**UNITED STATES DISTRICT COURT**
**DISTRICT OF MINNESOTA**

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| DAVID ERICKSON, Individually and on Behalf of All Others Similarly Situated,<br><br>Plaintiff,<br><br>v.<br><br>HUTCHINSON TECHNOLOGY INCORPORATED, RICHARD J. PENN, WAYNE M. FORTUN, MARTHA GOLDBERG ARONSON, RUSSELL HUFFER, FRANK P. RUSSOMANNO, PHILIP E. SORAN, and THOMAS R. VERHAGE,<br><br>Defendants. | : | Civil Action No. _____<br><br>**CLASS ACTION COMPLAINT FOR VIOLATIONS OF SECTIONS 14(a) AND 20(a) OF THE SECURITIES EXCHANGE ACT OF 1934**<br><br>**JURY TRIAL DEMAND** |

## CLASS ACTION COMPLAINT

David Erickson ("Plaintiff"), on behalf of himself and all others similarly situated, by and through his attorneys, alleges the following upon information and belief, including investigation of counsel and review of publicly-available information, except as to those allegations pertaining to Plaintiff, which are alleged upon personal knowledge:

1. This is a class action brought by Plaintiff on behalf of himself and the other public shareholders of Hutchinson Technology Incorporated ("Hutchinson" or the "Company"), other than Defendants and their affiliates, against Hutchinson and the members of its board of directors (the "Board" or the "Individual Defendants," and together with Hutchinson, the "Defendants") for their violations of Section 14(a) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15.U.S.C. §§ 78n(a), 78t(a), and SEC Rule 14a-9, 17 C.F.R. 240.14a-9, in

connection with the proposed merger between Hutchinson and certain entities beneficially owned by TDK Corporation ("TDK").

2. Defendants have violated the above-referenced Sections of the Exchange Act by causing a materially incomplete and misleading preliminary proxy statement (the "Proxy") to be filed with the SEC. The Proxy recommends that Hutchinson shareholders vote in favor of a proposed transaction (the "Proposed Transaction") whereby Hutchinson will merge with Hydra Merger Sub, Inc. ("Merger Sub") and become a wholly owned subsidiary of Headway Technologies, Inc. ("Headway"). Pursuant to the terms of the definitive agreement and plan of merger these entities entered into (the "Merger Agreement"), Hutchinson shareholders stand to receive $3.62 in cash per share and up to an additional $0.38 in cash under certain circumstances (the "Merger Consideration").

3. As discussed below, the Merger Consideration and the process by which Defendants propose to consummate the Proposed Transaction are fundamentally unfair to Plaintiff and the other common shareholders of Hutchinson. Defendants have now asked Hutchinson's shareholders to support the Proposed Transaction in exchange for inadequate consideration based upon the materially incomplete and misleading representations and information contained in the Proxy, in violation of Sections 14(a) and 20(a) of the Exchange Act. Specifically, the Proxy contains materially incomplete and misleading information concerning the financial analyses conducted by Bank of America Merrill Lynch ("BofA Merrill Lynch"), Hutchinson's financial advisor, as well as the fees BofA Merrill Lynch stands to receive in connection with the Proposed Transaction and the fees it has received in the past for work it has performed for both Hutchinson and TDK.

4. For these reasons, and as set forth in detail herein, Plaintiff seeks to enjoin Defendants from taking any steps to consummate the Proposed Transaction, including filing a definitive proxy statement ("Definitive Proxy") with the SEC or otherwise causing a Definitive Proxy to be disseminated to Hutchinson's shareholders, unless and until the material information discussed below is included in the Definitive Proxy or otherwise disseminated to Hutchinson's shareholders. In the event the Proposed Transaction is consummated without the material omissions referenced below being remedied, Plaintiff seeks to recover damages resulting from the Defendants' violations of the Exchange Act.

## JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331 (federal question jurisdiction) as Plaintiff alleges violations of Section 14(a) and 20(a) of the Exchange Act and SEC Rule 14a-9.

6. Personal jurisdiction exists over each Defendant either because the Defendant conducts business in or maintains operations in this District, or is an individual who is either present in this District for jurisdictional purposes or has sufficient minimum contacts with this District as to render the exercise of jurisdiction over Defendant by this Court permissible under traditional notions of fair play and substantial justice.

7. Venue is proper in this District under Section 27 of the Exchange Act, 15 U.S.C. § 78aa, as well as under 28 U.S.C. § 1391, because: (i) the conduct at issue took place and had an effect in this District; (ii) Hutchinson maintains its primary place of business in this District; (iii) a substantial portion of the transactions and wrongs complained of herein, including Defendants' primary participation in the wrongful acts detailed herein, occurred in this District; and (iv) Defendants have received substantial compensation in this District by doing business here and engaging in numerous activities that had an effect in this District. Venue is also proper in this

District because on November 1, 2015 the Individual Defendants approved an amendment to the Company's Amended and Restated By-Laws which designates this Court as the exclusive forum for suits of this nature.

**PARTIES**

8. Plaintiff David Erickson, a resident of Minnesota, is, and has been at all relevant times, the owner of Hutchinson common stock and has held such shares since prior to the wrongs complained of herein.

9. Defendant Hutchinson Technology Incorporated is a Minnesota corporation with its principal executive offices located in Hutchinson, Minnesota. The Company manufactures and supplies suspension assemblies for hard disk drives. The Company's suspension assemblies hold recording heads in position above the spinning magnetic disks. Hutchinson supplies its products to users of suspension assemblies around the world.

10. Individual Defendant Richard J. Penn ("Penn") has served as Hutchinson's President and Chief Executive Officer since October 1, 2012, and is also a director of the Company. Penn began his career with Hutchinson in 1981.

11. Individual Defendant Wayne M. Fortun ("Fortun") began his career with Hutchinson in 1975 and has held positions in engineering, marketing, and operations. In 1983, he was elected Director, President and Chief Operating Officer. He was appointed Chief Executive Officer in May of 1996 and served in that position until October 2012, when he was appointed Chairman of the Board. Fortun also serves on the board of directors for G&K Services, Inc. and C.H. Robinson Worldwide Inc.

12. Individual Defendant Martha Goldberg Aronson ("Goldberg Aronson") became a director of the Company in 2010. Goldberg Aronson is Executive Vice President and President of Global Healthcare for Ecolab Inc., a global leader in water, hygiene and energy technologies

and services. Prior to joining Ecolab in June 2012, she was Senior Vice President and President, North America for Hill-Rom Holdings, Inc., a leading worldwide manufacturer and provider of medical technologies and related services for the health care industry. Prior to joining Hill-Rom, Goldberg Aronson served as a senior vice president and corporate officer for Medtronic, which she joined in 1991. Prior to joining Medtronic, Goldberg Aronson was an associate consultant at Bain & Company, a global management consulting firm.

13. Individual Defendant Russell Huffer ("Huffer") became a director of the Company in 1999 and is the former chairman, president and chief executive officer of Apogee Enterprises, Inc. ("Apogee"), serving in that role from 1999 through his retirement in August 2011. Huffer served as President, Chief Executive Officer and a director of Apogee since January 1998, and served in various senior management positions with Apogee or its subsidiaries since 1986.

14. Individual Defendant Frank P. Russomanno ("Russomanno") became a director of the Company in 2011. Russomanno is the former vice chairman and chief executive officer of Imation, serving in that role from 2009 through his retirement in May 2010. He began his career with 3M Company in 1973 and served at Imation following its spin-off from 3M Company in 1996.

15. Individual Defendant Philip E. Soran ("Soran") became a director of the Company in 2011. He is currently the Executive Chairman of Vidku Inc. Soran was the co-founder, president, and chief executive officer of Compellent Technologies. In February of 2011, Compellent Technologies was acquired by Dell, where Soran was the president of Dell Compellent until March 2012. Previously, he served as chief executive officer and president of Xiotech Corp, a network storage vendor that he co-founded in 1995. Before that, Soran served

as an executive vice president at Prodea Software, a data warehousing software company. He also held various management, sales, marketing, and technical positions at IBM for ten years, including business unit executive for the PC and networking group.

16. Individual Defendant Thomas R. VerHage ("VerHage") became a director of the Company in 2006. From 2004 until his retirement in October 2011, VerHage was Vice President and Chief Financial Officer of Donaldson Company, Inc., a worldwide provider of filtration systems and replacement parts. Prior to joining Donaldson, VerHage was a partner for Deloitte & Touche LLP from 2002 to 2004 and a partner at Arthur Andersen LLP from 1987 to 2002. He is also a director of Franklin Electric Co., Inc.

## SUBSTANTIVE ALLEGATIONS

**The Proposed Transaction Undervalues Hutchinson**

17. Hutchinson researches, designs, develops, manufactures, and supplies suspension assemblies for hard disk drives in Thailand, Hong Kong, the Philippines, Malaysia and the United States. The Company's suspension assemblies are components in computers and various consumer electronics and enterprise storage products. Hutchinson also offers disk drive industry-related engineering services and specific disk drive program capacity, and biomeasurement products. The Company sells its suspension assemblies to original equipment manufacturers and subassemblers. Hutchinson was founded in 1965 and is headquartered in Hutchinson, Minnesota.

18. The Merger Consideration fails to adequately compensate Hutchinson shareholders in light of the Company's recent strategic achievements and strong growth prospects.

19. Although the Company's stock price dropped significantly during the first half of 2015 in light of a weaker than expected start to the fiscal year, that loss was largely the result of

panicky investors rather than a reflection of the Company's future prospects or inherent value. Indeed, after bottoming-out in July, Hutchinson's stock price increased by approximately 60% as of the date prior to the announcement of the Proposed Transaction.

20. In a recent investor presentation, Hutchinson announced that it was successfully implementing a turnaround strategy which involved cost model restructuring. The Company stated that it was "poised for improved financial performance as increased utilization and fixed costs are leveraged into higher shipments, revenue and profits." The Company also announced that it was reducing its debt obligations and that "demand for disk drive storage remains strong" with a compound annual growth rate of 21%. The Company also announced that "increasing component counts per drive are fueling higher suspension demand and worldwide market growth."

21. Despite the Company's temporary stock price decline, industry analysts identified Hutchinson as "extraordinarily undervalued," and a "turnaround story with a new product category that should become a significant growth driver over the next few years." Specifically, analysts have stated that "the company is on the verge of introducing OIS products for smartphones and other markets that could grow the revenue base of the company by 50-100% over the intermediate term and drastically increase the profitability of the company."

22. Optical image stabilization ("OIS") is a technology that counteracts handshaking from the user of a handheld camera. When pictures/videos are taken using a handheld camera, any movement in the person's hand can cause the picture to be blurry or the video to be shaky. For pictures this problem gets worse in low light conditions where the exposure needs to be longer to allow more light to reach the sensor. The longer the exposure, the higher the chance that the user will shake resulting in a blurry image. Alternatively, exposure times can be kept

shorter and the gain can be increased (digitally amplifying the sensor signal). This however, also amplifies noise (mistakes by the sensor in detecting the correct color) and results in grainy looking images. OIS solves both of these problems by allowing the exposure time to be longer without handshake blurring the image, resulting in clear, bright, low-light images and smoother videos.

23. The Company has also announced that OIS represents an "exciting new business opportunity" and that the smartphone OIS market is "expected to surge in 2016." The Company concluded that its "core suspension business is strengthening," that it has established "early traction in the new and growing OIS market, which effectively leverages [its] assets and strength," and that it was "on a path to cash flow generation and profitability."

24. Recognizing Hutchinson's strong growth prospects, analysts have issued price targets significantly above the $3.62 to $4.00 per share Merger Consideration in recent months. Indeed, the $3.62 per share Merger Consideration is 40% less than the $6.00 per share price target analysts at Craig-Hallum Capital Group LLC issued as recently as April 2015. The Merger Consideration is also significantly below Hutchinson's 52-week high stock price of $4.50 per share.

25. The Company's strong growth prospects were also reflected by its most recent financial results. On November 2, 2015, Hutchinson issued a press release announcing its financial performance for the fourth quarter of 2015. The Company announced gross profit in the quarter totaled $7.5 million, or 11.8% of net sales, up from $4.8 million, or 8.8% of net sales, in the fiscal third quarter. The improvement resulted from the higher volume in the quarter and the resulting increase in operating leverage. The Company continued to optimize costs by shifting assembly production to its Thailand assembly operation, which accounted for 92% of the

fourth quarter's assembly production, up from 89% in the preceding quarter. Suspension assembly shipments for the quarter totaled 105.4 million, up 22% from 86.6 million in the preceding quarter. The Company also announced an increase in gross profit and lower research and development expenses, which declined to $3.8 million from $5.2 million in the preceding quarter due primarily to the recognition of $1.5 million of previously deferred income. Cash and investments at the end of the fiscal 2015 fourth quarter totaled $40.4 million compared with $36.4 million at the end of the preceding quarter. Cash increased primarily due to favorable changes in working capital, including a $4.7 million reduction in receivables and a $3.8 million reduction in inventories.

26. In sum, Hutchinson is well-positioned to generate significant earnings in the foreseeable future, particularly in light of its strong position within the rapidly emerging OIS market. Despite Hutchinson's bright financial prospects, the Board has now agreed to sell the Company at a time when its stock price does not accurately reflect the Company's intrinsic value and growth prospects, to the detriment of Hutchinson's common shareholders.

**The Single Bidder Sales Process Failed to Maximize Shareholder Value**

27. As described in the Proxy, the inadequate Merger Consideration is the result of a flawed sales process during which the Board engaged solely with representatives of Magnecomp Precision Technology ("MPT"), a subsidiary of TDK.

28. Individual Defendant Penn had a long-standing relationship with representatives from MPT, as the companies had engaged in various commercial transactions in recent years.

29. In February 2015, Penn engaged almost exclusively in discussions with MPT's president and chief executive officer, Albert Ong.

30. During the next eight months, the Board failed to solicit a single other potential bidder. The Board purportedly believed that "the universe of potential bidders for the Company

was very limited and that no other potential bidder would offer a price in excess of what MPT was offering to pay to acquire the Company." Proxy at 27. The Proxy's baseless assertion that the Board did not think any other company would have an interest in acquiring Hutchinson at a better price conflicts with the opinions of various analysts who cover the industry. Indeed, in a recent article on investor news website Seeking Alpha, one industry follower identified two other companies, Seagate Technology PLC and Western Digital Corp., that he believed would value Hutchinson at a figure greater than the offer submitted by TDK. Yet, as a result of the deal protection provisions in the Merger Agreement, the ability of these companies to submit a superior proposal is significantly impeded.

31. Simply put, the Board is disingenuously trying to convince Hutchinson's shareholders that the Merger Consideration is fair and to excuse their failure to conduct an adequate sales process by misportraying the "universe of potential bidders." Indeed, the Proxy states that the Board had determined that "no other potential bidder would offer a price in excess of what MPT was offering to pay" as of July 14, 2015; but as of that date, MPT's offer had only been conveyed as an enterprise value **range**, and an **estimated** equity value of $3.47 to $3.78 per share. The Proxy indicates that on that same day, BofA Merrill Lynch indicated that any revised proposal would need to be expressed as a price per share and would need to provide "**more certainty as to the consideration that would be payable to Company shareholders**." In other words, the Board purportedly determined that no other company would be willing to submit a higher bid before it was even able to fully understand the value that TDK was offering.

32. The Board ultimately agreed to accept TDK's inadequate offer without soliciting a single other bid, and further failed to negotiate for the right to conduct a post-signing market check via a limited go-shop period.

33. In sum, the sales process the Board conducted was fundamentally flawed and wholly inadequate. The Board failed to maximize shareholder value, and is now asking Hutchinson's shareholders to approve the Transaction based upon materially incomplete and misleading information in the Proxy statement.

**The Individual Defendants Will Reap Personal Financial Gain from the Proposed Transaction While Hutchinson Shareholders Will Be Cashed Out for Inadequate Consideration**

34. Each of the Individual Defendants will reap personal financial gain if the Proposed Transaction is consummated. Thus, they each have a personal interest to ensure that Hutchinson's shareholders vote to approve the Proposed Transaction.

35. Specifically, each of the Individual Defendants will receive significant cash payments as a result of the accelerated vesting of their restricted stock. As a result of this personal benefit, Individual Defendant Fortun will receive a payment of more than $2.1 million, and the remaining director Individual Defendants will each receive a payment ranging from $90,000 to $212,000.

36. Individual Defendant Penn, who led the flawed sales process, will receive more than $1.5 million in cash as a result of golden parachute compensation and the accelerated vesting of his stock options.

37. Further, Penn, the remaining Individual Defendants, and high-level Company executives are free to enter into employment agreements with TDK or the post-Merger entity. Current news reports indicate that a number of executives intend to stay on with the post-close company.

38. The inadequate sales process was thus tainted by these personal financial benefits which are unique to the Individual Defendants and not shared by Hutchinson's public shareholders. It is therefore imperative that Hutchinson's shareholders receive the material

information referenced below, so that the can cast a fully informed vote on the Proposed Transaction.

**The Preclusive Deal Protection Provisions**

39. In addition to failing to conduct a fair and reasonable sales process, the Individual Defendants agreed to certain deal protection provisions in the Merger Agreement that operate conjunctively to deter other suitors from submitting a superior offer for Hutchinson.

40. First, the Merger Agreement contains an onerous no solicitation provision that prohibits the Company or the Individual Defendants from taking any affirmative action to obtain a better deal for Hutchinson's shareholders. Specifically, section 6.04 of the Merger Agreement states that the Company and the Individual Defendants shall not:

i) solicit, initiate or take any action to knowingly facilitate or encourage (including by way of furnishing nonpublic information) the submission of any Acquisition Proposal or any inquiry, proposal, request for nonpublic information or offer that would reasonably be expected to lead to an Acquisition Proposal (an "Acquisition Inquiry");

ii) enter into or participate in any discussions or negotiations with, furnish any nonpublic information relating to the Company or any of its Subsidiaries or afford access to the business, properties, assets, books or records of the Company or any of its Subsidiaries to, otherwise cooperate in any way with, or knowingly assist, participate in, facilitate or encourage any effort by any Third Party that has made, or would reasonably be expected to make an Acquisition Proposal or Acquisition Inquiry;

iii) fail to make, withdraw or modify in a manner adverse to Parent the Company Board Recommendation (or recommend an Acquisition Proposal or take any action or make any public statement inconsistent with the Company Board Recommendation) (any of the foregoing in this clause (iii), an "Adverse Recommendation Change");

iv) grant any waiver or release under any standstill or similar Contract with respect to any class of equity securities of the Company or any of its Subsidiaries (provided that the Company shall not be required to enforce, and shall be permitted to waive, any provision of any such Contract that prohibits or purports to prohibit a confidential proposal being made to the Board of Directors);

v) approve any transaction under, or any Person (other than Parent or Merger Subsidiary) becoming an "interested shareholder" under, Section 302A.673 of the MBCA; or

vi) enter into any agreement in principle, letter of intent, term sheet, merger agreement, acquisition agreement, option agreement or other similar instrument or Contract relating to an Acquisition Proposal or Acquisition Inquiry.

41. Additionally, Section 6.04 of the Merger Agreement grants TDK recurring and unlimited matching rights, which provides it with: (i) unfettered access to confidential, non-public information about competing proposals from third parties which it can use to prepare a matching bid; and (ii) five business days to negotiate with Hutchinson, amend the terms of the Merger Agreement and make a counter-offer in the event a superior offer is received.

42. The non-solicitation and matching rights provisions essentially ensure that a superior bidder will not emerge, as any potential suitor will undoubtedly be deterred from expending the time, cost, and effort of making a superior proposal while knowing that TDK can easily foreclose a competing bid. As a result, these provisions unreasonably favor TDK, to the detriment of Hutchinson's public shareholders.

43. Lastly, section 11.04 of the Merger Agreement provides that Hutchinson must pay TDK a termination fee of $4.2 million in the event the Company elects to terminate the Merger Agreement to pursue a superior proposal. Additionally, Hutchinson is obligated to pay TDK up to an additional $1.4 million million in expenses if the Merger Agreement is terminated under certain circumstances. The termination fee and reimbursement provisions further ensure that no competing offer will emerge, as any competing bidder would have to pay a naked premium for the right to provide Hutchinson shareholders with a superior offer.

44. Ultimately, these preclusive deal protection provisions restrain Hutchinson's ability to solicit or engage in negotiations with any third party regarding a proposal to acquire all or a significant interest in the Company.

45. Given that the preclusive deal protection provisions in the Merger Agreement virtually ensure that a superior offer will not emerge, it is imperative that Hutchinson's

shareholders receive all material information necessary for them to cast a fully informed vote at the shareholder meeting concerning the Proposed Transaction.

**The Materially Incomplete and Misleading Proxy**

46. On November 23, 2015 Defendants filed the Proxy with the SEC. The information contained in the Proxy has thus been disseminated to Hutchinson shareholders to solicit their vote in favor of the Proposed Transaction. The Proxy omits certain material information concerning the fairness of the Proposed Transaction and Merger Consideration. Without such information, Hutchinson shareholders cannot make a fully informed decision concerning whether or not to vote in favor of the Proposed Transaction.

47. First, with respect to BofA Merrill Lynch's Selected Publicly Traded Companies Analysis, the Proxy fails to disclose the range, median and mean revenue and EBITDA multiples for the selected companies. Rather, the Proxy only discloses the range of multiples BofA Merrill Lynch applied, which were "derived from the selected publicly traded companies." Proxy at 36. The range, median and mean multiples for the selected companies are material information that a reasonable shareholder would consider important in determining whether or not to approve the Proposed Transaction. The omission of this information from the Proxy renders this section of the Proxy materially misleading because shareholders have no way of determining whether the ranges BofA Merrill Lynch applied were reasonable when compared to the multiples observed for the selected companies, and thus have no way of determining whether the implied per share equity reference ranges accurately reflect the value of their shares.

48. Second, with respect to BofA Merrill Lynch's Selected Precedent Transactions Analysis, the Proxy fails to disclose the range, median and mean revenue multiples for the selected transactions. Rather, the Proxy only discloses the range of multiples BofA Merrill

Lynch applied, which were "derived from the selected transactions." Proxy at 37. The range, median and mean multiples for the selected transactions are material information that a reasonable shareholder would consider important in determining whether or not to approve the Proposed Transaction. The omission of this information from the Proxy renders this section of the Proxy materially misleading because shareholders have no way of determining whether the range BofA Merrill Lynch applied was reasonable when compared to the multiples observed for the selected transactions, and thus have no way of determining whether the implied per share equity reference range accurately reflects the value of their shares.

49. Third, the Proxy fails to disclose the transactions BofA Merrill Lynch reviewed in connection with its Selected Precedent Technology Transactions Premiums Analysis. Proxy at 38. A reasonable shareholder would find it material to know which transactions were utilized for this analysis so that they can determine how much weight to give to it. Without knowing which transactions were used, shareholders must simply accept BofA Merrill Lynch's assertion that the selected transactions were appropriate to compare to the Proposed Transaction.

50. Lastly, the Proxy fails to disclose certain information concerning BofA Merrill Lynch's fee and the previous work it has done for both Hutchinson and TDK. Specifically, the Proxy fails to disclose the percentage of BofA Merrill Lynch's $5.9 million fee that is contingent upon the completion of the merger. This information is material because a reasonable shareholder would find it important to know exactly how much of BofA Merrill Lynch's fee is contingent so that they may properly assess whether its fairness opinion was improperly tainted by its desire to ensure that the Proposed Transaction closes. The omission of this information renders the statement in the Proxy that "a significant portion" of the fee is contingent misleading,

because determining what constitutes a "significant portion" is subjective and varies based on an individual's personal determination.

51. The Proxy also fails to provide: (i) a description of the services BofA Merrill Lynch has provided to Hutchinson in the past two years and the amount of fees it has received for such services; and (ii) a description of the services BofA Merrill Lynch has provided to TDK in the past two years and the amount of fees it has received for such services. Because of the central role BofA Merrill Lynch played in the sales process and the determination that the Merger Consideration is fair, it is critical that Hutchinson shareholders receive this material information, which will enable them to assess whether BofA Merrill Lynch was conflicted. Indeed, SEC regulations specifically require disclosure of all material relationships between a company and its financial advisor and the compensation received by the advisor for the last two years, 17 C.F.R. § 229.1015(b)(4). The omission of this information renders the Proxy's assertion that BofA Merrill Lynch determined that the Merger Consideration is fair based solely upon the "various assumptions and limitations described in its opinion" materially misleading, because shareholders cannot currently determine how much influence BofA Merrill Lynch's fee and past engagements with Hutchinson and TDK influenced its fairness opinion.

52. Defendants have knowingly, recklessly, or negligently omitted the above-referenced material information from the Proxy, in violation of the Exchange Act. Accordingly, Plaintiff seeks injunctive and other equitable relief to prevent the irreparable injury that Hutchinson shareholders will suffer absent judicial intervention.

**Defendants Knew or Recklessly Disregarded that the Proxy Omits Material Information**

53. The Individual Defendants knew or recklessly disregarded that the Proxy omits the material information concerning the Proposed Transaction and contains the materially incomplete and misleading information discussed above.

54. Specifically, the Individual Defendants undoubtedly reviewed the contents of the Proxy before it was filed with the SEC. Indeed, as directors of the Company, they were required to do so. The Individual Defendants thus knew or recklessly disregarded that the Proxy omits the material information referenced above and contains the incomplete and misleading information referenced above.

55. Further, the Proxy indicates that on November 1, 2015 BofA Merrill Lynch reviewed with the Board its financial analysis of the merger consideration and delivered to the Board an oral opinion, which was confirmed by delivery of a written opinion dated November 1, 2015, to the effect that the Merger Consideration was fair, from a financial point of view, to Hutchinson shareholders. Proxy at 31. Accordingly, the Individual Defendants undoubtedly reviewed or were presented with the material information concerning BofA Merrill Lynch's financial analyses which has been omitted from the Proxy, and thus knew or should have known that such information has been omitted.

## CLASS ACTION ALLEGATIONS

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

57. This action is properly maintainable as a class action for the following reasons:

(a) The Class is so numerous that joinder of all members is impracticable. As of October 28, 2015 there were over 33.5 million outstanding shares of Hutchinson common stock. The holders of these shares are believed to be geographically dispersed throughout the United States;

(b) There are questions of law and fact which are common to the Class and which predominate over questions affecting individual Class members. The common questions include, *inter alia*, the following:

i. Whether Defendants have violated Section 14(a) of the Exchange act and Rule 14a-9 promulgated thereunder;

ii. Whether the Individual Defendants have violated Section 20(a) of the Exchange Act; and

iii. Whether Plaintiff and the other members of the Class would suffer irreparable injury were Defendants to file a Definitive Proxy with the SEC that does not contain the material information referenced above and the Proposed Transaction is consummated as presently anticipated.

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

(d) Plaintiff's claims are typical of the claims of the other members of the Class and Plaintiff does not have any interests adverse to the Class;

(e) The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for the party opposing the Class;

(f) Defendants have acted on grounds generally applicable to the Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole; and

(g) A class action is superior to other available methods for fairly and efficiently adjudicating this controversy.

## CLAIMS FOR RELIEF

### COUNT I

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

58. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

59. Defendants have filed the Proxy with the SEC with the intention of soliciting Hutchinson shareholder support for the Proposed Transaction. Each of the Individual Defendants reviewed and authorized the dissemination of the Proxy, which fails to provide the material information referenced above.

60. In so doing, Defendants made materially incomplete and misleading statements and/or omitted material information necessary to make the statements made not misleading. Each of the Individual Defendants, by virtue of their roles as officers and/or directors of Hutchinson, were aware of the omitted information but failed to disclose such information, in violation of Section 14(a).

61. 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 and 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.

62. Specifically, and as detailed above, the Proxy violates Section 14(a) and Rule 14a-9 because it omits material facts concerning: (i) the value of Hutchinson shares and the financial analyses performed by BofA Merrill Lynch in support of its fairness opinion; (ii) the services BofA Merrill Lynch has performed for Hutchinson and TDK over the past two years

and the fees it has received for such services; and (iii) the percentage of BofA Merrill Lynch's fee that is contingent on the closing of the Proposed Transaction.

63. Moreover, in the exercise of reasonable care, the Individual Defendants knew or should have known that the Proxy is materially misleading and omits material information that is necessary to render it not misleading. The Individual Defendants undoubtedly reviewed and relied upon the omitted information identified above in connection with their decision to approve and recommend the Proposed Transaction; indeed, the Proxy states that BofA Merrill Lynch reviewed and discussed its financial analyses with the Board during various meetings including on November 1, and further states that the Board relied upon BofA Merrill Lynch's financial analyses and fairness opinion in connection with approving the Proposed Transaction. The Individual Defendants knew or should have known that the material information identified above has been omitted from the Proxy, rendering the sections of the Proxy identified above to be materially incomplete and misleading.

64. The misrepresentations and omissions in the Proxy are material to Plaintiff and the Class, who will be deprived of their right to cast an informed vote if such misrepresentations and omissions are not corrected prior to the vote on the Proposed Transaction. Plaintiff and the Class have no adequate remedy at law. Only through the exercise of this Court's equitable powers can Plaintiff and the Class be fully protected from the immediate and irreparable injury that Defendants' actions threaten to inflict.

## COUNT II

### On Behalf of Plaintiff and the Class against the Individual Defendants for Violations of Section 20(a) of the Exchange Act

65. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

66. The Individual Defendants acted as controlling persons of Hutchinson 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 Hutchinson and participation in and/or awareness of the Company's operations and/or intimate knowledge of the incomplete and misleading statements contained in the Proxy 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 that Plaintiff contends are materially incomplete and misleading.

67. Each of the Individual Defendants was provided with or had unlimited access to copies of the Proxy and other statements alleged by Plaintiff to be misleading prior to the time the Proxy was filed with the SEC and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

68. In particular, each of the Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company, and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the Exchange Act violations alleged herein, and exercised the same. The omitted information identified above was reviewed by the Board prior to voting on the Proposed Transaction. The Proxy at issue contains the unanimous recommendation of each of the Individual Defendants to approve the Proposed Transaction. They were, thus, directly involved in the making of the Proxy.

69. In addition, as the Proxy sets forth at length, and as described herein, the Individual Defendants were involved in negotiating, reviewing, and approving the Merger Agreement. The Proxy purports to describe the various issues and information that the

Individual Defendants reviewed and considered. The Individual Defendants participated in drafting and/or gave their input on the content of those descriptions.

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 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 Individual Defendants' conduct, Plaintiff and the Class will be irreparably harmed.

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

**RELIEF REQUESTED**

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

A. Declaring that this action is properly maintainable as a Class Action and certifying Plaintiff as Class Representative and his counsel as Class Counsel;

B. Preliminarily and permanently enjoining Defendants and their counsel, agents, employees and all persons acting under, in concert with, or for them, from filing a Definitive Proxy with the SEC or otherwise disseminating a Definitive Proxy to Hutchinson shareholders unless and until Defendants agree to include the material information identified above in the Definitive Proxy;

C. Preliminarily and permanently enjoining Defendants and their counsel, agents, employees and all persons acting under, in concert with, or for them, from proceeding with, consummating, or closing the Proposed Transaction, unless and until Defendants disclose the material information identified above which has been omitted from the Proxy;

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

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

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

**JURY DEMAND**

Plaintiff demands a trial by jury.

DATED: November 30, 2015.

s/ *Renae D. Steiner*
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