] 2Q – Strong Fundamentals – and Big Increase in Excess Capital; Raise Estimates and PT, CREDIT SUISSE (July 28, 2021), at 1.

[19] Impressive 2Q21 Beat Driven by Credit and Lease, Tier 1 Ratio Increases to 18.1% Boosting Excess Capital, COMPASS POINT (July 28, 2021), at 1.

underscore the value we believe [SHUSA] and Banco Santander see in [the Company]."[20]

- Barclays – the Company "continue[s] to benefit from the same pandemic driven trends, which[] are impacting overall auto demand and benefitting used car prices and credit."[21]

177. On August 11, 2021, SHUSA countered the Special Committee's $43.25 per share Counteroffer with a proposal of $39.75 per share (SHUSA's "Second Proposal").

178. The Special Committee met on the afternoon of August 11, 2021 to discuss the Second Proposal, as well as SHUSA's request for an in-person meeting in New York City among SCUSA Chairman Rainer, Rainer's close friend and SHUSA Chairman Ryan, and their respective bankers at Piper Sandler and JP Morgan.

179. On August 16, Rainer and Ryan met at [REDACTED] The Special Committee sent Rainer to [REDACTED] before agreeing to a $41.50 per share deal that was right in line with SCUSA's trading price at the time, and which did not price in the Company's Reliable Projections, but did price in the expectation that

[20] 2Q21: Raising Estimates and Target Due to Lower Credit Costs and Higher NII, BMO CAPITAL MARKETS, (July 28, 2021), at 1.

[21] Santander Consumer USA Holdings Inc., BARCLAYS (July 29, 2021), at 1.

the Squeeze Out would not be subject to minority stockholder approval.

180. The Squeeze Out price represented just a 14% premium to the Company's July 1, 2021 trading price, was lower than the $42 per share that the Company's management was prepared to pay to acquire the same shares using corporate funds, and was ***far*** below a fair price. [REDACTED]

181. On August 23, 2021, Piper Sandler presented its fairness analysis to the Special Committee, which then recommended the Squeeze Out to the SCUSA Board. Piper Sandler's analysis relied on the [REDACTED]

182. That same day, the Group Board approved the Squeeze Out. The memo presented to the Group Board in connection with the approval highlighted that the Squeeze Out was timed to serve "Group's interests" and that, at $41.50/share, the Squeeze Out easily exceeded Group's investment criteria by generating [REDACTED] Group could have paid [REDACTED] and still achieved its investment criteria.

183. While Group certainly considered its investment criteria in assessing the attractiveness of the Squeeze Out, it also focused on a metric known as "Capital IRR," which likewise demonstrates the Squeeze Out's unfairness. Capital IRR is a measure of return based on the premium to book value being paid and most accurately reflected the true benefits to the Controller Defendants. A typical target IRR is, at most, around 20%. [REDACTED] This extreme profitability—which does not even account for projected outsized performance in 2022 or excess Loan Loss Provisions—supports the premise that in an actual, competitive, arm's-length negotiation, the deal price would have been ***far*** higher.

J. The Special Committee and Majority-Conflicted Board Approve the Unfair Squeeze Out

184. On August 23, 2021, both the Special Committee and the SCUSA Board unanimously approved the Squeeze Out and recommended that Company stockholders tender their shares. None of the seven dual fiduciaries—Akbari, Alvarez de Soto, Coleman, Ferriss, Hill, Holiday, and Maldonado—recused themselves, instead participating in the deliberations and voting in favor of the deal. So too did Aditya, who was interested in the Squeeze Out in his capacity as CEO of a controlled company (and with a plan to remain on post-deal).

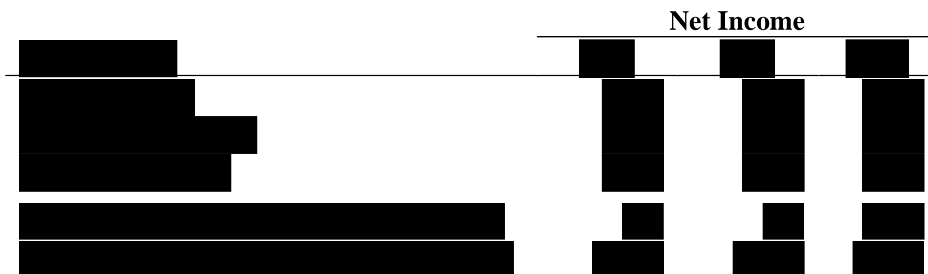
185. On August 24, 2021, the Company, SHUSA, and Group each issued press releases and SEC filings announcing the Squeeze Out.

K. SCUSA (In Coordination with the Controller Defendants) Immediately Revises Its Projections Materially Upwards

186. Days after signing, the Company and the Controller Defendants began the process of revising the Stale Projections that Piper Sandler and the Special Committee relied on to assess the Squeeze Out's fairness. That process [REDACTED] but the Controller Defendants delayed it until September for reasons no witness could (or was willing to) explain.

187. Within days of signing, the Controller Defendants expressed their view that the [REDACTED]

188. As reflected in the chart below, by September 10, SCUSA had increased its net income projections for 2021 and 2022 by [REDACTED] for each year. And by early October, those projections had increased by [REDACTED] for 2021 and [REDACTED] for 2022 [REDACTED] for a total projected aggregate net income increase of [REDACTED]



The main driver of the change was a [REDACTED]

189. Witnesses consistently testified that the

Or, put differently, the early revised projections could have been provided to the Special Committee to assess the Squeeze Out's fairness if the Controller Defendants had not postponed their typical review of the initial draft projections from July until September.

190. Unlike the unapproved Stale Projections that were relied on by Piper Sandler and the Special Committee, the Reliable Projections were presented to the SCUSA Board in October and were ultimately approved by the SCUSA Board on December 17, 2021.

191. Thus, the Special Committee received the materially higher Reliable Projections, which would have meaningfully impacted Piper Sandler's valuation analyses, before closing. Nevertheless, the Special Committee never asked Piper Sandler to provide a "bringdown" fairness opinion or re-run its valuation analyses with the more accurate projections at any point before closing. Demonstrating the Special Committee's neglect, when asked why the Special Committee did not reevaluate the Squeeze Out's fairness after receiving the Reliable Projections, Muir testified:

The Special Committee members

L. Defendants Fail to Update a Materially Misleading Solicitation Statement; Stockholders Refuse to Tender Their Shares

192. On September 2, 2021, dual-fiduciary Defendant J.C. Alvarez and SHUSA Chairman Ryan were provided the management forecasts that were set to be disclosed in the Solicitation Statement. J.C. Alvarez [REDACTED]

193. On September 7, 2021, the tender offer commenced, and Group and SHUSA filed the Schedule TO, which stated that the tender offer would expire at midnight on October 4, 2021. Also on September 7, the Company filed its Schedule 14D-9, including its Solicitation Statement.

194. The Proxies stated that the SCUSA Special Committee was entirely "independent and disinterested" without disclosing the thick personal ties between Rainer and McCarthy, on the one hand, and Ryan, on the other hand.

195. The Solicitation Statement also included the Stale Projections that were provided to Piper Sandler, and the valuation analyses that Piper Sandler performed using those Stale Projections.

196. Between September 7, 2021 and January 27, 2022, the tender offer was extended fourteen times pending regulatory approval. The Solicitation Statement was amended fourteen times over that period, including twelve times after the Reliable Projections were provided to the SCUSA Board (including J.C. Alvarez) and five times after the Reliable Projections were approved by the full

SCUSA Board (including J.C. Alvarez). Nevertheless, Defendants never disclosed the Reliable Projections.

197. The discrepancy in forecasted 2022 net income between the Stale Projections and the Reliable Projections was particularly consequential because several of Piper Sandler's financial analyses were based on [REDACTED] [REDACTED] Incorporating the Reliable Projections into Piper Sandler's analyses would have materially increased those analyses. Disclosure of the Reliable Projections thus would have significantly altered the total mix of information available to minority stockholders in assessing whether to seek appraisal of their shares.

198. Even though the Solicitation Statement misleadingly suggested that the Company's value was far lower than it actually was and even though the tender offer was extended fourteen times, SCUSA minority stockholders overwhelmingly refused to tender their shares. Just ***23.5%*** of stockholders agreed to tender. Even backing out the shares owned by Lead Plaintiffs, only approximately 35.1% of minority stockholders agreed to tender. It follows that if the Squeeze Out was conditioned on minority stockholder approval, the Squeeze Out price would have needed to be higher (or the deal rejected). And, as discussed herein, the Controller Defendants were willing to pay more (as evidenced by, *e.g.*, the fact that Group could have achieved an attractive IRR and satisfied its investment criteria at far higher prices).

M. As Expected, the Controller Defendants Distribute Massive Amounts of Excess Capital to Themselves Following Closing

199. By the end of 2021, SCUSA had approximately [REDACTED] of excess capital, nearly [REDACTED] more than the consensus projections as of July 1, 2021.

200. In the first quarter of 2022 (but after the Squeeze Out closed), SCUSA paid a [REDACTED] dividend to SHUSA. In the second quarter of 2022, SCUSA paid another [REDACTED] dividend to SHUSA. SCUSA has since paid [REDACTED] in additional dividends to SHUSA, for a total of [REDACTED] since the Squeeze Out. In other words, SCUSA has distributed to the Controller Defendants ***more than half of the value of the whole Company as implied by the deal price***. But for the Squeeze Out, minority stockholders would have received approximately [REDACTED] or approximately [REDACTED] per share, of those dividends, and also would have continued to share in additional upside through their ongoing stock ownership.

201. Beyond the Company's excess capital, there is ample evidence that SCUSA continued to carry excess Loan Loss Provisions on its book at closing even after releasing [REDACTED] in reserves in the Q4 2021. On June 6, 2022, Aditya texted Muir, [REDACTED]

202. On June 24, 2022, Alvarez de Soto sent an email titled "case closed," that contained the following attachment:

Karam explained that the attachment shows that SCUSA was

[22] Adjusting SCUSA's loan loss allowances to bring them in line with industry norms would have further increased SCUSA's net income (and excess capital) by

N. The Squeeze Out Is Unfair to the Company's Minority Stockholders

i. The $41.50 Per Share Consideration Was Far Below Intrinsic Value and Did Not Reflect Any Split of Massive Synergies

203. The Squeeze Out price of $41.50 per share was unfair to the Company's minority stockholders.

204. *First*, the Company's intrinsic value alone exceeded $41.50 per share and the Squeeze Out was therefore effectively a take-under. As discussed above, the Company's stock price before public disclosure of the Controller Defendants' Initial Proposal did not reflect the Company's Q2 earnings that beat market consensus estimates for the quarter by 94%; did not reflect the Company's

[22] Prasad Ex. 36 [SHUSA_MERGER00052817] at -2817.

Reliable Projections, which included forecasted net income for the second half of 2021 and 2022 that exceeded market consensus estimates by nearly [redacted] If the market had been privy to that information, its stock price would have been ***above*** the Squeeze Out price without even accounting for other factors that could have further increased the stock price (*e.g.*, excess Loan Loss Provisions).

205. *Second*, it is axiomatic that arm's-length transactions result in the seller capturing a significant percentage of the buyer's expected synergies, but SCUSA's minority stockholders captured ***zero*** percent of the synergies. [redacted]

206. As noted above, unwinding the capital dis-arbitrage and achieving "very low execution risk" funding and cost synergies was worth [redacted] or more to the Controller Defendants. Conservatively assuming that a real arm's-length negotiation would have resulted in SCUSA's minority stockholders capturing 50% of the value of those synergies (a study that this Court has relied on found that sellers, on average, capture 54% of synergies) increases fair value by an additional approximately [redacted]/share.

207. The Special Committee's failure to achieve a fair price can be attributed in part to their failure to do ***any*** of the following at any point:

- Ask for (let alone require) a majority-of-the-minority vote or minimum tender condition. Rather, the concept was raised at a

single Special Committee meeting, and counsel explained that [redacted] In fact, the Controller Defendants made a clear determination that they did not want the market to have a say in approving the deal and imposed that determination on the Special Committee.

- Consider what SCUSA's market value might have been, inclusive of the Q2 2021 results, internal excess capital build assumptions, and excess Loan Loss Provisions, but exclusive of the Controller Defendants' public offer.
- Attempt to achieve an average premium deal. Instead, the Special Committee's opening Counteroffer was far below the average merger premium in controller squeeze outs.
- Assess the Controller Defendants' likely ability to pay under their investment criteria or any other form of return-based methodology.
- Evaluate the potential synergies or other (considerable) valuation creation that the Controllers Defendants were expecting in the Squeeze Out.
- Seek diligence regarding synergies and other value creation.
- Attempt to negotiate for a share of the synergies and other value creation.

ii. The Squeeze Out Negotiation Process Was Unfair

208. The process through which the Board and Special Committee negotiated and approved the Squeeze Out with the Controller Defendants was flawed and unfair, including because:

- The Squeeze Out was negotiated by a conflicted Special Committee.
- The conflicted Special Committee was represented by a conflicted financial advisor, which the Controller Defendants helped select.
- The Special Committee's authority was neutered, given that it did not have the authority to consider any other strategic alternatives during the negotiation process.

- The Pricing Committee successfully carried out its mandate to initiate the Squeeze Out at the time most favorable to Group by publicly announcing its Initial Proposal before (i) SCUSA's stock price impounded its 94% second quarter earnings beat, which would also have impacted the market's forecasts for SCUSA for the remainder of 2021 and 2022 and (ii) SCUSA could distribute any of its billions of dollars of excess capital to stockholders or repurchase shares.

- The Special Committee did not even attempt to negotiate a price that was in line with precedent majority squeeze-out transactions. While the Special Committee knew that the average majority squeeze-out premium to unaffected stock price was more than 40%, the Special Committee's opening offer reflected a less than 20% premium to SCUSA's July 1 stock price.

- Piper Sandler assessed the Squeeze Out's fairness based on Stale Projections and an [REDACTED] intended to make the Squeeze Out price seem fair.

- The Squeeze Out was approved by a majority-conflicted Board.

- The Company's Reliable Projections were never disclosed to minority stockholders.

- Minority stockholders overwhelming refused to tender their shares, but the fact that minority stockholders determined that the Squeeze Out price was unfair was rendered irrelevant by the Controller Defendants' refusal to condition the Squeeze Out on approval of a majority of minority stockholders.

iii. The Disclosures Made in Connection with the Squeeze Out Were Materially Misleading and/or Omitted Material Facts

209. Although the Controller Defendants deprived the minority stockholders of the ability to reject the Squeeze Out as unfair by refusing to

condition the Squeeze Out on minority stockholder approval, SCUSA stockholders still had the option to seek appraisal.

210. In connection with determining whether to seek appraisal, stockholders are entitled to an accurate picture of the process leading to the Squeeze Out price and the Company's value.

211. With respect to the process, the Proxies were materially misleading in two respects. First, it is well-established that a special committee's independence is a critical element of running a fair process and that the fairness (or quality) of the process is important to assessing the weight to be afforded to deal price in an appraisal. The Proxies described each of the Special Committee members as "independent and disinterested" without disclosing any of the thick ties between Rainer and McCarthy, on the one hand, and Ryan, on the other hand. That was materially misleading.

212. Second, the 14D-9 falsely stated that "[b]etween July 3, 2021 and July 21, 2021, Piper Sandler reviewed materials made available by the Company's management regarding the Company's business and financial condition and prospects and held discussions with senior executives of the Company, including the Company's Chief Executive Officer and Chief Financial Officer, to discuss this information." This left stockholders with the impression that Piper Sandler had completed its conversations with Company management

before the Special Committee made its Counteroffer, but in fact Piper Sandler did not meet with CEO Aditya until after the Counteroffer was made.

213. This false disclosure is material

214. With respect to valuation, nothing is more important in assessing a Company's value than projections.

215. Here, as discussed above, the undisclosed Reliable Projections that were Board-approved painted a very different picture of the Company's value than the Stale Projections that were not Board approved. The Reliable Projections' forecasted net income for 2021 and 2022 was higher than the Stale Projections. And, if one changed the Piper Sandler disclosed valuation analyses merely by substituting the Reliable

Projections for the Stale Projections, one would have gotten materially higher valuations. This undermines the reliability of Piper Sandler's analyses and the fairness of the Squeeze Out price.

216. Accordingly, disclosure of the Special Committee ties to Ryan and the Reliable Projections would have significantly altered the total mix of information available to a reasonable stockholder deciding whether to seek an appraisal.

V. CLASS ACTION ALLEGATIONS

217. Lead Plaintiffs, former stockholders in the Company, bring this action individually and as a class action pursuant to Rule 23 of the Rules of the Court of Chancery of the State of Delaware on behalf of themselves and all former record and beneficial holders of Company common stock (except the Defendants herein, and any person, firm, trust, corporation, or other entity related to or affiliated with any of the Defendants and their successors in interest) who have suffered financial or economic harm as a result of Defendants' breaches of fiduciary duties and other violations of law, as more fully described herein (the "Class").

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

219. A class action is superior to other available methods of fair and efficient adjudication of this controversy.

220. The Class is so numerous that joinder of all members is impracticable. The number of Class members is believed to be in the thousands and are likely scattered across the world. As of August 30, 2021, the Company had approximately 60,516,901 shares issued and outstanding not owned by SHUSA. Moreover, damages suffered by individual Class members may be small, making it overly expensive and burdensome for individual Class members to pursue redress on their own.

221. There are questions of law and fact which are common to all Class members and which predominate over any questions affecting only individuals, including, without limitation:

- whether the Controller Defendants controlled the Company;
- whether Defendants owed fiduciary duties to Lead Plaintiffs and the Class;
- whether Defendants breached their fiduciary duties to Lead Plaintiffs and the Class;
- the existence and extent of any injury to the Class or Lead Plaintiffs caused by any breach; and
- the proper measure of the Class's monetary or equitable damages.

222. Lead Plaintiffs' claims and defenses are typical of the claims and defenses of other Class members and Plaintiffs have no interests antagonistic or adverse to the interests of other Class members.

223. Lead Plaintiffs will fairly and adequately protect the interest of the Class.

224. Lead Plaintiffs are committed to prosecuting this action and have retained competent counsel experienced in litigation of this nature.

225. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for Defendants; or adjudications with respect to individual members of the Class would, as a practical matter, be dispositive of the interest of other members or substantially impair or impede their ability to protect their interests.

226. Defendants have acted in a manner that affects Lead Plaintiffs and all members of the Class alike, thereby making appropriate injunctive relief and/or corresponding declaratory relief with respect to the Class as a whole.

227. On January 22, 2024, the Court granted the Stipulation and Order Regarding Class Certification, which certified a non-opt-out class consisting of the following:

> All former holders of SCUSA common stock as of the January 31, 2022 closing of the Squeeze Out (the "Closing") who received $41.50 per share in cash in exchange for their shares of SCUSA common stock in connection with the Squeeze Out, whether beneficial or of record, including as necessary for relief the legal representatives, heirs, successors-in-interest, transferees, and assignees of all such foregoing holders, but excluding (i) Defendants in this action; (ii) any person who is, or was at the time of the Closing, an officer, director, or partner of SCUSA, SHUSA, and/or Banco; (iii) the immediate family members of any of the foregoing; (iv) any trusts, estates, entities, or accounts that held SCUSA common stock for the benefit of any of the foregoing; and (v) the legal representatives, heirs, successors-in-interest, successors, transferees, and assigns of (i)-(iv).

VI. CLAIMS FOR RELIEF

COUNT I
(Claim for Breach of Fiduciary Duty Against the Controller Defendants)

228. Lead Plaintiffs repeat and reallege each allegation above as if set forth in full herein.

229. The Controller Defendants were the controlling stockholders of the Company at all relevant times, including through their over 80% equity ownership, exercised ability to appoint a majority of the Board members, and financial and operational entanglements with the Company.

230. As the Company's controlling stockholders, the Controller Defendants owed fiduciary duties to the Company's minority stockholders, including the duty to pay fair value to minority stockholders.

231. The Controller Defendants breached their fiduciary duties by engaging in unfair self-dealing in connection with the Squeeze Out.

232. The Squeeze Out was not entirely fair to the Company's minority stockholders.

233. The Squeeze Out resulted in an unfair and improper transfer of economic value to the Controller Defendants.

234. As a direct and proximate result of the Controller Defendants' breaches of fiduciary duty, Lead Plaintiffs and the Class were harmed through the provision of unfair consideration for their Company shares, and they suffered damages in an amount to be determined at trial.

235. Lead Plaintiffs do not have an adequate remedy at law.

COUNT II
(Claim for Breach of Fiduciary Duty Against the Dual-Fiduciary Defendants and Aditya)

236. Lead Plaintiffs repeat and reallege each allegation above as if set forth in full herein.

237. The Dual-Fiduciary Defendants and Aditya owed Lead Plaintiffs and the Class the utmost fiduciary duties of care, loyalty, good faith, and candor in their capacity as Company directors and/or officers.

238. These duties required the Dual-Fiduciary Defendants and Aditya to place the interests of Company stockholders above their personal interests and the interests of the Controller Defendants. But each of the Dual-Fiduciary Defendants and Aditya improperly divided their loyalties by facilitating and approving the Squeeze Out while also having fiduciary duties and affiliations to the Controller Defendants and their affiliates.

239. Through the events and actions described herein, the Dual-Fiduciary Defendants and Aditya breached their fiduciary duties to Lead Plaintiffs and the Class by knowingly prioritizing their personal interests and the business, strategic, financial, or other interests of the Controller Defendants above those of the unaffiliated Company stockholders, and by agreeing to and entering into the Squeeze Out knowing that the process and price of the Squeeze Out were not entirely fair to Lead Plaintiffs and the Class. Each of the Dual-Fiduciary

Defendants and Aditya voted in favor of the Squeeze Out, despite being interested in the Squeeze Out and/or lacking independence from the Controller Defendants.

240. As a result, Lead Plaintiffs and the Class were harmed by the failure to receive fair consideration for their Company shares, the value of their investment was diminished, and they suffered damages in an amount to be determined at trial.

241. Lead Plaintiffs do not have an adequate remedy at law.

<u>COUNT III</u>
(Claim for Breach of Fiduciary Duty of Candor Against All Defendants)

242. Lead Plaintiffs repeat and reallege each allegation above as if set forth in full herein.

243. All Defendants owed Lead Plaintiffs and the Class the utmost fiduciary duties of care, loyalty, good faith, and candor in their capacity as Company directors and/or officers.

244. All Defendants breached their duty of candor by (i) falsely disclosing that all Special Committee members were "independent and disinterested"; (ii) falsely disclosing that Piper Sandler met with SCUSA's CEO before the Special Committee made its Counteroffer; and (iii) failing to cause disclosure of the Reliable Projections. All Defendants knew that the Board-approved Reliable Projections were far higher than the Stale Projections; all Defendants were involved in the creation of and/or approved the Reliable Projections; but no Defendant caused disclosure of the Reliable Projections.

245. Disclosure of Special Committee conflicts, accurate disclosure of the timing of highly relevant discussions, and disclosure of the materially higher projections would have significantly altered the total mix of information available to minority stockholders determining whether to seek appraisal for their shares.

246. As a result, Lead Plaintiffs and the Class suffered damages in an amount to be determined at trial.

247. Lead Plaintiffs do not have an adequate remedy at law.

VII. PRAYER FOR RELIEF

248. WHEREFORE, Plaintiffs demand judgment and relief in their favor and in favor of the Class, and against Defendants, as follows:

A. Finding the Controller Defendants liable for breaching their fiduciary duties owed to Lead Plaintiffs and the Class in their capacity as the Company's controlling stockholders;

B. Finding the Dual-Fiduciary Defendants and Aditya liable for breaching their fiduciary duties owed to Lead Plaintiffs and the Class in their capacity as Company directors and/or officers;

C. Awarding Lead Plaintiffs and the other members of the Class damages, including but not limited to compensatory, equitable, and rescissory damages, in an amount which may be proven at trial;

D. Awarding Lead Plaintiffs and the members of the Class pre-judgment and post-judgment interest, as well as their reasonable attorneys' and experts' witness fees and other costs; and

E. Awarding Lead Plaintiffs and the Class such other relief as this Court deems just and equitable.

Dated: May 9, 2024

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CERTIFICATE OF SERVICE

I, Andrew E. Blumberg, hereby certify that, on May 16, 2024, the foregoing *Public [Redacted] Version of the Verified Amended Class Action Complaint* was filed and served via File & Serve*Xpress* upon the following counsel of record:

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