

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

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IN RE ZIPCAR, INC.	)	Consolidated
	)	C.A. NO. 8185
STOCKHOLDER LITIGATION	)	

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**VERIFIED CONSOLIDATED AMENDED CLASS ACTION COMPLAINT  
FOR BREACH OF FIDUCIARY DUTY**

Plaintiffs Martin Bertisch, Bruce H. Paul, Joseph Morcos, Allen Srulowitz, Evan Hecker, and Jim Billups (collectively “Plaintiffs”), by their attorneys, allege upon information and belief, except for their own acts, which are alleged on knowledge, as follows:

1. Plaintiffs bring this class action on behalf of the public stockholders of Zipcar, Inc. (“Zipcar” or the “Company”) against the members of Zipcar’s Board of Directors (the “Board” or the “Individual Defendants”) for their breaches of fiduciary duties arising out of their attempt to sell the Company to Avis Budget Group, Inc. (“Avis”) in an unfair process, and without providing material information to stockholders.

2. On January 2, 2013, Avis and the Company announced a definitive agreement under which Avis, through its wholly owned subsidiary Millennium Acquisition Sub, Inc. (“Merger Sub”), will acquire all of the outstanding shares of Zipcar in an all-cash transaction for \$12.25 per share in cash (the “Proposed Transaction”). The Proposed Transaction is valued at approximately \$500 million.

3. The Company's board of directors (the "Board") improperly favored a sale to Avis over the pursuit of an option for long-term strategic growth because of the personal financial windfall a sale would bring. Despite the fact that the Company engaged in extensive negotiations with an auto manufacturer ("OEM Potential Investor") relating to the Company's floating by the minute ("FBM") short trip, one way service offering, which to be consummated by the end of calendar year 2012, the Board quickly abandoned this potential strategic opportunity for growth, opting instead to cash-out quickly through the Proposed Transaction.

4. Given that most of Board members will receive substantial windfalls as a result of a sale of the Company (one director will gross approximately \$96 million), the Board put their own financial interests above their duty to maximize value for the Company's stockholders.

5. The Board then locked up the Proposed Transaction via voting agreements. Zipcar's largest stockholder, defendant Stephen M. Case ("Case"), along with Revolution Living LLC ("Revolution"), an investment firm which is controlled by Case, beneficially owns approximately 19.6% of the Company's outstanding common stock. Case, Revolution, venture capital firms Benchmark Capital Partners V, L.P. ("Benchmark") and Greylock Partners ("Greylock"), together with the Company's Chairman and Chief Executive Officer ("CEO") Scott Griffith ("Griffith"), collectively hold approximately 32% of Zipcar's outstanding shares. Case has entered into a voting agreement to support the Proposed Transaction, along with the directors, executive

officers and three holders of greater than 5% of the Company's outstanding shares. Those voting agreements represent approximately 32% of Zipcar's outstanding shares.

6. In addition to pushing for a quick sale which would yield substantial financial gain to the Board, then locking up the Proposed Transaction via voting agreements, the Board also agreed to an inadequate price. The intrinsic value of Zipcar's common stock is materially in excess of the amount offered, giving due consideration to, among other things, the Company's strong financial condition and steadily increasing revenues. Indeed, the Merger Consideration, which is valued at approximately \$500 million, is less than two times the Company's expected 2012 revenues.

7. Avis, Case and Zipcar's venture capital investors are the primary beneficiaries of the Proposed Transaction, not the Company's public stockholders. Avis, with a complicit Company Board, has taken advantage of a decline in the Company's stock price unrelated to Zipcar's fundamental value in order to gain control of the Company at a discount to its true value and to the detriment of the Plaintiffs and Zipcar's public stockholders. The Proposed Transaction is the product of a flawed process that is designed to ensure the sale of Zipcar to Avis on terms preferential to Avis and the Individual Defendants in lieu of pursuing long-term growth opportunities for the Company.

8. Moreover, Defendants have failed to disclose all material information related to the Proposed Transaction. On January 22, 2013 the Company filed a Schedule 14A preliminary proxy statement (the "Proxy") with the United States Securities and Exchange Commission ("SEC") in connection with the Proposed Transaction that fails to

provide the Company's stockholders with material information necessary for them to make an informed decision on whether to vote in favor of the Proposed Transaction or to seek appraisal for their shares.

9. The Individual Defendants have breached their fiduciary duties due care and loyalty, and Avis and Merger Sub have aided and abetted such breaches by Zipcar's officers and directors. Plaintiffs seek to enjoin the Proposed Transaction unless and/or until defendants cure their breaches of fiduciary duty.

### **PARTIES**

10. Plaintiffs are, and have been at all relevant times, the owners of shares of Zipcar common stock.

11. Zipcar is a corporation organized and existing under the laws of the State of Delaware. It maintains its principal executive offices at 25 First Street, 4<sup>th</sup> Floor, Cambridge, Massachusetts 02141. Zipcar is named herein solely for the purpose of providing full and complete relief.

12. Defendant Scott Griffith ("Griffith") has been the Chief Executive Officer ("CEO") and a director of the Company since 2003 and Chairman of the Company's Board since 2007.

13. Defendant Robert Kagle ("Kagle") has been a director of the Company since 2005. He represents venture capital investor Benchmark on the Zipcar Board.

14. Defendant Donn Davis ("Davis") has been a director of the company since 2007. Davis is currently president of Revolution LLC, Zipcar's largest stockholder owning approximately 16% of Zipcar's stock.

15. Defendant Stephen Case (“Case”) has been a director of the Company since 2010. Case co-founded Revolution LLC in April 2005, together with Defendant Davis, and is currently its manager, chairman, and CEO. According to the Schedule 13D filed by Zipcar on January 4, 2013 with the Securities and Exchange Commission (“SEC”), Case beneficially owns 7,853,818 shares of Zipcar common stock. Case is the Chairman, CEO and President of Revolution and has the sole power to direct the vote and disposition of the shares held by Revolution entities. Revolution acquired its stake in Zipcar through its 2005 investment in Flexcar, another car sharing company. Zipcar acquired Flexcar in 2007.

16. Defendant William Helman (“Helman”) has been a director of the Company since 2006. Helman represents venture capital investor Greylock on the Zipcar Board.

17. Defendant Margaret Whitman (“Whitman”) has been a director of the Company since 2011.

18. Defendant John Mahoney, Jr. (“Mahoney”) has been a director of the Company since 2010.

19. Defendant John Kenny, Jr. (“Kenny”) has been a director of the Company since 2010.

20. Defendant Edward Gilligan (“Gilligan”) has been a director of the Company since June 2012.

21. Defendants referenced in ¶¶ 12 through 20 are collectively referred to as the Individual Defendants and/or the Board.

22. Defendant Avis is a Delaware corporation with its headquarters located at 6 Sylvan Way, Parsippany, New Jersey 07054. Avis is a leading global provider of vehicle rental services through its Avis and Budget brands and has approximately 10,000 rental locations in 175 countries around the world.

23. Defendant Merger Sub is a Delaware corporation, wholly owned by Avis that was created for the purposes of effectuating the Proposed Transaction.

### **CLASS ACTION ALLEGATIONS**

24. Plaintiffs bring this action on their own behalf and as a class action on behalf of all owners of Zipcar stock as of the January 2, 2013 announcement of the Proposed Transaction, and their successors in interest, except Defendants and their affiliates (the “Class”).

25. The Class is so numerous that joinder of all members is impracticable. Plaintiff believes that there are thousands of members in the Class. According to the Merger Agreement, as of December 31, 2012, approximately 40.12 million shares of common stock were represented by the Company as outstanding.

26. Questions of law and fact are common to the Class, including, *inter alia*, the following:

- (i) Have the Individual Defendants breached their fiduciary duties of loyalty and/or due care with respect to Plaintiffs and the other members of the Class in connection with the Proposed Transaction;

- (ii) Have the Individual Defendants breached their fiduciary duty to maximize stockholder value in connection with the Proposed Transaction;
- (iii) Have the Individual Defendants omitted material facts in violation of their fiduciary duties owed to Plaintiffs and the other members of the Class;
- (iv) Have Avis and Merger Sub aided and abetted the Individual Defendants' breaches of fiduciary duty; and
- (v) Whether Plaintiffs and the other members of the Class would be irreparably harmed were the transactions complained of herein consummated;

27. Plaintiffs are committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature.

28. Plaintiffs' claims are typical of the claims of the other members of the Class.

29. Plaintiffs have no interests that are adverse to the other members of the Class.

30. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class that would establish incompatible standards of conduct for defendants, or adjudications with respect to individual members of the Class that would, as a practical matter, be dispositive of the interests of the other members not parties to the

adjudications or substantially impair or impede their ability to protect their interests.

31. Defendants have acted, or refused to act, on grounds generally applicable to the Class making appropriate final injunctive relief with respect to the Class as a whole.

### **FURTHER SUBSTANTIVE ALLEGATIONS**

#### **I. Company Background and Its Poise For Growth**

32. Zipcar operates the world's leading car sharing network. The Company has more than 760,000 members in 17 major metropolitan areas and on more than 250 college campuses in the United States, Canada, the United Kingdom, Spain, and Austria.

33. Since the fourth quarter of 2011, the Company has enjoyed considerable revenue growth, a 14% increase in its membership, and expansion into new domestic and international markets.

34. The Company had a successful fourth quarter and full fiscal 2011. In a February 14, 2012 press release, the Company reported its financial results for the quarter and full year ended December 31, 2011. Zipcar reported fourth quarter revenue of \$62.9 million, a 21% increase compared to \$52.1 million for the same period of the prior year and full year revenue of \$241.6, which represented a 30% increase compared to \$186.1 million in revenue from 2010. Additionally, the Company's membership grew by 25% from the prior year period. The Company also announced fourth quarter adjusted EBITDA of \$5.9 million compared to \$3.6 million for the fourth quarter of 2010 and full year adjusted EBITDA of \$10.9 million compared to \$4.2 million for the prior year.

35. Defendant Griffith was pleased with the Company's fourth quarter and 2011 full year performance. Griffith was quoted in the press release as saying, in relevant part:

Our fourth quarter results capped off a record year of revenue and profitability gains.

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We reported our second consecutive quarter of profitability and posted accelerated growth in our established markets while expanding our global network of cities, both domestically and abroad. In addition to our market leadership in North America, Zipcar stands today as one of the largest car sharing operators in Europe and we look forward to building our presence in this attractive market.

36. The Company's momentum carried into the new fiscal year. Zipcar reported its financial results for the first quarter of 2012, for the period ended March 31, 2012, in an April 25, 2012 press release. First quarter revenue increased 20% to \$59.1 million, a sharp increase compared to \$49.1 million of revenue from the same quarter of the prior year. The Company attributed the revenue growth to a 23% year-over-year increase in membership. Additionally, the Company reported that adjusted EBITDA for the second quarter of 2012 was break-even compared to the same metric from the first quarter of 2011.

37. Defendant Griffith stated that the Company's "first quarter results set the stage for a strong 2012." Additionally, Zipcar's positive start to 2012 prompted the Company to raise aspects of its 2012 outlook. Specifically, the April 25, 2012 press release stated that the Company "is increasing its full year 2012 profitability outlook with Adjusted EBITDA now expected to range from \$16.0 million to \$20.0 million and US GAAP net income expected to range from \$3.0 million to \$7.0 million."

38. In the following weeks the Company increased its domestic footprint by expanding service to Austin, Texas. The launch of the Company's Austin branch represented Zipcar's entrance into its eighteenth major metropolitan market.

39. On July 11, 2012, and consistent with the Company's previously articulated goal of increasing its presence in Europe, Zipcar issued a press release announcing the acquisition of Denzel Mobility CarSharing GmbH, a leading car sharing service in Austria operating under the name CarSharing.at. In the press release, defendant Griffith commented on the acquisition:

The acquisition of CarSharing.at in Austria gives us access to an established car sharing business in a key market with high growth potential.

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We believe we can scale the CarSharing.at business in Austria with our technology, car sharing expertise and extensive network. By leveraging opportunities such as this, we continue to execute our plan to grow the car sharing category and build out a leading car sharing network across Europe.

40. The Company reported impressive second quarter financial results, for the quarter ended June 30, 2012, in an August 2, 2012 press release. The Company posted second quarter revenue of \$70.8 million, a 15% increase compared to \$61.6 million of revenue from the same period of the prior year. Again, the Company attributed the revenue growth to a 21% membership increase from the prior year period. The Company also reported adjusted EBITDA of \$3.4 million, an increase compared to \$2.3 million from the second quarter of 2011.

41. The Company again expanded its presence in the domestic market in November 2012 by announcing the launch of Zipcar in Miami. In a November 1, 2012

press release the Company reported that Miami signaled the Company's entrance into its twentieth major metropolitan market.

42. Several days later, on November 8, 2012, the Company issued a press release announcing its financial results for the third quarter, for the period ended September 30, 2012. Zipcar reported \$78.2 million in revenue, a 15% increase compared to \$68.1 million of revenue for the same period of the prior year. The Company attributed the revenue growth to an 18% increase in membership compared to the prior year period. Furthermore, the Company announced adjusted EBITDA of \$6.5 million compared to \$4.6 million for the third quarter of 2011. Defendant Griffith was pleased with the Company's results and was quoted in the press release as saying:

With our strong results in the quarter, we have raised our full-year guidance and we are on track to deliver 2012 as Zipcar's first full year of profitability on a US GAAP basis. This is an exciting milestone for our company[.]

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We expanded our global leadership position by integrating our operations in Barcelona and by acquiring a leading car sharing provider in Austria. Additionally, we have strengthened our technology edge with the successful launch of a new platform and have enhanced both our membership marketing programs and offerings including a further rollout of our Zipvan cargo van service that is expected to be available in all of our major North American markets in 2013.

43. In a press release dated January 2, 2013, the Company announced that it had entered into the Merger Agreement with Avis pursuant to which Avis, through Merger Sub, will acquire all of the outstanding shares of the Company for \$12.25 per share.

44. Rather than permitting the Company's shares to trade freely and allowing its stockholders to reap the benefits of the Company's future business prospects, the

Individual Defendants inexplicably agreed to sell the Company to Avis for short-term profits and at the expense of the interests of the Company's stockholders.

## **II. Zipcar Improperly Favored a Quick Sale Over Pursuit of Long Term Growth Strategies and Hired A Conflicted Financial Advisor**

45. In the late spring of 2012, the Company approached certain OEMS regarding an exclusive arrangement to be the Company's strategic partner regarding the FBM (floating by the minute), short trip, one way service. The Company contemplated that the arrangement would involve a significant minority investment in the company to assist the company in meeting the intensive capital requirements of launching this new service.

46. Following discussions with several OEMs, the Company received indications of interest from multiple OEMs and eventually received a non-binding letter of intent from the OEM Potential Investor proposing a strategic relationship regarding the supply of a specific vehicle platform for use in the FBM service, technology integration between the vehicle platform and the company's technology, joint marketing and promotional activities and payment of a program fee by the OEM Potential Investor and also proposing a significant minority investment in the company by the OEM Potential Investor.

47. At a Board meeting on September 19, 2012, the Board authorized the Company's management to pursue the relationship with the OEM Potential Investor.

48. The Board, at that time, was also considering pursuing a strategic relationship with a major rental car company to serve longer trip needs and to further

bolster the company's balance sheet through a minority investment in parallel to the proposed investment by the OEM Potential Investor.

49. Shortly after receiving the indication of interest from OEM Potential Investor, Griffith continued speaking with executives from other companies regarding a strategic partnership with Zipcar. By the end of September 2012, Griffith spoke with Ronald Nelson ("Nelson"), the Chairman and CEO of Avis, and the CEO of another party identified in the Proxy as Party A. Both Nelson and Party A's CEO informed Griffith that their respective companies would be interested a strategic relationship with Zipcar.

50. Several weeks later, on October 16 and 17, 2012, Griffith attended meetings with Avis and Party A, respectively, to discuss strategic partnerships. At these meetings, however, representatives from Avis and Party A indicated that they were also interested in "a potential business combination and acquisition of Zipcar." Additionally, on October 18, 2012 the CEO of another party, identified in the Proxy as Party B, spoke with Griffith concerning a strategic relationship or partnership but indicated that Party B's "principal interest [was] in a strategic combination with and acquisition of the [C]ompany." By October 22, 2012, Avis and Party A also expressed their "preference" to acquire the Company instead of forming a strategic partnership.

51. Soon after these parties indicated that they might be interested in an acquisition of Zipcar, rather than a strategic relationship, the Board did an about-face, abandoning its plans for long-term growth of the Company in favor of cashing out quickly. Although the Company continued discussions with the OEM Potential Investor,

it focused on a potential sale, knowing that the announcement of a change of control transaction would likely preclude a transaction with the OEM Potential Investor.

52. The Company quickly hired Morgan Stanley, a highly conflicted financial advisor, to aid in pursuit of a sale. In the two years preceding the execution of the Merger Agreement, Morgan Stanley had received approximately \$34 million in fees from Avis. Zipcar, had ample opportunity to choose other investment banks with experience in the industry as Lazard, Barclays, Bank of America Merrill Lynch, Deutsche Bank, J.P. Morgan, and Goldman, Sachs & Co. all of which recently worked on acquisitions in the automobile industry. Yet the Company chose the conflicted Morgan Stanley.

53. Unsurprisingly, Morgan Stanley aided the Board in moving quickly towards a sale of the Company to Avis, rather than pursuing the strategic relationship with the OEM Potential Investor. The Company had provided Morgan Stanley with financial projections for the FBM model, along with probability weightings for each. Even assuming modest success of the program, management projected that with 15 cities assumed to be launched within six years, annual revenues of \$151.3 million, net income of \$13.8 million and \$13.0 million of unlevered free cash flow would be achieved in 2022. This would mean a 16% increase for projected revenue in 2022.

54. Pursuing a sale, however, meant that Morgan Stanley would be a paid a still unspecified fee contingent on the consummation of a merger. Pursuing a sale also meant that the Individual Defendants could quickly cash out their substantial equity interests in the Company.

55. Rather than seek to maximize shareholder value through pursuing a long-term growth strategy with the OEM Potential Investor, the Board put their own financial interests ahead of the Company's stockholders and agreed to sale, ensuring their ability to cash-out quickly for substantial gains.

### III. The Substantial Conflicts of Interests of the Individual Defendants in a Sale

56. As a result of the Proposed Transaction, a number of the Individual Defendants will profit quite handsomely as demonstrated by the table below:

Name	Common Stock		Outstanding Options (Vested and Unvested)		Total Value
	Shares	Consideration	Shares	Consideration	
<b><i>Non-Employee Directors:</i></b>					
Stephen M. Case	7,852,175(2)	\$ 96,189,144	8,768(1)	\$ 13,152	\$ 96,202,296
Donn Davis	62,500	\$ 765,625	8,768(1)	\$ 13,152	\$ 778,777
Edward P. Gilligan	—	\$ —	35,074(1)	\$ 52,611	\$ 52,611
William W. Helman	2,144,138(3)	\$ 26,265,691	8,768(1)	\$ 13,152	\$ 26,278,843
Robert C. Kagle	2,592,856(4)	\$ 31,762,486	8,768(1)	\$ 13,152	\$ 31,775,638
John F. Kenny, Jr.	34,674(5)	\$ 424,757	48,018(1)	\$ 150,920	\$ 575,676
John J. Mahoney, Jr.	69,348(6)	\$ 849,513	41,418(1)	\$ 54,618	\$ 904,131
Margaret Whitman	69,348(7)	\$ 849,513	8,768(1)	\$ 13,152	\$ 862,665
<b><i>Executive Officers:</i></b>					
Scott W. Griffith	572,500	\$ 7,013,125	875,000(1)	\$ 6,891,250	\$ 13,904,375

57. Defendant Case beneficially owns approximately 7,853,818 shares of Zipcar stock through his personal holdings and the Revolution entities, and as noted above, will gross approximately \$96 million from the Proposed Transaction.

58. Defendant Helman, representing venture capital investor Greystone on the Board, will gross approximately \$26 million from the Proposed Transaction.

59. Defendant Kagle, representing venture capital investor Benchmark on the Board, will gross approximately \$31 million from the Proposed Transaction.

60. Zipcar's CEO, Defendant Griffith, who was instrumental in negotiating a sale of the Company, is set to receive approximately \$14 million as a result of the Proposed Transaction.

61. Additionally, under the terms of the Merger Agreement, upon consummation of the Proposed Transaction, Merger Sub will merge with and into Zipcar, whereupon the corporate existence of Merger Sub will terminate and the Zipcar will continue as the surviving company. Zipcar will thereafter operate as a wholly-owned subsidiary of Avis. Current top executives of Zipcar are expected to remain in place after the transaction closes. Accordingly, Defendant Griffith will be guaranteed continuing employment at Zipcar after the acquisition

#### **IV. The Board Agreed to a Transaction That Significantly Undervalues the Company**

62. Despite the Company's excellent financial performance, including considerable revenue growth, a 14% increase in its membership since the fourth quarter of 2011, and expansion into new domestic and international markets, on January 2, 2013 the Company announced that it had entered into a definitive agreement where Avis will acquire all of the outstanding shares of the Company for \$12.25 per share in cash.

63. The proposed consideration is inadequate and significantly undervalues the Company for the benefit of short-term profit at the expense of Zipcar stockholders' long-term gain.

64. Zipcar stock had been trading well in excess of the Proposed Transaction offer price of \$12.25. In fact, as recently as April 24, 2012, Zipcar's stock closed at

\$13.83 per share. Additionally, the Company's stock closed at \$16.14 on February 13, 2012.

65. Also, on December 24, 2012, the reputable financial website SeekingAlpha.com published an article titled "*5 Stocks Ready To Swing Up For A Diversified Portfolio*" that discussed how Zipcar was poised for growth. The article stated, in relevant part:

### **Zipcar**

Zipcar is a different take on the typical car rental business that everyone is used to. Instead of going to a car lot and renting a car, you become a member of Zipcar which allows you an allowance of driving time per month. After your allowance is used up, it's similar to other car renters in that you pay a fee based on the number of days you keep the car.

How Zipcar really separates itself from other renters is that there's no need for on-site employees. Cars are parked at Zipcar locations placed strategically throughout big cities and near universities. Customers rent through their computer, by phone, or using Zipcar's apps for Android and iPhones. Once the rental is made, their Zipcard (given to all Zipcar members) becomes the key to unlock a particular car.

Zipcar is still a young company with limited availability which means it has a lot of room for growth. While the company was heavily affected in the short-term by Hurricane Sandy, its long-term outlook is good. In fact, last week was the first time since IPO that the 25 day moving average moved above the 50 day moving average. This may signal a change in the trend.

Zipcar has yet to make a net profit in an operating year, however the company has moved closer to the black every year. It trades at 75 times earnings which is exceptionally high, however this is not unheard of for young, high growth companies.



65. By selling the Company at this inopportune time for the inadequate price of \$12.25 per share, Defendants are wresting away the opportunity for public shareholders to enjoy the benefits of their investment.

66. The inadequacy of the Merger Consideration is obvious when the Proposed Transaction is viewed in light of the Company's recent financial results. For example, the estimated Merger Consideration of \$500 million is less than two times the Company's estimated 2012 revenue. Zipcar also compares well to both Avis and Hertz. The Company has a long-term debt to equity ratio of 0.5, compared to 5 for Hertz and 13.6 for Avis. Zipcar's price to book value ratio is 1.4, compared to 2.6 for both Hertz and Avis.

67. Likewise, the Merger Consideration undervalues Zipcar's plans for expansion into new product lines such as Zipcar for businesses (Z4B) and government (Z4G), limited no annual fee services now being tested in Canada, and expansion into new geographic markets.

68. In addition, the Proposed Transaction consideration fails to adequately compensate Zipcar's stockholders for the significant synergies created by the merger. The Proposed Transaction is a strategic merger for Avis and as stated in the Company's January 2, 2013 press release, Avis:

[E]xpects to generate \$50 to \$70 million in annual synergies as a result of the transaction. In particular Avis [] expects significant cost reductions across the fleet life cycle (from procurement to operations and maintenance to disposition, as well as financing), in addition to savings from eliminating Zipcar's public-company costs. Avis [] also plans to achieve substantial cost savings by increasing fleet utilization across the two companies.

69. Despite the significant synergies inherent in the transaction for Avis, however, the Board failed to secure a fair price for the Company, either for the intrinsic value of its assets or the value of the Company's assets to Avis.

67. Avis is poised to reap immediate and substantial benefits from the Zipcar acquisition. The acquisition is expected to provide Avis with the leading share of the car share market. Indeed, analysts have commented on the substantial benefits to Avis. *Seeking Alpha's* Delian Naydenov stated that "low debt levels and book value make Zipcar an excellent acquisition target. Even at a 50% premium, Zipcar's book value is below that of Avis and Hertz." Fred Lowrance, an analyst with Avondale Partners LLC, stated that "from day one, Avis is going to have a profitable business." Indeed, Mr.

Naydenov noted that the Merger Consideration was an excellent value for Avis in light of the Company's recent financial performance and concluded that a bidding war with other suitors would not be surprising.

70. As the foregoing demonstrates, Zipcar is continuing to grow its core business, expand into new product lines and geographical markets, and is on track to report its first full year of profitability in 2012. Avis saw this as an opportune time to secure the acquisition of a highly complementary company with a temporarily depressed stock price that will provide great synergistic value. Zipcar's largest shareholders and insiders also recognized the opportunity to cash out their interests, including venture capital investments made before the Company went public, to a willing suitor at the expense of Zipcar shareholders. Unless enjoined, consummation of the Proposed Transaction will act to preclude Zipcar shareholders from enjoying the benefits of the Company's strong financial performance, strategic initiatives and prosperous future

## **V. The Preclusive Deal Protection Devices**

71. In addition, as part of the Merger Agreement, defendants agreed to certain onerous and preclusive deal protection devices that operate conjunctively to make the Proposed Transaction a *fait accompli* and ensure that no competing offers will emerge for the Company.

72. Section 5.6(a) of the Merger Agreement includes a "no solicitation" provision barring the Company from soliciting interest from other potential acquirers in order to procure a price in excess of the amount offered by Avis. Section 5.6(a) demands

that the Company terminate any and all prior or on-going discussions with other potential acquirers.

73. Pursuant to Section 5.6(b) of the Merger Agreement, should an unsolicited bidder submit a competing proposal, the Company must notify Avis of the bidder's identity and the terms of the bidder's offer. Thereafter, Section 5.6(d) demands that should the Board determine to enter into a superior competing proposal, it must grant Avis three (3) business days in which the Company must negotiate in good faith with Avis (if Avis so desires) and allow Avis to amend the terms of the Merger Agreement to make a counter-offer so that the competing proposal would "cease to constitute a Superior Proposal." In other words, the Merger Agreement gives Avis access to any rival bidder's information and allows Avis a free right to top any superior offer simply by matching it. Accordingly, no rival bidder is likely to emerge and act as a stalking horse, because the Merger Agreement unfairly assures that any "auction" will favor Avis and piggy-back upon the due diligence of the foreclosed second bidder.

74. The Merger Agreement also provides that Zipcar must pay Avis a termination fee of approximately \$16.8 million if the Company decides to pursue the competing offer, thereby essentially requiring that the competing bidder agree to pay a naked premium for the right to provide the stockholders with a superior offer.

75. Moreover, in connection with the Proposed Transaction, three holders of greater than 5% of the Company's issued and outstanding shares of common stock, as well as the Company's directors and officers, who collectively own approximately 32% of Zipcar's common stock, have entered into voting agreements to vote in favor of the

Proposed Transaction with Avis. Accordingly, approximately 32% of Zipcar's common stock is already "locked up" in favor of the Proposed Transaction.

76. Ultimately, these preclusive deal protection provisions illegally restrain the Company's ability to solicit or engage in negotiations with any third party regarding a proposal to acquire all or a significant interest in the Company. The circumstances under which the Board may respond to an unsolicited written bona fide proposal for an alternative acquisition that constitutes or would reasonably be expected to constitute a superior proposal are too narrowly circumscribed to provide an effective "fiduciary out" under the circumstances.

## **VI. The Company's Proxy Omits Material Information**

77. To make matters worse, on January 22, 2013 the Company filed its Proxy with the SEC and disseminated it to the Company's public stockholders in an attempt to convince stockholders to vote in favor of the Proposed Transaction. The Proxy fails to provide the Company's stockholder with material information necessary for them to make an informed decision regarding whether to vote their shares in favor of the Proposed Transaction or seek appraisal.

### **A. Material Omissions Concerning the Projections Prepared by the Company's Management**

78. The Proxy states that Zipcar's management provided Morgan Stanley with three sets of financial projections for the FBM model, yet fails to disclose the detailed year-by-year projections for these three sets.

79. The Proxy fails to disclose projected financial information with respect to synergies expected to be realized from the combination of Zipcar and Avis, including any

present-value calculations as well as any calculations pertaining to the per-share impact on Zipcar's value.

80. The Proxy also fails to disclose what "acquisition and integration costs" Morgan Stanley factored into the projections of the Company's Adjusted EBITDA. Without further disclosure regarding whether these "acquisition and integration costs" pertain to the Proposed Transaction or the financial impact of future acquisitions, this statement is misleading.

**B. Material Omissions Concerning Morgan Stanley's Financial Analyses**

81. The Proxy fails to disclose certain data and inputs underlying the financial analyses supporting the fairness opinion of the Board's financial advisor, Morgan Stanley, including:

(a) With respect to the *Comparable Company Analysis*, the multiples observed for each of the comparable companies, and the items for which Morgan Stanley adjusted depreciation and amortization;

(b) With respect to the *Precedent Transactions Analysis*, the transaction dates, the transaction values, and the LTM EBITDA multiple observed for each transaction;

(c) With respect to the *Discounted Cash Flow Analysis*, how Morgan Stanley treated "investments accounted for under the equity method" in the calculation of Zipcar's aggregate value and/or the corresponding calculation of equity value, whether the discount rate of 10.9% was based on WACC or cost of equity, and the basis for using the same discount rate for the Discounted Equity Value Analysis;

(d) With respect to the *Discounted Equity Value Analysis*, Morgan Stanley's basis for failing to add the present value of dividends prior to 2021, and whether the discount rate of 10.9% was based on WACC or cost of equity; and

(e) With respect to the *Premiums Paid Analysis*, Morgan Stanley's basis for determining the presence of "information or speculation" that caused and adjustment in premium, and the percentage of transaction that required such an adjustment.

**C. Material Omissions Concerning the Process**

82. The Proxy fails to disclose the terms of the letter of intent sent to Zipcar by the OEM Potential Investor.

83. The Proxy fails to disclose the scope of authority given to the independent Committee, and its powers and limitations.

84. The Proxy fails to disclose what type of companies Party A and Party B were.

85. The Proxy states that the "Committee received information from Morgan Stanley about its prior engagements by Avis [] and other potentially interested parties," but fails to disclose the extent of Morgan Stanley's disclosures as of November 11, 2012 regarding its prior engagements.

86. In light of the substantial conflicts Morgan Stanley has with Avis, the Proxy fails to disclose whether the Committee considered a financial advisor with fewer conflicts.

87. The Proxy further fails to disclose whether Morgan Stanley performed work for the Company in the past, and if so, the type of services performed and the compensation received.

88. The Proxy fails to provide the specific amount of compensation to be received by Morgan Stanley in connection with the Proposed Transaction.

89. On November 19, 2012 through December 2012, Morgan Stanley and Griffith “reach[ed] out to seven additional potential acquirers to gauge each party’s interest in an acquisition for the [C]ompany.” The Proxy fails to disclose the criteria for identifying potential acquirers, the responses of each inquirer, and the input that the Company and Morgan Stanley each had in identifying and eventually contacting potential purchasers.

90. The Proxy fails to disclose whether the standstill agreement entered into by Party B on November 16, 2012 would terminate upon announcement of a merger or tender offer.

91. The Proxy fails to disclose Avis’s basis for determining that Zipcar should be operated on a largely standalone basis resulting in Avis lowering its previous offer.

92. The Proxy discloses that following the consummation of the Proposed Transaction, Defendant Griffith will have continued employment with the surviving company, but fails to disclose when discussions regarding his continued employment took place.

93. Accordingly, Plaintiff seeks injunctive and other equitable relief to prevent the irreparable injury that Company stockholders will continue to suffer absent judicial intervention.

## **CLAIMS FOR RELIEF**

### **COUNT I Breach of Fiduciary Duties (Against All Individual Defendants)**

94. Plaintiffs repeat all previous allegations as if set forth in full herein.

95. The Individual Defendants have in bad faith violated their fiduciary duties of care and loyalty owed to the public stockholders of Zipcar.

96. The Individual Defendants' recommendation of the Proposed Transaction will result in a change of control of the Company, which imposes heightened fiduciary responsibilities to maximize Zipcar's value for the benefit of the stockholders and requires enhanced scrutiny by the Court.

97. The Individual Defendants have breached their fiduciary duties of care and loyalty owed to the stockholders of Zipcar because, among other reasons:

(a) they failed to take steps to maximize the value of Zipcar to its public stockholders and put their own financial interests ahead of the stockholders' by favoring a sale over an option for long-term strategic growth;

(b) they took steps to avoid competitive bidding by entering into voting agreements and agreeing to preclusive deal protection provisions; and

(c) they failed to properly value Zipcar.

98. As a result of the Individual Defendants' breaches of their fiduciary duties, Plaintiffs and the Class will suffer irreparable injury in that they have not and will not receive their fair portion of the value of Zipcar's assets and will be prevented from benefiting from a value-maximizing transaction.

99. Unless enjoined by this Court, the Individual Defendants will continue to breach their fiduciary duties owed to Plaintiffs and the Class, and may consummate the Proposed Transaction, to the irreparable harm of the Class.

100. Plaintiffs and the Class have no adequate remedy at law.

**COUNT II**  
**Breach of Fiduciary Duty – Disclosure**  
**(Against Individual Defendants)**

101. Plaintiffs repeat all previous allegations as if set forth in full herein.

102. The fiduciary duties of the Individual Defendants in the circumstances of the Proposed Transaction require them to disclose to Plaintiffs and the Class all information material to the decisions confronting Zipcar stockholders.

103. As set forth above, the Individual Defendants have breached their fiduciary duty through materially inadequate disclosures and material omissions relating to the Proposed Transaction.

104. As a result, Plaintiffs and the Class members are being harmed irreparably.

105. Plaintiffs and the Class have no adequate remedy at law.

**COUNT III**  
**Aiding and Abetting**  
**(Against Avis and Merger Sub)**

106. Plaintiffs repeat all previous allegations as if set forth in full herein.

107. As alleged in more detail above, defendants Zipcar, Avis, and Merger Sub have aided and abetted the Individual Defendants' breaches of fiduciary duties.

108. As a result, Plaintiffs and the Class members are being harmed.

109. Plaintiffs and the Class have no adequate remedy at law.

**WHEREFORE**, Plaintiffs demand judgment against defendants jointly and severally, as follows:

(A) declaring this action to be a class action and certifying Plaintiffs as the Class representative and their counsel as Class counsel;

(B) enjoining, preliminarily and permanently, the Proposed Transaction;

(C) in the event that the Proposed Transaction is consummated prior to the entry of this Court's final judgment, rescinding it or awarding Plaintiffs and the Class rescissory damages;

(D) directing that defendants account to Plaintiffs and the other members of the Class for all damages caused by them and account for all profits and any special benefits obtained as a result of their breaches of their fiduciary duties;

(E) awarding Plaintiffs the costs of this action, including a reasonable allowance for the fees and expenses of Plaintiffs' attorneys and experts; and

(F) granting Plaintiffs and the other members of the Class such further relief as the Court deems just and proper.

Dated: January 29, 2013

**RIGRODSKY & LONG, P.A.**

By: /s/ Brian D. Long

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