



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ALDEN GLOBAL CAPITAL, LLC,  
on behalf of ALDEN GLOBAL VALUE  
RECOVERY MASTER FUND, L.P.,  
ALDEN GLOBAL OPPORTUNITIES  
MASTER FUND, L.P.,  
and TURNPIKE LIMITED,

Plaintiffs,

v.

SOLUS CORE OPPORTUNITIES LP,  
SOLA LTD., ULTRA MASTER LTD.,  
SOLUS OPPORTUNITIES FUND 1 LP,  
SOLUS OPPORTUNITIES FUND 2 LP,  
SOLUS OPPORTUNITIES FUND 3 LP,  
SOLUS OPPORTUNITIES FUND 5 LP,  
and NEXTWAVE HOLDCO LLC,

Defendants.

C.A. No. 2018-0418-TMR

REDACTED PUBLIC VERSION  
FILED: June 12, 2018

**VERIFIED COMPLAINT**

Alden Global Capital, LLC (“Alden”), on behalf of Alden Global Value Recovery Master Fund, L.P., Alden Global Opportunities Master Fund, L.P., and Turnpike Limited (the “Alden Funds”), alleges:

[Redacted]

## NATURE OF THE ACTION

1. Alden is the investment manager for the Alden Funds, which are minority members of NextWave Holdco LLC (the “Company”), a Delaware limited liability company that is controlled by Solus Alternative Asset Management LP (“Solus”) through the defendant investment funds it manages.

2. The Alden Funds bring this action to enforce their rights under the Company’s limited liability company agreement and Delaware law and to remedy defendants’ breaches of their obligations thereunder. The Company, under the control of the Solus defendants, has deprived the Alden Funds of basic information needed to understand and manage their significant interests in the Company, including information that would permit the Alden Funds to understand how their significant capital contributions to the Company have been used (or squandered) by the board of directors and why the Company has failed to obtain a buyer for its valuable wireless spectrum assets during its nearly six-year existence.

3. Alarming, the Alden Funds learned as the result of a recent records inspection demand that there are no minutes of relevant meetings of the Company’s board of directors because the Company never created them. The Company’s operating agreement requires it to maintain records of its business and affairs, which includes minutes of board meetings, and expressly requires board

resolutions to be reduced to writing in minutes which shall be provided to members of the Company upon their written request. (Amended and Restated Operating Agreement of NextWave Holdco LLC adopted by written consent dated June 8, 2016 (“LLC Agmt.”), §§ 7.02(e), 11.01, a true and correct copy of which is attached hereto as Exhibit A.)

4. In their effort to deny the Alden Funds transparency concerning the Company’s governance, the controlling Solus defendants, acting through their director designees Chris Pucillo (Solus’s founder, chief executive officer, and chief investment officer), Craig Chobor (Solus’s director of research), and John Dooley of Jarvinian Ventures, have breached provisions of the Company’s operating agreement and the implied covenant of good faith and fair dealing arising thereunder. The Company also has failed to provide the Alden Funds with books and records necessary to the Alden Funds’ proper purposes as members in response to a valid inspection demand.

5. NextWave Holdco was formed in August 2012 in connection with a debt-restructuring of NextWave Wireless, Inc. and that entity’s related merger with AT&T, Inc. In those transactions, assets worth hundreds of millions of dollars if not more, including a portion of wireless spectrum licenses previously owned by NextWave Wireless, Inc., were contributed to the newly organized NextWave

Holdco. Creditors, including the Solus defendants and the Alden Funds, became that new Company's owners.

6. The Company's original operating agreement required it, "as promptly as practicable," to distribute to members the proceeds obtained from the sale of its assets. Almost six years after its formation, however, the Company has failed to fulfill that formative purpose. Instead of liquidating assets and distributing the proceeds, the Company—under Solus's domination and control—has sat on its hands and has completed only limited, relatively inconsequential asset dispositions. Meanwhile, members including the Alden Funds have been required to contribute more capital to support the Company's cash-draining operations under threat of punitive dilution if they failed to comply.

7. Even though the Alden Funds own roughly 19 percent of the Company, they have been kept in the dark about the Company's operations and future prospects, including the troubling failure to sell its valuable assets. Concerned by the Company's failure to monetize value for the benefit of its members, in 2015 the Alden Funds requested the right to attend and observe board meetings. Solus objected to this modest request, however, and the Company denied it.

8. The next year, Solus formalized its control of the Company through the acquisition of interests from other members. Solus then caused the operating agreement to be amended and restated to buttress its control. The Alden Funds were first informed of these actions only after they occurred. Solus now controls three of the five seats on the board of directors.

9. Because Solus and the Company consistently have thwarted the Alden Funds' efforts to obtain meaningful insight into the Company's operations and plans, on January 26, 2018 the Alden Funds served a formal demand to examine certain Company books and records, which is a right expressly granted to them by the operating agreement (even as amended and restated at Solus's behest) and by Delaware law. (LLC Agmt., §§ 7.02(e), 11.01; 6 *Del. C.* § 18-305(a).)

10. The Alden Funds hoped that review of the Company's board minutes and other books and records would dispel their concerns of possible gross mismanagement of the Company or other actionable misconduct, to the Alden Funds' detriment, under Solus's domination and control. Were the Company's years of inaction the result of strategic decision-making or the product of conflicted decision-makers under Solus's control who had their own incentives to delay? If there are justifications for the inaction, why was the Company so reluctant to provide information?

11. The Company’s limited and heavily redacted production in response to the Alden Funds demand did not provide the answers—most surprisingly because it included no minutes, resolutions, or written consents of the board of directors except one—the written consent by which four directors secretly amended and restated the operating agreement to lock in Solus’s control. A lawyer for the Company admitted that responsive minutes never had been prepared but argued, in conflict with the Company’s governing charter, that board minutes were not required.

12. The records provided suggest that board meetings have been held from time to time, and at some of those gatherings the board apparently discussed the possibility of transactions involving Company assets. But what those transactions might have been, their benefits or risks, and the directors’ views and instructions to management and advisors about them cannot be determined. Similarly, in at least one meeting the board apparently considered and approved an annual budget for the Company, yet the budget and the Company’s justifications for its annual expenditures were not revealed.

13. The Company’s failure to maintain board records that are “necessary, convenient, or incidental to recording the Company’s business and affairs” (LLC Agmt., § 11.01) has deprived the Alden Funds of a fundamental benefit of

their bargain—the right to monitor the Company’s governance to ensure that the Alden Funds’ interests as minority owners are protected, and are not being abused, by Solus and the controlling majority.

14. When the Alden Funds requested that the Company provide additional records to address the production’s deficiencies and the failure to keep minutes of board meetings, the Company refused. The response once again heightened the Alden Funds’ concerns that the Company is being managed in a manner that prejudices their interests to benefit Solus and the majority.

15. The Alden Funds therefore bring this action (a) to remedy defendants’ breaches of the operating agreement’s requirements, and of the covenant of good faith and fair dealing, to maintain books and records necessary, convenient, or incidental to recording the Company’s business and affairs, including resolutions, minutes, and written consents recording board of directors decisions and the reasons for them, (b) for an accounting of all transactions of the Company since its inception as an appropriate remedy for defendants’ failure to maintain books and records required under the operating agreement, (c) for an order requiring the Company to keep minutes of any meeting of the board of directors after the date of this complaint and to permit Alden observation rights at any such meeting, and (d) to obtain true and full information in response to the Alden Funds’ demand

regarding the business, governance, and financial condition of the Company under section 11.01 of the operating agreement and section 18-305(a)(1) of the Delaware Limited Liability Company Act.

### **JURISDICTION**

16. The Company is a limited liability company that is organized under the laws of the State of Delaware.

17. This is an action to interpret, apply, or enforce the provisions of the Company's limited liability company agreement, concerning the duties, obligations, or liabilities of that limited liability company to its members, and concerning the duties, obligations, and liabilities among members of the Company.

18. Subject matter jurisdiction over this proceeding is vested in this Court under 6 *Del. C.* § 18-111.

19. Each of the defendants irrevocably submitted to the co-exclusive jurisdiction of the federal and state courts located in Delaware for the purpose of any suit, action, proceeding, or judgment arising from the Company's operating agreement or with respect thereto, including tort claims. Each of the defendants irrevocably consented to jurisdiction in this Court for this action and to the laying of venue in this Court. Each defendant irrevocably waived any contention that this action has been brought in an inconvenient forum. (LLC Agmt., § 12.04.)

## **THE PARTIES**

20. Defendant NextWave Holdco LLC is a limited liability company organized under the laws of the State of Delaware with its principal place of business in California.

21. Alden is a Delaware limited liability company with its principal place of business in New York. Alden is a registered investment adviser and is the investment manager for a number of funds.

22. Alden Global Value Recovery Master Fund, L.P. is an exempted limited partnership under the laws of the Cayman Islands for which Alden acts as investment manager. It owns approximately 8.46 percent of the outstanding membership interests in the Company.

23. Alden Global Opportunities Master Fund, L.P. is an exempted limited partnership under the laws of the Cayman Islands for which Alden acts as investment manager. It owns approximately 6.31 percent of the outstanding membership interests in the Company.

24. Turnpike Limited is an exempted Cayman Islands company for which Alden acts as investment manager. It owns approximately 4.33 percent of the outstanding membership interests in the Company.

25. Non-party Solus Alternative Asset Management LP is a Delaware limited partnership with its principal place of business in New York. Solus is a registered investment adviser that acts as investment manager for the defendant funds. According to its website, “[a]ll products and positions at Solus are co-managed by the Firm’s three Portfolio Managers: Chris Pucillo (Chief Executive Officer & Chief Investment Officer), Scott Martin and C.J. Lanktree.”

26. Defendant Solus Core Opportunities LP is a Delaware limited partnership for which Solus acts as investment manager. It owns approximately 3.82 percent of the outstanding membership interests in the Company.

27. Defendant Sola Ltd. is a Cayman Islands exempted company for which Solus acts as investment manager. It owns approximately 25.5 percent of the outstanding membership interests in the Company.

28. Defendant Ultra Master Ltd. is a Cayman Islands exempted company for which Solus acts as investment manager. It owns approximately 2.47 percent of the outstanding membership interests in the Company.

29. Defendant Solus Opportunities Fund 1 LP is a Delaware limited partnership for which Solus acts as investment manager. It owns approximately 1.9 percent of the outstanding membership interests in the Company.

30. Defendant Solus Opportunities Fund 2 LP is a Delaware limited partnership for which Solus acts as investment manager. It owns approximately 3.82 percent of the outstanding membership interests in the Company.

31. Defendant Solus Opportunities Fund 3 LP is a Delaware limited partnership for which Solus acts as investment manager. It owns approximately 3.82 percent of the outstanding membership interests in the Company.

32. Defendant Solus Opportunities Fund 5 LP is a Delaware limited partnership for which Solus acts as investment manager. It owns approximately 3.43 percent of the outstanding membership interests in the Company.

## **FACTUAL BACKGROUND**

### **The Original Governance of the Company**

33. The Company was formed in 2012 in connection with a debt restructuring and merger transaction of NextWave Wireless, Inc. The Company received its assets—wireless spectrum licenses and technology, including licenses for 2.5 MHz EBS/BRS spectrum—as an indirect method of redeeming, in part, a series of NextWave Wireless, Inc. secured notes. The noteholders, including the Alden Funds, then became members of the Company.

34. The original members had a shared understanding of the Company's purpose, which was, as soon as practicable, to monetize its assets and distribute the proceeds. This purpose was expressly stated in the Company's original operating agreement, which provided that "the Company shall, *as promptly as practicable*, distribute cash or securities constituting the proceeds from the sale of any assets of the Company. . . to the Members in accordance with their respective Interests." (Limited Liability Company Agreement of NextWave Holdco LLC dated as of August 8, 2012 ("Original LLC Agmt."), § 9 (emphasis added), a true and correct copy of which is attached hereto as Exhibit B.)

35. In the nearly six years since the Company's formation, however, the Company has not sold any of its primary assets. The Company has made only two distributions to members, both in late 2014, after the sale of some ancillary assets. The distributions, amounting to roughly \$27.6 million, were far outweighed by the Company's demands to members for capital contributions over its lifespan. For example, the Alden Funds have received distributions with respect to their equity interests of \$5.275 million but have been required to make capital contributions of \$8.225 million.

36. The Alden Funds are the only members of the Company who do not have the ability to designate a member of the board of directors, despite their collective ownership of membership interests greater than that of several other members.

37. The Alden Funds did not insist on the ability to designate a member of the Company's board of directors when the Company was formed because they wanted to maintain their ability to sell some or all of their interest in the Company without restriction under the securities laws. At the time, the Alden Funds did not consider board representation essential because they expected the Company to monetize its assets "as promptly as practicable." Moreover, at the time, the interests in the Company were owned by a number of unaffiliated parties. No member owned a majority of the interests, could appoint a majority of the five-member board of directors, or otherwise was in a position of domination and control.

38. In addition, the Alden Funds initially anticipated transparency concerning the governance of the Company and its activities. The operating agreement, in its original form, required the Company to "observe [ ] all procedures and formalities required by [the] Agreement and the laws of the State of Delaware," to observe "proper corporate formalities in relation to all actions,"

and to “reduce[] to writing” all resolutions adopted by the board of directors and “include[]” those resolutions “in the minutes of such meeting, copies of which shall be provided to each Member promptly upon the written request of such Member.” (Original LLC Agmt., §§ 2(b)(i)(3), 4(i)(G)(vi).)

39. As it turned out, the Alden Funds’ trust and expectations were misplaced.

**The Alden Funds’ Request to Attend Board Meetings Is Denied**

40. Shortly after the Company was formed, the Alden Funds established a communications channel with Frank Cassou, a part-time employee of the Company who previously had been with NextWave Wireless, Inc. By early 2015, however, the Alden Funds had become troubled by the pace at which the Company was monetizing its assets. They also had become frustrated by their inability to obtain from Mr. Cassou sufficient information to understand why the Company’s monetization efforts were proceeding so slowly.

41. The Alden Funds therefore requested observational privileges at meetings of the Company’s board of directors. They expected the request to be granted given the size of the Alden Funds’ financial stake in the Company, which was similar to other members’ interests who had the right to designate voting members to the board of directors. But Solus objected and told the Alden Funds

that the information they were being provided by Mr. Cassou was sufficient. The Company denied the Alden Funds' request.

42. As Solus knew, the communications with Mr. Cassou did not provide insight into the Company's strategy or the board's deliberations. Mr. Cassou was not a decision-maker and had been given limited authority to relay information. Moreover, over time, Mr. Cassou reduced the frequency of his communications with the Alden Funds from monthly to only sporadically.

**Solus Obtains Control of the Company and Causes  
the Operating Agreement to be Materially Amended**

43. As originally organized, the five members of the Company's board of directors were designated by five different members (or fund groups): Solus, Avenue Capital Management, LLC ("Avenue"), Douglas F. Manchester, Navation, Inc., and Polygon Recovery Fund, L.P. ("Polygon").

44. By 2016, however, Solus had come to dominate the board through a series of transactions. First, funds affiliated with Avenue acquired interests that had been owned by Manchester and Polygon, including their rights to designate representatives to the board of directors. Then, in 2016, Solus obtained the right to designate two directors that Avenue previously had designated.

45. In a written consent signed on June 8, 2016, three directors who work for Avenue, together with one director who works for Solus, purported to amend and restate the Company's operating agreement to reflect Solus's newly obtained ability to designate three of the five board members. A number of other changes also were made, including changes to members' rights to transfer their interests in the Company together with the right to designate directors to the board.

46. Even though they were the third-largest equity holder in the Company, no one provided the Alden Funds any notice of the proposed amendment and restatement of the operating agreement or of the transaction between Avenue and Solus that led to it. Shortly before those events, the Alden Funds had held an update call with Mr. Cassou, the person at the Company who apparently coordinates discussions among the members of the board and, in that role, undoubtedly knew what was about to occur. But Mr. Cassou made no mention of the impending amendment and restatement of the operating agreement during that call, an omission that once again raises questions about the reasons for the secrecy toward the Alden Funds of the Company and its controlling owners.

47. The amended and restated operating agreement provides for one of the five directors to be designated by Avenue and three of the five directors to be designated by Solus. The fifth director is to be designated by Navation.

48. The Solus directors are, and have been, Solus's chief executive officer Chris Pucillo, its director of research Craig Chobor (one of the directors who signed the written consent restating the operating agreement), and John Dooley of Jarvinian Ventures. The Avenue director is Robert Symington, who also was one of the directors who signed the written consent restating the operating agreement. Allen Salmasi is the Navation director, and the only member of the board of directors who did not sign the written consent restating the operating agreement.

#### **The Company's Funding Demands**

49. Instead of monetizing assets and distributing proceeds to members "as promptly as practicable," the Company has spent its six-year existence losing money and demanding further capital from its members, including the Alden Funds, to pay for leases on its wireless spectrum assets, employee salaries and benefits, and other expenses. For the full-year ended December 31, 2017, for example, the Company suffered a net loss of \$12.9 million.

50. As a result of the Company's continuing losses, and its failure to sell assets, the Alden Funds have been required to make a series of funding contributions to the Company. First, on August 19, 2015, they made a \$2,496,382 contribution to the Company. Then, on October 12, 2016, they contributed an additional \$1,909,529.

51. At the end of 2016, the Company (now controlled by Solus) asked the Alden Funds for an additional \$3,819,060 in funding. The Alden Funds strongly objected given the previous contributions that had been required and the failure to progress the sale of the Company's most valuable assets over more than four years. The Alden Funds and the Company ultimately agreed that members could defer their funding contribution until April 1, 2018. If a member ultimately chose not to make its contribution, however, its equity interest would be subject to punitive dilution.

52. The Alden Funds chose to defer their contribution until April 1, 2018.

### **The Books and Records Demand**

53. On January 26, 2018, in light of these developments, the Alden Funds served a books and records demand on the Company in accordance with the operating agreement and section 18-305(a) of the Delaware Limited Liability Company Act. The demand explained that the Alden Funds sought to inspect books and records of the Company for the following purposes:

1. To determine whether and when distributions will be made, and in what amounts;
2. To determine the Company's present ability to monetize assets or make distributions;
3. To assess the uses to which Alden's past capital contributions have been put and the need and intended purpose for future capital contributions by members; and

4. To have a fulsome basis on which to communicate with other members regarding the Company's performance, management, distributions, requests for capital contributions, and June 8, 2016 adoption of the Amended LLC Agreement.

54. In connection with the specified purposes, the demand sought inspection of the following books and records:

1. A copy of the Company's Certificate of Formation, and any actual or proposed amendments thereto;
2. A copy of the Company's federal, state and local income tax returns for the three most recent years for which they have been prepared;
3. True and full information regarding the status of the Company's business and its financial condition;
4. True and full information regarding the amount of cash and a description and statement of the agreed value of any other property or services contributed by each member;
5. All presentations, slide decks, memoranda, or other materials provided to or reviewed by any member of the Company's Board of Directors from January 1, 2016 to the present concerning the valuation, monetization or sale of the Company's assets;
6. All minutes or written consents of the Company's Board of the Directors, or any committee thereof, reflecting information or discussions concerning the valuation, monetization or sale of the Company's assets;
7. All presentations, slide decks, memoranda or other materials prepared for or provided to any potential purchaser of the Company's assets from January 1, 2016 to the present;

8. All materials distributed to the Company's Board of Directors relating to the Written Consent of the Board of Directors of NextWave Holdco LLC In Lieu of a Meeting dated June 8, 2016, including but not limited to any communications with or notice to any Director concerning the proposed action to be taken by the Written Consent; and
9. Documents sufficient to identify the dates of and participants in all meetings between Company's representatives and potential purchasers of the Company's assets.

55. In a letter to the Alden Funds dated February 21, 2018, the Company's counsel listed various documents that the Company would "endeavor to produce" subject to agreement by the Alden Funds to a number of terms and conditions. Among others, the Company purported to require the Alden Funds to agree—before receiving any information—that the Company's proposed production would "fully satisfy the demand" and that the Alden Funds would not "file an action or proceeding pursuant to Section 18-305(f)" relating to the demand. The Alden Funds refused to agree to such a provision.

56. After further discussions and several drafts, the Company agreed to remove this provision from the final version of the production letter, which counsel for the Company and the Alden Funds signed on March 8, 2018.

57. Thereafter, the Company produced to the Alden Funds certain books and records that the Company had outlined, in broad terms, in its correspondence. The books and records, many of which were heavily redacted, were entirely

insufficient to satisfy the purpose of the inspection or fulfill the Company's obligations under the operating agreement and Delaware law.

58. Most glaringly, the production did not include the minutes of a single meeting of the board of directors. The Alden Funds later learned that this was because the Company had not kept such minutes. Yet the operating agreement, even as it has been amended and restated, requires that:

All resolutions adopted by the Board shall be reduced to writing and included in *the minutes of such meeting, copies of which shall be provided to each Member promptly upon the written request of such Member.*

(LLC Agmt., § 7.02(e) (emphasis added).)

59. Not only did the absence of minutes mean that the Company had no formal record of the board's deliberations and decision-making process, it also rendered the remainder of the Company's books-and-records production effectively useless.

60. Various emails with the members of the board of directors suggest that board meetings or calls were, or might have been, held on June 24, 2016, July 25, 2016, September 16, 2016, September 23, 2016, October 24, 2016, December 13, 2016, January 6, 2017, March 6, 2017, March 17, 2017, May 10, 2017, and November 30, 2017. In some instances, it is not clear that meetings or calls actually occurred on those dates. Nor is there any record indicating that these

were the only board gatherings scheduled or held during the period. It is impossible for the Alden Funds to determine.

61. In some instances, the subjects discussed with the board, or scheduled to be discussed, can be gleaned from records provided. In other instances, however, the matters discussed are unclear and significant portions of relevant materials have been redacted.

62. On a few occasions, for example, a board call scheduled for June 24, 2016 (around the time that Solus obtained control of the Company), the records include emails to board members that could be read as an agenda for the coming meeting. Yet the inclusion of such documents only further highlights the deficiencies of the records that have been provided.

63. Many of the documents produced by the Company are presentations prepared by entities such as the Company's investment banker or potential purchasers of the Company's assets. But without board minutes or some other information that would place those documents in context, the Alden Funds are not able to determine which of the documents the Board reviewed, why the Company has them, and what the board or the Company did with them.

64. For example, the most recent document in the production is a March 2018 report—apparently [REDACTED]

[REDACTED]. Without context, the Alden Funds are unable to extract meaningful information from such a broad range. Yet the Company's production provided no information that could be the source of such context, such as whether the board agreed with the range, whether the board intended to pursue transactions within that range, or whether the mere existence of such a broad range was a reason for the Company's lack of activity.

65. Relatedly, the Company's production did not contain a single report of the Company's own valuation of its assets. Nor did the production contain any reflection of what board members thought of others' valuations of the Company's assets, including for example any instructions provided to the Company's investment banker, PJT Partners, concerning transactions that should be pursued.

66. The failure to keep minutes also meant the production provided little information on the Company's efforts to sell its valuable wireless spectrum assets or otherwise capitalize on them. Nothing in the production revealed whether the Company had entered into any negotiations with a potential buyer or partner, any

explanation of why it had not done so (if that was the case), or generally whether board members were properly discharging their duties.

67. But the production's deficiencies were not limited to the absence of minutes. For example, the production contained no documents responsive to the demand's request for "all materials distributed to the Company's [b]oard of [d]irectors" or any member thereof concerning the amendment and restatement of the operating agreement in 2016. As a result, the production provided no information on the series of events by which Solus came to dominate and control the Company, including whether the Company's amendment to its operating was procedurally and substantively proper. It also failed to contain "documents sufficient to identify the dates of and participants in all meetings between the Company's representatives and potential purchasers of the Company's assets," another specific request for information that the Alden Funds had made in the demand.

68. In addition, the production contained extensive redactions on forty-five pages (including nine documents redacted in full), even though under the operating agreement members have the right to examine "any of the books and records of the Company." (LLC Agmt., § 11.01 (emphasis added).) The operating agreement includes a confidentiality provision, and in connection with the demand

the Alden Funds separately agreed that they would keep the information they received confidential. No redactions for purported lack of responsiveness were necessary.

69. In a letter sent on April 3, 2018, the Alden Funds identified a number of deficiencies in the Company's production. In addition, given the Company's admitted failure to keep minutes of board meetings, the Alden Funds asked the Company to make a supplemental production of board members' notes and emails. The Alden Funds also requested the Company to produce additional valuation analyses, including those in the possession of the Company's investment bankers and financial advisers.

70. The Company refused. In a letter dated April 14, 2018, the Company argued that the "absence of minutes" does not "violate[] any obligation to the Alden Funds," and claimed that the relevant provision "governs [only] Board resolutions and does not describe any other matters that must be committed to writing." The Company asserted that the limited and heavily redacted materials it already had provided were all the records "necessary, essential and sufficient to satisfy each of the purposes enumerated in the Alden Funds' books and records demand."

71. The Company also produced a log indicating that only three of the twenty-one documents containing full or partial redactions were redacted on the basis of a claim of privilege. According to the letter, all of the other redactions were made solely for a putative lack of responsiveness.

**The Alden Funds' Deferred Contribution Becomes Due**

72. On March 16, 2018—before the Company had completed its books-and-records production—the Company sent the Alden Funds a notice stating that they owed the Company capital contributions totaling \$3,819,060 by April 1, 2018. (But due to a bank holiday, these contributions were effectively due on March 29.)

73. The funding was to take place pursuant to a note purchase agreement in which the Company purported to require the Alden Funds to represent that they had “had an opportunity to discuss, ask questions of, and receive answers from, the Company’s officers concerning the Company’s business, management, financial affairs.” In a letter dated March 28, 2018, the Alden Funds told the Company that they could not make that representation under the circumstances.

74. Having been stonewalled in their attempt to obtain necessary information, the Alden Funds proposed to delay the funding deadline by thirty days so that the Company could provide sufficient information for the Alden Funds to make the required representation. The Company refused.

75. On March 29, 2018, to avoid a punitive dilution of its existing equity interests in the Company at a discounted valuation, the Alden Funds made the demanded contribution of \$3,819,060.

**COUNT I - BREACH OF THE LLC AGREEMENT**

76. Alden incorporates all preceding allegations as if fully set forth herein.

77. The amended and restated operating agreement requires the Company to maintain true and correct books and records, including “records necessary, convenient, or incidental to recording the Company’s business and affairs.” (LLC Agmt., § 11.01.) This provision requires the Company to make a record of meetings of its board of directors.

78. The operating agreement requires all resolutions adopted at a meeting of the board of directors to “be reduced to writing and *included in the minutes of such meeting*, copies of which shall be provided to each Member promptly upon the written request of such Member.” (LLC Agmt., § 7.02(e) (emphasis added).)

79. The Alden Funds believe, based on the limited records they have been provided, that the board of directors has made decisions and given direction to the Company’s management or advisors during meetings of the board. Any such decisions or directions were required by the operating agreement to “be reduced to writing and included in the minutes of such meeting.”

80. The Alden Funds made a written request to the Company for copies of minutes or written consents of the board of directors “reflecting information or discussions concerning the valuation, monetization or sale of the Company’s assets.”

81. The Company failed to provide copies of any resolutions or minutes of meetings of the board of directors to the Alden Funds in response to their written request. The Company asserted in a letter from its counsel that “NextWave has not withheld any minutes from its productions; responsive minutes were not produced for the simple reason that there are none.”

82. The Company’s failure to prepare and maintain minutes of meetings of its board of directors is a material breach of the operating agreement for which the Alden Funds seek recovery from all defendants jointly and severally.

83. The Alden Funds have suffered damages as a direct and proximate result of the Company’s failure to prepare and maintain minutes of meetings of its board of directors in an amount to be determined at trial.

84. In addition, the Alden Funds seek an order from the Court for specific performance requiring the Company to prepare and maintain minutes of all future meetings of the board of directors.

**COUNT II - BREACH OF THE IMPLIED  
COVENANT OF GOOD FAITH AND FAIR DEALING**

85. Alden incorporates all preceding allegations as if fully set forth herein.

86. The Alden Funds are members of the Company and are entitled to the benefits and protections afforded them under the operating agreement.

87. Defendants' failure to prepare and maintain minutes of meetings of its board of directors has deprived the Alden Funds of the benefits of their bargain under the operating agreement and amounts to a breach of the implied covenant of good faith and fair dealing thereunder for which the Alden Funds seek recovery from all defendants jointly and severally.

88. The Alden Funds have suffered damages as a direct and proximate result of the Company's failure to prepare and maintain minutes of meetings of its board of directors in an amount to be determined at trial.

89. In addition, the Alden Funds seek an order from the Court for specific performance requiring the Company to prepare and maintain minutes of all future meetings of the board of directors.

**COUNT III - EQUITABLE REMEDY OF ACCOUNTING**

90. Alden incorporates all preceding allegations as if fully set forth herein.

91. The breaches of contract and breaches of the implied covenant of good faith and fair dealing had the purpose and effect of depriving the Alden Funds of information concerning the Company, its transactions, its business, and its affairs, that are necessary for the Alden Funds to exercise their rights and fulfill their obligations as members of the Company.

92. The Company has described its assets as illiquid and difficult to value. Ordinary discovery procedures may be inadequate to permit the Alden Funds to obtain a complete and accurate understanding of the Company, its transactions, its business, and its affairs.

93. The Alden Funds do not have the information necessary to ascertain the damages they have sustained as the result of defendants' breaches. Subject to further proceedings, the Alden Funds reasonably believe that discovery will show that the Alden Funds have no adequate remedy at law for defendants' actionable misconduct.

94. The Alden Funds are entitled to an accounting by the Company of all transactions by or involving the Company from its inception to the date of such accounting.

**COUNT IV - COMPULSORY INSPECTION OF BOOKS  
AND RECORDS PURSUANT TO LLC AGREEMENT**

95. Alden incorporates all preceding allegations as if fully set forth herein.

96. Section 11.01 of the operating agreement gives each member of the Company the right to “examine any of the books and records of the Company during normal business hours upon reasonable notice for a proper purpose reasonably related to the Member’s Units in the Company.” Section 7.02(e) of the operating agreement further provides that copies of minutes of the meetings of the board of directors “shall be provided to each Member promptly upon the written request of such Member.”

97. On January 26, 2018 and in subsequent correspondence, the Alden Funds made written requests to the Company for the examination of the Company’s books and records and for copies of the minutes of the meetings of the Company’s board of directors.

98. The Alden Funds made their requests for proper purposes reasonably related to their units in the Company.

99. The Company has failed to permit examination of the books and records requested and has failed to provide copies of minutes of meetings of the Company’s board of directors as required by the operating agreement.

100. The Alden Funds seek specific performance requiring the Company to produce to the Alden Funds the requested information, books, and records or to allow their examination thereof.

101. The Alden Funds have no remedy at law.

**COUNT V - COMPULSORY INSPECTION OF BOOKS  
AND RECORDS PURSUANT TO 6 *Del. C.* § 18-305(f)**

102. Alden incorporates all preceding allegations as if fully set forth herein.

103. On January 26, 2018, Alden, on behalf of the Alden Funds, made written demand upon the Company to obtain the information and to examine the books and records set forth in the demand.

104. The Alden Funds have complied with all requirements under 6 *Del. C.* § 18-305 concerning the form and manner of a demand to examine the Company's books and records described in the demand.

105. The Alden Funds are members of the Company and made the demand for proper purposes.

106. The Company has failed to provide the information requested or to permit examination by the Alden Funds of the books and records necessary, essential, and sufficient to their proper purposes.

107. The Company should be ordered to furnish the requested information, books, and records to the Alden Funds or to allow their examination thereof.

108. The Alden Funds have no remedy at law.

**PRAYER FOR RELIEF**

**WHEREFORE**, Alden on behalf of the Alden Funds prays for entry of judgment in their favor granting the following relief:

- A. Damages in an amount to be determined at trial;
- B. An accounting by the Company of all transactions by or involving the Company from its inception to the date of such accounting;
- C. An order requiring the Company to permit the Alden Funds to inspect and copy the books and records requested in the demand;
- D. An order requiring the Company to provide true and full information concerning the subjects on which the Alden Funds have requested information;
- E. An order requiring the Company to produce responsive emails and meeting notes of the Company's directors, as a remedy for the Company's failure to keep, and provide copies of, minutes of Board meetings;
- F. An order requiring the Company to keep minutes of the future meetings of its board of directors;
- G. An order requiring the Company to permit Alden observation rights at any and all future meetings of the Company's board of directors;

- H. An order awarding Alden and the Alden Funds their costs, fees and expenses, including reasonable attorneys' fees; and
- I. Such other relief as this Court deems just and appropriate.

DATED: Wilmington, Delaware  
June 7, 2018

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