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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ARASH NIKOUGHADEM, on behalf of
himself and those similarly situated,

Plaintiff,

v.

ZAGG INC, CHERYL A. LARABEE, CHRIS
AHERN, DAN MAURER, SCOTT STUBBS,
MICHAEL BIRCH, RON GARRIQUES, and
EDWARD TERINO,

Defendants.

Case No.:

CLASS ACTION

CLASS ACTION COMPLAINT FOR:

- (1) Violation of § 14 (a) of the Securities Exchange Act of 1934
- (2) Violation of § 20(a) of the Securities Exchange Act of 1934
- (3) Breach of Fiduciary Duties
- (4) Aiding and Abetting Breach of Fiduciary Duties

DEMAND FOR JURY TRIAL

Plaintiff, Arash Nikoughadem (“Plaintiff”), by his attorneys, on behalf of himself and those similarly situated, files this action against the defendants, and alleges upon information and belief, except for those allegations that pertain to him, which are alleged upon personal knowledge, as follows:

SUMMARY OF THE ACTION

1. Plaintiff brings this stockholder class action on behalf of himself and all other public stockholders of ZAGG Inc (“ZAGG” or the “Company”), against ZAGG and the Company’s Board of Directors (the “Board” or the “Individual Defendants,” and collectively with ZAGG, the “Defendants”) for violations of Sections 14(a) and 20(a) of the Securities and Exchange Act of 1934 (the “Exchange Act”), breaches of fiduciary duty as a result of Defendants’ efforts to sell the Company to Zephyr Parent, Inc. (“Parent”), and Zephyr Merger Sub, Inc. (“Merger Sub,” and collectively with Parent, “Evercel”) as a result of an unfair process for an unfair price, and to enjoin an upcoming stockholder vote on a proposed all cash transaction valued at approximately \$132.8 million (the “Proposed Transaction”).

2. The terms of the Proposed Transaction were memorialized in a December 11, 2020, filing with the Securities and Exchange Commission (“SEC”) on Form 8-K, attaching the definitive Agreement and Plan of Merger (the “Merger Agreement”). Under the terms of the Merger Agreement, Evercel will acquire all of the outstanding shares of ZAGG’s common stock at a price up to \$4.45 per share in cash. ZAGG stockholders will receive \$4.20 per share in cash upon closing and a Contingent Value Right (“CVR”) of up to \$0.25 per share, to be paid if the Company’s Paycheck Protection Program Loan (the “PPP Loan”) is forgiven and any audit related thereto is satisfactorily completed. As a result, ZAGG will become an indirect wholly-owned subsidiary of Parent, a subsidiary of the Evercel.

3. Thereafter, on January 7, 2020, ZAGG filed a Preliminary Proxy Statement on Form PREM14A (the “Preliminary Proxy”) with the SEC in support of the Proposed Transaction.

4. The Proposed Transaction is unfair and undervalued for a number of reasons. Significantly, the Preliminary Proxy describes an insufficient process in which the Board acquiesced to two activist stockholder groups who forced through a sale of the Company despite the fact that the Board had previously concluded that continuing as a standalone entity was in the Company’s best interest. The two activist stockholders are (i) a consortium consisting of AREX

Capital Master Fund, LP, AREX Capital GP, LLC, AREX Capital Management, LP, AREX Capital Management GP, LLC, and Mr. Andrew Rechtschaffen (the “AREX Parties”), and Roumell Asset Management, LLC and James C. Roumell (the “Roumell Parties”).

5. In approving the Proposed Transaction, the Individual Defendants have breached their fiduciary duties of loyalty, good faith, due care and disclosure by, *inter alia*, (i) agreeing to sell ZAGG without first taking steps to ensure that Plaintiff and Class members (defined below) would obtain adequate, fair and maximum consideration under the circumstances; and (ii) engineering the Proposed Transaction to benefit themselves and/or the Evercel without regard for ZAGG’s public stockholders. Accordingly, this action seeks to enjoin the Proposed Transaction and compel the Individual Defendants to properly exercise their fiduciary duties to ZAGG stockholders.

6. Next, it appears as though the Board has entered into the Proposed Transaction to procure for itself and senior management of the Company significant and immediate benefits with no thought to the Company’s public stockholders. For instance, pursuant to the terms of the Merger Agreement, upon the consummation of the Proposed Transaction, Company Board Members and executive officers will be able to exchange all Company equity awards for the merger consideration.

7. In violation of the Exchange Act and in further violation of their fiduciary duties, Defendants caused to be filed the materially deficient Preliminary Proxy on January 7, 2021 with the SEC in an effort to solicit stockholders to vote their ZAGG shares in favor of the Proposed Transaction. The Preliminary Proxy is materially deficient, deprives ZAGG’s stockholders of the information they need to make an intelligent, informed and rational decision of whether to vote their shares in favor of the Proposed Transaction, and is thus in breach of the Defendants fiduciary duties. As detailed below, the Preliminary Proxy omits and/or misrepresents material information concerning, among other things: (a) the sales process and in particular certain conflicts of interest for management; (b) the financial projections for ZAGG, provided by ZAGG to the Company’s

financial advisor BofA Securities, Inc. (“BofA”); and (c) the data and inputs underlying the financial valuation analyses, if any, that purport to support the fairness opinions created by BofA and provides to the Company and the Board.

8. Absent judicial intervention, the Proposed Transaction will be consummated, resulting in irreparable injury to Plaintiff and the Class. This action seeks to enjoin the Proposed Transaction or, in the event the Proposed Transaction is consummated, to recover damages resulting from the breaches of fiduciary duties by Defendants.

PARTIES

9. Plaintiff is a citizen of California and, at all times relevant hereto, has been an ZAGG stockholder.

10. Defendant ZAGG designs, manufactures, and distributes mobile tech accessories for smartphones, tablets, smartwatches, and other mobile technology in the United States, Europe, and internationally. ZAGG is organized under the laws of Delaware and has its principal place of business at 910 West Legacy Center Way, Suite 500, Midvale, Utah 84047. Shares of ZAGG common stock are traded on the Nasdaq under the symbol “ZAGG.”

11. Defendant Cheryl A. Larabee (“Larabee”) has been a Director of the Company at all relevant times. In addition, Larabee serves as the Chairperson of the Company Board.

12. Defendant Chris Ahern (“Ahern”) has been a director of the Company at all relevant times. In addition, Ahern serves as the Chief Executive Officer (“CEO”) of the Company.

13. Defendant Dan Maurer (“Maurer”) has been a director of the Company at all relevant times.

14. Defendant Scott Stubbs (“Stubbs”) has been a director of the Company at all relevant times.

15. Defendant Michael Birch (“Birch”) has been a director of the Company at all relevant times.

16. Defendant Ron Garriques (“Garriques”) has been a director of the Company at all relevant times. Garriques was one of two directors who was placed onto the Company Board in April of 2020 as a result of the negotiations between the Company and two activist stockholders, the AREX Parties and the Roumell Parties.

17. Defendant Edward Terino (“Terino”) has been a director of the Company at all relevant times. Terino was one of two directors who was placed onto the Company Board in April of 2020 as a result of the negotiations between the Company and two activist stockholders, the AREX Parties and the Roumell Parties.

18. Defendants identified in ¶¶ 11 - 17 are collectively referred to as the “Individual Defendants.”

19. Non-Defendant Evercel is a holding company that acquires and manages high potential businesses which have been limited by their capital structure. Evercel was founded in 1998 and is headquartered in New York, NY.

JURISDICTION AND VENUE

20. This Court has subject matter jurisdiction pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331 (federal question jurisdiction) as Plaintiff alleges violations of Sections 14(a) and Section 20(a) of the Exchange Act. This action is not a collusive one to confer jurisdiction on a court of the United States, which it would not otherwise have. The Court has supplemental jurisdiction over any claims arising under state law pursuant to 28 U.S.C. § 1367.

21. Personal jurisdiction exists over each defendant either because the defendants

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