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Case No. 2023-1068-MTZ

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

PILOT CORPORATION, a Tennessee corporation, Plaintiff, v. GREG ABEL, KEVIN CLAYTON, MARC HAMBURG, MARK HEWETT, SCOTT THON, BERKSHIRE HATHAWAY, INC., a Delaware corporation, NATIONAL INDEMNITY COMPANY, a Nebraska corporation, and PILOT TRAVEL CENTERS, LLC, a Delaware company, Defendants.	C.A. No. 2023-1068-MTZ Redacted Public Version eFiled: October 26, 2023

VERIFIED COMPLAINT

Plaintiff Pilot Corporation ("Pilot"), by and through its undersigned counsel, brings the following complaint against Defendants Greg Abel, Kevin Clayton, Marc Hamburg, Mark Hewett, Scott Thon, Berkshire Hathaway, Inc., National Indemnity Company ("NICO," and together with Berkshire Hathaway, Inc., "Berkshire"), and Pilot Travel Centers, LLC ("PTC"), and alleges as follows:

NATURE OF THE ACTION

1. In 2017, Berkshire acquired a 38.6% interest in PTC from Pilot and other entities. The agreed price for the transaction was $2.758 billion, a figure calculated by multiplying PTC's earnings before interest and taxes ("EBIT") by ten, with adjustments for cash and debt.

2. In conjunction with that investment, the parties entered into several related agreements. These agreements obligated Berkshire to acquire an additional 41.4% interest in PTC on January 31, 2023, bringing Berkshire's interest in PTC to 80% (the "2023 Control Purchase"). They also gave Pilot an annual 60-day put right, beginning on January 1, 2024, to sell the remaining 20% interest in PTC to Berkshire (the "Put Right"). Berkshire proposed, and Pilot agreed, that the price for Berkshire's 2023 Control Purchase and for Berkshire's purchase of the 20% interest in PTC upon exercise of the Put Right would be determined by the same formula for valuing PTC used to set the price for Berkshire's initial investment.

3. When Berkshire initially invested in PTC, the parties also entered into an LLC agreement governing PTC that contained protections for the minority investor—*i.e.*, Berkshire before it made the 2023 Control Purchase and Pilot thereafter. These protections included the right to veto any "select[ion]" or "change" of PTC's "accounting policies" not required by applicable law or GAAP.

4. Five years later, in accordance with the parties' agreement, Berkshire made the 2023 Control Purchase, acquiring an additional 41.4% interest in PTC for a total ownership interest of 80%. The price was $8.2 billion, determined according to the contractually agreed formula for valuing PTC.

5. The first monthly financial statement PTC issued after Berkshire's assumption of control covered February 2023. The February 2023 statement was consistent with PTC's historical accounting conventions.

6. The March 2023 monthly statement, however, applied—for the first time—"pushdown accounting." Berkshire adopted this change without seeking or obtaining Pilot's consent. Pushdown accounting is an optional accounting decision that allows an acquirer (such as Berkshire) to "push down" its own basis for the acquired company's assets and liabilities to the financial statements of the acquired company. The acquirer's basis is the "stepped-up basis" of assets and liabilities at the time of the acquisition, rather than their historical basis. Under accounting rules, an acquiree that maintains its own financial statements—like Pilot here—may, but is not required to, "step up" the basis of its assets and liabilities after the acquisition.

7. Pushdown accounting does nothing to change the value or performance of PTC's business. But the application of pushdown accounting, and the various subsidiary changes in accounting policies that necessarily result, artificially depress

the reported earnings of PTC by, among other things, increasing depreciation and amortization expenses and by preventing the recognition of gains on derivative instruments and other hedges in the income statement.

8. Accordingly, the artificial decrease in reported earnings due to the application of pushdown accounting reduces PTC's EBIT, which in turn reduces the value of Pilot's Put Right. The economic results are dramatic. Based on PTC's projected 2023 earnings, Pilot could lose as much as $[redacted] from the devaluation of its Put Right resulting from PTC's artificially lower earnings. Berkshire's choice to impose pushdown accounting on PTC thus risks unfairly transferring [redacted] or more to Berkshire, the LLC's controlling member, from the pocket of minority member Pilot.

9. Pilot has not only repeatedly registered its refusal to consent to Berkshire's unilateral and self-interested imposition of pushdown accounting, but also repeatedly requested assurances that Berkshire will not apply pushdown accounting in calculating the value of the Put Right. Berkshire has refused to stop applying pushdown accounting to PTC's financial statements or to provide the assurances Pilot has sought, notwithstanding Pilot's veto rights and the duties of care and loyalty that Berkshire and its board designees owe the minority member of PTC.

10. To remedy and prevent these continuing breaches of contract and fiduciary duties, Pilot seeks (among other relief) a declaration that the use of pushdown accounting in PTC's financial statements was and is unauthorized, as well as related injunctive relief. In addition, Pilot seeks an expedited adjudication of its entitlement to relief to ensure that Berkshire's imposition of pushdown accounting, in breach of the LLC Agreement, will not be applied to determine the value of the Put Right before Pilot's 2024 right to exercise the Put Right expires.

JURISDICTION, VENUE, AND GOVERNING LAW

11. The Court of Chancery has subject-matter jurisdiction pursuant to 6 *Del. C.* § 18-111, 10 *Del. C.* § 341, and the Delaware Declaratory Judgment Act, 10 *Del. C.* § 6501, *et seq.*

12. Under § 14.11 of the LLC Agreement and § 3.11 of the Investor Rights Agreement, the parties consented to the exclusive jurisdiction of the Courts of the State of Delaware or the United States District Court for the District of Delaware.[1] Section 14.09 of the LLC Agreement and § 3.9 of the Investor Rights Agreement provide that all issues and questions concerning the construction, validity, enforcement, and interpretation of the agreements are governed by the laws of the State of Delaware.

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[1] The LLC Agreement and Investor Rights Agreement (as defined below) are attached hereto as Exhibit A and Exhibit B, respectively.

PARTIES

13. Plaintiff Pilot is a member of PTC and owns a 20% stake. Pilot is a party to the LLC Agreement. Its principal executive offices are located at 5508 Lonas Drive, Knoxville, Tennessee.

14. Defendant PTC is a Delaware limited liability company. Its principal executive offices are located at 5508 Lonas Drive, Knoxville, Tennessee. PTC is the largest operator of travel centers in North America (primarily under the names Pilot or Flying J) with more than 650 travel center locations across 44 U.S. states and six Canadian provinces. PTC also has 135 retail locations in the United States and Canada where it sells diesel fuel through various arrangements with third-party travel centers. PTC sold over 13 billion gallons of fuel in 2022 (primarily diesel and gasoline). PTC has approximately 30,000 employees and is one of the largest privately owned companies in the United States.

15. Defendant Berkshire is a Delaware corporation. Its principal executive offices are located at 3555 Farnam Street, Omaha, Nebraska. Berkshire is a holding company owning subsidiaries engaged in numerous diverse business activities. Berkshire owns a controlling 80% stake in PTC through its subsidiary, NICO. Berkshire is a party to the LLC Agreement.

16. Defendant NICO is a Nebraska insurance company. Its principal executive offices are located at 1314 Douglas Street, Suite 1400, Omaha, Nebraska. NICO is a subsidiary of Berkshire. NICO is a member of PTC, owns a controlling 80% stake in PTC, and is a party to the LLC Agreement.

17. Defendant Greg Abel, Berkshire's Vice Chairman, serves as PTC's Board Chair. Berkshire appointed Abel to the PTC Board, and used its control of PTC to name him Board Chair on March 31, 2023, replacing Jimmy Haslam, the chairman of Pilot, in that role.

18. Defendant Marc Hamburg, Berkshire's Chief Financial Officer, has served on the PTC Board since his appointment by Berkshire in 2018.

19. Defendant Kevin Clayton, CEO of Clayton Homes, a Berkshire company, has served on the PTC Board since his appointment by Berkshire in 2018.

20. Defendant Mark Hewett, President and CEO of Berkshire Hathaway Energy's Pipeline Group, has served on the PTC Board since his appointment by Berkshire in 2023.

21. Defendant Scott Thon, President and CEO of Berkshire Hathaway Energy, has served on the PTC Board since his appointment by Berkshire in 2023.

22. Abel, Hamburg, Clayton, Hewett and Thon are referred to herein as the "Board Defendants."

FACTUAL ALLEGATIONS

A. The founding and history of Pilot and PTC

23. Jim Haslam II founded Pilot in 1958 with a single gas station he purchased for $6,000 in Gate City, Virginia. Over the next two decades, Pilot developed a regional network of gasoline stations and convenience stores. In November 1981, Pilot opened its first truck stop, in Corbin, Kentucky. Through a combination of acquisitions and organic growth, Pilot evolved from a regional convenience store operator into a leading national operator of truck stops. By 1996, Pilot operated 96 travel centers and 50 convenience stores, and its total fuel sales had reached 1.2 billion gallons. That year, Jimmy Haslam was named president and chief executive officer, taking the reins from his father.

24. In 2001, Pilot and Marathon Ashland Petroleum LLC (Speedway Truck Stops) created PTC, a nationwide network of 232 travel centers, as a joint venture. By 2018, PTC had expanded to more than 550 travel centers and created a new division called PFJ Energy, which today is one of the largest wholesalers of gasoline and diesel and the largest seller of biodiesel and renewable diesel in the United States. By 2023, PTC was the fifth-largest privately held company in the United States and the country's biggest seller of biodiesel, renewable diesel, and over-the-road diesel fuel.

25. More than fifty years after founding Pilot, Jim Haslam II and the Haslam family considered selling a controlling interest in Pilot's travel center business for the first time. Because of their respect for Berkshire, the Haslam family chose to engage seriously only with Berkshire as a possible acquirer of PTC.

B. Berkshire agrees to buy an 80% stake in PTC in two stages

26. In October 2017, Berkshire agreed to buy an 80% interest in PTC in two stages. The terms of the sale and the parties' respective rights in PTC were governed by several related agreements.

27. Pursuant to the Investment Agreement executed on October 3, 2017, NICO, a wholly owned subsidiary of Berkshire, bought a 38.6% interest in PTC for $2.758 billion. In conjunction with the Investment Agreement, the parties entered into the Sixth Amended and Restated Limited Liability Company Agreement governing PTC (including as subsequently amended, the "LLC Agreement"), the 2023 Sale Agreement, and the Fourth Amended and Restated Investor Rights Agreement (the "Investor Rights Agreement").[2]

28. Under the 2023 Sale Agreement, NICO was obligated to buy an additional 41.4% interest in PTC, for a total interest of 80%, on January 31, 2023—

[2] The parties entered into the current Seventh Amended and Restated Limited Liability Company Agreement as of August 13, 2021, but none of the relevant contract provisions relating to this dispute were changed.

the 2023 Control Purchase. Beginning on January 1, 2024, the Investor Rights Agreement gives Pilot an annual right to sell its remaining 20% interest in PTC to NICO—the Put Right. The Put Right must be exercised within 60 days of the end of a PTC fiscal year.

29. To set the price for NICO's initial investment, the 2023 Control Purchase, and the Put Right, Berkshire proposed, and Pilot agreed to, a single formula that was based on PTC's earnings—ten times EBIT, with adjustments for debt and cash. Accordingly, the 2023 Sale Agreement and the Investor Rights Agreement set the price of the 2023 Control Purchase and the Put Right using the same formula.

30. Section 8.08(i) of the LLC Agreement bars PTC from "select[ing] or chang[ing] the accounting policies of the Company, except as required by Applicable Law or GAAP" without the approval of the PTC Board, Berkshire, and Pilot. Unless otherwise permitted by § 8.08(i), § 1.02 of the LLC Agreement requires PTC to use the "same methodologies, principles and policies used in the preparation of the Company's annual audited consolidated financial statements for the most recently ended Fiscal Year." And § 7.01(a) of the LLC Agreement states that PTC's "books of account shall be kept using the method of accounting determined by the Board of Managers, subject to Section 8.08(i)."

31. Section 12.02 of the LLC Agreement provides that the PTC Board Representatives "shall have the fiduciary duties of loyalty and care (similar to the fiduciary duties of loyalty and care of directors of a business corporation governed by the General Corporation Law of the State of Delaware) to each of the Members," with certain limited exceptions. Section 12.01 of the LLC Agreement provides additional limited exceptions to fiduciary duties but does not purport to generally disclaim fiduciary duties otherwise owed by PTC's members and directors.

32. In accordance with the 2023 Sale Agreement, Berkshire executed the 2023 Control Purchase on January 31, 2023, paying $8.2 billion for the additional interest in PTC.

33. In February 2023, Berkshire reappointed two of its representatives, and appointed three new representatives, to PTC's seven-member board, leaving Pilot representatives in the remaining two seats. In March 2023, Berkshire removed Pilot appointees as PTC Board Chair, CEO, and CFO and installed Greg Abel, its Vice Chairman, as the PTC Board Chair, Adam Wright as the CEO, and Joe Lillo as the CFO.

C. Berkshire breaches the LLC Agreement by imposing pushdown accounting on PTC without Pilot's consent

34. As a matter of accounting, acquisitions of controlling interests are recorded using the acquisition method, under which the acquirer recognizes the

assets acquired and liabilities assumed at fair value with limited exceptions. If the acquired business prepares separate financial statements, Accounting Standards Codification 805-50-25-4 gives the acquired business a choice between using the historical basis of the acquired company or the "stepped-up basis" of the acquirer in those separate financial statements. "Pushdown accounting" refers to the use of the basis of the acquirer in the acquired company's separate financial statements—because the acquirer's basis is "pushed down" to the acquired company's financial statements.

35. The "step up" in basis and goodwill recognition that occurs when pushdown accounting is applied typically results in higher net assets for the acquired company, which in turn usually results in lower net income in periods subsequent to the acquisition due to higher amortization and higher depreciation, among other changes.

36. In March 2023, Berkshire caused PTC to adopt pushdown accounting in the preparation of PTC's separate financial statements—without obtaining Pilot's consent as required under § 8.08(i) of the LLC Agreement. The adoption of pushdown accounting did nothing to change the results, revenue, or profitability of PTC. But, as expected, the switch to pushdown accounting nevertheless resulted in

lower reported income in the periods following Berkshire's acquisition of a controlling interest in PTC.

37. In the March 2023 financial statement, pushdown accounting deductions related to depreciation and amortization resulted in nearly $[redacted] being eliminated from PTC's pre-tax income. And a further $[redacted] related to interest rate swaps and ethanol hedges that would have otherwise been recognized as earnings was instead recognized as equity (and did not increase pre-tax income). Together, these adjustments reduced PTC's pre-tax income from approximately $[redacted] to $[redacted]. Accordingly, the downward adjustment resulting from Berkshire's improper imposition of pushdown accounting in March 2023 translates to a $[redacted] reduction in EBIT (or [redacted]).

38. This exercise yields similar results looking at year-to-date performance. Pushdown accounting adjustments through September reduced PTC's earnings by roughly $[redacted].

39. Because pushdown accounting rejects the use of the historical basis of the acquired company, the introduction of pushdown accounting also resulted in numerous changes to the "Significant Accounting Policies" as disclosed and applied in PTC's prior financial statements.

40. For example, Note 2(c) of PTC's 2022 Consolidated Financial Statements states that under PTC's accounting policy, "acquired assets and liabilities" were recorded at "fair value determined on the acquisition date," *i.e.*, when the assets were initially acquired by PTC. PTC's shift to pushdown accounting changes this policy to instead value these acquisitions at "fair value" as of when pushdown accounting was applied. While the underlying economic value of these assets and health of the company is identical, this change in accounting policy artificially reduces EBIT through increased depreciation or amortization, or both.

41. Similarly, Note 2(h) states that PTC's accounting policy was to value property and equipment "at cost." PTC's shift to pushdown accounting changes this policy to instead value property and equipment at "fair value" as of when pushdown accounting was applied. Again, while the underlying economic value of these assets and health of the company is identical, this change in accounting policy artificially reduces EBIT through increased depreciation or amortization, or both.

42. The accounting policy disclosed in Note 2(q) of PTC's 2022 Consolidated Financial Statements, governing derivative instruments, is also altered by the adoption of pushdown accounting. The policy as described in PTC's 2022 Consolidated Financial Statements required derivative instrument hedges to be accounted for under "Other Comprehensive Income," and for gains and losses

resulting from those hedges to "be recognized in earnings when the hedged forecasted transactions occur." Under pushdown accounting, those gains and losses are not reflected in earnings (or EBIT), but instead are contained in the equity reported on the acquired company's balance sheet. As a result, gains (and losses) on those derivative instruments no longer increase (or decrease) EBIT on future income statements.

43. A number of other Significant Accounting Policies disclosed in PTC's prior financial statements also change based on the application of pushdown accounting, including, but not limited to, accounting policies described in Notes 2(f), 2(j), 2(k), 2(s), 2(u), 2(v), and Items 6-9 of the footnotes to PTC's 2022 audited financial statements.

44. Note 2(f), "Accounts Receivable," previously required an estimate of uncollectible amounts based on historic collections. Under pushdown accounting, the accounts receivable would be reported at current fair value, which could differ from the estimated collectible amounts reported under PTC's historic accounting policies.

45. Note 2(j), "Other Noncurrent Assets," including "franchise fees," "deposits," and "interest rate swaps," would all be updated to reflect current fair value as opposed to historical value.

46. Note 2(k), "Asset Retirement Obligations" previously allowed PTC to not recognize certain obligations when "the fair value cannot be reasonably estimated due to an indeterminate settlement date of the obligation." After the application of pushdown accounting, PTC may be *required* to estimate fair value for these assets and list those obligations on the balance sheet.

47. Note 2(s), "Estimates," will change as a general matter. While prior financial statements utilized historical cost to create certain estimates and assumptions, pushdown accounting will require these estimates and assumptions to consider current fair value. Section 2(u), "Purchase Price Allocation," will change in a similar way, as the methodology used to measure "certain assets and liabilities," including intangible assets, will look to current fair value instead of historical cost.

48. And the accounting policy described in Note 2(v), "Leases," could change significantly if third parties who transact with PTC have lease covenants based on certain financial performance metrics or ratios, because pushdown accounting will significantly change a host of those measures.

49. Finally, Notes 6-9 to PTC's 2022 Consolidated Financial Statements would also change: Note 6, "Goodwill and Intangible Assets," previously valued those assets at historical cost; pushdown accounting would value those assets at current fair value, which would increase the associated amortization expense (with

a corresponding drop in income). Note 7, "Equity Affiliates," previously called for the carrying amount of equity affiliates to be calculated at cost, plus earnings, minus losses. Pushdown accounting would result in the revaluation of those affiliates at current fair value. Note 8, "Debt," would result in debt service payments being recalculated at current (higher) interest rates. And Note 9, "Members' Capital," would also be recalculated at current fair value.

D. Berkshire's imposition of pushdown accounting threatens to grossly devalue Pilot's bargained-for Put Right

50. Berkshire's self-interested decision to switch to pushdown accounting has thus predictably and necessarily resulted in a reduction of PTC's recorded income, compared to PTC's income calculated using PTC's historical basis—but that change has nothing to do with any change in the financial performance of PTC.

51. Berkshire is intent on using the accounting change to justify grossly underpaying Pilot for its 20% interest upon Pilot's exercise of its Put Right.

52. Because the pricing formula for the Put Right utilizes PTC's recorded earnings, Berkshire's unilateral imposition of pushdown accounting for PTC's financial statements, in breach of the LLC Agreement, threatens to reduce the value of Pilot's Put Right by potentially more than [redacted]. Under PTC's historical accounting policies, the formula for calculating the Put Right exercise price is based on 10x multiple of EBIT. But application of pushdown accounting

could, effectively result in the use of 6x multiple of EBIT in calculating the Put Right exercise price.

53. Based on PTC's projected 2023 earnings, the amount in dispute from the unauthorized application of pushdown accounting to fiscal year 2023 EBIT is potentially as much as $[redacted]. If pushdown accounting is applied, the Put Right exercise price could be as low as [redacted]% of the price that Pilot would have obtained were the pricing formula applied based on PTC's historical accounting policies. As much as $[redacted] will instead be captured by controller Berkshire as an unfair and self-interested windfall.

54. PTC's financial statements have also made clear that the Put Right is to be determined based on the contractual pricing formula, without adjustments for pushdown accounting—*i.e.*, the same formula used for both Berkshire's initial investment in PTC and the 2023 Control Purchase. PTC's 2022 Consolidated Financial Statements, for example, state that Berkshire's purchase prices were "based on a predetermined contractual formula that is intended to reflect *fair value on the date that NICO purchases the equity interest in PTC*," and that the Put Right "allows Pilot to require NICO to purchase the remaining 20% Class A member interests in PTC *for the same formula*."

55. This description eliminates any possible ambiguity that the parties always intended for the price of the 20% interest in PTC subject to the Put Right to be calculated in the same way as the price for Berkshire's initial investment in PTC and its subsequent 2023 Control Purchase. This same language has been consistently included in the notes appearing in PTC's prior consolidated financial statements, for as long as Berkshire has been an investor in PTC.

56. Indeed, Berkshire's Form 10-Q for the quarter ended June 30, 2023, as filed with the Securities and Exchange Commission, lists Pilot's "redeemable noncontrolling interest" at approximately $3.2 billion. On information and belief this valuation was calculated *without* downward adjustments resulting from pushdown accounting. *See* Berkshire Hathaway Inc., Quarterly Report (Form 10-Q) (June 30, 2023), pp. 3, 10. The disclosure notes that the amount disclosed for the noncontrolling interest reflects "fair value as of the acquisition date." *Id.* at 10. Berkshire has thus conceded that the "fair value" of Pilot's remaining 20% interest in PTC should be calculated consistently with the calculation of the price for Berkshire's previous purchases of interests in PTC.

57. The unambiguous language in PTC's consolidated financial statements and in the Berkshire Form 10-Q puts in writing what should be common sense: When Berkshire made its initial investment in PTC, the parties agreed to a consistent

formula to value PTC for the purpose of pricing Berkshire's subsequent purchases of interests in PTC, and Berkshire is not free to change that formula to its own advantage by causing PTC to adopt new accounting policies that artificially reduce EBIT.

E. Berkshire refuses to recognize Pilot's repeated objections to the imposition of pushdown accounting and devaluation of its Put Right

58. Pilot has repeatedly objected to Berkshire's unauthorized imposition of pushdown accounting in PTC's monthly and quarterly financial statements—including in direct communications by Jimmy Haslam to Greg Abel, Berkshire Vice Chairman and recently appointed Chairman of PTC, and to Mark Hamburg, Berkshire's CFO and a PTC Board Representative.

59. Pilot has also specifically requested assurances that Berkshire will not impose pushdown accounting on PTC's audited financial statements for fiscal year 2023 or otherwise use pushdown accounting to value the Put Right exercise price.

60. Rather than remedy its improper imposition of pushdown accounting at PTC or provide the requested assurances, Berkshire has instead continued to cause PTC to issue financial statements using pushdown accounting and has refused to confirm that it will comply with its contractual obligation by refraining from imposing pushdown accounting on PTC's audited financial statements for fiscal year 2023. Without contractual justification, Berkshire has asserted that it need not

determine the accounting policies applicable to those statements unless and until Pilot exercises its Put Right. Abel has also expressly informed Pilot that Berkshire will determine the relevant accounting and valuation issues only after Pilot exercises its Put Right.

61. On information and belief, Berkshire is seeking to force Pilot to exercise its Put Right before resolution of which accounting policies are applicable to PTC's audited financial statements for fiscal year 2023 so that Berkshire can avoid Court scrutiny of its conduct and instead assert that the dispute should be resolved by an accounting arbitrator under § 2.04(d) of the Form of Pilot Put Sale Agreement attached as an exhibit to the Investor Rights Agreement.

62. The parties' dispute over Pilot's veto rights, including which accounting policies may be applied to PTC's audited financial statements, however, is governed by the LLC Agreement—and that agreement does not provide for any disputes over its terms to be decided by an arbitrator. To the contrary, § 14.11 of the LLC Agreement provides that "any and all suits, legal actions or proceedings arising out of this agreement shall be brought in the courts of the State of Delaware or the United States District Court for the District of Delaware and each party hereby submits to and accepts the exclusive jurisdiction of such courts for the purpose of such suits, legal actions or proceedings."

63. In another attempt to amicably and fairly resolve the parties' dispute, the two Pilot directors (Jimmy Haslam and his father and PTC founder Jim Haslam II) proposed a resolution (the "Pushdown Accounting Resolution") at a PTC Board meeting on August 24, 2023. The Pushdown Accounting Resolution provided that the financial statements of PTC, including the audited financial statements for the fiscal year ending December 31, 2023, shall be prepared in accordance with the accounting policies, practices, methods and elections used in the preparation of PTC's audited consolidated financial statements for the fiscal year ended December 31, 2022, and that pushdown accounting would therefore not be utilized for those statements, and that, in any event, pushdown accounting would not be used to calculate fiscal year 2023 EBIT for the purposes of determining the value of the Put Right.

64. The purpose of the Pushdown Accounting Resolution was to end PTC's ongoing breach of contract related to the preparation and distribution of unauthorized financial statements and to confirm that PTC's future financial statements, including the 2023 yearly financial statements, would not improperly reduce PTC's recorded earnings and consequently dramatically undervalue the Put Right, effectuating an unfair transfer of value from minority investor Pilot to controlling investor Berkshire in breach of the LLC Agreement.

65. Without explanation, the five Berkshire representatives on the PTC Board—all of whom work for Berkshire companies—voted against the Pushdown Accounting Resolution and it was not adopted. Upon information and belief, the five Berkshire representatives on the PTC Board voted against the resolution to benefit controller Berkshire at the expense of minority investor Pilot.

66. Following the August 24, 2023 PTC Board meeting, Pilot has repeatedly sought to confirm Berkshire's position on the application of pushdown accounting to PTC's fiscal year 2023 financial statements and to the calculation of the value of its Put Right. After Berkshire's Chairman, Warren Buffett, informed the elder Haslam in an October 13, 2023 phone call that Berkshire would abide by the LLC Agreement, the elder Haslam sent Buffett a letter seeking confirmation that Berkshire would not apply pushdown accounting in calculating the value of Pilot's Put Right. Buffett refused to provide a straight answer to Haslam's simple question. Instead, Buffett repeated: "I said that Berkshire will comply with the terms of the contract. That's exactly what will happen," and that "when and if the Haslam family decides to exit, we will do exactly what the contract says." Buffett's refusal to even disclose Berkshire's position on the proper method of valuing Pilot's Put Right has not only made litigation inevitable, but also made clear that Berkshire and the Board

Defendants will not commit to honor their contractual obligations and fiduciary duties.

CLAIMS FOR RELIEF

FIRST CLAIM: BREACH OF CONTRACT (against PTC)

67. Plaintiff repeats and incorporates by reference the above allegations as if fully set forth herein.

68. The LLC Agreement is a valid contract between the parties thereto, including PTC, Pilot, and Berkshire, through its subsidiary NICO.

69. Applicable law and GAAP do not require the application of pushdown accounting to PTC's financial statements.

70. PTC has breached § 8.08(i) and § 1.02 of the LLC Agreement by issuing financial statements deploying pushdown accounting without Pilot's consent.

71. PTC has also breached § 7.01(a) of the LLC Agreement by failing to maintain books of account that reflect only accounting determinations made in compliance with § 8.08(i) and § 1.02 of the LLC Agreement.

72. Plaintiff is entitled to an order requiring Berkshire and the Board Defendants to cause PTC to issue financial statements that reflect only accounting determinations made in compliance with § 8.08(i) and § 1.02 of the LLC Agreement,

to correct and reissue any financial statements reflecting accounting determinations made in breach of § 8.08(i) and § 1.02 of the LLC Agreement, and to correct books of account to reflect only accounting determinations made in compliance with § 8.08(i) and § 1.02 of the LLC Agreement.

73. Pilot is further entitled to compensation for damages resulting from PTC's prior and ongoing breaches of the LLC Agreement.

SECOND CLAIM: BREACH OF FIDUCIARY DUTY
(against Berkshire and the Board Defendants)

74. Plaintiff repeats and incorporates by reference the above allegations as if fully set forth herein.

75. Berkshire and the Board Defendants owe Pilot fiduciary duties of care and loyalty.

76. In violation of those duties, Berkshire and the Board Defendants caused PTC to issue, and voted against a resolution precluding PTC from issuing, financial statements that unfairly harm Pilot and benefit Berkshire.

77. Plaintiff has been damaged as a result of the fiduciary breaches by Berkshire and the Board Defendants.

78. Plaintiff is entitled to injunctive relief and compensation for damages resulting from Berkshire and the Board Defendants' breaches of fiduciary duty.

THIRD CLAIM: DECLARATORY JUDGMENT
(against all Defendants)

79. Pursuant to Court of Chancery Rule 57 and 10 *Del. C.* § 6501, this Court has authority to declare the rights, status, or other legal relations of the parties before it.

80. The LLC Agreement is a valid and enforceable contract between Plaintiff and Defendants.

81. Defendants have a contractual obligation under the LLC Agreement to seek Plaintiff's consent before adopting a change or selection of accounting policy.

82. As set forth above, Defendants have breached and have threatened to continue to breach the LLC Agreement.

83. Plaintiff will be harmed absent the Court's declaration of rights.

84. Plaintiff accordingly requests a declaratory judgment that the LLC Agreement prohibits the adoption of pushdown accounting for PTC's past and future financial statements without Plaintiff's consent, that Berkshire and NICO are in breach of the LLC Agreement for preparing past financial statements reflecting pushdown accounting, and that any calculation of fiscal year 2023 EBIT for the purposes of the Put Right shall be consistent with such accounting practices as utilized in the calculation of fiscal year 2022's EBIT, and shall not utilize pushdown accounting.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests that this Court enter a judgment:

a. Declaring that the LLC Agreement requires Pilot's consent to apply pushdown accounting principles to PTC's financial statements; that PTC's prior financial statements deploying pushdown accounting were unauthorized and impermissible; directing PTC to re-prepare and redistribute its prior financial statements deploying pushdown accounting solely with financial figures not reflecting pushdown accounting; directing Berkshire, NICO and the Board Defendants to cause PTC to prepare its fiscal year 2023 financial statements without deploying pushdown accounting; and directing Berkshire, NICO, and the Board Defendants to cause PTC to calculate the exercise of Pilot's Put Right based on the same accounting principles used to calculate the financial statements for fiscal year 2022;

b. Enjoining PTC from preparing further financial statements deploying pushdown accounting without Pilot's consent, unless or until Pilot no longer possesses such a right;

c. Awarding Plaintiff damages in an amount that may be proven at trial, together with interest thereon;

d. Awarding Plaintiff the costs and disbursements of this Action, including attorneys', accountants', and experts' fees; and

e. Awarding such other, further, and different relief as this Court may deem just, equitable, and proper.

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