



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

DMITRY VERKHOVSKY, DONNA
TOBKIN, JORDAN PEASE, and CHIA-
HUEI YAO, individually and derivatively on
behalf of HealthTap, Inc.,

Plaintiffs

v.

MDV MANAGEMENT COMPANY, LLC
d/b/a MOHR DAVIDOW VENTURES, a
Delaware limited liability company, MDV
IX, L.P., a Delaware limited partnership,
MDV ENF IX, L.P., a Delaware limited
partnership, BILL ERICSON, BILL
GOSSMAN, SEAN MEHRA, PAUL
BALDASSARI, and DAVID KOPP,

Defendants,

-and-

HEALTHTAP, INC.,

Nominal Defendant.

C.A. No. 2024-1101-NAC

**Public Version Filed
November 1, 2024**

VERIFIED STOCKHOLDER DERIVATIVE COMPLAINT

Plaintiffs Dmitry Verkhovsky, Donna Tobkin, Jordan Pease, and Chia-Huei Yao, by and through their undersigned attorneys, bring this action against Mohr Davidow Ventures and its affiliates (collectively, “MDV”) and Bill Ericson, Bill Gossman, Sean Mehra, Paul Baldassari, and David Kopp (collectively, the “Director Defendants”). The allegations in this Complaint are made upon Plaintiffs’ knowledge as to themselves and, as to all other matters, upon information and belief,

including counsel's investigation of publicly available information and documents produced by HealthTap, Inc., in response to demands made under 8 *Del. C.* § 220.

Plaintiffs allege as follows:

NATURE OF THE ACTION

1. This is an action for breaches of fiduciary duties in connection with two self-interested financing rounds orchestrated by MDV, the controlling shareholder of HealthTap, Inc. (“HealthTap” or “the Company”), and approved by the MDV-dominated board of directors, on terms grossly unfair to the Company's remaining shareholders. After the Company had gained status as a billion-dollar tech startup known for its groundbreaking telehealth platform, MDV and its hand-selected appointees to the Company's board sabotaged the Company's core business, drove down its valuation by nearly 99%, and manufactured repeated liquidity crises, all so that MDV could dilute the Company's remaining shareholders to next to nothing through successive self-interested financings. Those self-serving financings came at artificially low valuations and served as the springboard for MDV's takeover.

2. The first step in MDV's plan was to gut HealthTap's core business. When MDV, through Ericson and Gossman, took over the board and appointed Gossman as CEO in 2018, HealthTap was a leader in providing telehealth solutions to enterprise buyers—Fortune 500 companies, healthcare providers, insurance carriers, and other large players. Ericson and Gossman abruptly switched

HealthTap’s business to a direct-to-consumer model, irrationally abandoning and intentionally discontinuing lucrative contracts and revenue streams from the Company’s existing enterprise clients, such as multi-national healthcare conglomerate Bupa and others. In doing so, MDV positioned itself to acquire HealthTap’s valuable business and intellectual property for mere pennies on the dollar. The pivot that MDV forced on the Company had predictable consequences, intentionally driving the Company from a nearly [REDACTED] valuation to the brink of insolvency over a few short years. Amidst this self-made liquidity crisis, MDV and its hand-selected directors and officers notably declined to engage with potential outside funding sources. Instead, MDV and its allies at the Company forced the Company to borrow from MDV in exchange for convertible notes that would ultimately permit MDV to dilute away the other shareholders and, once its core business is restored, claim the future value of the Company for itself.

3. On October 25, 2021, the MDV-dominated board approved MDV’s conversion of more than [REDACTED] of notes into preferred stock with anti-dilution protections at an artificially low valuation, and intentionally misled other stockholders into agreeing. MDV surrounded the transaction with window-dressing—a purported “special committee” of one member and a purported “independent” new CEO and board member—but the transaction was extremely flawed, conflicted, unfair, and plainly designed to funnel the Company’s value to

MDV and its affiliates. Through this orchestrated convertible note exchange and issuance of more than 18 million shares of Series A Preferred stock to MDV and its affiliates, MDV cemented itself as the majority stockholder of the Company's voting shares at a valuation of just over [REDACTED] or roughly [REDACTED] less than the Company's valuation just three years earlier (and barely half of a contemporaneous third-party offer to acquire the Company, which MDV concealed from the other shareholders to obtain consent for the self-interested financing).

4. But MDV was not finished. Over the next three years, MDV continued to manufacture liquidity crises and to drive down the Company's valuation while keeping it afloat through yet another series of convertible notes, again totaling more than [REDACTED] in the aggregate. MDV is now undertaking to cause the Company to issue more than 9 million additional shares of Series A Preferred Stock and over 5.6 million shares of Series B Preferred Stock, both with anti-dilution protection, in exchange of the conversion of those convertible notes and an additional \$10 million investment in the Company at a valuation of just [REDACTED] of what the Company had been worth before MDV seized control.

5. As a result of these transactions, Plaintiffs' ownership has been decimated. While the pre-dilution, non-MDV stockholders once owned nearly [REDACTED] of the Company, as a result of the conflicted-controller transactions, the same stockholders now own a small fraction of that amount. MDV's ownership has

increased correspondingly, and MDV now holds the vast majority of the Company's equity. This stark reversal is the result of blatant breaches of fiduciary duty by MDV, Ericson, Gossman, and the rest of HealthTap's Board. Now, before the ink is even dry on the latest financing, these actors have begun a long-planned "turnaround" of the Company that will restore (and likely exceed) the hundreds of millions of dollars in value that they intentionally destroyed, with all of that value now inuring to MDV's own benefit, to the exclusion of other stockholders like Plaintiffs.

6. Accordingly, Plaintiffs bring this action to remedy the fiduciary duty breaches, seeking equitable relief and damages against MDV and the Director Defendants.

THE PARTIES

7. Plaintiff Dmitry Verkhovsky is an individual and a record holder of 8,347 shares of HealthTap common stock. Verkhovsky has been a stockholder of HealthTap since September 22, 2016.

8. Plaintiff Donna Tobkin is an individual and a record holder of 462 shares of HealthTap common stock. Tobkin has been a stockholder of HealthTap since August 18, 2017.

9. Plaintiff Jordan Pease is an individual and a record holder of 525 shares of HealthTap common stock. Pease has been a stockholder since January 22, 2018.

10. Plaintiff Chia-Huei Yao is an individual and record holder of 1,350 shares of HealthTap common stock. Yao has been a stockholder since December 17, 2018.

11. Defendant MDV Management Company, LLC is a Delaware limited liability company that does business as Mohr Davidow Ventures and is controlling stockholder of HealthTap.

12. Defendant MDV IX, L.P. is a Delaware limited partnership that MDV formed to hold its investment in the Company, and is a record stockholder of the Company controlled by MDV.

13. Defendant MDV ENF IX, L.P., is a Delaware limited partnership that MDV formed to hold its investment in the Company, and is a record stockholder of the Company controlled by MDV.

14. Defendant Bill Ericson is a partner at MDV. He has also been one of MDV's appointees to the HealthTap Board of Directors (the "Board") at all times discussed herein.

15. Defendant Bill Gossman is an individual formerly serving as a partner at MDV. He is currently one of MDV's appointees to Board and has served as the Board's chairman. He also previously served as the President and Chief Executive Officer of HealthTap from approximately mid-May 2018 to June 22, 2021, and served as Chief Financial Officer until recently.

16. Defendant Sean Mehra is an individual and member of the Board since June 2021. The MDV-controlled Board plucked him from Company ranks and installed him as President and CEO on June 22, 2021, giving him a lucrative pay package that included cash and outsized equity grants that incentivized him to make sure the Company completed its then-in-progress financing transaction with MDV.

17. Defendant Paul Baldassari was a member of the Board during the times discussed below, and was the sole member of the “special committee” tasked with considering the 2021 financing transaction.

18. Defendant David Kopp has been a member of the Board since late 2021. Mr. Kopp serves as one of the allegedly independent members of the Board.

19. Nominal Defendant HealthTap, Inc. is a Delaware corporation with its principal place of business in Sunnyvale, California.

JURISDICTION

20. This Court has subject matter jurisdiction over this action pursuant to 10 *Del. C.* § 341.

21. The Court has personal jurisdiction over MDV pursuant to 6 *Del. C.* §§ 18-105 & 18-109 and 6 *Del. C.* §§ 17-105 & 17-109.

22. The Court has personal jurisdiction over the Director Defendants pursuant to 10 *Del. C.* § 3114.

23. Defendants have further submitted to the jurisdiction and venue of this Court pursuant to the Amended and Restated Certificate of Incorporation of HealthTap, Inc., which provides: “the Court of Chancery in the State of Delaware shall be the sole and exclusive forum for any stockholder (including a beneficial owner) to bring...any action asserting a claim against the Corporation, its directors, officers or employees arising pursuant to any provision of the General Corporation Law or the Corporation’s certificate of incorporation or bylaws....”.

FACTUAL ALLEGATIONS

I. The Founding and Early Growth of HealthTap.

24. HealthTap was founded in 2010 to change healthcare by providing real-time, remote access to high-quality and affordable healthcare. The Company’s cutting-edge online platform connects people looking for health information to a network of doctors by using proprietary, artificial intelligence technology that efficiently routes patients to the appropriate level of care.

25. Within a few years, the Company grew into a telemedicine pioneer and global market leader in interactive health. The Company’s enterprise customers included a Fortune 500 company, a global insurance company, and a leading healthcare provider, and patients could connect to nearly 100,000 licensed physicians nationwide through HealthTap’s easy-to-use applications. By 2018, the Company had a [REDACTED] capitalization, strong balance sheet, and robust sales.

26. Like most startups, HealthTap used venture capital (“VC”) to fund its early operations. Three VC firms—MDV, Mayfield Fund, and Khosla Ventures—invested in the Company in the early 2010s and received Board seats in return.

27. In May 2018, when MDV ousted the Company’s founder and CEO and seized control of the Company, the Company had tens of millions of dollars in cash and accounts receivable and was nearing profitability.

II. MDV Seizes Control and Destroys HealthTap’s Value.

28. In May 2018, MDV converted its preferred stock in the Company into common stock to increase its voting power as part of a scheme to oust the Company’s founder and CEO and take over the Company. Former MDV partner and “Executive in Residence” Bill Gossman took over as chairman of the Board and was installed as the new CEO despite being woefully underqualified for that role. There was no proper process to identify the most qualified CEO.

29. Bill Ericson, a partner at MDV, also continued as a director.

30. On August 7, 2019, the Board met to discuss the Company’s fundraising options. MDV’s Ericson stated that the existing investors would discuss options and report back. Within hours, however, the Board members appointed by the other VC investors, Mayfield and Khosla, abruptly resigned.

31. Thereafter, the Board was comprised of only three members, leaving MDV designees Ericson and Gossman with majority control of the Board. Just four

days later, Ericson and Gossman entrenched MDV's majority, passing a self-interested resolution that decreased the Board's size from five to three members in violation of the express terms of the Company's certificate of incorporation.

32. This decrease in the Board size ensured that MDV would retain control of the boardroom. Moreover, with MDV appointee Gossman serving as chairman and CEO of the Company, MDV could maintain control over the Company at both the Board and executive levels.

33. The now MDV-controlled Board and executives quickly burned through the Company's cash reserves (in part by paying their appointed friends unreasonable amounts of money) and dismantled HealthTap's core business, pushing the once thriving Company to the brink of bankruptcy.

A. The Entrenched Board Abandons the Company's Lucrative Business Model and Places the Company in Financial Distress.

34. Board materials from July and August 2019 show that the MDV-dominated Board was preparing to abandon the Company's successful and lucrative core enterprise business and shift to a direct-to-consumer model.

35. That decision made little business sense. HealthTap's enterprise business was an important part of the Company and made up a majority of its revenue stream. The most successful companies in the industry pursued the enterprise model as well, and nobody had been successful with a direct-to-consumer

model. The decision by MDV, Ericson, and Gossman to intentionally and irrationally walk away from the enterprise business and its existing customers and contracts squandered the competitive advantage that the Company had built in the enterprise space and upended the Company's business model in a manner calculated to place a severe strain on cashflow and drive down the Company's valuation. But that decision had another obvious consequence—it would place the Company into financial distress, allowing MDV to propose funding terms advantageous to itself.

36. The winding down of HealthTap's enterprise business had its intended outcome. In just a few short years, nearly █████ of the Company's value was destroyed, notwithstanding a tremendous boom in the telemedicine industry due in part to the unprecedented COVID-19 pandemic.

37. The Company should have been uniquely positioned to serve the needs created by the pandemic and deliver incredible value to its stockholders. Any well-intentioned management team with even a modicum of business sense could have discerned ways to capture vast value from a telehealth platform during the global COVID-19 pandemic. But HealthTap, led by MDV's Ericson and Gossman, didn't. And while HealthTap's once-lagging competitors who continued with the enterprise model exploded in value—and either went public or were sold at high valuations to provide their investors hefty returns—the Company's financial performance had gone off a cliff.

38. As HealthTap's revenue dwindled, Ericson, Gossman, and MDV's hand-picked management made further curious decisions. HealthTap went through several rounds of layoffs designed (in theory) to reduce its cash burn rate (but in practice to reduce the value of the Company to allow MDV to acquire stock at a lower value), but at the same time the Company spent a tremendous amount of money on advertising that had no reasonable prospect of delivering meaningful returns. These actions burnt through the Company's cash reserves and put artificial downward pressure on the value of the Company.

39. Additionally, MDV guided the Company's cash to friends and allies through employment arrangements, consulting jobs, advisory roles, and other means. The [REDACTED] on the balance sheet in 2018 quickly dissipated.

40. By intentionally discarding the Company's core competencies and wasting cash, along with its other misconduct, the Board and senior management—led by MDV's Ericson and Gossman—manufactured a need for additional financing to sustain the Company's operations. MDV was there to fill that need, provided that Ericson, Gossman, and their allies used their control over the Company to deliver terms that were favorable to MDV.

B. The Same Day MDV Entrenches Itself on the Board, it Begins Issuing Itself Convertible Notes on Favorable Terms.

41. On the same day that MDV seized control of the Board and reduced its size to allow Ericson and Gossman to dominate it, the Board resolved to issue Convertible Notes (the “Convertible Notes”).

42. MDV was the leading purchaser of the Convertible Notes.

43. The Convertible Notes were issued on overwhelmingly favorable terms for MDV and at a significantly depressed valuation. The Convertible Notes were clearly designed to position MDV for a takeover of HealthTap for a steal.

44. The Convertible Notes would convert into preferred stock at a large discount upon the occurrence of a “qualified financing.” For example, the Convertible Notes issued to MDV’s affiliates in 2020 would automatically convert into preferred stock at a staggering [REDACTED] discount if the Company approved a sale of equities above [REDACTED], depending on when the qualified financing occurred. In conjunction with the Convertible Notes, the Company also issued warrants that allowed MDV to buy additional preferred stock at a discounted rate when a qualified financing occurred.

45. The Company issued additional Convertible Notes to MDV’s affiliates on at least two subsequent occasions. By July 2021, despite the booming telemedicine industry during the height of the COVID-19 pandemic, MDV and its

affiliates had saddled the company with nearly ██████████ in debt from these Convertible Notes, which were held mostly by MDV and its affiliates.

III. Capitalizing on its Control, MDV Forces a Conflicted Transaction.

46. The MDV-controlled Board and executives used the financial “crisis” they manufactured to engage in a self-interested financing round that seriously diluted Plaintiffs’ ownership in the Company and transferred significant value to MDV on unfair terms (the “2021 Financing Transaction”). Ericson, Gossman, and others at the Company began discussing the conversion of the Convertible Notes in early 2021 and consummated the MDV-favored deal in mid-November 2021.

A. The MDV-Controlled Board Brings Mehra Under the Tent.

47. As of June 22, 2021, the Board was comprised of three individuals and dominated by MDV partners and affiliates Ericson and Gossman.

48. That day, the Board gave Defendant Sean Mehra—a mid-level employee without qualifications to serve as a C-level executive—a “promotion” to President and Chief Executive Officer, and appointed Mehra to the Board. There was no proper process to identify the most qualified CEO.

49. Mehra’s promotion came with significant and highly unusual financial benefits. It included a ██████████ annual base salary, notwithstanding the Company’s dire financial position. Additionally, the MDV-controlled Board bestowed upon Mehra a new grant of equity equal to ██████████ of the Company—a

substantial and material increase in his holdings and well beyond industry standards and benchmarks, even for highly qualified CEOs. But such grant was notably to be based upon the capitalization table “as of the closing of the financing currently in progress.”

50. The MDV-dominated Board also resolved to provide Mehra with additional equity in the Company, to be considered in connection with his annual performance reviews and/or in connection with any financing. Today, Mehra holds stock and options in the Company exceeding █████ of the Company on a fully-diluted basis, which is extraordinary for an executive with no qualifications, and such awards stand in stark contrast to the purportedly poor performance of the Company.

51. Plainly, Mehra’s promotion and compensation package was intended to ingratiate him to MDV and incentivize him to carry through MDV’s plan.

B. The Board Appoints a “Special Committee” of One to Rubber Stamp the Conflicted Transaction.

52. By July 27, 2021, the four-person Board that included MDV’s Gossman, Ericson, and now Mehra, was discussing the possible conversion of the existing Convertible Notes into a new series of preferred stock. At a Board meeting held on July 27, the Company’s corporate counsel—an outside law firm with whom

Ericson had previously been affiliated for a long period—advised as to the conflicts of interest on the Board, and the required consents needed for the conversion.

53. Notably, the minutes of the July 27 Board meeting do not reflect any discussion of alternatives to converting the convertible notes held by MDV.

54. In recognition of the numerous conflicts of interest among the MDV-entrenched Board, the Company resolved at the July 27 meeting to form a “special committee” to consider the 2021 Financing Transaction. But this “committee” was wholly inadequate to protect the Company and its shareholders from MDV’s pervasive conflicts and intent to pilfer the Company. Rather, the special committee was clearly designed to rubber stamp a deal that was a foregone conclusion.

55. The special committee’s sole member was Defendant Baldassari, the fourth member of the Company’s Board.

56. Notably, the committee-of-one was formed before the Board was increased to five members, such that it was appointed by an improperly constituted Board. But Ericson, Gossman, Mehra, and MDV relied upon it in any event.

57. The special committee was not empowered to explore alternatives to the transaction that MDV had proposed to convert the Convertible Notes. Rather, Baldassari’s singular focus was to evaluate, negotiate, and recommend the MDV-designed conversion of Convertible Notes to the full Board for approval.

58. Notwithstanding his mandate, Baldassari failed to obtain independent counsel or any financial advisor or valuation expert, even though the resolution creating his committee-of-one expressly empowered him to retain investment bankers, accountants, attorneys, or other advisors as needed to carry out his task.

59. Instead, Baldassari merely received advice from the same outside law firm that MDV had selected for the Company (the same firm that Ericson had previously worked at). That is, Baldassari as the sole “committee” member was being advised exclusively by the same counsel who had long advised the Company and its Board, whose members were beholden to counterparty MDV.

60. And Baldassari appears to have done little, if any, actual work to investigate, scrutinize, challenge, and negotiate the terms of the deal that MDV wanted to see carried out. At the special committee’s first meeting (there were only three), held on July 30, 2021, Baldassari merely reviewed with the Company’s counsel his role in the potential transaction, which would involve “the conversion of outstanding convertible promissory notes into a new series of preferred stock and the additional sale of said series of preferred stock”; he heard from Company counsel about the “conflicts of interest of the other directors”; and he learned about his fiduciary duties from Company counsel. This first meeting of the “special committee” apparently concluded without any substantive discussion of the proposed financing, as no such discussion is reflected in the committee minutes.

61. On August 24, 2021, Baldassari attended a full Board meeting with Ericson, Gossman, and Mehra. At that meeting, [REDACTED]

[REDACTED] The minutes do not reflect that Baldassari contributed to the discussion of the proposed financing and conversion by MDV.

62. Presumably guided by Ericsson’s comments at the August 24 Board meeting, Baldassari held the second meeting of his special committee two days later, on August 26, 2021. At that meeting, Baldassari appears to have done nothing more than review the term sheet that MDV had provided and review an accompanying pro forma cap table—also provided by MDV—while continuing to receive advice from the Company’s counsel (who, again, had been selected by MDV).

63. Reflecting Baldassari’s true goal of advancing MDV’s interest, he then jumped to discussing [REDACTED]

[REDACTED] In a passing reference, the minutes of this second meeting

[REDACTED] But no further discussion was apparently had on that point, and no details, specifics, or plans to digress from pursuing MDV’s term sheet are reflected in the record.

64. On October 21, Ericson, Gossman, and Mehra met as a full Board without Baldassari and [REDACTED]

Ericson, Gossman, and Mehra also discussed “

In a final act of the meeting,

Ericson, Gossman, and Mehra “

Notwithstanding Baldassari’s formal absence from this meeting, it appears that he quickly understood that MDV was ready to move forward with its transaction.

65. Two days later—and nearly two *months* after his last special committee meeting—Baldassari held the third and final special committee meeting on October 23, 2021. The only other people in attendance at this committee-of-one were the Company’s lawyers from the law firm at which MDV’s Ericson had previously worked. At that meeting, Baldassari recommended that the Board move forward with MDV’s conversion and financing transaction.

66. The minutes of the October 23 meeting of Baldassari’s special committee do not reflect that Baldassari ever conducted any independent financial diligence of MDV’s proposal. There is no mention of any independent valuation of the Company or its stock. There is no analysis of the fairness of MDV’s deal. Baldassari never retained independent advisors. And there is no discussion of actual negotiation of terms, except to state that MDV had rejected a term that was unfavorable to it.

67. Any investigation or negotiation to secure better terms for HealthTap in the 2021 Financing Transaction—if there was any, as none are discussed in the committee minutes—must have been half-hearted at best. The “committee” of one did not retain or receive advice from a financial advisor and met only three times with the MDV-selected Company counsel. Remarkably, the special committee minutes do not reflect that Baldassari made *any* investigation into the Company’s valuation or other opportunities for financing, except for (i) his review of a “pro forma cap table provided by MDV” that valued the Company at [REDACTED] wiping out the vast majority of the value of the Company, and (ii) a vague reference to discussions “with Company management and advisors,” who were admittedly conflicted.

68. Baldassari’s reliance on MDV’s self-servingly low valuation of the Company is especially striking in view of the third-party interest in acquiring or transacting with the Company at much higher valuations.

69. For example, in mid-2020, [REDACTED] had been in advanced discussions to acquire HealthTap for between [REDACTED]

70. Similarly, in August 2021, a wealthy businessman named [REDACTED] had begun discussions with Mehra about a possible acquisition of the Company for at least [REDACTED]. Those discussions took place at the same time

as Baldassari was serving on the “special committee” and culminated in [REDACTED] submission of a term sheet for a [REDACTED] purchase in mid-November 2021. Indeed, it was Mehra himself who advised [REDACTED] that [REDACTED] offer should value the Company at no less than [REDACTED]. But Baldassari does not appear to have considered these, or he considered them but ignored them. Indeed, as discussed below, Mehra, Ericson, and Gossman went to lengths to conceal these facts from stockholders (and perhaps even from Baldassari).

71. Given these recent valuations, it is unclear how Mr. Baldassari could, consistent with his fiduciary duties, rely on a pro forma cap table *prepared by MDV* to drive his negotiations *with MDV* with respect to a financing that would dramatically restructure the equity ownership of the Company *in favor of MDV*.

72. Aside from these inconsistent valuations, it does not appear that Baldassari considered alternatives to MDV’s proposed transaction at all. Tellingly, there is no record of the [REDACTED] offers, or indeed any other financing alternatives, being considered by the “special committee” as alternatives that could have affected Baldassari’s recommendation of MDV’s 2021 Financing Transaction.

73. As further indication that the special committee was formed to rubber stamp MDV’s 2021 Financing Transaction, the Board decided even before the “committee” did that the 2021 Financing Transaction would close. In fact, as shown above, the Board began discussing how it would frame the transaction in its

disclosures to stockholders even before Baldassari approved the transaction or issued his formal recommendation to the Board. Rather, the Board was lining up MDV's purchase of Series A Preferred as early as April of 2021, months before the Special Committee was handed a packaged deal to "negotiate."

74. In short, Baldassari did MDV's bidding and did not act independently. The deal he signed off on was extraordinarily favorable to MDV and ensured that MDV, already in control of the Company's management and boardroom, would obtain an outright majority of the Company's voting power.

C. The Conflicted Board Approves the MDV Financing Deal.

75. While MDV sent Baldassari out as a committee-of-one to hopefully serve as a shield for MDV to hide behind, Ericson and Gossman took further steps to entrench Mehra's approval of the deal.

76. Despite having just recently promoted Mehra to CEO and President in June and providing an unusually hefty pay package, Ericson, Gossman, and Baldassari voted on September 28, 2021, as a unanimous Board "to offer continuing employment" to Mehra pursuant to a new employment contract.

77. Additionally, the MDV-dominated Board took steps to create an appearance of independence by also voting on September 28, 2021 to appoint David Kopp as a "new independent director," with his appointment to be [REDACTED]

[REDACTED]

78. Not surprisingly, therefore, on October 25, 2021, the full Board—consisting of Ericson, Gossman, Mehra, and Baldassari, with Kopp in attendance—approved the 2021 Financing Transaction with MDV. The same Company counsel that had advised Baldassari advised the full Board and attended this meeting.

79. Through the 2021 Financing Transaction, the Board approved the following terms:

- a 10:1 reverse split of its common stock that would decrease the number of authorized shares of common stock of the Company to a total of 53,758,128 shares;
- create a new series of preferred stock, designated as Series A preferred stock, consisting of 33,695,715 authorized shares;
- issue 15,881,013 shares of Series A Preferred stock in exchange for the conversion of Convertible Notes with an aggregate principal amount of [REDACTED] most of which were held by MDV and its affiliates; and
- raise up to [REDACTED] in cash through the sale and issuance of up to [REDACTED] shares of Series A Preferred stock to certain accredited

investors, including MDV affiliates and others, reflecting a per-share price of [REDACTED]

80. In the end, the 2021 Financing Transaction reduced the pre-transaction, non-MDV equity holders' ownership of the Company to approximately [REDACTED] on terms that were extremely advantageous to MDV but unfair to the Company and its other stockholders given the Company's true value.

81. The 2021 Financing Transaction impliedly valued the Company at approximately [REDACTED], significantly less than the market-tested valuations of the Company advanced by [REDACTED] in June 2020, and just over half of the [REDACTED] price for which [REDACTED] had expressed interest contemporaneously with the Board's approval of MDV's financing and conversion proposal. The 2021 Financing Transaction was clearly designed to facilitate MDV's acquisition of a significant interest in the Company at a deep discount.

82. The Series A Preferred stock issued in the 2021 Financing Transaction, most of which was issued to MDV, afforded rights and powers not enjoyed by the holders of common stock. For instance, the Series A Preferred stock became senior to the Common Stock, and the consent of the holders of the Series A Preferred, voting as a separate class, become necessary for certain corporate actions, including the liquidation or winding up of the Company, the amendment of the Company's charter or its Bylaws, the creation of additional classes of capital stock or the increase

in the total authorized shares of Preferred Stock, and the increase or decrease of the authorized number of directors on the Board. Taken together, these rights would afford MDV full control of a majority of the Company's voting shares that, by virtue of the anti-dilution protections, could not be wrested away.

83. The Series A Preferred stock was also convertible into common stock on a 1:1 basis.

84. On balance, the 2021 Financing Transaction was driven by the obvious conflicts of interest of Ericson and Gossman, who, in addition to serving on the Company's Board, were affiliated with MDV and stood to receive addition equity awards as part of the 2021 Financing Transaction. Mehra, MDV's hand-selected and highly compensated CEO, was not independent because he was beholden to controlling stockholder MDV and his compensation rose and fell with completion of the MDV financing. And Baldassari neither was nor acted independently and oversaw a deeply flawed special committee process. All of this was blatantly at the expense of stockholders such as Plaintiffs.

D. The Company Seeks Shareholder Approval and Investment with Materially Misleading Disclosures.

85. The conflicted Board continued to breach its fiduciary duties—and evidence the extent to which they and MDV sought approval of the MDV-favored deal at any cost—by seeking stockholder approval of the 2021 Financing

Transaction through false, misleading, and incomplete disclosures. Defendants compounded their lack of candor in a subsequent rights offering to stockholders that also contained several material misstatements and omissions.

1. The Misleading November 2021 Stockholder Notice.

86. The Company solicited stockholder approval of MDV's 2021 Financing Transaction by emailing a Notice to Stockholders (the "Notice") on November 10, 2021. Mehra signed the Notice in his capacity as CEO. The other directors, including Ericson, Gossman, and Baldassari, approved or must have approved of the Notice as directors of the Company.

87. The Notice contained several false and misleading statements.

88. First, the Notice did not disclose the intentional mismanagement and waste that had created the dire need for financing, or otherwise properly contextualize the proposed transaction that would MDV outright majority voting power over the Company, combined with special veto and other rights, at an unfair price and at the expense of the minority stockholders.

89. Similarly, the Notice omitted any discussion of how MDV had accumulated the Convertible Notes or what steps (if any) had been taken to ensure that these conflicted transactions were fair. Accordingly, stockholders lacked an understanding of the depths of the conflicts of interest and flaws in the purported process leading to the Board's approval of the 2021 Financing Transaction.

90. Additionally, the Notice contained false and misleading statements intended to convince stockholders that the MDV proposal was fair when it was not.

91. For example, the Notice told stockholders that “[t]he Company has tried to raise financing from outside sources over the past two years. In its efforts to raise financing, the Company has contacted more than 100 potential investors *and received no offers or indications of interest.*” This statement was false or, at best, misleading, because it failed to disclose Mehra’s and the Company’s discussions with [REDACTED] which had been ongoing since August 2021.

92. The Notice also stated that “[w]hile the Company received an indication of interest in June of 2020 from a strategic buyer, at a valuation between \$ [REDACTED] [presumably referring to [REDACTED], *the buyer withdrew its indication of interest and terminated discussions.*” That statement was false or, at best, misleading, because it failed to disclose that [REDACTED] had provided a written proposal, conducted significant diligence, and the Company’s conduct had actually caused [REDACTED] to withdraw its proposal at the very end of diligence.

93. The Notice also stated that since the [REDACTED] proposal, “the Company has had conversations with other potential buyers and intends to continue to do so. However, as of yet, *no such conversations have resulted in any offer, indication of interest or indication of the value of the business.*” This statement was false or, at best, misleading, because it failed to disclose Mehra’s and the Company’s

discussions with [REDACTED] During those conversations, [REDACTED] had been clear that he intended to acquire the Company, and Mehra had been clear that [REDACTED] offer needed to value the Company at [REDACTED] or more, and [REDACTED] had expressed agreement.

94. Mehra and [REDACTED] had been in extensive discussions since at least August 30, 2021 about [REDACTED]'s proposal to acquire or finance the Company, and those discussions were ongoing before, during, and after the Company's approval and solicitation of approval for the 2021 Financing Transaction.

95. On November 10, 2021—the same day that the Notice was delivered to stockholders—Mehra emailed [REDACTED] to follow up on their earlier text messages, and he provided [REDACTED] with a slide deck and a proposal and he solicited [REDACTED] to provide an “acquisition offer” or a “strategic minority investment” in the Company, which Mehra proposed to be [REDACTED]

96. In [REDACTED] response on November 12 (while the Notice was out to stockholders), he wrote to Mehra, [REDACTED]
[REDACTED]
[REDACTED]” [REDACTED] attached to this email proof of his financial ability to close on a [REDACTED] acquisition. Indeed, Mehra had told [REDACTED] that any transaction with the Company must involve *at least* [REDACTED]

97. Later on November 12, Mehra responded to [REDACTED] and asked questions about what would happen after a transaction between the Company and [REDACTED] such as [REDACTED]. These types of questions reflect not only that Mehra viewed a deal with [REDACTED] as highly feasible, but that he was again looking out for his own interests above all else.

98. On November 15, 2021, [REDACTED] provided Mehra with a term sheet to [REDACTED]. The term sheet proposed to [REDACTED]. [REDACTED] closed his email by telling Mehra that he [REDACTED].” Clearly, [REDACTED] had expressed a meaningful interest in the Company and indicated its value long before November 10, 2021, such that the Notice’s failure to describe these interactions, and its statement that conversations with [REDACTED] have not resulted in any “indication of interest or indication of value” was false and materially misleading. Instead, the Board gave stockholders the impression that MDV’s tilted proposal was the only viable path forward for the Company.

99. Through these false and misleading disclosures, MDV and the Board sought to conceal from shareholders that there were viable alternatives to the 2021

Financing Transaction and to ensure that MDV could proceed with the unfair transaction for its own benefit.

100. In the following days, stockholders holding slightly [REDACTED] of the outstanding common stock of the Company consented to the 2021 Financing Transaction. The conversion of MDV's Convertible Notes and MDV's acquisition of additional Series A Preferred stock in the 2021 Financing Transaction closed on November 16, 2021. And notwithstanding the premise of the transaction—that the Company was purportedly in severe financial distress—MDV further voluntarily increased its stake in the Company by acquiring additional common stock from an existing investor on November 30, 2021.

2. The Misleading January 2022 Rights Offering.

101. Mehra, Gossman, Ericson, and the rest of the Board doubled down on their misleading disclosures in January 2022 when they solicited interest in acquiring Series A Preferred stock from the Company's accredited investors.

102. On January 31, 2022, the Company sent to stockholders an additional Information Statement, the purpose of which was to extend the opportunity to participate in the Series A financing to certain stockholders (the "Rights Offering Statement"). Like the Notice sent to solicit stockholder approval of the 2021 Financing Transaction, the Rights Offering Statement contained several false and misleading statements. Again, Mehra signed the Rights Offering Statement in his

capacity as CEO, and the other directors, including Ericson and Gossman, approved or must have approved of the contents of the Rights Offering Statement.

103. Notably, and in stark contrast to the earlier Notice, the Rights Offering Statement disclosed the conversations with [REDACTED]. That alone demonstrates that the prior Notice was materially misleading and omitted material facts. But the Rights Offering Statement described the [REDACTED] situation in a further misleading and inappropriate way.

104. The Rights Offering Statement told stockholders that:

In the Fall of 2021, the Company was contacted by a potential buyer, interested in acquiring the Company. Despite the Company's efforts, *these discussions did not progress*. Most recently, *in December* of 2021, the Company received an *unsolicited indication of interest* to acquire the Company from an individual *purporting to buy the company at a valuation of \$200,000,000.000*. This potential buyer had not, and has not yet, conducted any material due diligence in the Company and initially proposed terms are not acceptable to the Company.... (emphasis added).

105. These statements were false and misleading in several regards. First, [REDACTED] had made contact with Mehra by August 30, 2021, which was before the “Fall,” itself a vague term seemingly designed to hide the precise timeline.

106. And contrary to the Rights Offering Statement, the Company's discussions with [REDACTED] *did* progress—materially. [REDACTED] [REDACTED] on November 12, 2021 and a term sheet for [REDACTED] [REDACTED] on November 15. The Board discussed [REDACTED] proposal on

December 7 and directed Company management “[REDACTED]”
[REDACTED] his position and reply in due course [REDACTED]
[REDACTED] On December 17, Mehra provided
[REDACTED] with a revised term sheet for the potential transaction and told [REDACTED]
[REDACTED] The Board
discussed [REDACTED] interest in acquiring the Company again on December 21, 2021.
On December 22, Mehra told [REDACTED]
[REDACTED]
[REDACTED]

107. The discussions between the Company and [REDACTED] progressed into
2022. Based on an email that Mehra sent to [REDACTED] on January 6, 2022, it appears
that on that day, Mehra, [REDACTED], and Ericson joined a call. [REDACTED] was ill at the
time, and Mehra commented that his attendance [REDACTED]
[REDACTED] Mehra then noted that it was
[REDACTED]
[REDACTED] for
negotiating the transaction. Although there were still deal points in disagreement,
[REDACTED] and Mehra continued negotiating until at least March 3, long after the
January 31 Rights Offering Statement went to stockholders.

108. Thus, it was not true that discussions with [REDACTED] did “not progress”; it was not true that [REDACTED] provided his indication of interest in “December”; it was not true that [REDACTED] indication of interest was “unsolicited”; and it was not true that [REDACTED] was “purporting” to value the Company at \$200 million, [REDACTED]

109. The Rights Offering Statement also failed to disclose that the Company had further attempted to sabotage the [REDACTED] deal by repeatedly insisting upon off-market and onerous terms, knowing that [REDACTED] could not agree to them.

110. The Rights Offering Statement also omitted material information and contained inaccurate information about the MDV transaction and the circumstances leading to it. For example, the Rights Offering Statement indicated that the Company was converting [REDACTED] in Convertible Notes into Series A Preferred Stock, but the exhibits to the Note Conversion and Series A Financing Agreement (the “Notes Agreement”) indicate that [REDACTED] in Convertible Notes were converted in the 2021 Financing Transaction, and the financial disclosures attached to the Rights Offering Statement put the value at [REDACTED]

111. Further, the Notes Agreement appears to provide that the Purchasers (as such term is defined therein to include all holders of the Convertible Notes) agreed to convert their notes to Series A shares at no less than [REDACTED] per share, but

the Schedules, the Rights Offering Statement, and materials attached thereto imply a conversion rate of \$ [REDACTED] per share, respectively.

112. The Rights Offering Statement also misleadingly described the disproportionate benefits that MDV had received from the transaction, by suggesting that MDV's control of the Company was only a possibility of the transaction, when in fact it was already established. The Rights Offering Statement stated:

- ***The Series A Financing may result in MDV's obtaining a controlling interest in the Company.***

As a result of MDV's (i) ownership of the Notes, and thereby the shares issued upon conversion thereof, and (ii) its additional investment in the Series A Financing, MDV ***may*** hold more than fifty percent (50%) of the fully-diluted capitalization of the Company following the Series A Financing. This ***would be*** enough to determine most stockholder votes in the future. (emphasis to "may" and "would be" added).

- ***A future acquisition of the Company may result in additional proceeds to MDV and may occur in the near-term.***

In the event of a future merger or acquisition of the Company, the terms of the Series A Financing ***may*** result in MDV receiving greater proceeds than it otherwise would have if the conversion of MDV's Notes if the Series A Financing had not occurred.

113. In sum, the Rights Offering Statement, like the prior Notice, was rife with misleading misrepresentations, inaccuracies, and material omissions, and demonstrated a pattern by Mehra, Ericson, Gossman, and the rest of the Board to mislead shareholders regarding MDV's transaction.

E. MDV Received Significant Benefits, Disproportionate to Those of Other Stockholders in the 2021 Financing Transaction.

114. The grossly conflicted 2021 Financing Transaction cemented MDV's status as controller of the Company. As a result of MDV's ownership of the Convertible Notes (and thereby the shares issued upon conversion), and additional investment in the Company in connection with the 2021 Financing Transaction, MDV increased its ownership of the Company to over fifty percent of the fully-diluted capitalization of the Company. Accordingly, MDV now unquestionably has the ability to determine most stockholder votes in the future and seized hard control of the Company with no control premium to the existing stockholders. This, coupled with its existing and prior control over the Board and management, allowed MDV to completely dominate the Company and to do so going forward.

115. Further, the terms of the 2021 Financing Transaction resulted in MDV receiving greater proceeds than it otherwise would have if the conversion of MDV's Convertible Notes in the 2021 Financing Transaction had not occurred.

116. All this was to the detriment of the Plaintiffs and other minority stockholders. The 2021 Financing Transaction treated MDV more favorably than the other stockholders, converting their debt to equity at a rate of between [REDACTED] per Series A Preferred share.¹ The remaining Series A Preferred was

¹ The disclosures in the Information Statement, the information on Schedule A of the Note Conversion Agreement, and the Company's own pro forma balance sheet

offered to existing stockholders in a scant follow-on offering at [REDACTED] per share, with incomplete and misleading information. Although purporting to offer more than 14 million shares of Series A to existing holders of common stock, the 2021 Financing Transaction resulted in the issuance of only [REDACTED] shares of “new money” Series A. Of those [REDACTED] shares, MDV acquired [REDACTED]

117. As a result of the 2021 Financing Transaction, Plaintiffs (and the other pre-transaction non-MDV stockholders) saw their fully diluted ownership tumble more than [REDACTED]. And the collective holders of the Common Stock, who held [REDACTED] of the fully diluted equity in the Company at the beginning of 2021, now hold less than [REDACTED]. Meanwhile, MDV is poised to orchestrate a comeback for the Company and seize its inherent value for itself, to the exclusion of other stockholders.

118. The 2021 Financing Transaction was the product of repeated breaches of fiduciary duty by MDV, which exercised effective control over the Company’s Board and affairs even before the transaction closed, and by the Director Defendants. Their failure to pursue other transactions at more favorable prices or to follow a fair process free of conflicts of interest render the 2021 Financing

contain a number of inconsistencies and direct contradictions, making an exact figure indeterminable. However, all calculations of the effective per share conversion price come out to less than the purported [REDACTED] per share minimum purchase price offered to existing stockholders.

Transaction subject to entire fairness. The defective committee process and the false and misleading disclosures fail to cleanse the transaction.

IV. The Same Conflicted Board Has Approved or is Poised to Approve Another Conflicted Financing Transaction.

119. Unsurprisingly, the 2021 Financing Transaction did not resolve the Company's dire financial straits, and its financial condition continued to deteriorate. MDV stood ready to capitalize on distress it manufactured.

120. The 2021 Financing Transaction infused at least [REDACTED] in cash to the Company and eliminated the overhanging debt of the Convertible Notes, but within months, MDV and its affiliates once again burdened the Company with new liabilities that ultimately amounted to between [REDACTED] mostly in the form of new convertible notes held by MDV.

121. MDV also attempted, once again, to prioritize its own interests at the expense of other shareholders, as it did in 2021. A summary of terms considered by the Board dated May 31, 2024, shows that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (“2024 Financing Transaction”). The Defendants have so far provided no evidence supporting the pricing and valuation of the new stock, or the terms applicable to the new set of convertible notes issued starting in the first quarter of 2022. The sole investors in this transaction are slated to be [REDACTED]

122. The Company appears to have made zero effort to address the continuing conflicts of interest in connection with the 2024 Financing Transaction. Indeed, despite the Board having discussed on multiple occasions between December 2023 and March 2024 [REDACTED]

[REDACTED]

[REDACTED]

and despite the continued controller conflicts of MDV and Ericson, Gossman, and Mehra, there is no indication that a truly independent special committee was established to consider the terms of the 2024 Financing Transaction.

123. Just weeks later, on June 26, 2024, the Board [REDACTED]

[REDACTED]

[REDACTED]. Upon information and belief, the Company closed on at least the first phase of the 2024 Financing Transaction in the summer of 2024.

124. Documents provided by the Company in response to a Section 220 demand contain two spreadsheets detailing outreach to potential financial backers (e.g., investors or lenders). Notes within these spreadsheets suggest that many of these potential partners were provided with financial data, including references to revenue, cash flow, and other financial metrics of the Company. While the spreadsheets record a number of rejections, they also show that many potential investors are marked as “not started,” and that the Company had garnered interest from several financial and strategic partners other than MDV. This further undermines the notion that the 2024 Financing Transaction is a last-ditch effort, instead suggesting that it is a further self-interested, controller-driven, dilutive transaction to concentrate value within MDV.

125. As in 2021, MDV will again reap significant benefits from the 2024 Financing Transaction not available to other stockholders. As part of the 2024 Financing Transaction, MDV [REDACTED]

126. In addition to converting more purported debt into Company equity, as part of the 2024 Financing Transaction, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] This arrangement gives MDV a superior position over holders of Series A or common stock in any future events involving dividends, sales, or liquidation. As such, it is likely to leave all stockholders other than MDV with little or no return.

127. In connection with the 2024 Financing Transaction, it was contemplated that Baldassari may leave the Board. On information and belief, Baldassari resigned his Board position in July 2024, allowing MDV to appoint his replacement and further cement its outright control of the Company, which is another benefit conferred on MDV that was not provided to other stockholders.

128. Having forced two self-interested and dilutive transactions, MDV has no regard for the interests of HealthTap's stockholders and will stop at nothing to drive the Company's value into the ground so it can acquire the Company and its valuable intellectual property for a miniscule fraction of their worth.

129. And despite the Company's purportedly low valuation advocated by MDV, the Company in reality is positioned to capture a significant share of the burgeoning market for telehealth services. Demand for telehealth services is booming, and the Company possesses the intellectual property and other assets

necessary to capitalize upon the rapidly expanding market. Through the actions described herein, MDV seeks to capture that wealth and opportunity for itself, to the detriment of all other stockholders.

V. Plaintiffs' Books and Records Demands.

130. Plaintiffs made a books and records demand on October 2, 2024, seeking to inspect materials related to the events and transactions discussed.

131. The Company produced books and records on October 15, 2024.

VI. Demand on the Board is Excused as Futile.

132. Plaintiffs have not made a demand on HealthTap's Board to assert the claims set forth herein. For the reasons detailed herein, such a demand would be futile because a majority of the directors who would have considered a demand are interested, face a substantial likelihood of liability, and/or lack independence.

133. Therefore, there is a reasonable doubt that a majority of the Board could have impartially considered whether bringing these claims is in the best interests of HealthTap and its shareholders.

134. Currently, Plaintiffs understand that HealthTap's Board is comprised of five or potentially four directors. Those directors are Gossman, Ericson, Mehra, Baldassari, and Kopp; however, as noted, Plaintiffs have information to suggest that Baldassari may have recently resigned from the Board.

135. If the Board is five directors, demand is excused so long as at least three directors are not independent or disinterested. If the Board is four directors, demand is excused if at least two directors are not independent or disinterested.

136. Here, Defendants Gossman, Ericson, and Mehra are not independent or disinterested. In fact, the Rights Offering Statement states that:

(i) Bill Ericson and Bill Gossman are directors of the Company and are affiliated with MDV, which negotiated the terms of, and participated in, the Series A Financing and (ii) Sean Mehra is an officer, employee and director of the Company and Bill Gossman is an employee and director of the Company, each of whom may in the future receive additional equity awards pursuant to the Stock Plan Increase....

Various other documents make similar admissions as to Ericson's and Gossman's affiliation with MDV and conflicts arising therefrom.

137. Bill Ericson and Bill Gossman are affiliated with MDV and Sean Mehra is not independent of MDV by reason of his employment as CEO of the Company, which is controlled by MDV, and his unusually high compensation package that was granted to buy his collaboration with MDV's ploy to take over the Company.

138. Bill Gossman received a material benefit through the 2021 Financing Transaction and 2024 Financing Transaction by reason of the stock plan increase, among other facts described herein.

139. Sean Mehra received a material benefit through the 2021 Financing Transaction and 2024 Financing Transaction by reason of the stock plan increase, among other facts described herein.

140. Bill Ericson could not impartially consider a demand because he faces a substantial likelihood of non-exculpated personal liability because of the wrongful conduct described herein.

141. Bill Gossman could not impartially consider a demand because he faces a substantial likelihood of non-exculpated personal liability because of the wrongful conduct described herein.

142. Sean Mehra could not impartially consider a demand because he faces a substantial likelihood of non-exculpated personal liability because of the wrongful conduct described herein.

143. In the event he continues to serve as a director, Paul Baldassari could not impartially consider a demand because he faces a substantial likelihood of non-exculpated personal liability because of the wrongful conduct described herein.

144. Accordingly, demand on the Board was futile.

COUNT I
(Breach of Fiduciary Duty Against MDV)

145. Plaintiffs repeat and reallege each of the allegations contained in the preceding paragraphs as though fully set forth herein.

146. MDV presently controls HealthTap through its ownership of more than 50% of the Company's stock voting power. MDV is thus HealthTap's controller as a matter of law. Even before the 2021 Financing Transaction, MDV and its affiliates controlled the Company through significant stock ownership (over 20% of the voting power, and the largest block of voting power within the Company), its rights as a holder of the majority of the Company's debt, its appointment of a majority of the Board, its appointment of key managers including the CEO, and its exercise of actual control over the Company and over the 2021 Financing Transaction, as described herein.

147. As HealthTap's controller, MDV owes Plaintiffs and HealthTap's other minority stockholders the highest obligation of loyalty and good faith.

148. MDV knowingly and intentionally breached its fiduciary duties for its own enrichment and personal gains by engaging in bad faith and self-serving conduct. Specifically, MDV caused the Company to abandon its lucrative business without justification and approve a transaction valued well below what the Company was worth on terms favorable to itself while diluting other stockholders.

149. Because of the self-interestedness of the 2021 Financing Transaction and the 2024 Financing Transaction (together, the "Transactions"), the actions of the Board are subject to entire fairness review. The conduct of MDV in guiding the negotiation and approval of the Transactions cannot cleanse the Transactions

because of the disabling conflicts of interest that tainted the entire conflicted-controller transaction process.

150. Plaintiffs have no adequate remedy at law.

COUNT II
(Breach of Fiduciary Duty Against the Director Defendants)

151. Plaintiffs repeat and reallege each of the allegations contained in the preceding paragraphs as though fully set forth herein.

152. As directors of a Delaware corporation, the Director Defendants owe HealthTap and its stockholders, including Plaintiffs, fiduciary duties, including the duties of care and loyalty and related obligations of disclosure.

153. The Director Defendants approved the Transactions, which benefitted MDV at the expense of other stockholders, including Plaintiffs.

154. Because a majority of the Board that approved the Transactions were interested in the Transactions or beholden to MDV, which received benefits in the Transactions not shared by all stockholders, the entire fairness standard of judicial review applies.

155. Specifically, Defendants Gossman, Ericson, and Mehra are all affiliated with or beholden to MDV-affiliated investors that benefitted from the Transactions by converting shares to Preferred Stock at a significant discount and having an opportunity to further invest and unfair prices. These benefits were

bestowed on MDV by reason of the Transactions and were not shared with the Company's other stockholders, resulting in harm to the Company and its other stockholders. Further, the employee Director Defendants, including Mr. Gossman and Mr. Mehra, stood to gain from the stock option grants associated with both transactions, additional benefits that were not available to other stockholders.

156. By approving Transactions that provided them or MDV, to which they were beholden, with disparate and unfair benefits and, as a result, unfairly diluting other stockholders, the Director Defendants violated their fiduciary duty of loyalty.

157. Approval of the Transactions harmed Plaintiffs by denying them fair consideration for their shares of Company stock in connection with the Transactions, by the intentional decision to favor MDV over the consideration to be received by stockholders, by the failure to obtain the best terms and highest value reasonably available, and by unfairly and improperly diluting Plaintiffs' ownership interests.

158. The Director Defendants also breached their fiduciary duties by failing to provide accurate disclosures of material information to stockholders in connection with the approval of the 2021 Financing Transaction.

159. Plaintiffs have no adequate remedy at law.

COUNT III
(Breach of Fiduciary Duty Against Mehra as an Officer)

160. Plaintiffs repeat and reallege each of the allegations contained in the preceding paragraphs as though fully set forth herein.

161. As an officer of a Delaware corporation, Mehra owes HealthTap and its stockholders, including Plaintiffs, fiduciary duties, including the duties of care and loyalty and related obligations of disclosure.

162. Mehra breached his fiduciary duties by failing to provide accurate disclosures of material information to stockholders in connection with the approval of the 2021 Financing Transaction.

163. Plaintiffs have no adequate remedy at law.

COUNT IV
(Aiding and Abetting Breaches of Fiduciary Duty Against MDV)

164. Plaintiffs repeat and reallege each of the allegations contained in the preceding paragraphs as though fully set forth herein.

165. Plaintiffs allege this Count in the alternative, in the event that the Court determines that MDV was not a controller of the Company at pertinent times.

166. MDV was aware of the fiduciary duties and obligations the Director Defendants owed to all stockholders, including Plaintiffs.

167. By engaging in a conflicted and self-serving transaction that grossly undervalued the Company for its own benefit, MDV aided and abetted breaches of

fiduciary duty by the Director Defendants. Specifically, without limitation, MDV and its affiliates knew that the Company had potential outside funding sources that valued the Company more fairly. MDV nonetheless pushed its own self-conflicted transaction to pursue its own interests alongside the Director Defendants to the detriment of stockholders.

168. As a result of MDV aiding and abetting the Director Defendants' breaches of fiduciary duty, Plaintiffs were harmed by having the value of their shares diluted.

169. Plaintiffs have no adequate remedy at law.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that the Court:

- (a) Enter an order declaring that Defendants breached their fiduciary duties by approving the 2021 Financing Transaction and 2024 Financing Transaction;
- (b) Award damages in an amount to be determined at trial;
- (c) Award Plaintiffs their reasonable costs and expenses, including attorneys' fees, incurred in connection with this matter; and
- (d) Grant such other relief as this Court deems just, proper, and equitable.

Date: October 28, 2024

MELUNEY ALLEMAN & SPENCE, LLC

/s/ William M. Alleman, Jr. _____

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