SECOND AMENDED CLASS ACTION COMPLAINT

Plaintiff Furlong Fund LLC ("Plaintiff"), on behalf of itself and all others similarly situated, by its undersigned attorneys, alleges upon personal knowledge with respect to itself, and upon information and belief and investigation of counsel as to all other allegations herein, as follows:

INTRODUCTION

1. This class action lawsuit arises from the decision of Paulson Capital Corp. ("PCC" or the "Company") to restructure and spin off certain legacy assets (the "Restructuring Transaction") of PCC and its financial services subsidiary Paulson Investment Company ("PIC") into a Liquidating Trust (the "Liquidating Trust") for the benefit of legacy shareholders holding stock of PCC as of October 11, 2013 (the "Record Date"). As expressly stated on page 25 in the October Proxy Statement, "As beneficial owners of
executives did not have enough voting power to unilaterally approve the Restructuring Transaction and Liquidating Trust themselves, PCC issued a misleading proxy statement to coerce shareholders to vote in favor of the Restructuring Transaction and Liquidating Trust. As described more fully herein, Defendants (as defined herein) issued a proxy statement so wholly false and misleading that NASDAQ found the Company in violation of NASDAQ Listing Rules, not once, but twice.

2. This is a securities class action brought on behalf of legacy shareholders of PCC, holding stock of PCC as of October 11, 2013 (the “Legacy Shareholders”), seeking to recover compensable damages caused by Defendants' (as defined herein) violations of federal securities laws and pursue remedies under the Securities Exchange Act of 1934 (the “Exchange Act”).

3. PCC was once a publicly-traded financial services holding company that operated through its sole subsidiary Paulson Investment Company (“PIC”). Established by president Chester L.F. Paulson in 1970, PIC was one of the largest independent brokerage firms in the Pacific Northwest.

4. On September 26, 2013, the board of directors of PCC (the “Board” and/or the “Individual Defendants”) held a meeting to discuss, among other things, a certain plan to restructure the Company. Specifically, the Board discussed a definitive plan to create a “liquidating trust (the “Trust”) to be established by the Company . . . ”

2 According to the Board minutes from the September 26, 2013 Board meeting, a “discussion ensued regarding the the Trust, the Legacy Shareholders would continue to have ownership rights in the Trust Assets; on the other hand, anyone who purchases our Common Stock in the open market after the Record Date will have no rights to any of the assets of PIC, including the Trust Assets, with respect to the securities so purchased.” (emphasis added).

See Ex. A, (Minutes of the Meeting of the Board of Directors of Paulson Capital Corp. Board Minutes) (September 26, 2013).
administration of the Trust . . . [and that] Chester Paulson and Charles Paulson expected to continue to be paid their current salary for administering the Trust . . . .”

5. Shortly thereafter, on October 18, 2013, the Company filed a Definitive Proxy Statement on Schedule 14A (the “October Proxy Statement” or the “Proxy”) with the U.S. Securities and Exchange Commission (the “SEC”) and solicited votes from PCC shareholders necessary to approve the Restructuring Transaction and Liquidating Trust (also referred to in the Proxy as “Proposal No. 6”). The approval of the Restructuring Transaction and Liquidating Trust was not a hypothetical exercise by Defendants. The Restructuring Transaction and subsequent formation of the Liquidating Trust was a separate and distinct proposal required to be approved by shareholders. The opening letter and cover to the Proxy explicitly and unequivocally stated that the “Board has approved a plan whereby a liquidating trust will be created and the shareholders of our Common Stock of record as of the record date of the Shareholders Meeting (“Legacy Shareholders”) will be given non-transferable beneficial interests in the trust in proportion to their pro rata ownership interest in our Common Stock.”

Page 26 of the October Proxy Statement further confirmed that “the Trust Assets were irrevocably placed in trust at a time when the Company could have distributed them as dividends to the Legacy Shareholders under state law . . . .” (emphasis added). The Proxy further provided that the trust assets included, among other things, a 25% equity interest in PIC, underwriter warrants, trading and investment securities, cash, accounts receivable and an

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3   Id.
5   See Initial Letter to Proxy.
insurance policy on the life of Chester L.F. Paulson, the founder of PIC (collectively, the “Trust Assets”).

6. According to the Proxy, as of the Record Date, PCC’s then-existing officers and directors only owned 33.5% of PCC’s outstanding common stock and thus only controlled 33.5% of the vote.\(^6\) A shareholder vote was required in order to satisfy the requisite voting standard to approve the Restructuring Transaction and formation of the Liquidating Trust. NASDAQ Listing Rule 5635 also mandated a shareholder vote because the formation of the Liquidating Trust was an issuance of securities subject to shareholder authorization. The Proxy set October 11, 2013 as the Record Date for a shareholder meeting that was scheduled to take place on November 8, 2013.

7. To approve the Restructuring Transaction and Liquidating Trust, the Proxy asked existing PCC shareholders to vote on the transaction that would, among other things, spin off certain legacy assets of PCC and PIC (PCC’s broker-dealer business) into the Liquidating Trust for the benefit of Legacy Shareholders. As disclosed by the Company, the Liquidating Trust would contain certain legacy assets (i.e. the Trust Assets) of PIC and would be held in the Liquidating Trust for the benefit of Legacy Shareholders. As expressly disclosed by the Proxy, “[t]he trust will distribute sale proceeds to the Legacy Shareholders when a trust asset is liquidated, which would be treated for tax purposes as a dividend to the Legacy Shareholders.”\(^7\)

8. Because of the representations made by Defendants in the Proxy, PCC shareholders voted in favor of Proposal No. 6 at the meeting of shareholders held on November 8, 2013.

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\(^6\) Proxy at 3 (emphasis added).

\(^7\) Id.
9. On November 8, 2013, the Board held a meeting to discuss, among other things, "the establishment and administration of the [L]iquidating [T]rust to be created by the Company . . ." According to the November 8th Board minutes, a presentation about the Trust was given "describing the purpose of the Trust, the steps being taken to implement the Trust, and the role of the Trustee . . . in administering the Trust." Most notably, the November 8th Board minutes explicitly admit that "the role of the Trustee was to liquidate the Trust assets in an orderly and expedited fashion."9

10. As the Company later confirmed in an 8-K filing with the SEC on November 27, 2013, “the ‘Record Date’ was established by the Company for purposes of determining the shareholders of the Company eligible to receive distributions from a liquidating trust (the “Trust”) that is to be established by the Company and funded with certain assets held by Paulson Investment Company, Inc., the Company’s operating subsidiary.”10

11. Pursuant to NASDAQ Listing Rule 5250(e)(6), an issuer of securities listed on NASDAQ is required to notify the NASDAQ exchange no later than ten (10) calendar days prior to the record date of a cash or non-cash dividend or other distribution. Because disbursements of proceeds from the Liquidating Trust were considered a “dividend” for tax purposes, PCC was required to notify NASDAQ by October 1, 2013 that such disbursements were going to be made. Ultimately, PCC violated NASDAQ Listing Rules not once, but twice. On November 21, 2013, NASDAQ delivered a deficiency letter (the “November Deficiency Letter”) to PCC that

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8 See Ex. B annexed hereto, (Minutes of the Meeting of the Board of Directors of Paulson Capital Corp. Board Minutes) (November 8, 2013).
9 Id.
disclosed that “NASDAQ deemed the Company to be in violation of NASDAQ’s listing standards.”

12. After receiving the November Deficiency Letter, the Board failed to act in the face of a known duty to act and negligently continued to violate NASDAQ Listing Rules. Almost three months later, on February 9, 2014, the NASDAQ Listing Qualifications Panel distributed a public reprimand letter to PCC for again refusing to provide timely notice and disclosure to NASDAQ regarding the Liquidating Trust. Among other things, the public reprimand letter stated that, “the Company has been remiss in failing to provide timely notifications in accordance with NASDAQ Listing Rule 5250(e)(6) and SEC Rule 10b-17.”

13. Defendants did not create the Liquidating Trust until on or about July 25, 2014. Finally, on August 8, 2014, PCC’s successor, VBI Vaccines, Inc. (“VBI”) disclosed in a 10-Q Report (the “August 10-Q”) that the Liquidating Trust was formed with assets “valued at approximately $9.8 million.” The August 10-Q not only discloses the creation of the Liquidating Trust but also the ownership interests in PIC. Despite previously disclosing to shareholders that “the 25% retained interest is expected to be sold and the proceeds added to the Trust,” the Trust’s 25% interest in PIC appears to have been completely eliminated.

14. Even more alarming is the fact that according to PCC’s 2013 10-K filed on March 18, 2014 and its 10-Q filed on May 15, 2014, the Liquidating Trust’s cash decreased by $840,543 (from December 31, 2013 to March 31, 2014) despite the fact that the Liquidating


Trust had not yet been formed. Neither VBI nor PCC has provided any information disclosing the inexplicable disappearance of the Trust’s 25% equity interest in PIC and the decrease in cash. Even based upon a review of the executed Trust Agreement dated July 25, 2014 and the Letter to Legacy Shareholders dated November 14, 2014, the **25% interest in the PIC has simply vanished.**

15. The October Proxy Statement contained several material misleading statements that coerced Legacy Shareholders to vote in favor of Proposal No. 6. These misrepresentations include, but are not limited to: (1) misrepresenting the fact that 25% of PIC would be contributed to the Liquidating Trust; (2) misrepresenting the fact that the Trust Assets would be irrevocably placed in trust; and (3) failing to disclose that the Company was going to delay the creation of the Trust until almost one (1) year later. Because the Individual Defendants and PCC made the foregoing material misrepresentations, PCC received the required votes to approve Proposal No. 6. Notably, had the Defendants disclosed to Legacy Shareholders that it was going to wait almost a year to establish the Liquidating Trust, Defendants would have run the risk of not receiving the votes needed to approve the Restructuring Transaction and Liquidating Trust.

16. As a result of the above-referenced misrepresentations, Legacy Shareholders are left with an interest in a Liquidating Trust that is significantly different than what was initially represented to them in the October Proxy Statement. The 25% interest in PIC, which was promised to be contributed into the Liquidating Trust, appears to have vanished. Assets that were supposed to be "irrevocably placed in Trust," as disclosed in the October Proxy

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15 Proxy at 26.
Statement, were instead used to indemnify PCC’s new merger partner VBI. Due to Defendants’ delay in forming the Liquidating Trust, the time value of money has significantly reduced the amount of cash that was supposed to be placed into Trust.

17. This action asserts claims arising under Section 20(a) and Section 14(a) of the Exchange Act, 15 U.S.C. § 78n(a) and Rule 14a-9, 17 C.F.R. § 240.14a-9, promulgated thereunder by the SEC on behalf of all persons or entities who held common stock of PCC as of the Record Date, October 11, 2013, who were eligible to vote on the Restructuring Transaction and the formation of the Liquidating Trust at the Company’s November 8, 2013 meeting of stockholders. These claims seek recovery based upon the Defendants’ negligence and do not sound in fraud.

18. As a result of Defendants’ wrongful acts and misrepresentations, Plaintiff and the other Class members were deprived of material information needed to cast an informed vote. As a result of Defendants’ misrepresentations, Legacy Shareholders have suffered significant losses and damages.

JURISDICTION AND VENUE


20. Venue is proper in this Judicial District pursuant to §27 of the Exchange Act, 15 U.S.C. §78aa and 28 U.S.C. §1391(b) as a substantial part of the conduct complaint of herein occurred in this District.

21. In connection with the acts, conduct and other wrongs alleged in this Complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce,
including but not limited to, the United States mails, interstate telephone communications and
the facilities of the national securities exchange.

PARTIES

22. Plaintiff, as set forth in the accompanying certification, incorporated by reference
herein, is a Legacy Shareholder that held stock of PCC as of the Record Date and suffered
damages as a result of Defendants’ federal securities law violations and false and/or misleading
statements and/or material omissions alleged herein.

23. Defendant VBI Vaccines, Inc. ("VBI") (f/k/a Paulson Capital (Delaware) Corp.,
f/k/a Paulson Capital Corp.) is the successor entity to PCC. On May 9, 2014, PCC and VBI
announced the signing of a definitive Agreement and Plan of Merger (the “Merger Agreement”).
The Merger Agreement provided that, following the Merger, VBI would become an operating
subsidiary of PCC with VBI’s pre-merger stockholders acquiring 59% of PCC’s outstanding
stock. The Merger was completed on July 28, 2014. Upon completion of the merger PCC
renamed the Company VBI Vaccines Inc. ("VBI"). VBI is a biopharmaceutical company that
develops novel vaccine products. The company was founded in 1970 and is headquartered in
Cambridge, Massachusetts. The company currently trades under the stock ticker symbol
“VBIV” and trades on the NASDAQ stock exchange.

24. Defendant Chester L. F. Paulson ("Chester Paulson") is a former member of the
Board of PCC. Chester Paulson was a director of PCC as of the Record Date. Chester Paulson
founded PCC in 1970 and served as the Board’s Chairman from 1970 until December 2013.
Chester Paulson served as a director of PCC from 1970 until December 2013.

25. Defendant Charles L.F. Paulson ("Charles Paulson") is a former member of the
Board of PCC. Charles Paulson was a director of PCC as of the Record Date. Charles Paulson

26. Defendant Paul F. Shoen ("Shoen") is a former member of the Board of PCC. Shoen was a director of PCC as of the Record Date. Shoen was a member of PCC's Board from February 1998 to July 2014. Shoen was Chairman of the Board from March 2014 until July 2014.

27. Defendant Dr. Shannon Pratt ("Pratt") is a former member of the Board of PCC. Pratt was a director of PCC as of the Record Date. Pratt was a member of PCC's Board from February 1998 to July 2014.

28. Defendant Trent Davis ("Davis") is a former member of the Board of PCC. Davis was elected as a director of PCC on November 8, 2013. Davis joined PCC in 1991 and was the President and Chief Executive Officer ("CEO") of PCC from July 2005 to April 2012.

29. Defendants Chester Paulson, Charles Paulson, Shoen, Pratt and Davis are collectively referred to as the "Individual Defendants" or the "Board".

30. Collectively, the Company and Individual Defendants are herein referred to as the "Defendants."

CLASS ACTION ALLEGATIONS

31. Plaintiff brings this action on its own behalf and as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of a class (the "Class") consisting of all persons and entities that held stock of PCC as of the Record Date (October 11, 2013) and now are considered Legacy Shareholders of PCC and currently hold or held an interest in the Liquidating Trust and were damaged thereby. 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. Also excluded from the Class are any persons or entities that sold stock of PCC
prior to the Record Date.

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

A. The Class is so numerous that joinder of all members is impracticable. As
of the Record Date (October 11, 2013) there were approximately 6,093,258 shares of PCC
common stock issued and outstanding or available (5,766,985 of which were entitled to receive
beneficial interests in the Trust). These shares are held by thousands of Legacy Shareholders
who are members of the Class. Up until the Record Date, PCC stock was actively traded on the
NASDAQ stock exchange;

B. Plaintiff’s claims are typical of the claims of the members of the Class
because Plaintiff and the Class sustained damages as a result of Defendants’ wrongful conduct
complained of herein;

C. Plaintiff will fairly and adequately protect the interests of the members of
the Class and retained counsel competent and experienced in class and shareholders litigation.
Plaintiff has no interests that are in conflict with the interests of the Class;

D. Common questions of law and fact exist as to all members of the Class
and predominate over any questions solely affecting individual members of the Class. Among
the questions of law and fact common to the Class are: (a) whether the Defendants violated the
Exchange Act; (b) whether the members of the Class have sustained damages and, if so, what is
the proper measure thereof; and (c) the appropriate relief for the wrongs complained of in this
complaint; and
E. A class action is superior to all available methods for the fair and efficient adjudication of this controversy. As the damages suffered by many individual Class members may be small relative to the expense and burden of individual litigation, it is practically impossible for most Class members to seek individual relief to redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

SUBSTANTIVE ALLEGATIONS

33. Founded in 1970 in Portland, Oregon by Chester L.F. Paulson, PCC was once a publicly traded holding company. PCC’s wholly owned subsidiary, PIC, is a boutique investment bank and brokerage firm.

34. On September 26, 2013, the Board held a meeting to discuss a restructuring transaction involving a disposition of certain Company assets. In particular, the Board’s September 26th minutes provided that “assets held by PIC . . . would be transferred to the liquidating trust (the “Trust”) to be established by the Company . . .”16 The Board minutes also reveal that: “[f]ollowing this update, a general discussion ensued regarding the administration of the Trust. It was noted that Messrs. Chester Paulson and Charles Paulson expected to continue to be paid their current salary for administering the Trust . . .”17

35. In the following weeks, the Board put its plan into action. On October 18, 2013, PCC filed the Proxy announcing the Restructuring Transaction of PIC’s assets and the formation of a Liquidating Trust for the benefit of Legacy Shareholders holding stock of PCC as of October 11, 2013. The opening letter of the Proxy definitively and unequivocally provides the following:

In connection with the proposed financing, your Board has approved a plan whereby a liquidating trust will be created and the shareholders of our Common

16 See Ex. A at 2.
17 Id.
Stock of record as of the record date of the Shareholders Meeting ("Legacy Shareholders") will be given non-transferable beneficial interests in the trust in proportion to their pro rata ownership interest in our Common Stock. The record date of the Shareholders Meeting is October 11, 2013. The trust will hold the majority of the assets currently held by Paulson Investment, primarily consisting of underwriter warrants, trading and investment securities, and cash and accounts receivables. It is expected that the assets in the trust will be liquidated and distributed to our Legacy Shareholders over time. Any purchasers of our securities in the open market after the record date will have no rights to the trust assets with respect to the securities so purchased. The trust will distribute sale proceeds to the Legacy Shareholders when a trust asset is liquidated, which would be treated for tax purposes as a dividend to the Legacy Shareholders. Your Board has also decided to restructure Paulson Investment's broker-dealer business, resulting in it being owned initially 25% by the Company and 75% by management of Paulson Investment and outside investors.  

36. The Proxy further confirms that the Board approved the Restructuring Transaction and in particular the formation of the Liquidating Trust. Specifically, the Proxy, at page 25, states, in part, that:

In connection with the proposed Financing, our Board of Directors has approved a plan whereby prior to the release of the escrow, an irrevocable liquidating trust (the "Trust") will be created and the shareholders of our Common Stock of record as of the Record Date (the "Legacy Shareholders") will be given non-transferable beneficial interests in the Trust in proportion to their pro rata ownership interest in our Common Stock. The Trust will hold the majority of the assets currently held by Paulson Investment Company, Inc. ("PIC"), our operating subsidiary through which the business of the Company is currently conducted, and will hold an option to purchase the Company's remaining interest in PIC.

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As part of the restructuring, it is contemplated that the broker-dealer operations will be initially owned 25% by the Company and 75% by management of PIC and outside investors, the 25% retained interest is expected to be sold and the proceeds added to the Trust. The Financing is intended to be the first step in a process of redirecting the Company's focus to a business model that the Company believes will generate better returns for shareholders.  

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18 See Initial Letter to Proxy.

19 Proxy at 25.
37. Page 26 of the October Proxy Statement further confirms that "the Trust Assets were irrevocably placed in trust at a time when the Company could have distributed them as dividends to the Legacy Shareholders under state law . . . ." (emphasis added).

38. As part of the Restructuring Transaction, the October Proxy Statement also represented to Legacy Shareholders that certain "Indemnification Agreements" had been executed between PIC and the Company. Specifically, the October Proxy Statement disclosed on page 26 that "[o]n July 25, 2013, the Company and PIC entered into a series of Indemnification Agreements pursuant to which **PIC agreed to indemnify the Company** and the investors in the Financing . . . ." (emphasis added).

39. Moreover, as expressly provided on page 3 in the October Proxy Statement (as demonstrated below), PCC’s then-existing officers and directors only owned 33.5% of PCC’s outstanding common stock and thus only controlled 33.5% of the vote:20

**Beneficial Ownership of Directors, Officers and 5% Shareholders**

The following table sets forth information regarding the beneficial ownership of our Common Stock as of September 30, 2013 by (a) each person who is known by us to beneficially own 5% or more of our Common Stock, (b) each of our directors and named executive officers, and (c) all of our directors and executive officers as a group. Except as otherwise noted, the persons listed below have sole investment and voting power with respect to the Common Stock owned by them. Unless otherwise indicated, the address of each holder is 1331 N.W. Lovejoy Street, Suite 720, Portland, Oregon 97209.

<table>
<thead>
<tr>
<th>Name of Beneficial Owner</th>
<th>Number of Shares (2)</th>
<th>Percent of Shares Outstanding</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chester L.F. (3) and Jacqueline M. Paulson (4)</td>
<td>1,260,514</td>
<td>20.8%</td>
</tr>
<tr>
<td>Steve H. Kleemann (5)</td>
<td>714,200</td>
<td>11.7%</td>
</tr>
<tr>
<td>Charles L.F. Paulson (3) (6)</td>
<td>608,591</td>
<td>10.0%</td>
</tr>
<tr>
<td>Erick J.C. Paulson (6)</td>
<td>604,598</td>
<td>9.9%</td>
</tr>
<tr>
<td>Kellie M. Davis (6)</td>
<td>598,590</td>
<td>9.8%</td>
</tr>
<tr>
<td>Shannon P. Pratt, D.B.A. (3)</td>
<td>121,054</td>
<td>2.0%</td>
</tr>
<tr>
<td>Paul F. Shoen (3)</td>
<td>56,881</td>
<td>*</td>
</tr>
<tr>
<td>Trent Davis (7)</td>
<td>15,000</td>
<td>*</td>
</tr>
<tr>
<td>Murray Smith (8)</td>
<td>5,000</td>
<td>*</td>
</tr>
<tr>
<td>All current executive officers and directors as a group (6 persons)</td>
<td>2,067,040</td>
<td>33.5%</td>
</tr>
</tbody>
</table>

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20 Proxy at 3.
40. Thus, the vote on the Restructuring Transaction and formation of the Liquidating Trust required an affirmative vote of the Legacy Shareholders, and thus was not a fait accompli. In order to obtain the requisite shareholder vote necessary for the Restructuring Transaction and formation of the Liquidating Trust, Defendants needed the approval of Legacy Shareholders:

As a result of the transactions more fully described in the accompanying Proxy Statement, each Legacy Shareholder will continue to own shares of Paulson Capital Corp. and an interest in a liquidating trust entitling the holder to dividends from the sale of certain assets previously held by Paulson Investment. Your Board urges you to vote for the Proposals set forth in the Proxy Statement so that we can accomplish our goal of maximizing shareholder value for years to come.21

41. The Company represented to Legacy Shareholders at the time that the Trust Assets included “underwriter warrants, trading and investment securities, an insurance policy on the life of the founder of the Company, and cash and accounts receivables . . . .”22 The Trust Assets also included a “25% retained interest [in PIC] [and] is expected to be sold and the proceeds added to the Trust.”23

42. On November 8, 2013, a majority of PCC shareholders voted in favor of the formation of the Liquidating Trust and the Restructuring Transaction. The Board held a meeting on the same day and discussed, among other things, “the establishment and administration of the liquidating trust (the ‘Trust’) to be created by the Company . . . .”24 Discussions about the “purpose of the Trust, the steps being taken to implement the Trust, and the role of the trustee in administering the Trust” also took place.25 During the meeting, it was further confirmed that

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21 See Initial Letter to Proxy (emphasis added).
22 Id.
23 Proxy at 25.
24 See Ex. B at 1.
25 Id.
"the role of the Trustee was to liquidate the Trust assets in an orderly and expedited fashion."\(^{26}\)

43. Less than two (2) weeks after shareholders voted in favor of the Liquidating Trust, on November 20, 2013, NASDAQ halted all trading of PCC stock. A week later, on November 27, 2013, the Company filed a Form 8-K\(^{27}\) with the SEC informing shareholders that the Company had failed to comply with NASDAQ Listing Rule 5250(e)(6). PCC's November 27, 2013 8-K states as follows:

On November 21, 2013, Paulson Capital Corp. (the "Company") received a letter from The NASDAQ Stock Market ("NASDAQ") stating that the Company had failed to comply with NASDAQ's Listing Rule 5250(e)(6), which requires that the issuer of any class of securities listed on NASDAQ must notify NASDAQ no later than ten calendar days prior to the record date of a cash or non-cash dividend or other distribution. The record date at issue is the October 11, 2013 record date (the "Record Date") that was established by the Company for purposes of determining the shareholders of the Company eligible to receive distributions from a liquidating trust (the "Trust") that is to be established by the Company and funded with certain assets held by Paulson Investment Company, Inc., the Company's operating subsidiary.

The transaction in connection with which the Trust is to be established was described in the proxy statement (the "Proxy Statement") that was provided to the Company's shareholders in connection with the 2013 Annual Meeting of Shareholders held on November 8, 2013, and was approved by the shareholders at that meeting. As described in the Proxy Statement, shareholders of the Company as of the Record Date would be eligible to participate in distributions from the Trust. Company shareholders who acquired their shares after the Record Date will not have any rights with respect to the Trust, including any right to participate in distributions from the Trust. Notification of the Record Date and the significance thereof was provided by the Company in a press release issued on September 27, 2013, and had been previously described in the Company's current reports on Forms 8-K and 8-K/A, filed on July 26, 2013 and August 30, 2013, respectively.

The Company believed that adequate public information regarding the Record

\(^{26}\) Id.

Date and the significance of such date with respect to shareholders' eligibility to participate in the Trust had been provided in the Company's Form 8-K filings and in the press release issued on September 27, 2013. However, the Company was notified by NASDAQ that direct notification to NASDAQ pursuant to NASDAQ’s Listing Rule 5250(e)(6) had been required and had not been provided to NASDAQ. Accordingly, NASDAQ deemed the Company to be in violation of NASDAQ's listing standards.

NASDAQ has requested that the Company provide, by December 6, 2013, a plan of compliance outlining how the Company will ensure timely future compliance with Listing Rule 5250(e)(6) through the implementation of new controls and procedures. The Company is in the process of preparing that plan. 28

44. Because disbursements of proceeds from the Liquidating Trust were considered a "dividend" for tax purposes, PCC was required to notify NASDAQ by October 1, 2013 that such disbursements were going to be made. The Company’s blatant failure to satisfy NASDAQ Listing Rule 5250(e)(6) demonstrates the Company’s failure to keep both Legacy Shareholders and NASDAQ fully apprised and informed.

45. Despite receiving the NASDAQ deficiency letter, the Board failed to satisfy Listing Rule 5250(e)(6) and willfully continued to violate NASDAQ rules. After nearly four months, the NASDAQ Listing Qualifications Panel issued a public reprimand letter on February 19, 2014 to the Company because the “Company has been remiss in failing to provide timely notifications in accordance with NASDAQ Listing Rule 5250(e)(6) and SEC Rule 10b-17, to ensure clear and complete disclosure with respect to shareholder rights to the Paulson Liquidating Trust and non-trust assets, and regarding plans for the Company’s operating subsidiary, Paulson Investment Company, Inc.” 29

28 Id.
46. On March 26, 2014, PCC filed a Form 8-K with the SEC announcing that the Company would re-incorporate in Delaware and change its name to “Paulson Capital (Delaware) Corp.”

47. On May 9, 2014, PCC and Variation Biotechnologies Inc. (“VBI”) announced that PCC was going to merge with VBI via a 1-for-5 reverse stock split, making VBI an operating subsidiary of PCC (the “Merger”). As a result of the Merger, VBI’s pre-merger stockholders were entitled to 59% of PCC common stock.

48. On June 30, 2014, PCC issued its Definitive June 2014 Proxy Statement where Legacy Shareholders were informed, contrary to the representations made in the October Proxy Statement that the Trust Assets were “irrevocably placed in Trust,” that the Trust Assets were now being used to indemnify PCC’s new merger partner VBI:

Paulson must also have furnished to VBI the Liquidating Trust Indemnification Agreement (as defined in the merger agreement), pursuant to which the Liquidating Trust agrees to stand behind Paulson’s indemnification obligations in the merger agreement, substantially in the form attached to the merger agreement as Exhibit F, executed by Paulson and the duly authorized representative of the Liquidating Trust (as defined in the merger agreement), 30

49. On July 27, 2014 the Company announced that the Merger had closed and that the name of the Company was going to officially change from “Paulson Capital (Delaware) Corp.” to VBI.

50. Almost 10 months after announcing the Restructuring Transaction and Liquidating Trust, newly formed VBI disclosed in a 10-Q filing on August 8, 2014 that the

Liquidating Trust was formed with assets “valued at approximately $9.8 million.” The August 10-Q provides, in pertinent part, the following:

At the effective time of the Merger, an irrevocable liquidating trust, The Paulson Liquidating Trust (the “Trust”) was created and the holders of record of Common Stock as of the record date for the Company’s 2013 Annual Meeting of Shareholders (the “2013 Record Date”) (such stockholders are referred to as the “Legacy Shareholders”) were given non-transferable beneficial interests in the Trust in proportion to their pro rata ownership interest in the Common Stock as of the 2013 Record Date. The majority of the assets currently held by PIC, which are non-operating assets primarily consisting of underwriter warrants, trading and investment securities, and cash and accounts receivables (the “Trust Assets”), collectively valued at approximately $9.8 million at June 30, 2014, were transferred to the Trust at the effective time of the Merger. It is expected that the Trust Assets will be liquidated and distributed to the Legacy Shareholders over the next two to three years.\(^{31}\)

51. In addition to the loss in value of the securities in the Liquidating Trust, the Liquidating Trust’s cash decreased by $840,543 from December 31, 2013 to March 31, 2014 despite the fact that the Liquidating Trust had not yet been formed. Moreover, contrary to the Company’s representations in the Proxy, the Liquidating Trust’s 25% interest in PIC appears to have been completely extinguished and the Company has not provided any information explaining this serious omission and blatant misrepresentation.\(^{32}\) Legacy Shareholders’ right to receive the 25% equity interest in PIC through the Trust has been completely extinguished.

52. In sum, PCC did not establish the Liquidating Trust until almost one (1) year after the announcement despite receiving Legacy Shareholder approval in November 2013. In addition to NASDAQ’s concern of PCC violating Listing Rules, the SEC also expressed concern


\(^{32}\) Further exacerbating this disappearance is the fact that both the Trust Agreement (Ex. C annexed hereto) and the Letter to Legacy Shareholders (Ex. D annexed hereto) confirm that the Legacy Shareholders’ 25% interest in the PIC has simply vanished.
over PCC’s delay in forming the Liquidating Trust. On May 15, 2014, the SEC delivered a comment letter to the Company requesting that PCC, among other things:

“Explain how net income/(loss) was allocated between Legacy and Non-Legacy shareholders given that the liquidating trust in which the Legacy shareholders will hold a beneficial interest was not formed as of December 31, 2013.”

53. On May 28, 2014, PCC sent a letter to the SEC responding to their requests. Specifically, PCC admitted that the Company segregated the Trust Assets from the Company’s assets and that as of December 31, 2013, the Liquidating Trust had not yet been formed:

Although the liquidating trust in which the Legacy shareholders hold a beneficial interest was not formed as of December 31, 2013, the Trust Assets are specifically identifiable and have been segregated for accounting purposes to allocate the net income/(loss) between Legacy and Non-Legacy shareholders.

54. The Class of Legacy Shareholders who were eligible to vote on the Restructuring Transaction and Liquidating Trust have been damaged on account of PCC’s, and now subsequently VBI’s, failure to form the Liquidating Trust in a timely manner thus resulting in actual economic harm to the Liquidating Trust and Legacy Shareholders.

55. Defendants have made several material misrepresentations including, but not limited to: (1) misrepresenting the fact that 25% of PIC would be contributed to the Liquidating Trust; (2) misrepresenting the fact that the Trust Assets would be irrevocably placed in trust; and (3) failing to disclose that the Company was going to delay the creation of the Trust until almost one (1) year later. Because the Individual Defendants and PCC made the foregoing material misrepresentations, PCC received the required votes to approve Proposal No. 6. Notably, had the Defendants disclosed to Legacy Shareholders that it was going to wait almost a year to

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34 Id.
establish the Liquidating Trust, the Defendants would have run the risk of not receiving the votes needed to approve the Restructuring Transaction and Liquidating Trust.

COUNT I

On Behalf of Plaintiff for Violations of Section 14(a) of the Exchange Act and Rule 14a-9 Against All Defendants

56. Plaintiff repeats and realleges each and every allegation set forth above.

57. The claims set forth herein do not sound in fraud and are based on negligent conduct by the Defendants named herein.

58. The Defendants named herein violated Section 14(a) of the Exchange Act and Rule 14a-9 thereunder in that these Defendants solicited proxies from Plaintiff and other members of the Class by means of the Proxy that through Defendants’ negligence contained statements which, at the time and in light of the circumstances under which they were made, were false and misleading with respect to material facts, and omitted to state material facts necessary in order to make the statements therein not false or misleading.

59. Rule 14a-9, promulgated by the SEC pursuant to Section 14(a) of the Exchange Act, provides that such communications with shareholders shall not contain “any statement which, at the time an in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading.” 17 C.F.R. §240.14a-9.

60. Plaintiff and other members of the Class were misled by Defendants’ false and misleading statements and omissions, were denied the opportunity to make an informed decision in voting on the Liquidating Trust and approved the formation of the Liquidating Trust without having been advised of material facts. Accordingly, because of Defendants’ misrepresentations, Plaintiff and other members of the Class did not (and have not) received fair value for the Trust
Assets that were invested into the Liquidating Trust. Because of Defendants’ material misrepresentations, Legacy Shareholders were coerced into casting an uninformed vote and received an interest in a Trust that was significantly worth less than what was represented to them and suffered harm as a direct result.

61. Plaintiff and the Class members eligible to vote on the Liquidating Trust were denied the opportunity to make an informed decision in voting on the Liquidating Trust, and, as a result, were damaged as a direct and proximate cause of the materially untrue statements and omissions set forth herein.

62. Each named Defendant named in this Count acted negligently in omitting and misrepresenting material facts required to be stated in order to make the statements contained in their solicitations not misleading and failing to update statements that were rendered false and misleading.

63. The solicitations described herein were essential links in the accomplishment of the Restructuring Transaction and Liquidating Trust. As a result of these solicitations, Legacy Shareholders approved the Restructuring Transaction and Liquidating Trust (collectively, Proposal No. 6).

64. Plaintiff and the Class members eligible to vote on the Restructuring Transaction and Liquidating Trust as a result, were damaged as a direct and proximate cause of the misleading statements and omissions set forth herein.

65. The members of the Class have suffered damages as a result of the Liquidating Trust, which was approved through the use of a proxy in violation of Section 14(a) of the Exchange Act and Rule 14a-9 thereunder.
COUNT II

On Behalf of Plaintiff for Violations of Section 20(a) of the Exchange Act
Against the Individual Defendants

66. Plaintiff repeats and realleges each and every allegation contained above as if full set forth herein.

67. The Individual Defendants acted as controlling persons of PCC within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their positions as officers and/or directors of PCC, and participation in and/or awareness of the Company’s operations and/or intimate knowledge of the false statements contained in the October Proxy Statement filed with the SEC, they had the power to influence and control and did influence and control, directly or indirectly, the decision making of the Company, including the content and dissemination of the various statements and omissions which Plaintiff contends are false and misleading.

68. Each of the Individual Defendants were provided with or had unlimited access to copies of the October Proxy Statement and other statements alleged by Plaintiff to be misleading prior to and/or shortly after these statements and omissions were made and had the ability to prevent the issuance of the statements and omissions or cause the statements to be corrected.

69. Plaintiff and the Class members eligible to vote on the Liquidating Trust were denied the opportunity to make an informed decision in voting on the Liquidating Trust and were damaged as a direct and proximate cause of the untrue statements and omissions in the October Proxy Statement.

70. By virtue of the foregoing, the Individual Defendants have violated Section 20(a) of the Exchange Act.
71. As set forth above, the Individual Defendants had the ability to exercise control over and did control a person or persons who have each violated Section 14(a) and SEC Rule 14a-9, by their acts and omissions as alleged herein. By virtue of their positions as controlling persons, these defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of Defendants’ conduct, Plaintiff will be irreparably harmed.

PRAYER FOR RELIEF

WHEREFORE, on behalf of itself and the Class, Plaintiff demands judgment against Defendants as follows:

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

B. Awarding Plaintiff and the Class compensatory and/or recissory damages;

C. Awarding Plaintiff his costs and disbursements, including the fees of Plaintiff’s counsel and experts, and reimbursements of expenses; and

D. Granting Plaintiff and the Class such other and further equitable relief as this Court may deem just and proper.

JURY TRIAL DEMAND

72. Plaintiff hereby demands a trial by jury for all issues so triable.