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Case No. 2020-0763-

IN THE COURT OF CHANCERY IN THE STATE OF DELAWARE

CONRAD DOATY, On Behalf of Himself and All Others Similarly Situated, Plaintiff, v. NOAH BRESLOW, DANIEL S. HENSON, CHANDRA DHANDAPANI, BRUCE P. NOLOP, MANOLO SÁNCHEZ, JANE J. THOMPSON, RONALD F. VERNI, AND NEIL E. WOLFSON, Defendants.	C.A. No. ___________________

VERIFIED CLASS ACTION COMPLAINT

Plaintiff Conrad Doaty ("Plaintiff"), through undersigned counsel, brings this stockholder class action on behalf of himself and the holders of the common stock of On Deck Capital, Inc. ("On Deck" or the "Company") and against the members of the Board of Directors (as defined herein) of On Deck for breaching their fiduciary duties arising out of their efforts to effectuate the proposed merger of the Company with Enova International, Inc. ("Enova") (the "Proposed Transaction" or "merger").

The allegations of this Complaint are based on Plaintiff's knowledge as to himself, and on information and belief based upon, among other things, the investigation of counsel and publicly available information, as to all other matters.

NATURE OF THE ACTION

1. On the heels of a withhold-the-vote campaign waged by activist investors, and a declining stock price due to volatility in the market, On Deck's Board engaged in a fire sale of the Company resulting in a demonstrably unfair price. In facilitating the merger, the Board authorized the filing of a Form S-4 Registration Statement (the "Registration Statement") with the Securities and Exchange Commission ("SEC") that omitted information, relied upon by the Board and bidders, that is material to stockholders. Should the Board not remedy the deficient Registration Statement prior to the vote on the merger, Plaintiff and the other common stockholders of the Company will face irreparable injury. Accordingly, Plaintiff seeks to enjoin the Proposed Transaction until the information outlined below is disclosed.

2. On July 28, 2020, On Deck entered into an agreement and plan of merger (the "Merger Agreement"), pursuant to which Energy Merger Sub Inc., an indirect wholly owned subsidiary of Enova ("Merger Sub"), will merge with and into On Deck, with On Deck continuing as the surviving corporation. Under the terms of the Merger Agreement, On Deck stockholders will receive ***only*** $0.12 cents per share in cash and 0.092 of a share of Enova common stock for each share of On Deck held. (the "Merger Consideration"). Upon completion of the transaction, On Deck stockholders will own approximately 16.7% of the combined entity, with

Enova stockholders owning approximately 83.3%.

3. On August 25, 2020, in order to convince On Deck's public common stockholders to vote in favor of the merger, the Board authorized the filing of the Registration Statement. The Registration Statement contains material omissions concerning: (i) the financial projections prepared by the Company; (ii) the Tangible Book Value for the Company; and (iii) the confidentiality agreements entered into by other interested parties and whether they contained 'Don't Ask, Don't Waive' ("DADW") provisions.

4. The stockholder vote will be scheduled in the coming weeks, as the Proposed Transaction is expected to close in the fourth quarter of 2020 (the "Stockholder Vote"). It is imperative that the material information that has been omitted from the Registration Statement is disclosed to the Company's stockholders prior to the Stockholder Vote so they can properly determine whether to vote for or against the Proposed Transaction.

5. For these reasons, and as set forth in detail herein, Plaintiff asserts claims against Defendants for breaches of their fiduciary duties. Plaintiff seeks to enjoin Defendants from taking any steps to consummate the Proposed Transaction unless and until the material information discussed below is disclosed to On Deck's public common stockholders sufficiently in advance of the upcoming Stockholder Vote or, in the event the Proposed Transaction is consummated, to recover damages

resulting from the Defendants' misconduct.

PARTIES

8. Plaintiff Conrad Doaty is, and has been at all relevant times, the owner of On Deck common stock.

9. Defendant Noah Breslow is, and has been at all relevant times, the Company's Chief Executive Officer and a director of On Deck.

10. Defendant Daniel S. Henson is, and has been at all relevant times, a director of On Deck.

11. Defendant Chandra Dhandapani is, and has been at all relevant times, a director of On Deck.

12. Defendant Bruce P. Nolop is, and has been at all relevant times, a director of On Deck.

13. Defendant Manolo Sánchez is, and has been at all relevant times, a director of On Deck.

14. Defendant Jane J. Thompson is, and has been at all relevant times, a director of On Deck.

15. Defendant Ronald F. Verni is, and has been at all relevant times, a director of On Deck.

16. Defendant Neil E. Wolfson is, and has been at all relevant times, a director of On Deck.

17. The defendants identified in paragraphs 8 through 15 are collectively referred to herein as the "Board" or the "Defendants".

RELEVANT NON-PARTIES

18. On Deck is a Delaware corporation with its principal executive offices located at 1400 Broadway, 25th Floor, New York, NY 10018. The Company's common stock trades on the NYSE under the ticker symbol "ONDK." On Deck is an online lending business, founded in 2006 and which helped pioneer the use of data analytics to make real-time lending decisions and deliver financing to small businesses online. Since inception, On Deck has provided over $13 billion in loans to customers in 700 different industries across the United States, Canada and Australia.

19. Enova will be acquiring On Deck in the Proposed Transaction. Enova is a technology and analytics company focused on providing online financial services. In 2019, Enova extended approximately $2.2 billion in credit or financing to borrowers.

20. Energy Merger Sub Inc., an indirect wholly owned subsidiary of Enova ("Merger Sub"), will merge with and into On Deck, with On Deck continuing as the surviving corporation

THE DEFENDANTS' FIDUCIARY DUTIES

21. By reason of the Defendants' positions with the Company as officers

and/or directors, they are in a fiduciary relationship with Plaintiff and the other public stockholders of On Deck and owe them a duty of care, loyalty, good faith, candor, and independence.

22. By virtue of their positions as directors and/or officers of On Deck, the Defendants, at all relevant times, had the power to control and influence On Deck, did control and influence On Deck, and caused On Deck to engage in the practices complained of herein.

23. In accordance with their duties of loyalty and good faith, the Defendants are obligated to refrain from: (a) failing to disclose all material information regarding the Proposed Transaction; (b) participating in any transaction where the Defendants' loyalties are divided; (c) participating in any transaction where the Defendants receive, or are entitled to receive, a personal financial benefit not equally shared by the public stockholders of the corporation; and/or (d) unjustly enriching themselves at the expense or to the detriment of the public stockholders.

24. Plaintiff alleges herein that the Defendants, separately and together, in connection with the Proposed Transaction, are knowingly or recklessly violating their fiduciary duties, including their duties of care, loyalty, good faith, and independence owed to the Company.

CLASS REPRESENTATION ALLEGATIONS

25. Plaintiff brings this action on behalf of himself and as a class action pursuant to Rule 23 of the Rules of the Court of Chancery on behalf of all other holders of On Deck common stock who are being and will be harmed by Defendants' actions described below (the "Class"). Excluded from the Class are Defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated with any of the Defendants.

26. This action is properly maintainable as a class action because:

a. The Class is so numerous that joinder of all members is impracticable. On Deck has in in excess of 77 million shares outstanding. The actual number of public stockholders of On Deck will be ascertained through discovery.

b. There are questions of law and fact that are common to the Class, including:

i. whether the Defendants have breached their fiduciary duties with respect to Plaintiff and the other members of the Class in connection with the Proposed Transaction;

ii. whether the Defendants have breached their fiduciary duty to obtain the best price available for the benefit of Plaintiff

and the other members of the Class in connection with the Proposed Transaction;

iii. whether the Defendants have breached their fiduciary duty to disclose fully and fairly all material information within the Board's control in connection with the Proposed Transaction;

iv. whether Plaintiff and other members of the Class would suffer irreparable injury were the Proposed Transaction consummated; and

v. whether Plaintiff and other members of the Class are entitled to damages as a result of the Defendants' wrongful conduct.

25. Plaintiff is an adequate representative of the Class, has retained competent counsel experienced in litigation of this nature, and will fairly and adequately protect the interests of the Class.

26. Plaintiff's claims are typical of the claims of the other members of the Class and Plaintiff does not have any interests adverse to the Class.

27. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual

members of the Class, which would establish incompatible standards of conduct for the party opposing the Class.

28. Defendants have acted on grounds generally applicable to the Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole.

SUBSTANTIVE ALLEGATIONS

A. Background of the Proposed Transaction

27. After approximately a two month-sales process, followed by one month of diligence, the Board voted to approve the merger with Enova on July 28, 2020. That same day, the Board authorized the announcement of merger, the press release stated in relevant part as follows:

> **Enova to Acquire On Deck to Create a Leading FinTech Company Serving Consumers and Small Businesses**
>
> CHICAGO and NEW YORK, July 28, 2020 /PRNewswire/ -- Enova International (NYSE: ENVA) and On Deck (NYSE: ONDK), today announced that they have entered into a definitive agreement under which Enova will acquire all outstanding shares of On Deck in a cash and stock transaction valued at approximately $90 million. The implied price of $1.38 per On Deck share reflects a 43.6% premium to its 90-day volume weighted average price and a 90.4% premium based on the closing price of $0.73 per On Deck share on July 27, 2020.
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> This transaction brings together two complementary, market-leading businesses combining world-class capabilities in consumer and small business online lending. Enova and On Deck are both innovators that have helped revolutionize online lending, using data and advanced analytics to simplify and expand access to financial services for underserved borrowers, while providing an unparalleled customer

> experience. Enova will add the On Deck brand, products and services to its existing industry-leading portfolio to create a combined company with significant scale and diverse product offerings in consumer and small business market segments that banks and credit unions have difficulty serving. Together, Enova and On Deck had $4.7 billion in originations in 2019 and have served approximately 7 million customers.
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> "This strategic transaction, which brings together two FinTech leaders, is a great opportunity for customers, employees and shareholders of both companies," said David Fisher, CEO of Enova. "Together, our companies will be stronger because of the complementary strengths and synergies of our businesses. Acquiring a premier online small business lender and its ODX bank platform, and welcoming its innovative and talented team to Enova, will increase our scale and resources, providing us with opportunities to accelerate growth in our increasingly diversified portfolio as we continue to execute on our strategy to create long-term value for all of our stakeholders."
>
> Noah Breslow, On Deck Chairman and CEO said, "I am proud of the business we have built and the more than $13 billion of financing we have provided to underserved small businesses since our founding in 2006. Following an extensive review of our strategic options, we believe this is the right path forward for our customers, employees and shareholders. Joining forces with Enova, a highly-respected and well-capitalized leader in online lending, and leveraging our combined scale and strengths, provides the best opportunity for our long-term success."

28. The Merger Consideration represents a woefully inadequate exchange for stockholders. The implied value of the Merger Consideration was approximately $1.38 per share as of June 30, 2020. This represents a massive ***70.7% discount*** to the Company's 52-Week high stock price, and a significant discount to the pre-COVID-19 trading levels above $4 per share. Should the merger be consummated, stockholders who bought in at this price will never be able to recoup the value of

their investment, and instead will be granted pennies per share and a diluted position in Enova.

29. Prior to the COVID-19 Pandemic ("Pandemic"), the Company's financial outlook was improving quarter over quarter. Analysts remained bullish on the Company, especially as the market cap remained a discount to book value, indicating unlocked intrinsic value for the Company's shares. Indeed, by all indications from executives, the Company was posed for tremendous financial growth. By example, the Company's Chief Financial Officer stated in the Q3 2019 earnings call on October 24, 2019 that:

> Net income for the quarter was $9 million or $0.11 per diluted share. This quarter includes a $2.8 million discrete tax benefit related to research and development costs in prior years. Excluding that benefit and the roughly $2 million of stock-based compensation expense, our adjusted net income this quarter was $8 million or $0.10 per diluted share.
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> …
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> Getting into the details. We continued to grow the portfolio. Portfolio assets grew 10% from last year and 2% sequentially to $1.2 billion. While we saw growth in both term loans and lines of credit, the growth was primarily driven by locks. This growth reflects strong demand for this offering as well as the benefit from the lengthening of amortization periods that occurred over the past year.
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> …
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> Likewise, our strategy to slightly lengthen term loan maturities should bolster the growth rates in that portfolio next year. We also grew revenue. Gross revenue of $113 million came in slightly above our guidance range reflecting increased interest income which grew at a

rate commensurate with the sequential and year-over-year portfolio growth.

30. The Company continued to experience growth into 2020, and analysts increased their price targets. As stated by the Company's Chief Executive Officer and Defendant, Noah Brewlow, in an earnings call for Q4 2019 on February 11, 2020:

> We have a lot to be proud of in 2019. We grew the portfolio. We originated $2.5 billion of loans and finance receivables and grew the portfolio 8% to $1.3 billion. Since our inception, we have now originated over $13 billion of loans, solidifying our position as the leading online lender to small businesses. We improved our funding profile.
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> …
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> And we nearly doubled the number of customers enrolled in our Instant Funding feature. As you may recall, Instant Funding delivers a best-in-class customer experience by using the debit card network to fund line of credit draws in [indiscernible].
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> …
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> In summary, we exited 2019 a much stronger company. Our product offerings are more fulsome with expanded terms and features; our distribution model remains diversified with three distinct origination channels across which we can allocate resources based on market dynamics; our credit decisioning is more dynamic and targeted allowing us to quickly respond to changes in the environments; our growth strategies are taking hold both domestically and abroad; and our talent pool is deeper and stronger than ever with seasoned industry professionals well equipped to lead On Deck into the future.

31. Despite the Company's improving prospects, the short-term financial outlook of the Company took a turn as the Pandemic began to spread across the

United States. In March 2020, the Company's stock price declined due to overall market volatility and immediate uncertainty concerning its business in consumer and small business loans. The Company then drew down on its credit facility and began contacting investment banks to act as a financial advisor in connection with the Company's review of strategic alternatives. On March 23, 2020, On Deck executed an engagement letter with Evercore Group L.L.C. ("Evercore") to fulfill this role as a financial advisor, after institution investors began clamoring for a sale.

32. Thereafter, on March 26, 2020, the United States became the hardest hit country by the Pandemic, with more than 80,000 confirmed cases and more than 1,000 deaths. In light of the emerging, challenging economic environment and the worsening financial outlook, On Deck management commenced a review of potential financing alternatives to replace its credit facility and began contacting potential sources of alternative financing, including sources of mezzanine financing. Throughout the merger process, On Deck management held negotiations with multiple alternative financing sources and reported the status of such negotiations on an ongoing basis to the On Deck Board. The results of the negotiations are undisclosed in the Registration Statement, and the disclosure of this information is important, as will be discussed below.

33. Prior to the spread of the Pandemic, the Company had been entertaining strategic alternatives for some time. As far back as the first half of 2019, On Deck

engaged in discussions to acquire, in an all-stock transaction, a state-chartered banking entity referred to as Party A in the Registration Statement. Likewise, on February 28, 2020, On Deck received an unsolicited, nonbinding, preliminary indication of interest from a potential counterparty referred to as Party B, a strategic buyer backed by a financial sponsor, to acquire 100% of On Deck in an all-cash transaction. These discussions were terminated as the Pandemic spread, as it became a plainly unfavorable environment to engage in a sales process.

34. Strikingly, the Company, instead of terminating the sales process and focusing on methods to endure the economic climate of 2020, doubled down on their efforts to sell. In late March, as cases of COVID-19 cases surged within the United States, the Board instructed Evercore to begin contacting potential counterparties.

35. The Company's inexorable march towards a merger was the result of tactics employed by activist investors. With the failure of Party A and Party B to consummate a transaction in early 2020, and with a declining stock price, activists ramped up pressure on the Board to immediately sell the Company so that they could recoup their investment. One activist investor, Voce Capital LLC ("Voce"), stated in a public letter to stockholders, dated April 17, 2020, that "on March 13, we presented management with detailed proposals for immediate steps, especially significant cost reductions and a culling of strategic priorities; over a month later, we've seen no announcements indicating that any of them have been acted upon."

Furthermore, Voce admitted to working over many months to achieve strategic priorities and that "as On Deck began to stumble earlier this year, we escalated this dialogue."

36. After the Board's failure to heed its warnings, Voce made good on their promise and escalated, waging a withhold-the-vote campaign to force the Board's hand. In Voce's April 17, 2020 letter, Voce urged stockholders to withhold their vote to reelect Defendants Noah Breslow, Jane J. Thompson, and Ronald F. Verni, stating "withholding votes in favor of each of their election this year will be stockholders' only way of holding them accountable." If enough stockholders voted against the directors, then these Defendants would be forced to resign.

37. Voce also began threatening the Board with a proxy contest following the withhold-the-vote campaign should its demands not be met, indeed, the Company implied it would have initiated a proxy contest were it not for an advance notification deadline in the Company's bylaws:

> Some may ask, "what good does voting 'no' do without a competing slate of nominees to replace the incumbents?" Having conducted many proxy contests in the past, Voce inarguably has the wherewithal to nominate and elect directors when given the opportunity. As noted, however, the Board's unreasonable advance notification deadline has made that impossible this year and the Board has banned all other forms of stockholder action, such as calling a special meeting or acting by written consent.
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> …

We therefore urge our fellow stockholders to join us in voting AGAINST all three Class III Directors by withholding votes for them on the Company's proxy card.

38. Voce's April 17, 2020 letter, was followed by public announcements and other public letters filed with the SEC. On April 24, 2020, Voce reiterated its position, stating: "dissatisfied stockholders have an alternative: Send an emphatic message that change is urgently required by voting against the three Directors standing for reelection," and again reiterated its position in a letter filed on May 4, 2020. As the holder of 1.34 million of the Company's shares, Voce's activist campaign was no doubt influential in the Board's decision to engage in a sale of the Company.

39. Unfortunately, this sort of pressure campaign is common tactic employed by activist investors. *See generally*, Leo E. Strine, Jr., Who Bleeds When the Wolves Bite?: A Flesh-and-Blood Perspective on Hedge Fund Activism and Our Strange Corporate Governance System, 126 YALE L.J.1870 (April, 2017). The Pandemic disrupted Voce's plans for the Company, and a fire sale became its only means to recoup its investment. The very public dispute turned into a desperate push for a sale—with the non-insider stockholders suffering as a result.

40. In the midst of the Pandemic, it remains a remarkably terrible time to engage in a sale of the Company. With Wall Street spooked, the price of the stock is significantly deflated. While some industries have been able to recover to pre-

Pandemic highs, others remain significantly depressed. The Company is being sold at its historic lows, at a time when strategic financing to remain a standalone company is a much more attractive offer to maximize stockholder in the long-term. The merger has been labelled a fire sale by analysts, stating that the Company is being sold for pennies.

41. Most significantly, is that it is not pressing time to sell, the Company was not facing imminent financial collapse or financial ruin. According to the Q2 2020 Earnings Call, as of July 29, 2020, On Deck has $150 million of cash and cash equivalents on hand. It has received multiple waivers of increased payments for the principal repayment under their loan obligations, and with these extensions allowing significant financial freedom to remain a standalone entity. Further, the Company was entertaining discussions to stay afloat with mezzanine debt financing and other financial instruments. Even without additional financing, On Deck has the cash on hand and has renegotiated agreements with lenders that it could remain a standalone entity even were business not to return to pre-COVID-19 levels until well into 2021.

42. Yet as a result of the frantic and unreasonable timing of the sale, the consideration offered for On Deck is woefully inadequate. Enova's management forecasts that the preliminary estimated bargain purchase gain for Enova from the Proposed Transaction will be $119,019,000, which is ***significantly higher*** than the implied aggregate value of the Merger Consideration of approximately $90 million.

Instead of receiving a premium for the intrinsic value of their shares, On Deck's stockholders will be providing a discount to Enova. The Company's stock price was artificially lower due to exigent circumstances, and the Board chose sell off the Company at a fraction of its intrinsic value, even at a fraction of its book value, in order to escape a situation which their mismanagement had created.

43. To add insult to injury, there were better significantly better offers from bidders on the table, and the Registration Statement fails to address why they did not result in a transaction. For example, Party F's proposal provided for an all-cash offer that valued On Deck between $100 and $125 million (or between $1.60 and $2.00 per share of On Deck common stock) and Party D's proposal provided for an all-cash offer that valued On Deck between $80 million and $110 million (or between $1.28 and $1.80 per share of On Deck Common Stock).

44. Instead, the Board drove the Company into the hands of a buyer which provided them with exorbitant personal compensation, continued employment, and which their largest institutional stockholders already had holdings. Dimensional Fund Advisors LP, BlackRock, Inc., and Renaissance Technologies LLC all hold greater than 5% beneficial ownership interests in both On Deck and Enova, and so even if the Exchange Ratio is unfair, those institutional investors will still benefit from seeing their positions in Enova benefitted. Non-insider stockholders, on the other hand, will not be parties to this benefit.

45. As additional incentive for the Defendants, the Board will receive exorbitant personal compensation far exceeding a fair ratio to the Merger Consideration. Despite the Company only receiving approximately $8 million in the Proposed Transaction as cash consideration for stockholders, the executive officers and directors have been promised nearly millions of dollars in severance packages, accelerated stock options, performance awards, golden parachutes and other deal devices to sweeten the offer for the Board. Defendant and Chief Executive Officer, Noah Breslow will retain his employment and move to Enova's board of directors as Vice Chairman and as part of the management team. This provides the Defendants with certain unique benefits not shared with the non-insider stockholders.

46. For good measure, in order to effectuate the Proposed Transaction, the Defendants agreed to certain restrictive and preclusive deal protection devices which impede the Company's ability to obtain a better offer or terminate the agreement. For example, the Company entered into a "No Solicitation" provision which prohibits seeking a better offer for stockholders. According to the Merger Agreement, should On Deck terminate the agreement, it shall have to pay Enova a $2.8 million dollar termination fee. As identified below, the Registration Statement omits whether other potential bidders are precluded from making a better offer by DADW provisions. Lastly, the current macro environment makes it a particularly precarious time to sell and this all but ensures no better offer will be forthcoming.

47. Piggybacking off the uncertainty of Pandemic, the Proposed Transaction may inordinately compensate Enova stockholders and reward the Defendants, all at the expense of the Company's common stockholders. Therefore, it is imperative that stockholders receive the material information (discussed in detail below) that Defendants have omitted from the Registration Statement, which is necessary for stockholders to properly exercise their corporate suffrage rights and in order to cast an informed vote on the Proposed Transaction.

B. The Registration Statement Omits Certain Material Information

48. On August 25, 2020 Defendants authorized the filing of the deficient Registration Statement with the SEC. The Defendants were obligated to carefully review the Registration Statement before it was filed with the SEC and disseminated to the Company's stockholders to ensure that it did not contain any material misrepresentations or omissions. However, the Registration Statement omits material information as follows.

49. ***First***, two sets of projections were created for use by the Board in evaluating a sale of the Company. The Registration Statement refers to these projections as Scenario 1 (which assumed, among other things, a quick economic recovery, and referred to as the "Bidder Projections") and Scenario 2 (which assumed, among other things, a slower economic recovery, and referred to as the "Fairness Opinion Projections"). The failure to include the Bidder Projections and

the financial analyses conducted on them, is a material omission in violation of Defendants' fiduciary duty.

50. On June 4, 2020, both the Bidder Projections and the Fairness Opinion Projections were created. Only the Bidder Projections were shared with potential counterparties. Indeed, throughout the merger process and up until three days before the Company entered into exclusivity with Enova, the Bidder Projections were relied upon – as evidenced by the fact that on June 25, 2020 Evercore was still circulating the Bidder Projections to potential counterparties.

51. The very first indication that the Board 'believed' the Fairness Opinion Projections ***may*** be more reliable came on July 10, 2020, after only one party remained in the bidding process and two days before the Board decided to enter into exclusivity with Enova in order to effectuate the Transaction. Two days later, on July 12, 2020, at the ***same*** meeting that a decision was made to enter exclusivity with Enova, the Board suddenly decided that the lower Fairness Opinion Projections were more realistic and directed Evercore to only use those projections in its fairness opinion. However, Evercore had already conducted preliminary financial analyses on the Bidder Projections and presented that information to the Board on July 10, 2020 and the Board relied on those preliminary financial analyses and the Bidder Projections when determining to enter exclusivity with Enova.

52. The Bidder Projections must be disclosed because the circumstances of

their preparation support the conclusion that they are reliable enough to aid stockholders in making an informed judgment. The Bidder Projections were created concurrently with the Fairness Opinion Projections only one month prior, they were used throughout the sales process, given to bidders, and given to Evercore for preliminary valuations. While the Registration Statement attributes the inclusion of the Fairness Opinion Projections and their analyses (and by implication the exclusion of the Bidder Projections) to uncertainties arising from the Pandemic, that remains a poor justification for why stockholders should not have full disclosure of information that alters the 'total mix' available. Their omission is not because of some unaccounted-for deterioration in the Company's business, but for uncertainties and challenges in the macroeconomic environment. It is because of those uncertainties that stockholders should be able to see all projected scenarios to make their own informed decisions of which scenario is most likely to occur.

53. Moreover, the Registration Statement's specific reasons for why the Board instructed Evercore to utilize the Fairness Opinion Projections, but not the Bidder Projections, are unreasonable. According to the Registration Statement, the Fairness Opinion Projections reflect: (1) the most up-to-date loan origination data; and (2) the status of negotiations with On Deck's lenders. However, according to the Company's Q2 Earnings Call, loan originations had restarted in July, which is a far cry from when loan originations were paused altogether at the time both sets of

projections were created and so would have reflected these sensitivities. Likewise, prior to the issuance of the Registration Statement, On Deck had reached an accord with their lenders to pause increases to payments on their loan agreements and had received a second limited consent extension on its debt. Therefore, the justifications provided for the Company's assertion that the Fairness Opinion Projections reflected a more realistic scenario are unreasonable.

54. For the reasons provided, pertaining to the Bidder Projections the Company must disclose: (i) the Bidder Projections; (ii) when Evercore created its preliminary financial analyses for the Bidder Projections; (iii) a fair summary of the Bidder Projection analyses; (iv) the changes in the loan origination data as of July 12, 2020; (v) the information concerning discussions with lenders as of July 12, 2020; and (vi) the results of the negotiations over financing alternatives and whether the Company had reached an agreement with financiers that would allow it to continue as a standalone entity.

55. ***Second***, concerning both sets of the projections, the Registration Statement omits the cash flow and *pro forma* projections, which both must be disclosed. Page 40 of the Registration Statement discloses that On Deck prepared internal financial forecasts and analyses for Enova and On Deck, "including projected cash flows and leverage." Yet, the Registration statement fails to include this information, opting instead to only disclose Net Revenue, Income from

Operations, and Net Income, from 2020 to 2024 (Evercore also uses the 2025E Net Income in its financial analyses, and so for these metrics, the year 2025 must also be disclosed). Courts across the country, in this circuit and in the Delaware Court of Chancery, routinely rule that cash flows are the most important financial metric for stockholders to have in a cash out merger, or like here, a mixed consideration merger where some of the consideration is in cash.

56. ***Third***, the Registration Statement fails to include critical background information that will allow stockholders to determine if the consideration offered is adequate. The Company must disclose more information concerning the Tangible Book Value for On Deck – what it consists of and how its calculated – as it is a critical metric relied upon by Evercore in its *Illustrative Price to Tangible Book Value Analysis and Selected Public Company Trading Analyses*. A detailed breakdown of Tangible Book Value will allow stockholders to decide whether the Company's assets are worth more than the consideration offered.

57. This is especially important because, as disclosed by the Registration Statement, the Tangible Book Value for the Company significantly exceeds the implied aggregate value of the Merger Consideration. The term "Tangible Book Value" is unique to the Registration Statement and does not appear in any other of the Company's SEC filings. Stockholders must have full disclosure concerning this metric in order to understand if there were other alternatives available to the

Company other than a "fire sale" merger.

58. ***Fourth and finally***, the Registration Statement states that the Company were entering strategic combination discussions with other bidders, and that 36 parties entered into confidentiality agreements. *See* Reg. Stmt. at 55. Yet, critically, the Registration Statement fails to disclose whether the bidders were subject to standstill agreements and whether they contained DADW provisions. The failure to plainly disclose the existence of DADW provisions and confidentiality agreements creates the false impression that any company could have made a superior proposal. If there are confidentiality agreements containing DADW provisions, then those parties could only make a superior proposal by breaching the agreement—since in order to make the superior proposal, they would have to ask for a waiver, either directly or indirectly. Any reasonable stockholder would deem the fact that the most likely potential topping bidders in the marketplace may be precluded from making a superior offer to significantly alter the total mix of information.

59. In sum, the omission of the above-referenced information renders the Registration Statement materially incomplete, in violation of Defendants fiduciary duties. Absent disclosure of the foregoing material information prior to the Stockholder Vote, Plaintiff will be unable to make an informed decision concerning whether to vote his shares, and he is thus threatened with irreparable harm, warranting the injunctive relief sought herein.

CAUSE OF ACTION

(Against the Defendants for Breach of Fiduciary Duties)

60. Plaintiff repeats and realleges each allegation set forth herein.

61. The Defendants have violated fiduciary duties owed to the public stockholders of On Deck.

62. As alleged herein, the Defendants have initiated a process to reach the Proposed Transaction without adequately informing themselves and failing to provide On Deck's public stockholders with all material information necessary to decide whether to approve the Proposed Transaction and its related proposals.

63. As a result of the actions of Defendants, Plaintiff and the Class will suffer irreparable injury, and that they face the irreparable injury of an uninformed Proposed Transaction. Unless the Defendants are enjoined by the Court, they will continue to breach their fiduciary duties owed to Plaintiff and the members of the Class, all to the irreparable harm of the members of the Class.

64. Plaintiff and the members of the Class have no adequate remedy at law. Only through the exercise of this Court's equitable powers can Plaintiff and the Class be fully protected from immediate and irreparable injury, which the Defendants' actions threaten to inflict.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands relief in his favor and in favor of the Class and against Defendants, as follows:

A. Declaring that this action is properly maintainable as a Class action and certifying Plaintiff as the Class representative;

B. Preliminarily and permanently enjoining Defendants and their counsel, agents, employees, and all persons acting under, in concert with, or for them from proceeding with, consummating, or closing the Proposed Transaction and related proposals unless and until the Company discloses the material information discussed above which has been omitted from the Registration Statement;

C. Directing the Defendants to account to Plaintiff and the Class for all damages suffered as a result of the wrongdoing;

E. Awarding Plaintiff, the costs and disbursements of this action, including reasonable attorneys' and experts' fees; and

F. Granting such other and further equitable relief as this Court may deem just and proper.

Dated: September 4, 2020

Respectfully submitted,

OF COUNSEL

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