



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

PINE BROOK CAPITAL PARTNERS)	
II, L.P.,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 2021-0649-MTZ
)	
BETTER HOLDCO, INC.,)	
AURORA ACQUISITION CORP. and)	
AURORA MERGER SUB I, INC.,)	
)	
Defendants.)	

**AMENDED VERIFIED COMPLAINT
FOR DECLARATORY JUDGMENT AND DAMAGES**

Plaintiff Pine Brook Capital Partners II, L.P. ("Pine Brook"), by its undersigned attorneys, hereby alleges upon personal knowledge as to its actions, and upon information and belief as to all other allegations herein, as follows:

NATURE OF THE ACTION

1. In this action, Pine Brook seeks a declaratory judgment regarding the enforceability and validity of two contracts: 1) a side letter agreement and 2) a provision in a merger agreement that purports to condition receipt of merger consideration on a stockholder signing a letter of transmittal containing a six-month lock-up provision. Pine Brook also seeks money damages for the misconduct described herein. Better Holdco, Inc.'s ("Better" or the "Company") flawed interpretation of the side letter and attempt to lock-up Pine Brook's shares in

exchange for merger consideration Pine Brook will be entitled to receive violates the Delaware General Corporation Law, is punitive and coercive, a deprivation of Pine Brook's benefit of its bargain, and an infringement of Pine Brook's stockholder rights.

2. Pine Brook is a longtime Better stockholder. Currently, Pine Brook owns 9,875,000 shares of Better's Series A preferred stock, 4,100,000 shares of its Series B preferred stock, 2,031,073 shares of its Series C-2 preferred stock and 1,218,644 shares of Better's Series C-3 preferred stock, in total accounting for 7.0254% of Better's outstanding equity.

3. In late 2020, Better began to explore transactions that would result in its shares being publicly traded. Better did not do an IPO. Instead, on May 10, 2021, Better entered into an Agreement and Plan of Merger (the "Merger Agreement") with Aurora Acquisition Corp. ("Aurora") and Aurora Merger Sub I, Inc. ("Merger Sub"), pursuant to which it intends to consummate a SPAC transaction (the "Merger").

4. Pursuant to Section 6.5 of the Merger Agreement, the Company is required as a first step of the Merger to convert all outstanding shares of Better preferred stock (including all shares held by Pine Brook) to common stock. Thereafter, all shares of Better common stock will be converted into the right to receive a *pro rata* share of the Merger consideration. Pursuant to Section 3.2(d) of

the Merger Agreement, a stockholder may choose to receive common stock of the post-Merger entity, non-voting stock of the post-Merger entity or cash (up to a specified limit).

5. The Merger is expected to close in or around late October or early November of 2021.

6. Better is attempting in connection with the Merger to impermissibly repurchase certain of Pine Brook's equity holdings in the Company for almost zero consideration.

7. On August 9, 2019, Pine Brook and Better entered into an amended and restated side letter (the "Side Letter," Exhibit A) governed by Delaware law. Pine Brook agreed to permit the repurchase of certain of its Better shares for an aggregate purchase price of \$1.00 in certain circumstances.

8. None of those circumstances apply here, and in any event, the Side Letter terminates upon the effectiveness of the registration statement under the Securities Act of 1933 pursuant to which shares of the Company's existing preferred stock are converted into shares of common stock (which will happen at least several days – if not weeks – before the Merger is completed and Pine Brook becomes entitled to receive any Merger consideration).

9. Moreover, Better is attempting to impose inequitable and invalid post-closing restrictions on Pine Brook, at its CEO's direction and for no consideration to Pine Brook.

10. Pine Brook, a longtime owner of Better's preferred stock, will be entitled to receive a *pro rata* share of the Merger consideration based on the same formula that applies to every other Better stockholder.

11. Nonetheless, Section 3.2(b) of the Merger Agreement purports to require any person or entity holding more than 1% of the Company's equity to sign a letter of transmittal (the "Transmittal Letter"), containing a six-month lockup provision that Pine Brook ultimately rejected in earlier negotiations (the "Transmittal Letter Lockup Provision"), as a condition to receiving its share of the Merger proceeds. This is contractually invalid and violates Delaware law, including Sections 202(b) and 251 of the DGCL.

12. Pine Brook and the other stockholders subject to the Transmittal Letter Lockup Provision will receive no additional payment or benefit in exchange for their forced agreement not to divest their shares. Indeed, each *minor* Better stockholder (*i.e.*, those who own less than 1% of Better's outstanding stock) that did not sign a Support Agreement will receive their *pro rata* Merger consideration just like Pine Brook – except that the minor stockholders will not have to agree to the Transmittal

Letter Lockup Provision in order to receive it. Nor will they have to vote for the Merger to receive their share of the proceeds.

13. Because Pine Brook will not receive any benefit in exchange for its forced agreement to the Transmittal Letter Lockup Provision, and because the Lockup Provision prevents Pine Brook from determining the value of the merger consideration, the Transmittal Letter is invalid and unenforceable.

14. Moreover, conditioning receipt of the Merger consideration on a lockup is inequitably coercive. In pre-signing negotiations, Pine Brook ultimately refused to sign a Company Holder Support Agreement (the “Support Agreement”) with Better containing a six-month post-closing trading lockup. Now, Better purports to condition Pine Brook’s receipt of the Merger consideration on Pine Brook’s agreement to the same restrictive terms that it rejected previously. Those terms have nothing to do with the Merger, as demonstrated by the fact that not every Better stockholder is being forced to agree to them. Thus, the Transmittal Letter Lockup Provision is inequitably and impermissibly coercive and invalid as a matter of law.

15. For all of these reasons, and as further explained below, Pine Brook is entitled to declarations that (i) the Side Letter’s repurchase right will not be triggered by the Merger and terminates prior to closing and (ii) the Transmittal Letter Lockup Provision is invalid and not binding on Pine Brook. Pine Brook is also entitled to money damages, including in connection with its declaratory judgment claims, as

well as for Defendants' anticipatory breaches of contract, conversion and statutory violations.

THE PARTIES

16. Plaintiff Pine Brook is a Delaware limited partnership and a member of the Pine Brook family of investment entities, with offices in New York and White Plains, New York. It was founded in 2006 with the vision of providing management teams with capital they need to build their businesses, leveraging its expertise in financial services and energy, and offering investors an opportunity to achieve attractive returns. Pine Brook's focus is on "business building" investments, primarily in energy and financial services businesses.

17. Defendant Better is a privately-held Delaware corporation providing mortgage-related services through an online platform.

18. Defendant Aurora is a Cayman Islands exempted company limited by shares. Aurora was incorporated for the purpose of effecting a merger, share exchange, asset acquisition, stock purchase, reorganization or similar business combination with one or more businesses, and conducts no business of its own.

19. Defendant Merger Sub is a Delaware corporation and a direct, wholly owned subsidiary of Aurora formed for purposes of effectuating the Merger.

JURISDICTION

20. The Court has subject matter jurisdiction over the claims asserted in this Complaint pursuant to 10 *Del. C.* § 341, 10 *Del. C.* § 6501, 10 *Del. C.* § 6502, and 8 *Del. C.* § 111.

21. In Section 11.14(a) of the Merger Agreement, Defendants irrevocably and unconditionally consented and submitted to the exclusive jurisdiction of this Court (or, to the extent that the Court lacks subject-matter jurisdiction, to the jurisdiction of the Superior Court of the State of Delaware, or the United States District Court for the District of Delaware).

SUBSTANTIVE ALLEGATIONS

A. Pine Brook Invests Significant Funds In Better, An Innovative Mortgage Startup.

22. Better was founded in 2014 by Vishal Garg, the Company's current CEO. The Company takes an innovative approach to mortgage lending by offering a completely online, rapid process, cutting borrowers' time to closing from an industry average of 42 days down to 21 days. It has grown quickly as a private company since its founding, engaging in multiple rounds of financing. Most recently in April 2021, Better closed a deal whereby SoftBank-related entities invested \$500 million in the business, resulting in an overall valuation of approximately \$6 billion. Last year, Better generated approximately \$800 million in revenue, and – unusual for a startup – made a profit.

23. Pine Brook has for years invested substantial sums in Better's various financing rounds. As of today, Pine Brook is Better's fourth-largest equity holder, controlling 7.0254% of Better's outstanding stock.

24. On August 9, 2019, Pine Brook and Better entered into the Side Letter. The Side Letter permits the Company to repurchase some of Pine Brook's Better stock in two circumstances: upon an "underwritten initial public offering by the Company of its securities," or if Pine Brook is "entitled to receive Proceeds from the Shares [*i.e.*, certain of Pine Brook's Better stock] ... in excess of the Valuation Threshold." (Ex. A §§ 1(a)(i); 1(b)(i))

25. The Side Letter does not grant the Company repurchase rights in the event of a SPAC transaction and it terminates upon, among other things, the effectiveness of a registration statement.

B. Better Determines To Go Public By Way Of A SPAC Merger.

26. In late 2020, Better began to explore means by which it could go public and, therefore, secure greater access to funding by way of the capital markets while also allowing insiders and early investors to profit from their work with the Company.

27. One such alternative was a SPAC transaction. In that deal structure, an existing blank check company with no operations of its own sells shares in order to fund its acquisition of an operating but private company. Thereafter the two

companies merge, with the blank check corporation (now an operating business) as the surviving entity – the result being that shares of the formerly private business are now traded publicly, without the necessity of an initial public offering.

28. Rather than undertaking an initial public offering of its own shares, Better determined to pursue a SPAC transaction (*i.e.*, the Merger).

29. The Merger will take place in multiple stages. Initially, Aurora (currently a Cayman Islands exempted company formed for the purpose of effecting a merger, share exchange, asset acquisition, stock purchase, reorganization or similar business combination with one or more businesses) will redomesticate as a Delaware corporation. Thereafter, Better's existing series of preferred stock will convert to common, and Better will merge into Aurora Merger Sub I, Inc., a Delaware corporation and a wholly-owned subsidiary of Aurora, with Better as the surviving entity. In the final stage of the transaction, Better will merge with Aurora, with Aurora surviving as a publicly traded entity.

30. During the Merger process, all shares of Better's existing preferred stock (including Pine Brook's holdings) will be converted into Better common stock. Then, each share of Better common stock (which will, at the time, account for all of Better's outstanding stock) will be converted into the right to receive the merger consideration set forth in the Merger Agreement, which, depending on each stockholders' election, will consist of stock in the post-Merger entity or cash.

Ultimately, Better's current stockholders will control 76% of the total voting power in the post-Merger public entity.

C. In Connection With The Merger, Better Impermissibly Seeks To Repurchase Some Of Pine Brook's Equity For Pennies.

31. As noted above, on August 9, 2019 Better and Pine Brook entered into the Side Letter, which in relevant part grants Better certain repurchase rights.

32. Specifically, Section 1(b)(i) of the Side Letter provides, in relevant part:

In the event of an underwritten initial public offering by the Company of its securities ("**IPO**") in which the Shares are converted into or exchanged for shares of Common Stock or other securities of the Company, if (i) the Proceeds that the Shares would have received if a Deemed Liquidation Event with a value exactly equal to the implied equity value of the Company based on the initial offering price per share in an IPO had occurred immediately prior to the IPO plus any Proceeds previously distributed to the Shares exceed (ii) the Valuation Threshold, then the Company shall have the right to repurchase from Investor for an aggregate purchase price of \$1.00 upon written notice to Investor a number of Redemption Shares such that the aggregate Proceeds that would have been received by Investor in such Deemed Liquidation Event following such redemption is equal to the Valuation Threshold, or all of the Redemption Shares if the aggregate Proceeds that would have been received by Investor in such Deemed Liquidation Event following such redemption would exceed the Valuation Threshold; provided, however, that if the Company exercises its repurchase right under this Section 1(b), the Company shall also exercise any similar repurchase right the Company has pursuant to letters between the Company and any other stockholder.

33. In connection with the Merger negotiations and discussions, Better, its counsel, and its advisors always assumed that the Side Letter would not apply to grant the Company repurchase rights in connection with the Merger. Among other

things, this is demonstrated by the fact that (prior to May 8, 2021), the Company's draft *pro forma* post-Merger capitalization tables assumed that Pine Brook would exchange all of its existing Better stock in the Merger.

34. On May 4, 2021, in conjunction with a request by Better that Pine Brook elect to take more than its *pro rata* share of cash in the Merger in order to facilitate desired levels of post-closing stockholding by Better's management, Better assured Pine Brook that in the Merger it would be entitled to exchange 17,224,717 shares for consideration, a number that is consistent with Pine Brook's current stock holdings and not reflective of any repurchase under the Side Letter.

35. A draft Support Agreement circulated to Pine Brook also demonstrates that, at least as of May 5, 2021, the Company considered the Side Letter inapplicable to the Merger. Specifically, it contains a provision whereby Pine Brook would agree to terminate the Side Letter immediately prior to the Closing. Such a provision would be unnecessary – in fact, detrimental to the Company's interests – if the Side Letter permitted a repurchase of Pine Brook's stock in connection with the consummation of the Merger.

36. Moreover, as of May 7, 2021 – after the SPAC transaction structure had been finalized – Better's and its financial advisor's Board-level analyses evidenced their conclusion that none of Pine Brook's shares could be repurchased pursuant to the Side Letter.

37. Despite all indications that Better, its counsel and its financial advisors believed for most of the process that the Side Letter would not apply, Better now asserts that, because the Merger will result in shares of the Company's successor entity being publicly traded, the Side Letter is triggered and Better is entitled to repurchase a large block of Pine Brook's shares for a dollar.

38. That is false. The Merger is not "underwritten," nor is it an "initial public offering." Nor is it an offering "by the Company of its securities," as the only securities that will be offered to the public are those of Aurora, the existing blank check company that will ultimately survive the Merger. The Side Letter's IPO repurchase provision, accordingly, does not apply.

39. Indeed, Better plans to tell its investors and the public that the Merger is the accounting equivalent of a reverse recapitalization transaction whereby Better acquires Aurora. It cannot contend for purposes of the Side Letter that the Merger is something else – an initial public offering of its own shares.

40. Moreover, the other repurchase right granted to Better in the Side Letter – triggered in the event of Pine Brook's receipt of "Proceeds" – is also not relevant to the Merger.

41. In relevant part, Section 1(a)(i) of the Side Letter provides:

If, at any time, Investor is entitled to receive Proceeds from the Shares (together with any shares of Common Stock or other securities issued upon conversion or exchange of such Shares) in excess of the Valuation Threshold (i.e., the next distribution by the Company would exceed the

Valuation Threshold), then the Company shall have the right, but not the obligation, to repurchase from Investor for an aggregate purchase price of \$1.00, upon written notice to Investor, a number of Redemption Shares such that the aggregate Proceeds received, or entitled to be received, by Investor following such redemption is equal to the Valuation Threshold, or all of the Redemption Shares if the aggregate Proceeds received, or entitled to be received, by Investor following such redemption would exceed the Valuation Threshold; provided, however, that if the Company exercises its repurchase right under this Section 1(a), the Company shall also exercise any similar repurchase right the Company has pursuant to letters between the Company and any other stockholder.

42. Here, however, a portion of the consideration that Pine Brook will be entitled to receive in the Merger does not constitute Proceeds.

43. “Proceeds” is defined in the Side Letter as follows:

“Proceeds” means with respect to any Shares, shares of Common Stock or other securities issued upon conversion or exchange of such Shares, (i) any cash or other property received by Investor as a dividend or distribution, and (ii) any cash or other property received by Investor upon a sale thereof, including as a result of a merger or recapitalization, or any other event or circumstance that is, or might be regarded as, a Deemed Liquidation Event (as defined in the Restated Certificate).

44. The stock portion of the Merger Consideration constitutes “securities issued upon conversion or exchange of the Shares” and therefore one must look to see if Pine Brook will receive, *on the stock consideration itself*, the consideration described in clauses (i) and (ii) of the definition of Proceeds. Therefore, the stock consideration should be disregarded in determining whether the Valuation Threshold has been satisfied.

45. Moreover, the Merger is also not a “Deemed Liquidation Event.” That term is defined in the Company’s Certificate of Incorporation (the “Restated Certificate,” for purposes of the Side Letter) to *exclude* the following:

any ... merger or consolidation involving the Corporation or a subsidiary in which the shares of capital stock of the Corporation outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such merger or consolidation, a majority by voting power, of the capital stock of (1) the surviving or resulting corporation.

46. The current stockholders of outstanding stock of Better will represent 76% of the voting power of the surviving corporation after the Merger. Accordingly, the Merger is not an “event or circumstance that is, or might be regarded as, a Deemed Liquidation Event.”

47. Further, although Pine Brook can elect cash consideration in the Merger, the cash portion of the total Merger proceeds that can be delivered to Better stockholders is limited such that Pine Brook can never reach the “Valuation Threshold” (as that term is defined in the Side Letter). Thus, in no event will Pine Brook receive “Proceeds” (again, for purposes of the Side Letter), meaning that the Side Letter’s redemption-related repurchase right cannot apply.

48. No provision of the Side Letter grants to Better a repurchase right triggered by the Merger. Accordingly, Better is not entitled to repurchase any of Pine Brook’s equity stake in the Company.

49. Better initially agreed with this conclusion. Before Better's CEO initiated his campaign to punish Pine Brook, Better's in-house counsel sent Pine Brook a capitalization table reflecting its calculation of the various existing stockholders' *pro forma* ownership of the post-Merger entity. Better, its counsel, its advisors and the capitalization table all assumed that the Side Letter would not apply, and that none of Pine Brook's Better stock would be repurchased in connection with the Merger. Now, Better says the opposite. It was right the first time.

50. Finally, even if the Merger *is* a Deemed Liquidation Event (which is not true), Better would *still* not be entitled to repurchase Pine Brook's shares, because a Deemed Liquidation Event terminates the Side Letter unless Pine Brook continues to hold Company shares (or shares of a nonpublic Company successor) thereafter. (*See* Side Letter § 2 ("This Letter shall terminate upon the earliest of (i) the consummation of a Deemed Liquidation Event (as defined in the Charter), unless, following such Deemed Liquidation Event, the Investor holds any security of (a) the Company or any subsidiary thereof or (b) any non-publicly reporting company which security was issued in right or exchange for any security of the Company or any subsidiary thereof.")) After the Merger, Better will not exist. It is true that Pine Brook will hold stock of the post-Merger surviving entity, but that entity will be publicly reporting. Thus, even if the Side Letter's repurchase features

could apply to the Merger, they do not, because the Merger will terminate the Side Letter.

51. Indeed, the Merger will terminate the Side Letter whether or not the Merger is a Deemed Liquidation Event. In addition to the above, the Side Letter terminates upon “the effectiveness of a registration statement under the Securities Act of 1933, as amended, pursuant to which all shares of preferred stock of the Company are converted into shares of common stock of the Company.” (Side Letter § 2) Such a registration statement will become effective at least several days – if not weeks – before the Merger is completed and Pine Brook becomes entitled to receive any Merger consideration.

52. The Side Letter also terminates when Pine Brook “no longer holds any shares of capital stock (whether as a result of transfer, cancellation, repurchase, revocation, abandonment or otherwise) of (a) the Company or any subsidiary thereof (or any successor or assignee thereof) or (b) any non-publicly reporting company which security was issued in right or exchange for any security of the Company or any subsidiary thereof.” (Side Letter § 2) As explained above, in the Merger Pine Brook’s existing Better stock will be converted to common, and then exchanged for the right to receive Merger consideration (which may include stock of Aurora, the post-Merger surviving entity). Until such time as Pine Brook *receives* such consideration, however, it will not own any Better stock *or* any Aurora stock. Thus,

immediately upon the exchange of Pine Brook's Better stock for a right to receive Aurora stock at some time in the future, the Side Letter will terminate.

53. Better is harming and damaging Pine Brook. Defendants concede that money damages are an appropriate remedy to correct this harm.

D. During The Merger Negotiation Process, Pine Brook Refuses To Agree To Lock Up Its Shares After Closing; Better Responds With Coercion.

54. On May 5, 2021, Better's counsel circulated a draft Support Agreement to Pine Brook. The Support Agreement, if signed, would have prohibited Pine Brook from disposing of its Company shares for at least one year after the Merger's closing. (Subsequent revisions to the Support Agreement reduced that period to six months.)

55. Pine Brook intended to sign the Support Agreement (with a six-month lockup, not one year) based on the deal terms that had been presented to Pine Brook up to that point, including that the Side Letter would not apply. Such agreement was voluntary (at the time) and Pine Brook intended to sign the Support Agreement only based on the proposed deal terms in the aggregate.

56. Thereafter, on May 8, 2021, Vishal Garg – Better's founder and CEO – lashed out. Garg wrote:

Nick¹ just informed me of a new development.

¹ "Nick" is Nicholas Calamari, Better's general counsel and a longtime Garg colleague.

The company negotiated the right to buy back 1.8mm shares for \$1 held by pinebrook in 2016 upon a liquidity event.

And it appears pinebrook is taking the position that this is not a liquidity event, even though they are getting consideration which is 28x their basis.

So I strongly suggest we take an alternative route in case pinebrook keeps that position wherein the preferred get 100% cash (aka full liquidity event in the eyes of the law) unless the preferred acknowledge that the spac transaction qualifies as a liquidity event.

57. Due to Garg's eleventh hour insistence that the Side Letter would apply, contrary to what his team had communicated to Pine Brook all along, the circumstances of the negotiation changed. Pine Brook ultimately decided not to sign the Support Agreement.

58. Garg's email is wrong on all counts. Nonetheless, as a result of his anger with Pine Brook, the next day, May 9, 2021, a revised draft of Section 2.3(b) of the Merger Agreement was circulated by Better's counsel and contained, for the first time,² the following language highlighted in bold and italics:

Prior to the First Effective Time (and in any event within two (2) Business Days of the First Effective Time), Acquiror shall send or shall cause the Exchange Agent to send, to each record holder of shares of Company Common Stock as of immediately prior to the First Effective Time, whose Company Common Stock was converted pursuant to Section 3.1(a) into the right to receive a portion of the Aggregate

² A prior draft of the Merger Agreement provided that the Letter of Transmittal would "be in customary form" and "contain certain restrictions on transfer for any Holder who beneficially owns greater than one percent (1%) of the outstanding Company Capital Stock of of [sic] immediately after the First Effective Time."

Merger Consideration, a letter of transmittal and instructions (which shall specify that the delivery shall be effected, and the risk of loss and title shall pass, only upon proper transfer of each share to the Exchange Agent, and which letter of transmittal will be in customary form and have such other provisions as Acquiror may reasonably specify) for use in such exchange (each, a “Letter of Transmittal”), which shall contain the transfer restrictions set forth in Section 3.1(a) of the Company Holders Support Agreement³ for any Holder who (i) beneficially owns greater than one percent (1%) of the outstanding Company Capital Stock as of the date of this Agreement and (ii) *is not a party to the Company Holders Support Agreement*.

59. What had happened was clear: at Garg’s direction, Better decided to unilaterally impose on Pine Brook the six-month lockup contained in the draft Support Agreement, despite Pine Brook’s ultimate refusal to sign that contract. Therefore, Better would accrue all of the benefits it sought in the Support Agreement, without having to obtain Pine Brook’s consent and without having to pay Pine Brook consideration.

60. Section 3.2(b) of the Merger Agreement, as executed, contains the Transmittal Letter Lockup Provision. It provides:

Prior to the First Effective Time⁴ (and in any event within two (2) Business Days of the First Effective Time), Acquiror shall send or shall cause the Exchange Agent to send, to each record holder of shares of Company Common Stock as of immediately prior to the First Effective Time, whose Company Common Stock was converted pursuant to Section 3.1(a) into the right to receive a portion of the Aggregate

³ The “Company Holders Support Agreement” is the Support Agreement referenced above.

⁴ The “First Effective Time” is defined in the Merger Agreement as the effective time of the first-step merger between Better and Aurora Merger Sub I.

Merger Consideration, a letter of transmittal and instructions (which shall specify that the delivery shall be effected, and the risk of loss and title shall pass, only upon proper transfer of each share to the Exchange Agent, and which letter of transmittal will be in customary form and have such other provisions as Acquiror may reasonably specify) for use in such exchange (each, a “Letter of Transmittal”), which shall contain the transfer restrictions set forth in Section 3.1(a) of the Company Holders Support Agreement⁵ for any Holder who (i) beneficially owns greater than one percent (1%) of the outstanding Company Capital Stock as of the date of this Agreement and (ii) is not a party to the Company Holders Support Agreement.

61. In other words, Pine Brook’s existing Better stock will be automatically converted pursuant to the Merger Agreement into the right to receive merger consideration, but in order to receive that consideration (that the Company is already obligated to pay Pine Brook), Pine Brook will be required to sign the Transmittal Letter – which contains the same stock transfer restrictions that Pine Brook ultimately refused to accept in connection with the proposed Support Agreement.

62. Pine Brook will not sign the Transmittal Letter required by the Transmittal Letter Lockup Provision.

63. Because the various series of Better stock will be converted to common stock in the Merger, each existing Better stockholder will be entitled to the same per-share consideration in connection with the transaction. However, Better

⁵ Section 3.1(a) of the Support Agreement states, in relevant part: “Each Locked-Up Major Stockholder (agrees that it, he or she shall not Transfer any Merger Shares prior to the date that is six (6) months from the Closing Date....”

stockholders who own small amounts of Company stock – less than 1% of the total outstanding – will be entitled to receive their Merger consideration free and clear of restrictions. *Only* those stockholders who own more than 1% of Better’s outstanding stock *and* who did not sign the Support Agreement (Pine Brook and two other stockholders) will be required to agree to the Transmittal Letter Lockup Provision in order to receive their share of the Merger proceeds. Such coercion is impermissible as a matter of Delaware law.

64. Further, this post-closing restriction violates Section 251 of the DGCL. In relevant part, that section requires that a merger agreement “set forth the cash, property, rights or securities of any other corporation or entity which the holders of such shares are to receive.” In other words, Section 251 requires that stockholders be able to ascertain the value, at or about the time of the merger, of what they will receive as merger consideration. The Transmittal Letter Lockup Provision precludes Pine Brook from knowing the value of the consideration it will receive at the time the Merger closes, because Pine Brook will not be able to sell that stock until some point in the future and cannot predict what its price will be at that time. Thus, as a matter of Delaware law, the Transmittal Letter Lockup Provision cannot be foisted on Pine Brook.

65. Also, even if Pine Brook were to agree to the Transmittal Letter required by the Transmittal Letter Lockup Provision, that agreement would be

invalid for lack of consideration. All Better stockholders will be entitled to the same compensation in connection with the Merger, but only some will be required to sign the Transmittal Letter and agree to the Transmittal Letter Lockup Provision. The Merger Agreement does not provide for any additional payment or other benefits to those stockholders who are bound by the Transmittal Letter Lockup Provision. Accordingly, it is unsupported by consideration and invalid under Delaware law.

66. Moreover, the Transmittal Letter Lockup Provision is invalid because it represents an attempt to impose inequitable differential treatment on Pine Brook. Initially, Better requested that Pine Brook sign a Support Agreement and thereby voluntarily agree to lock up its post-Merger shares. Pine Brook refused to agree to those terms. Now Better is seeking to impose those terms on Pine Brook by force, as part of the Merger Agreement.

67. However, Pine Brook's agreement to a lockup cannot possibly be *necessary* or *essential* to the Merger, because if that were so, there would be no need for the Support Agreement at all. If there was a real need to require holders of Better stock to agree to a lockup, the Company would simply have included a lockup provision in the Merger Agreement and made it apply to *all* of Better's stockholders. It did not. Better is attempting to punish Pine Brook not for business reasons, but out of personal animus or some other illegitimate motive. That is impermissible as a matter of Delaware law.

68. Better's actions also violate 8 *Del. C.* § 202(b). In relevant part, that statute reads:

A restriction on the transfer or registration of transfer of securities of a corporation, or on the amount of a corporation's securities that may be owned by any person or group of persons, may be imposed by the certificate of incorporation or by the bylaws or by an agreement among any number of security holders or among such holders and the corporation. No restrictions so imposed shall be binding with respect to securities issued prior to the adoption of the restriction unless the holders of the securities are parties to an agreement or voted in favor of the restriction.

69. Here, Better is attempting to impose stock-transfer restrictions in two ways, both of which violate Section 202(b).

70. *First*, Better – by way of the Merger Agreement – is attempting to restrict Pine Brook's ability to transfer the Company's existing stock as it desires. The Merger Agreement purports to convert Pine Brook's existing Better stock into a right to receive stock of the post-Merger entity. However, in order to exchange those rights (which are the equivalent of Better stock) for the Merger proceeds, Pine Brook must agree to the Transmittal Letter Lockup Provision. This draconian restriction on what Pine Brook may do with its existing Better shares is not authorized by Better's charter or bylaws,⁶ and Pine Brook did not vote in favor of

⁶ Indeed, Better's current bylaws provide that "[e]ach certificate for shares of stock which are subject to any restriction on transfer pursuant to the Certificate of Incorporation, these By-laws, applicable securities laws or any agreement among any number of stockholders or among such holders and the corporation

(cont'd)

the Merger or the forced imposition of the Transmittal Letter Lockup Provision. Accordingly, it is invalid under Section 202(b).

71. *Second*, the Transmittal Letter Lockup Provision itself is invalid. In order to receive its share of the Merger consideration – which, at least in part, will comprise shares of the post-closing entity – Pine Brook must agree to a restrictive provision whereby it will not be permitted to divest its equity holdings for six months. This Transmittal Letter Lockup Provision is not set forth in the surviving entity’s post-closing charter or bylaws,⁷ has not been noted on the face of any certificate representing such shares, and is unacceptable to Pine Brook (thus, Pine Brook has not and will not agree to it). Accordingly, it too is invalid under Section 202(b).

72. Better is infringing Pine Brook’s ability to exercise basic rights of a Delaware stockholder, including the fundamental right to sell one’s shares as and when desired. Also, by withholding Pine Brook’s share of the Merger consideration without its consent, Better is also depriving Pine Brook of its status as a stockholder

shall have conspicuously noted on the face or back of the certificate either the full text of the restriction or a statement of the existence of such restriction.”

The Merger Agreement’s restrictions on what Pine Brook may do with its Better stock are not noted on the face of Pine Brook’s share certificates in any way.

⁷ As is true of Better’s existing bylaws, it appears that the surviving entity’s post-closing bylaws will prohibit share transfer restrictions not set forth on the certificate representing the affected shares.

and all the rights that come along with that status. For this and other reasons, Better is harming and damaging Pine Brook. Defendants concede that money damages are an appropriate remedy to correct this harm.

73. Better's actions are not only inequitable and impermissible by contract, they are invalid as a matter of Delaware law.

COUNT I
DECLARATORY JUDGMENT AGAINST DEFENDANT BETTER
(AS TO THE SIDE LETTER)

74. Pine Brook repeats, realleges and incorporates by reference the allegations in the foregoing paragraphs of this Complaint as if fully set forth herein.

75. The Merger is not an “IPO,” as that term is defined in the Side Letter.

76. No provision of the Side Letter authorizes Better to repurchase any of Pine Brook’s shares of Better stock in connection with the Merger.

77. The Side Letter terminates when the registration statement becomes effective.

78. Pine Brook’s and Better’s interests regarding the inapplicability of the Side Letter to the Merger are real and adverse, and the issues involved are ripe for judicial determination.

79. Accordingly, Pine Brook is entitled to a declaration that the Side Letter does not authorize Better to repurchase any of Pine Brook’s shares of Better stock in connection with the Merger.

COUNT II
CONVERSION AGAINST DEFENDANT BETTER
(AS TO THE SIDE LETTER)

80. Pine Brook repeats, realleges and incorporates by reference the allegations in the foregoing paragraphs of this Complaint as if fully set forth herein.

81. The Merger is not an “IPO,” as that term is defined in the Side Letter.

82. No provision of the Side Letter or other right or entitlement authorizes Better to repurchase any of Pine Brook's shares of Better stock in connection with the Merger.

83. The Side Letter terminates when the registration statement becomes effective.

84. Better has expressed a definite and unequivocal intent to wrongfully exercise dominion over Pine Brook's property; namely, the stock that Better intends to wrongfully repurchase.

85. Better's actions will be in denial of, and inconsistent with, Pine Brook's rights, including its right to maintain ownership of the Better stock at issue.

86. Better's actions purportedly pursuant to the Side Letter will harm Pine Brook by, among other things, denying Pine Brook the full value of its Better stock holdings, and denying Pine Brook the ability to transact in or otherwise benefit from ownership of the stock at issue.

87. Accordingly, Pine Brook is entitled to money damages in an amount to be proven at trial.

COUNT III
ANTICIPATORY BREACH OF CONTRACT AGAINST
DEFENDANT BETTER (AS TO THE SIDE LETTER)

88. Pine Brook repeats, realleges and incorporates by reference the allegations in the foregoing paragraphs of this Complaint as if fully set forth herein.

89. The Side Letter is a valid, binding and enforceable contract.
90. The Merger is not an “IPO,” as that term is defined in the Side Letter.
91. No provision of the Side Letter or other right authorizes Better to repurchase any of Pine Brook’s shares of Better stock in connection with the Merger.
92. Better has expressed a definite and unequivocal intent to wrongfully repurchase Pine Brook’s stock pursuant to the Side Letter, which does not permit such a repurchase.
93. Better’s actions purportedly pursuant to the Side Letter will harm Pine Brook by, among other things, denying Pine Brook the full value of its Better stock holdings, and denying Pine Brook the ability to transact in or otherwise benefit from ownership of the stock at issue.
94. Accordingly, Pine Brook is entitled to money damages in an amount to be proven at trial.

COUNT IV
DECLARATORY JUDGMENT AGAINST ALL DEFENDANTS
(AS TO THE TRANSMITTAL LETTER LOCKUP PROVISION)

95. Pine Brook repeats, realleges and incorporates by reference the allegations in the foregoing paragraphs of this Complaint as if fully set forth herein.
96. The Merger Agreement purports to require Pine Brook to agree to the Transmittal Letter Lockup Provision in order for Pine Brook to receive Merger proceeds and provides no additional consideration for this forced lockup. Thus,

Defendants have unequivocally and definitely stated an intent to withhold Pine Brook's share of the Merger consideration unless Pine Brook agrees to execute the Transmittal Letter required by the Transmittal Letter Lockup Provision.

97. Pine Brook will not agree to execute the Transmittal Letter required by the Transmittal Letter Lockup Provision.

98. No consideration supports the Transmittal Letter Lockup Provision.

99. The Transmittal Letter Lockup Provision is inequitable and impermissible as a matter of Delaware law, and violates Sections 202 and 251 of the DGCL, as well as Better's bylaws.

100. The Transmittal Letter Lockup Provision is impermissibly coercive and inequitably treats stockholders disparately.

101. The Transmittal Letter Lockup Provision will deny Pine Brook its rights as a Better stockholder.

102. Pine Brook's and Defendants' interests regarding the ineffectiveness and invalidity of the Transmittal Letter Lockup Provision are real and adverse, and the issues involved are ripe for judicial determination.

103. Pine Brook is entitled to a declaration that the Transmittal Letter Lockup Provision (including the Merger Agreement's requirement that Pine Brook agree to the Transmittal Letter Lockup Provision) is invalid and unenforceable as a matter of law.

104. Pine Brook also seeks damages suffered because of the invalid and unenforceable Transmittal Letter Lockup Provision.

COUNT V
VIOLATIONS ARISING FROM IMPOSITION OF
THE TRANSMITTAL LETTER LOCKUP PROVISION
AGAINST ALL DEFENDANTS

105. The Merger Agreement purports to require Pine Brook to agree to the Transmittal Letter Lockup Provision in order for Pine Brook to receive Merger proceeds and provides no additional consideration for this forced lockup. Thus, Defendants have unequivocally and definitely stated an intent to withhold Pine Brook's share of the Merger consideration unless Pine Brook agrees to execute the Transmittal Letter required by the Transmittal Letter Lockup Provision.

106. Pine Brook will not agree to execute the Transmittal Letter required by the Transmittal Letter Lockup Provision.

107. When Pine Brook does not execute the Transmittal Letter required by the Transmittal Letter Lockup Provision after the Merger closes, Defendants will withhold Pine Brook's share of the Merger consideration.

108. No consideration supports the Transmittal Letter Lockup Provision.

109. The Transmittal Letter Lockup Provision is inequitable and impermissible as a matter of Delaware law, and violates Sections 202 and 251 of the DGCL, as well as Better's bylaws.

110. The Transmittal Letter Lockup Provision is impermissibly coercive and inequitably treats stockholders disparately.

111. The Transmittal Letter Lockup Provision will deny Pine Brook its rights as a Better stockholder.

112. Accordingly, Pine Brook is entitled to money damages for the various types of harm it will suffer as a result of Defendants' withholding of Pine Brook's share of the Merger consideration on the basis of the invalid and impermissible Transmittal Letter Lockup Provision and Pine Brook's refusal to execute the Transmittal Letter.

WHEREFORE, Pine Brook respectfully requests that the Court:

- (a) enter a judgment in its favor on this Complaint;
- (b) enter an order declaring that the Side Letter does not authorize Better to repurchase any of Pine Brook's shares of Better stock in connection with the Merger;
- (c) enter an order declaring that the Transmittal Letter Lockup Provision (including the Merger Agreement's requirement that Pine Brook agree to the Transmittal Letter Lockup Provision) is invalid as a matter of law and unenforceable;
- (d) award money damages to Pine Brook, including for the various types of harm set forth herein or that have arisen or will arise as a result of Defendants' misconduct, in an amount to be proven at trial; and
- (e) grant Pine Brook such other and further relief as the Court deems just and proper, including the costs and reimbursements of this action and reasonable attorneys' fees.

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