UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

U.S. BANK NATIONAL ASSOCIATION, Litigation Trustee of the Idearc Inc. *et al.* Litigation Trust,	§	
Plaintiff,	§	
v.	§	**CIVIL ACTION NO. 3:10-CV-1842-G**
VERIZON COMMUNICATIONS INC., *et al*.,	§	
Defendants.	§	

PLAINTIFF'S AMENDED PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

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PLAINTIFF'S AMENDED PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW[1]

Plaintiff U.S. Bank National Association, Litigation Trustee of the Idearc Inc. *et al.* Litigation Trust ("Plaintiff") files and respectfully proposes the Court's entry of the following proposed findings of fact and conclusions of law[2] with respect Phase I of the trial in this matter:

I. SUMMARY AND ULTIMATE FINDING REGARDING IDEARC'S VALUE ON NOVEMBER 17, 2006

1. In Phase I of the trial in this case, the Court heard evidence regarding the value of Idearc, Inc. ("Idearc") on November 17, 2006, the date on which it was spun-off from Defendant Verizon Communications, Inc. ("Verizon") (the "Spin-off").

2. As detailed in the findings in Section III below, the Plaintiff presented compelling, credible evidence that prior to November 17, 2006, Verizon failed to disclose to ratings agencies, lenders, stock purchasers, and other market participants the following material, relevant facts, among others, about Verizon's directories business, Verizon Information Services, Inc. ("VIS") (which became owned by Idearc via the Spin-off), all of which would have a material, negative impact on the value of Idearc:

a. Verizon failed to disclose that its CEO Ivan Seidenberg ("Seidenberg") knew VIS was not a growth business, and instead told the market that it would be a growth business.

b. Verizon failed to disclose that Seidenberg knew that an independent owner of VIS should cut costs, sell markets, reduce or curtail VIS's electronic business and harvest VIS's cash.

c. Verizon failed to disclose that VIS was in harvest mode for three years before the Spin-off.

d. Verizon failed to disclose that Defendant John Diercksen ("Diercksen"), Verizon Executive VP of Strategy, Development and Planning, knew (i) VIS's management team was incompetent and had reduced the value of the directories business by at least $5 billion, but (ii) nonetheless, as Idearc's sole director, Diercksen appointed that same management team as the officers of Idearc and touted the strength of the Idearc management team to the market.

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[1] These amended proposed findings of fact and conclusions of law amend and supersede *Plaintiff's Proposed Findings of Fact and Conclusions of Law for Phase I* filed by Plaintiff on September 21, 2012 (Document No. 541).

[2] To the extent that any finding of fact constitutes a conclusion of law, it shall be deemed a conclusion of law, and to the extent that any conclusion of law constitutes a finding of fact, it shall be deemed a finding of fact.

e. Verizon failed to disclose that VIS had been experiencing large double-digit declines in revenues generated from its large, northeastern urban markets where the vast majority of VIS's business was heavily concentrated, which portended a quicker decline for all of VIS's markets, and instead presented only overall revenue and EBITDA information to the market in a manner that hid this fact from the market.

f. Verizon failed to disclose that VIS was experiencing a quicker secular shift than other directories businesses.

g. Verizon failed to disclose that it had already attempted to improve VIS's business results using the same strategies that Verizon presented to the market as the means for turning VIS around as a growth company after the Spin-off, and that none of those strategies had worked.

h. Verizon failed to disclose that in each year from 2001-2005, Verizon and VIS management consistently fell short of their forward-looking five-year projections of revenue and EBITDA for VIS and, having missed those targets, consistently revised those projections downward each successive year by material amount and then failed to achieve the lower projections, reflecting the inability of management to make and meet projections.

i. Verizon failed to disclose that McKinsey had reviewed Verizon's 2006 projections for VIS and found they were not credible and revised them downward.

j. Verizon failed to disclose that despite McKinsey's findings, Verizon mandated more aggressive financial performance projections to VIS management in connection with the Spin-off and presented those more aggressive projections to the private siders and rating agencies without disclosing the history of failing to accurately project revenue and EBITDA or that McKinsey had found that Verizon's prior, less-aggressive projections were not credible.

k. Verizon failed to disclose that the original projections of VIS's financial performance prepared by Verizon and VIS management for 2006 that had been generated in the normal course of business before the McKinsey findings and before the final projections were mandated by Verizon were intentionally removed by Verizon from the data room before lenders were given access to the data room.

l. Verizon failed to disclose that it had internally concluded that any growth in VIS's electronic business would not likely offset the decline in its print business.

m. Verizon failed to disclose that it had internally concluded there was a significant risk that VIS would underperform its 2005 plan (i.e., Verizon's internal projections of VIS' financial performance in place in 2005), which was less aggressive than the 2006 plan for VIS' performance and the ultimate projections mandated by Verizon in connection with the Spin-off.

n. Verizon failed to disclose that it had concluded in July 2005 that VIS would be worth only $6.5 billion if it continued to decline at its historical rate.

o. Verizon failed to disclose that it had concluded in July 2005 that VIS would be worth only $8.8 billion if the rate of decline was reduced to negative 2% from the historical rate of negative 4.8%.

p. Verizon failed to disclose unfavorable internal information about VIS's "cost-per-reference" relative to its competitors, and instead presented more favorable "cost-per-reference" data to the rating agencies.

q. Verizon failed to disclose that the 2003 reduction in VIS's sales force that Verizon used to justify VIS's historical revenue and EBITDA declines was in fact an excuse or scapegoat and not the true reason for the revenue and EBITDA declines.

3. Defendants' entire case rests on the market value theory. However, not a single one of the Defendants' witnesses (expert or lay) testified that the market knew about any of these material facts at the time of the Spin-off, which clearly would have impacted the market's view of Idearc's value.

4. Accordingly, the Court finds that the market value of Idearc's publicly traded stock on November 17, 2006 is not indicative of, or relevant to, Idearc's actual value as of that date.

5. Thus, Idearc's value on November 17, 2006 must be determined through other relevant valuation methodologies – the discounted cash flow approach and the market approach (involving market multiples of other companies and comparable transactions). Of these methodologies, the Court finds that the discounted cash flow approach is the most reliable and accurate under the circumstances and should therefore be given the greatest weight in determining Idearc's value on the Spin-off date.

6. Based upon the testimony and documentary evidence presented at trial, and the Court's determination of the credibility and, where applicable, the expertise of each witness, the Court finds, as set forth in greater detail in the following findings, that the value of Idearc as of November 17, 2006 was $8.15 billion.

II. INTRODUCTION

7. In the summer of 2005, Verizon began analyzing the disposition of its print and electronic directories business, then known as VIS, which was later transferred to Idearc in connection with the November 17, 2006 Spin-off. Diercksen, Vol. 1A 55:23-56:5.

8. Idearc incurred $9.115 billion of debt in connection with the Spin-off and transferred $7.115 billion in notes and $2,441,532,374.71 in cash to Verizon in connection with the Spin-off. PX 1048 at 7-8.

9. Seidenberg, who was then Verizon's CEO (and remained in that position until his retirement in 2011), put Diercksen, Verizon's Executive Vice President for Corporate Strategy, Development and Planning, in charge of analyzing the various disposition alternatives for VIS. Diercksen, Vol. 1A 54:25-55:1, 55:23-56:5.

10. Verizon referred to the disposition VIS as Project Sunburst. Diercksen, Vol. 1B at 42:15-17.

11. Ultimately, after considering various other alternatives such as a sale of VIS, Verizon determined that a Spin-off of VIS was the best disposition alternative for Verizon. PX 27 at 44.

12. The following Verizon officers and employees assisted Seidenberg and Diercksen with Verizon's analysis of its directories business, the potential disposition alternatives, and ultimately the Spin-off of VIS:

a. Kevin Balsley ("Balsley") – Director of Tax. DX 405, p. 9.

b. Thomas Bartlett ("Bartlett") – Verizon Senior Vice President and Controller, Corporate Financial Planning and Analysis. *Id.* at 3.

c. Michael Boches – Verizon Vice President, Corporate Development. *Id.* at 2.

d. Andre Chi – Manager, Verizon Corporate Development Department. *Id.*

e. Marianne Drost ("Drost") – Senior Vice President, Legal. *Id.* at 6.

f. John Fitzgerald ("Fitzgerald") – Verizon Executive Director, Corporate Development. Fitzgerald, Vol. 6B 115:12-15.

g. Laurence Fulton ("Fulton") – Verizon Vice President, Corporate Financial Planning and Analysis. DX 405, p. 2.

h. Janet Garrity ("Garrity") – Verizon Vice President – Treasury. *Id.*

i. Steve Holtz – Verizon Associate General Counsel, Tax. *Id.* at 6.

j. David Kauffman ("Kauffman") – Verizon Vice President and Associate General Counsel, Finance and Securities. *Id.*

k. Philip Marx ("Marx") - Verizon Associate General Counsel, Legal (M&A). *Id.*

l. Paul McConnville – Verizon Vice President and Associate General Counsel, Tax. *Id.*

m. Neil Olsen ("Olson") – Verizon Vice President, Treasury. *Id.* at 4.

n. Philip Seskin ("Seskin") – Verizon Senior Vice President, Corporate Development. *Id.* at 2.

o. Doreen Toben ("Toben") – Verizon Executive Vice President and Chief Financial Officer. *Id.*

p. Catherine Webster ("Webster") – Verizon Senior Vice President and Treasurer. *Id.* at 4.

q. Sophia Xu ("Xu") – Verizon Director, Corporate Development. *Id.* at 2.

13. The following VIS officers and employees were involved in the Spin-off and acted as the management team of Idearc after the Spin-off:[3]

a. Andrew Coticchio ("Coticchio") – VIS CFO and acting Idearc CFO post-spin. Coticchio, Vol. 9B 50:19-52:15.

b. Katherine Harless ("Harless") – VIS President and acting Idearc CEO post-spin. Harless, Vol. 9A 51:11-23.

c. Samuel "Dee" Jones ("Jones") – VIS Executive Director of Financial Planning and Analysis. Jones, Vol. 5B 67:16-68:8.

d. William Mundy ("Mundy") – VIS Vice President, General Counsel, Information Services. DX 405, p. 9.

e. Clifford Wilson ("Wilson") – VIS Director, Financial Planning and Analysis. *Id.*

14. The following were some of the individuals who purportedly became directors of Idearc the day before the Spin-off and continued to act as such after the Spin-off:

a. John "Jack" Mueller ("Mueller") – acting Chairman of the Board of Directors of Idearc Inc. beginning the day before the Spin-off and continuing after the Spin-off. Mueller, Vol. 8B 52:13-15.

b. Stephen Robertson – acting member of the Idearc Inc. Board of Directors beginning the day before the Spin-off and continuing post-spin. *Id.* at 62:15-20.

c. Donald Reed – acting member of the Idearc Inc. Board of Directors beginning the day before the Spin-off and continuing post-spin. *Id.* at 62:15-20.

15. The following were outside counsel jointly representing Verizon and Idearc:

a. Gregory Feldman - Debevoise & Plimpton associate. DX 405, p. 18; Order (Docket #80), p. 8.

b. Steven Matays – associate at Skadden Arps. DX 405, p. 20.

c. David Rievman – Tax partner at Skadden Arps. *Id.*

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[3] These findings reference persons "acting" as officers or directors of Idearc because, although the referenced people acted under such titles, they were never properly appointed to be officers or directors of Idearc. *See* Section VI, *infra*.

d. Jeffrey Rosen ("Rosen") – Debevoise & Plimpton partner. *Id.* at 18; Order (Docket #80), p. 8.

e. Stephen Slutzky – Debevoise & Plimpton partner DX 405, p. 18; Doc. 80 Order (Docket #80), p. 8.

16. The following attorneys at Fulbright & Jaworski represented Idearc after it retained Fulbright in mid-October 2006:

a. John "Jack" Allender ("Allender") – Fulbright & Jaworski tax partner. Diercksen, Vol. 2B 58:15-20.

b. Glen Hettinger – Fulbright & Jaworski corporate partner. Harless, Vol. 9A 77:5-13.

17. The following representatives of JP Morgan, Bear Stearns and Morgan Stanley served as advisors to Verizon in connection with the Spin-off:

a. Andrew Decker ("Decker") – Bear Stearns Senior Managing Director and Chairman, Global Telecom Group. Decker, Vol. 7B 61:9-62:6.

b. James Ferency - Bear Stearns Senior Managing Director. DX 405, p. 11.

c. Jessica Kearns ("Kearns") – JP Morgan Managing Director. Kearns, Vol. 9B 79:5-8.

d. Jennifer Nason ("Nason") – JP Morgan Managing Director of Global Head Technology, Media & Telecom Investment Banking. Nason, Vol. 7A 76:8-77:12.

e. Jonathan Yourkoski ("Yourkoski") – Morgan Stanley. Yourkoski, Vol. 9A 5:20-6:19.

18. The following representatives of McKinsey and Company ("McKinsey") were involved in the preparation of a report that McKinsey delivered to Verizon in March 2006:

a. Peter Bisson ("Bisson"). Diercksen, Vol. 1B 50:22-51:6.

b. Rock Khanna. PX 208.

c. Ellen Taylor. *Id.*

19. The following employee of Houlihan, Lokey, Howard & Zukin ("Houlihan" or "HLHZ") was involved in Houlihan's valuation of VIS prior to the Spin-off:

a. Richard DeRose – Managing Director. DeRose, Vol. 7B 7:11-13.

III. INFORMATION KNOWN BY VERIZON ABOUT VIS'S DIRECTORIES BUSINESS AND NOT DISCLOSED TO RATING AGENCIES, LENDERS OR OTHER MARKET PARTICIPANTS

20. Plaintiff presented substantial evidence concerning relevant and material facts that Verizon knew about VIS before the Spin-off that Verizon never shared with the ratings agencies, Spin-off lenders and other market participants. This evidence is detailed in the following findings.

A. Verizon's July 2005 Directories Analysis of Alternatives (the "AoA") – PX 27

21. The AoA, PX 27, contained the following relevant and material information, findings and conclusions by Verizon about VIS's directories business that Verizon never shared with the ratings agencies, Spin-off lenders and other market participants:

a. Verizon concluded in the AoA that "traditional print directories [were] likely to continue to decline" and VIS's "ability to offset [the decline in print revenue] with electronic product [revenue] is uncertain." PX 27, p. 44.

b. Verizon further concluded in the AoA that there was a "significant risk of VIS underperformance vs. current plan." *Id.*

c. The "current plan" referred to in the AoA was the plan of record for 2005. *Id.* at p. 22.

d. The plan of record for 2006 – which, according to Defendants, was "negotiated" between VIS management and Verizon corporate personnel (including primarily Verizon's CFO Toben and Diercksen) but was, in reality, "mandated" and "dictated" by Verizon to VIS – was even more aggressive in its growth projections for VIS for 2006-2010 than the plan of record for 2005 referred to in the AoA. PX 300; PX 295.

e. Therefore, if there was significant risk of underperformance of the 2005 plan of record according to the AoA, there was an even greater risk of underperformance of the 2006 plan of record "negotiated with" or "mandated" by Verizon corporate personnel.

f. Verizon further concluded in the AoA that the "risk of further VIS deterioration and value decline would be separated from New VZ [i.e., post-spin Verizon without Idearc]." PX 27, p. 44.

g. Verizon also found that "incumbent print directories are not expected to create additional value," and that "if future value can be created, it will come from electronic YP [Yellow Pages]." *Id.*at 17.

h. However, "managing the migration to electronic directories is key for incumbent players to retain value, but it might be difficult for them to compete with Yahoo! and Google." *Id.*

i. Verizon determined that VIS electronic initiatives have had minimal traction," "revenues have not materialized," "competition has increased – Google, Yahoo, Microsoft, etc.," and it was "unlikely that VIS will be able to reorient strategy again." *Id.* at 26.

j. Core print yellow page revenue at VIS had declined from 2001 to 2005 by 4.8% a year. *Id.* at 17.

k. Historical revenue declines at VIS were known to the market based upon disclosures of historical financial performance in Verizon's 10K's and 10-Q's, but the other findings and conclusions in the AoA referred to herein were not. Balcombe, Vol. 10B 6:1-15.

l. A critical fact the market did not know about VIS's historical financial performance is that five-year revenue and EBITDA projections for VIS by Verizon and VIS, called 5-year plans of record, had consistently declined by very large amounts every year from the 2001 plan of record (covering 2001-2005) to the 2005 plan of record (covering 2005-2009), which indicated that Verizon and VIS management had historically been unable to accurately predict the future performance of VIS. PX 27, p. 21, showing graphs of declining revenue and EBITDA projections from 2001 to 2005 plans of record. Taylor, Vol. 3A, 74:16-75:9.

m. The fact that Verizon and VIS management had been unable to predict the future performance of VIS since 2001 would have been material to ratings agencies, Verizon's advisors at JP Morgan, Bear Stearns and Morgan Stanley and other private side market participants who relied upon Verizon's 2006 Spin-off projections to rate the bonds and estimate the value of Idearc's business at the time of the Spin-off, because it would demonstrate that the Spin-off projections, like the prior projections, were unreliable. *Id*.

n. Verizon's base plan for 2005 assumed a reduced rate of decline in VIS's core print yellow page revenue and EBITDA compared with the historical record. PX 27, p. 22.

o. However, there were additional risks to Verizon's 2005 plan of record for VIS if its core print yellow page revenues continued to decline at the historical rate of minus 4.8% per year, and EBITDA would be lower by $167 million in 2009. *Id.* at 23.

p. Perhaps most important, Verizon concluded in the AoA that the value of VIS's print directories business was only $6.5 billion if it continued declining at the historic rate of 4.8% per year. *Id*. at 26.

q. In addition, Verizon concluded that the value of VIS's print directories business was $7.6 billion if VIS could achieve its questionable 2005 plan of record, which anticipated negative 2% growth in the future. *Id*.

r. Verizon further determined that the only way Verizon could make the print business worth $10.4 billion was to somehow reverse the historic decline and grow the VIS business at a rate of positive 2%. *Id.*

s. Therefore, Verizon concluded that the total value of VIS's directories business (both print and electronic) was $6.5 billion in a downside case (where the print business continued declining at historic rates and the electronic business was valued at $0), and $8.8 billion based upon the 2005 plan of record (where the rate of decline in the print business was slowed to minus 2% per year and the electronic business was valued at $1.2 billion based upon a value of 10 times the projected 2009 EBITDA). *Id.*

t. Thus, based upon the values Verizon itself placed upon VIS in the AoA (whether under the downside case or the 2005 plan of record case), Idearc would be insolvent with $9.115 billion of debt that was placed upon Idearc in the Spin-off. This conclusion is illustrated by the red bar on the Discounted Cash Flow ("DCF") line of the bar chart on page 32 of DX 213, the color version of PX 27, which shows a red bar between $6.5 billion and $8.8 billion. *Id.*

u. Based upon Verizon's valuations of VIS in the AoA, Verizon also concluded that the multiples of EBITDA that the market would use to value VIS in the market would be "very sensitive to growth expectations and any tax generated tax shield." *Id*. at 33.[4] In the illustration on page 33 of PX 27, Verizon demonstrated, by looking at a competitor, Dex Media, Inc. ("Dex"), that using an assumed positive 2% growth rate would result in an adjusted Enterprise Value ("EV") to EBITDA multiple of 9.8x and an EV of $9.190 billion, whereas using a 0% growth rate would result in an EV/EBITDA multiple of 6.2x and an EV of $5.841 billion. This sensitivity of value to growth (or decline) rates illustrates the materiality of any representation (or lack thereof) by Verizon to the market about Idearc's growth prospects in connection with the Spin-off. *Id.*

v. Thus, Verizon knew the importance of selling the market on a turnaround story that Idearc would become a growth company, rather than continuing VIS's historical trajectory of a declining "harvest" company, in order to obtain a higher valuation in the market and place the maximum amount of debt on Idearc.

w. The AoA was prepared for Diercksen and was sent by Fitzgerald to Diercksen and others in Diercksen's organization, and subsequently sent to Seidenberg. Fitzgerald, Vol. 6B 127:11-18.

x. VIS did not have any involvement in the preparation of PX 27. Verizon created it with input from its Corporate Development, Planning and Strategy group. *Id.* at 128:25-129:6.

[4] This conclusion is consistent with the valuation literature. *See* DX 1731 (excerpts from Pratt, Shannon P., et al., *Valuing a Business* (4th ed. 2000)), pp. 159-60 of 173 ("Changes in the growth rate projected, sometimes seemingly small, can result in striking changes. … Because such large impact may result from relatively small changes in input variables, it is often enlightening to perform some sensitivity analysis … showing the impact of a range of … growth rates ….").

y. None of the foregoing relevant and material findings, valuations and conclusions by Verizon about VIS, aside from the historical revenues and EBITDA of the business, were ever disclosed by Verizon to the ratings agencies, Spin-off lenders or other market participants. Taylor, Vol. 3B 56:13-57:4 and 101:4-10; *see also* DX 313, DX 314, DX 416, DX 488, DX 494, DX 1730, PX 612, PX 920.

z. Although Verizon formulated new projections for VIS in 2006, none of Verizon's witnesses ever disputed the facts, findings and conclusions about VIS's business and its trajectory contained in PX 27.

B. Seidenberg Email to Diercksen dated July 2, 2005 – PX 32

22. On July 2, 2005, Seidenberg sent an email to Diercksen regarding the VIS analysis (referring to the AoA), stating "this is very good…It seems another issue where we need to take a longer view and cash this out before it is too late," and that "the offsetting debt reduction is very attractive." PX 32.

23. Seidenberg's view that Verizon needed to "cash out" VIS promptly or it would end up being worth nothing was a material fact that Verizon never disclosed to the ratings agencies, Spin-off lenders or other market participants. *See* DX 313, DX 314, DX 416, DX 488, DX 494, DX 1730, PX 612, PX 920, *see also* ¶¶ 161-184, *infra*.

C. Sophia Xu Email to John Fitzgerald dated October 9, 2005 – PX 45

24. Leading up to the Spin-off, Xu was Verizon's Director of Corporate Development. She was instrumental in assisting Diercksen with the Spin-off and received high performance marks from Verizon for her work in connection with the Spin-off [*see* PX 129, 2006 Performance Review]; *see also* PX 129, Sophia Xu's 2006 "leading" performance review describing her accomplishments with respect to the Spin-off. On October 9, 2005, Xu sent an email to Fitzgerald regarding a November 3, 2005 Verizon Board of Directors Presentation where Diercksen and his Strategy, Development and Planning group intended to seek Verizon board approval to pursue the divestiture of VIS. In that e-mail Xu stated that they could have a slide for the Board of Directors presentation showing that: "***VIS's initiatives to-date to fend off competition (new book launches, price cut, online effort, etc.) … haven't been successful – … we have already tried (and possibly exhausted) [an] organic turnaround strategy [for VIS], and further time delay would cause serious value erosion; therefore we should ride the high tide of Dex ….*"** PX 45 (emphasis added).

25. Xu further stated in the email "I've read the two books on VIS update that Joe gave you, not much info that we could piggy back off to use for our purposes (mostly outlining their planned turnaround strategy going forward), but ***I get a feel for the magnitude of the decline in the business, not encouraging***." PX 45 (emphasis added).

26. The facts that VIS initiatives to fend off competition had not been successful and that Verizon had already tried and possibly exhausted an organic turnaround strategy for VIS were never disclosed by Verizon to the ratings agencies, Spin-off lenders or other market participants. *See* DX 313, DX 314, DX 416, DX 488, DX 494, DX 1730, PX 612, PX 920; *see also* ¶¶ 161-184, *infra*.

D. Email between Seidenberg, Diercksen and Fitzgerald dated November 16 and 17, 2005 – PX 71

27. On November 16, 2005, Seidenberg sent an email to Diercksen, stating that "[m]y assumption is we [Verizon] do not get the valuation credit in our stock and unless we sell we will never see the terminal value of the asset [VIS]." PX 71, p. 2.

28. Diercksen forwarded this email from Seidenberg to Fitzgerald the next day. *Id*.

29. On November 17, 2005, Fitzgerald responded to Diercksen and Xu stating that "they [referring to purchasers] likely have a much more positive view of the prospects for directories, and see its lower cost of capital due to high leverage. We need to be careful how we address the first point, which could open a can of worms on effectiveness of current management." *Id.*

30. Seidenberg's view that Verizon would never see the terminal value for VIS if Verizon did not quickly dispose of VIS was never disclosed by Verizon to the ratings agencies, Spin-off lenders or other market participants. Furthermore, nothing was ever disclosed to the ratings agencies, Spin-off lenders or other market participants regarding the incompetence or ineffectiveness of the VIS management (Harless, Coticchio, Jones, etc.) or Verizon's belief that they were incompetent and ineffective. *See* DX 313, DX 314, DX 416, DX 488, DX 494, DX 1730, PX 612, PX 920; *see also* ¶¶ 161-184, *infra*.

E. Seidenberg's December 30, 2005 Secular Shift Email to Diercksen and Toben – PX 121

31. On December 30, 2005, Seidenberg sent an email to Diercksen and Toben stating that Verizon's directories business (VIS) was going through "a major secular change," and that "an independent owner would slash costs big time, sell markets, probably reduce or curtail the electronic activity and focus on cash." PX 121.

32. Seidenberg further stated "To me the issue is changing the base assumptions about the print sector rather than thinking this is a fix it up issue … My view is that we can tinker with operational improvements all we want, but this business is changing quickly … This is the same lesson we learned in telco [i.e., telephone companies] … I listened for ten years that we had the time and market position to deal with the technology shift and just in a flash wireless and cable ate us up." *Id.*

33. The views Seidenberg expressed in this internal email would have been material and relevant to the market, but Verizon did not disclose them to the ratings agencies, Spin-off lenders or other market participants. *See* DX 313, DX 314, DX 416, DX 488, DX 494, DX 1730, PX 612, PX 920; *see also* ¶¶ 161-184, *infra*.

34. While Verizon presented evidence of certain analyst reports containing awareness in the marketplace of a secular change affecting VIS's print directories business, Verizon presented no evidence that the market was aware that Verizon's CEO believed an independent owner of VIS would slash costs big time, sell markets, reduce or curtail the electronic activity and focus on cash, which are the hallmarks of what Harless referred to as a harvest business.

PX 1161, Harless email dated January 19, 2007, stating that Idearc had been "in a Harvest mode" for three years.

F. May 21, 2006 Email from Seidenberg Regarding Verizon's Directories Business Experiencing Quicker Secular Shift than Competitors – PX 367

35. Furthermore, Verizon knew that VIS was going through a quicker secular shift in its markets than other directories businesses. PX 367, May 21, 2006 email from Seidenberg to Diercksen. This material fact was never disclosed to the ratings agencies, Spin-off lenders or other market participants. *See* DX 313, DX 314, DX 416, DX 488, DX 494, DX 1730, PX 612, PX 920; *see also* ¶¶ 161-184, *infra.*

36. In a May 21, 2006 response to Seidenberg's email, Fitzgerald responded to Diercksen (who had forwarded Seidenberg's "quicker secular shift" email to him) that he had begun to modify the board of directors presentation to incorporate Seidenberg's comments, but stated "we need to walk a fine line between the business being bad/unfixable (i.e. Ivan's secular shift point) as a rationale for disposition of the business and this business being good/turning around as a rationale for it being able to support $9 billion of debt and trading with reasonable equity value for our shareholders." PX 365.

37. Verizon never disclosed to the ratings agencies, Spin-off lenders or other market participants its conclusions that VIS's business was bad/unfixable, experiencing a quicker secular shift than other directories businesses, and was not a growth business. To the contrary, Verizon represented to the market that VIS's business could turn around and grow in the outer years of its five-year plan.

G. VIS Management 2006 Plan of Record Projections

38. In the normal course of business, in the fall of 2005, Verizon and VIS began the process of formulating the 2006 business plan for VIS that would include projections of VIS's revenue and EBITDA for the next five years (2006 through 2010). Jones, Vol. 5B 91:19-92:16; Fitzgerald, Vol. 7A 33:2-12.

39. In April 2006, Verizon and VIS completed their initial projections for the 2006 plan of record (including projections of VIS's revenue and EBITDA for 2006 to 2010). PX 295.

40. The VIS 2006 plan projections were not formulated by VIS management alone. They had significant input from the Verizon corporate finance team even before McKinsey was retained and before the projections were later "negotiated" or "mandated" by Verizon. PX 212, March 16, 2006 email from Phil Seskin to John Diercksen, stating "since those involved much input from the Corporate Finance team, shouldn't Doreen's (referring to Verizon CFO Doreen Toben) team be given an opportunity to push back."

H. McKinsey Retained to Evaluate 2006 Plan of Record

41. In January 2006, after formulating the 2006-2010 projections for VIS, Verizon retained McKinsey, a well-known and highly regarded national consulting firm to review the 2006 plan of record formulated by Verizon and VIS management. Diercksen, Vol. 1B 41:15-24.

I. February 23, 2006 Email from Diercksen to Seidenberg and Toben re Project Sunburst, with attached McKinsey Status Update – PX 181

42. On February 23, 2006, Diercksen sent an email to Seidenberg and Toben regarding Project Sunburst, stating that McKinsey "has not produced anything new that we have not already discussed, for example, increased advertising, more feet on the street [i.e., sales people], repackaging of discounts and pricing, VIS has higher bad debt and SG&A costs than it's (*sic*) peers." PX 181.

43. "That said, we need to balance the above with the associated EBITDA impacts for de-levering (remember for every dollar reduction in EBITDA we lose six in debt reduction opportunity)." *Id.*

44. Thus, Verizon knew the importance of projecting the highest EBITDA possible for Idearc in connection with the Spin-off to accomplish Verizon's goal of obtaining the highest possible debt to be used in the debt-for-debt exchange that would reduce Verizon's own debt.

J. McKinsey Report – March 2006

45. On March 15, 2006, Diercksen, after speaking to Peter Bisson of McKinsey, wrote an email to Seidenberg and Toben stating as follows:

> FYI ONLY – spoke with Peter Bisson, their preliminary findings on the development of a 5 year plan suggests that the growth and retention initiatives presented have not shown that they are taking hold in local advertising in all regions. Of particular concern is the Net 7 region (there is concern about the Northeast as well). Peter indicated that he spoke with Kathy [Harless] about this and she will look into it. But in Net 7, they continue to run at a negative 7% loss and they are experiencing larger losses than planned. Peter suggested to Kathy that implement interim canvass measurements to understand where they are for reaction and change implementation…. ***We need this to develop a turnaround story.*** According to Peter, Kathy understands the value implications in not being able to demonstrate improvements. Electronic on the other hand is showing signs of revenue improvement which is good ***but as you know this line of business does not have meaningful EBITDA. National appears to show steady results but not enough to offset the local losses.***

PX 203 (emphasis added).

46. McKinsey concluded that "***the VIS long range plan of record was not credible.***" PX 212, March 16, 2006 email from Phil Seskin to Diercksen. PX 212 (emphasis added).

47. McKinsey's report entitled "Project Sunburst - Summary of Perspectives," dated March 16, 2006, containing McKinsey's findings was sent by email to Diercksen, Harless, Jones, Coticchio, Xu, Marx and others at Verizon on March 16, 2006. PX 208.

48. McKinsey revised VIS's local print revenue forecast downward, and projected higher rates of continued decline in local print revenue than had been previously projected by Verizon and VIS management. In their original plan of record, Verizon and VIS management had projected a turnaround from negative declines to positive growth in the print revenues in 2009 and 2010, whereas McKinsey projected continued revenue declines in local print in 2009 and 2010 at a rate of 2.1% per year. *Id.* at 16.

49. McKinsey also projected additional costs for an independent, stand-alone VIS. *Id.* at 18.

50. On March 17, 2006, Diercksen sent an email to Toben, Bartlett and Fulton of Verizon attaching the McKinsey report and stating that "the latest 5 year McKinsey forecast is coming in lower than the plan of record!" PX 219.

51. Fulton sent an email to Diercksen, Toben and Bartlett on March 17, 2006 regarding the McKinsey report in which he stated in reference to the electronic side of the business that "Page 12 seems to indicate that even if all plans go as proposed in this deck, EBITDA is only improved in 2010 by $43M. That's 1/3 higher than the current contribution from electronic but only a fraction of VIS' total EBITDA." PX 219.

52. He further stated "I think the hemorrhaging on the print side is still the big gorilla that needs to be tackled." *Id.*.

K. Verizon Mandate of Final Spin-off Projections

53. Rather than accept McKinsey's findings and revised projections, Verizon euphemistically contends that it "negotiated" a new set of projections with VIS management that were better than the McKinsey projections.

54. However, several contemporaneous Verizon emails demonstrate that Verizon's corporate management, including Diercksen and Toben, actually mandated and dictated the final projections to VIS management, rather than "negotiating" those projections, as Verizon alleged *post hoc*.

> a. On April 11, 2006, Fitzgerald sent an email to Marx in response to Marx's inquiry about the business plan, in which Fitzgerald stated "Sophia [Xu] and I just got finished meeting with Fulton and team on their proposed revisions to VIS' plan. They are scheduled to review with DAT [Toben] and JWD [Diercksen] tomorrow morning, which will, hopefully, be followed shortly by a ***dictate to VIS on the final plan***." PX 283 (emphasis added).
>
> b. On April 12, 2006, Fulton sent an email to Toben, Diercksen, Bartlett, Olson, and Fitzgerald stating he "[j]ust got off the phone with Andy/Dee [Coticchio and Jones]" and the "bottom line is they are not moving from their revised submission attached [referring to revised EBITDA projections]. It was described as 'best and final offer.'" PX 287.

c. Diercksen responded the same day stating "***where do they come off with a best and final offer!*** Given their statement, I think we need to talk to Ivan [Seidenberg] and ***enforce this view on them.***" *Id.* (emphasis added).

d. On April 13, 2006, Bartlett sent an email to Harless stating "we are trying to close out the final VIS bus[iness] plan we have been working with Andy [Coticchio] …. Unfortunately Andy [Coticchio] is trying to negotiate this plan with us which I find interesting. Could you please intervene and help us here. I want to close out for the banking meetings next week." *Id.*

e. On April 13, 2006, Diercksen responded to Bartlett concerning Fulton's April 12 email referenced above [PX 287], stating "This is incredible … I suggest you call Andy and tell him that ***this is a mandate.***" *See* PX 300 (emphasis added).

f. Bartlett responded "I think his [Coticchio's] behavior is unbelievable – I will call him today – who does he think he is?" *Id.*

g. Diercksen responded "Tom, in my many years here, I have never seen behavior like this." *Id.*

h. These emails show that the final Spin-off projections were not in fact negotiated in any true sense of the word, but rather were dictated by Verizon to VIS management in order to justify the valuation and debt level Verizon desired for the Spin-off.

L. Final Spin-off Projections

55. Ultimately, a final set of projections was "agreed upon" between Verizon and VIS management. The final set of Spin-off projections were contained in the Confidential Information Memorandum for Private Siders, dated October 2006. PX 673, pp. 7-10.

56. The final Spin-off EBITDA projections were significantly higher than originally projected by Verizon and VIS management, and higher than the McKinsey revised projections. PX 1808 (demonstrative exhibit used in Carlyn Taylor's direct testimony, comparing EBITDA projections of VIS, Verizon corporate, and final "negotiated" Spin-off projections contained in the Confidential Information Memorandum for Private Siders).

57. As Fitzgerald stated in a May 31, 2006 email to Diercksen, "The McKinsey forecast actually took the VIS revenues down significantly from plan-of-record (in 2010, print was lower by $262M; Electronic was higher by $97M, for a net variance to plan of negative $165M." DX 224. Furthermore, "the revised management view (including the final round of arm-twisting by Doreen's people) is still off from plan-of-record ($108M in total revenue in 2010) …. The final management view of print is generally consistent with McKinsey in the early years …, but it gets better than McKinsey in the out years." *Id.* (emphasis added).

M. Removal of Prior Plan of Record from Data Room and Cover Up

58. After Verizon dictated the final projections to VIS management, Verizon instructed VIS management to remove the old business plan from the due diligence data room before it was opened up to the Spin-off lenders.

59. On April 18, 2006, Xu wrote to Wilson and Fitzgerald that "the banks have requested opening the data room to the financing teams. Before we do that, ***please remove the old business model and replace it with the new plan.***" PX 321 (emphasis added). Wilson complied and responded, "Original Plan of Record removed." *Id.*

60. As far as the lenders knew, there was only one set of projections, and they never knew that the final projections placed in the data room were more aggressive than the projections McKinsey had told Verizon were not credible, and were dictated to VIS management by Verizon.

61. On April 24, 2006, Fitzgerald wrote to Xu that Cliff Wilson, VIS's Director of Financial Planning and Analysis, "***needs to be coached to represent that there is only one version of the plan*** – the painful internal process we went through is irrelevant and would undermine credibility." PX 330 (emphasis added).

62. Xu responded by saying she did not want to invoke McKinsey too much, and she was "***also concerned that rating agency will request a copy of McKinsey report and it is not positive, saying VIS plan is very aggressive. After that, the plan only gets even more so.*** The industry benchmarks are the killers." PX 330 (emphasis added).

63. Verizon never disclosed to the ratings agencies, Spin-off lenders or other market participants that the final projections and plan of record were mandated or dictated by Verizon, that the prior projections and plan were less aggressive and deemed "not credible" by McKinsey.

64. Verizon never disclosed the McKinsey report to the public market.

65. The Court finds these facts would have been relevant and material to the market's valuation of Idearc, but were never disclosed.

N. Verizon Refuses to Give Idearc Independent Advisors or an Independent Board Until Shortly Before the Spin-off and Dictates Terms of Spin-Off and Capital Structure.

66. In addition to dictating the Spin-off projections to VIS management, Verizon refused to appoint any independent advisors or board for Idearc until shortly before the Spin-off.

67. This fact is evident from the August 18, 2006 email of Verizon's attorney at Debevoise & Plimpton, Jeffrey Rosen, who was supposed to be jointly representing Idearc along with Verizon in connection with the Spin-off stating that "***since we basically decided not to give spinco [Idearc] eyes, ears, limbs and advisors until close to closing, I am not sure why we would want to give it a brain*** [i.e., independent directors]." PX 528 (emphasis added).

68. Similarly, in an August 19, 2006 email, Verizon's Marianne Drost stated to Diercksen that "I have some concerns about whether we should run the risk of putting anyone on the board prior to the spin. According to Jeff [Rosen], in the final Form 10, you identify the people who will join the board at the effective time of the spin – not put them on before. Similarly, ***I don't really think they should be involved in the decision making process***. Most things can be changed after the spin. ***Capital structure is ours [Verizon's] to determine***. I think if they served as "advisors" and we paid and indemnified them, that might compromise independence." PX 530 (emphasis added).

69. Rosen's email reveals that Verizon's counsel was looking out only for the interests of Verizon despite their joint representation of Idearc.

70. Prior to the purported appointment of the new board on November 16, 2006, the day before the Spin-off, Diercksen, a Verizon officer, was the only director of Idearc.

71. Diercksen had a hopeless conflict of interest as both an Idearc director and an officer of Verizon on both sides of the Spin-off transaction.

72. Similarly, prior to the retention of Fulbright & Jaworski as separate counsel to Verizon Directories Disposition Corporation ("VDDC"), the predecessor name for Idearc, Idearc had no separate, independent counsel. And Fulbright & Jaworski reported to and received its instructions from an in-house Verizon lawyer, William Mundy, until the Spin-off occurred.

73. As stated by Idearc's in-house attorney Bill Mundy on October 15, 2006, "Verizon did not allow us to have its own counsel until just a few weeks ago." PX 754.

74. Doreen Toben, Verizon's Chief Financial Officer, made the final determination about VIS's capital structure and how much debt VIS would have on the spin date. Seidenberg, Vol. 2C 13:11-25, 269:22-271:2[5].

75. As early as December 2005, nearly a year before the spin date, Verizon determined that it wanted to use the spin as a vehicle for repaying $7-9 billion of Verizon's own debt via a "debt for debt exchange." Seidenberg, Vol. 2C 310:22-314:16.

76. Thus, in order to implement its plan to place as much debt as possible on Idearc, use as much of Idearc debt as possible to reduce Verizon's debt in a debt-for-debt exchange with its own existing debtholders, and obtain the maximum amount of cash from Idearc in the Spin-off, Verizon deprived Idearc of independent lawyers, advisors and directors, so that Verizon could completely control the Spin-off process without any questioning from independent lawyers or advisors to Idearc, dictate the Spin-off projections, dictate the capital structure and amount of the debt to be placed upon Idearc, and control the information that would and would not be shared with the ratings agencies, Spin-off lenders and other market participants.

[5] Portions of the video deposition of Ivan Seidenberg were played in open court during the Phase I trial, beginning on the afternoon of October 17, 2012. By agreement of the parties and order of the Court (Document No. 609), a transcript of those deposition portions was designated as Volume 2C of the trial transcripts.

O. Verizon Controls Information Given to Post-Spin Board of Idearc

77. In a September 5, 2006 email to Seidenberg about a meeting with three potential post-spin directors for Idearc, Diercksen stated that "***If you did not know what support, coaching and guidance you have given their team – one could swallow the guano***." *See* PX 587 (emphasis added).

78. The Merriam-Webster Dictionary defines "guano" as the "excrement of seabirds or bats."

79. When one of the would-be new directors, Mueller, was evaluating VIS prior to the Spin-off and prior to being appointed as a director, he did not have access to any non-public information. Mueller, Vol. 8B 79:18-80:7. He also did not believe at the time he was given inaccurate information ("guano") by Verizon and VIS; and had he known he was given inaccurate information he would not have proceeded with the Spin-off. *Id.* at 83:1-83:19.

80. Thus, even when Verizon started sharing information with the people who were supposed to become the new directors of Idearc, Verizon ensured they had only the information Verizon wanted them to have.

P. Seidenberg Testimony – Video Deposition and Live

81. **Testimony from Video Deposition** – In his video deposition played by Plaintiff at the trial on the afternoon of October 16, 2012 (*see* Transcript, Vol. 2C), Seidenberg gave the following testimony regarding material information he knew about the directories business that Verizon did not share with the market, thereby causing the market to overvalue Idearc's business at the date of the Spin-off:

a. Prior to the spin, Verizon was facing two issues: competitors from other yellow page books and new technology (Internet) that had created substitutable products that made it difficult for Verizon to believe it had the wherewithal to build a sustainable business without the chance for the business to be repositioned. Seidenberg, Vol. 2C 81:20-82:8.

b. Verizon had invested in the electronic side of the directories business for many years but never got enough traction to reverse VIS's downward momentum. *Id.* at 82:20-83:2.

c. The new electronic competitors, including Google, were something Verizon never dealt with before, completely changed the game, the rules, the dynamic. Verizon began to see people use the Yellow Pages book as a joke, something that was more important to use to reach a can of corn in the cupboard than to look up a name. *Id.* at 83:3-23.

d. VIS was for the most part a business that was suffering from large numbers of competitive players coming into the market and, in addition, the Internet was further changing the business to the point where there was a different kind of competitor with a substitutable product. Thus, there was a secular shift in the business: underlying

forces were changing the business and the industry, and the Internet suddenly accelerated that change. *Id.* at 124:14-125:24. Although the market generally knew about the secular shift, Verizon never disclosed to the market Seidenberg's conclusion that VIS was "experiencing a quicker secular shift in [its] markets" than its competitors. PX 367 (email from Seidenberg to Diercksen, dated 5/21/06); *see* Taylor, Vol. 5A 67:19-68-5, 72:24-73:3.

e. With regard to the statements Seidenberg made in PX 121 discussed in Section II(E) above, Seidenberg testified that he had been in the industry a long time and after looking at the general momentum of the entire industry he was very concerned about whether VIS could meet the challenges, particularly when the same thing was going on in the landline business. He didn't think it was a fix-it-up issue; it was a much more fundamental issue. Tinkering with operational improvements (e.g., hiring more salespeople or spending more money on advertising) could not change the fact that VIS's business was changing quickly when the issues were more fundamental than that. Seidenberg, Vol. 2C 216:9-219:9.

f. As of March 2006, Seidenberg was aware that for years, VIS had been losing customers on a net basis. It was losing customers on the print side and its electronic customers were hardly paying anything. So on a net basis, VIS was losing paying customers. *Id.* at 241:19-242:18.

g. Before the spin, Seidenberg believed the VIS business was undergoing a major secular shift and facing long-term issues. It was facing competition from independent print directories that were attacking existing markets, especially in large metropolitan markets that had been VIS's core business for years. And there was a brand new form of competition in the form of the Internet. Both of these competitive forces were "hammering" VIS at the same time. *Id.* at 249:13-250:14.

h. During the five years before the Spin-off, VIS, under Seidenberg's direction, had looked at every conceivable potential for improving its operation and tried everything they could – including, but not limited to, increased advertising, hiring more sales people, repackaging discounts, pricing, and reducing bad debt – to improve its operations and grow the business. Yet none of these efforts changed the downward trajectory of VIS's performance. VIS hired McKinsey to develop a five-year plan for VIS, but McKinsey did not come up with any new suggestions or new insights. *Id.* at 323:17-328:6.

i. From 2001-2005, VIS's performance had declined each year and was in a long-term decline. The longer-term prospects for VIS were to see continued declines in the business, and there was no "secret elixir" that could change the momentum of the business. *Id.* at 332:13-334:19.

82. **Live Trial Testimony** - In his testimony at trial, Seidenberg gave the following additional testimony regarding material information he knew about VIS that Verizon did not share with the market.

a. In order for VIS to grow post-spin via merger with other directories business ("horizontal merger" per PX 27, p. 44, last bullet point), it would be very important that it didn't have any unwieldy restrictions on its ability to merge with other companies. *Id.* at 85:8-17.

b. During the five-year pre-spin period when VIS's sales and EBITDA were declining, Verizon's management (Seidenberg, Diercksen, Harless) were doing everything they could to determine the cause of the decline and reverse the decline. *Id.* at 88:6-89:22.

c. Seidenberg hoped McKinsey would tell Verizon something it did not already know about the directories business, but Diercksen reported to him that McKinsey's perspective on the business model had not produced anything that Verizon had not already considered or tried and knew would not work (more advertising, more sales representatives, repackaging discounts and pricing) to no avail. *Id.* at 96:5-97:14; *see also* PX 181.

d. VIS was undergoing a quicker secular shift in its markets than its competitors due to competitive alternatives like other print directories and the Internet, which had a bigger impact on VIS than on its competitors. *Id.*. at 99:18-102:25; *see also* PX367.

e. Despite trying all sorts of things to change VIS's downward momentum and stabilize the company, Verizon was "unable to change the fact that it [VIS] was not a growth business." *Id*. at 103:24-104:2.

Q. Diercksen Testimony and Email

83. Diercksen testified at trial that he, as sole director of VDDC (which became Idearc), appointed Harless as the President of VDDC, even though he thought she and the rest of the VIS management team were incompetent. Diercksen, Vol. 2A 35:21-24; 36:25-42:24; 63:24-65:2.

84. In fact, Diercksen sent an email to Marc Reed on October 27, 2006, less than a month before the Spin-off, in which he expressed his view that the Idearc management was incompetent and had reduced the value of the directories business by more than $5 billion. *Id*. at 37:11-21; 40:22-41:6.

85. Nonetheless, as sole director of VDDC/Idearc, Diercksen signed a VDDC/Idearc board resolution stating that Harless, Coticchio and Jones were appointed as officers of Idearc to run the business after the Spin-off:

> Please call 911 because I am in the bell tower ready to start shooting, got my duck so I can hold out for a very long time – I guess it is better to be lucky than good. I think it is very appropriate to reward ***individuals that reduced the value of this unit by $5+ B*** …. I am sorry to vent, but approving a very large pool of options "feels" like the

> wrong thing to do, and ***seems like we are feeding "the rising tide of incompetence***."

PX 869 (emphasis added).

86. Verizon never disclosed Diercksen's knowledge that the Idearc management team he appointed was incompetent and had reduced the value of the company by over $5 billion to the ratings agencies, Spin-off lenders or other market participants. *Id*. at 66:24-67:15. To the contrary, as set forth below, Verizon represented the opposite in its disclosures to the marketplace.

87. Diercksen's November 2, 2007 email to Seidenberg (PX 1313) further confirms his knowledge that the management of Idearc was incompetent, and that the excuse Verizon used to sell the turnaround story to the market concerning the 2003 voluntary reduction in force was not true.

88. In PX 1313, Diercksen stated: "In spite of adding a significant number of reps, sales have fallen dramatically and they are writing negative numbers vs. their plan. Kathy has taken the billing function and credit and collections away from Finance and put it in Marketing – wow… this latest blame of the net income miss on separation costs associated with the spin and stock true up is a shell game. Moreover, the relationship she has with several of her direct reports is at an all-time low and she is in open war with her CFO [Coticchio], rep turnover is climbing as well. Seen this movie before."

89. Additional testimony by Diercksen supports Plaintiff's contentions that Verizon withheld material, adverse facts concerning VIS from the market and instead sold the market on Verizon's turnaround growth story.

a. Diercksen testified he "doesn't recall" telling anyone at Goldman Sachs that VIS consistently missed its forecasts, suffered double digit declines in urban markets, and that there was no turnaround in sight. Diercksen, Vol. 1A 63:5-20. The Court finds that his lack of recollection of this is because those facts were not disclosed.

b. Goldman Sachs, Wells Fargo, Barclays, and Morgan Stanley only had publicly available information regarding VIS; Diercksen did not tell them Seidenberg's beliefs as reflected in PX 121 and admits that Seidenberg's statement in PX 121 about tinkering with operational improvements being futile would include adding more sales personnel, improving bad debts, improving markets, improving canvasses and improving focus around the electronic side of VIS's business. Diercksen, Vol. 1B 26:10-27:4; 31:1-17; 34:3-7.

c. When questioned about the disclosures in the Form 10, Diercksen admitted that the "turnaround stories" appear throughout the Form 10, including:

i. the revenue declines being blamed on the voluntary separation package (PX 452 (Form 10), pp. 50, 55); double digit urban market decline not disclosed (PX 452, p. 70), and Internet predicted to make up for print decline (PX 452, p. 53). Diercksen, Vol. 2A 69-78.

ii. Internet revenue for the last 10 years was $271 million. *Id.* at 78:21-23.

iii. The investor presentation materials contain a projected growth rate of 1.8%. *Id.* at 89:16-21; PX 462.

iv. Presentation to Standard & Poors contains projections of close to 2% growth. Diercksen, Vol. 2A 92:21; 93:15-20; PX 620, p. 54.

v. The rating agency presentation described "solid management with competitive industry experience" despite the fact Diercksen knew they were incompetent. Diercksen, Vol. 2B 8:23-9:12.

vi. The projections were given to both rating agencies. *Id.* at 11:15-25.

vii. The offering memorandum for the high yield bond offering contains discussion of the voluntary separation package/reduction in force as an excuse for revenue declines. *Id.* at 17-19.

viii. Turnaround stories (sales force disruption) appear in the Credit Suisse credit memo. *Id.* at 22.

90. Diercksen never shared with those designated to be Idearc's incoming directors his views that Idearc's management was incompetent and had reduced the value of VIS by $5 billion. *Id.* at 44:13-23, 45:22-25.

91. Diercksen admitted he signed the Distribution Agreement to implement the Spin-off while serving as the sole director of Idearc, he never passed a resolution stating that Coticchio was authorized to sign the Distribution Agreement, and that Diercksen was wearing two hats at the time he signed the Distribution Agreement. *Id.* at 63-69.

R. Xu's Emails Contradict the Growth, Turnaround Story Verizon Used to Justify the Value of VIS's Business and Debt Levels for the Spin-off.

92. Xu wrote several emails to Diercksen and others working on Project Sunburst concerning the state of Verizon's directories business, which demonstrate Verizon's knowledge of material facts directly contrary to the turnaround, growth story that Verizon told the market about VIS to justify higher market valuations and debt levels for Idearc in the Spin-off.

93. For example, on March 24, 2006, Xu sent an email to Diercksen, Fitzgerald and Seskin regarding a two-day presentation by VIS management about the VIS directories business, which Xu attended in Dallas. *See* PX 245.

a. In the Dallas trip report, Xu stated "***the 'turnaround' seems nowhere in sight.*** Out of the 100+ pages of charts, you couldn't find any rising or even flat bars. What is especially disturbing is '06 year-to-date (through 3-4-06), nearly every region shows meaningful decline, double-digit declines are commonplace (which spooked

bankers) [i.e., JP Morgan and Bear Stearns representatives who attended the presentations].” *Id.* (emphasis added).

b. “Net 7 ((NY/Boston) and Big East are the problem child as usual….” *Id.*

c. “It’d be very difficult to convince the debt guys and rating agencies that the business is turning around when EBITDA in 06 will nosedive by $140 million to $1,513M from ’05 level; and revenue will fall by $100M just like ’05.” *Id.*

d. “***Bad credit problem is rampant.***” *Id.* (emphasis added).

e. “Verizon value transfer does not mask the erosion of core business – the ‘bridge’ of EBITDA will tell rating agency everything …. ***It’s a leaking bucket, adding more water doesn’t stop or slow the leak.*** Is it worth giving up $2+ billion value for $1+ billion extra debt capacity.” *Id.* (emphasis added).

f. “***On the business turnaround story, this is going to be tough*** but we have to give it a go. One way is to ***find a better management (use the old ones as scapegoats)*** … ***spin the stories as creative as we can*** – do case studies in selected regions where they had improvement … ***Find more scapegoats/excuses***, in Manhattan for example, blame on the voluntary separation package, 9-11, a fraud case (salesman violating policy) – you need to convince people bad events are behind you and not recurring.” *Id*. (emphasis added).

g. “[T]here isn’t much more you can take out of cost, it’s not enough to offset the topline revenue decline.” *Id.*

94. On March 27, 2006, Xu sent another email to Fitzgerald, Marx and Olson stating “***it is a declining business with little empirical evidence of turning around. Compared with Dex, which shows flat to slight growth, there is no illusion that VIS is a weaker business***.” *Id.* (emphasis added).

95. On April 20, 2006, Xu wrote an email to Olson, Webster and Fitzgerald regarding the presentations that would be made on the roadshows and to ratings agencies, stating “For roadshows/rating agencies … ***I wouldn’t volunteer the info (as Kathy did) that the boom in electronic is not sufficient to cover the loss in print. If it is obvious, then why mention it? If it is not, why volunteer that information?*** They need to plant the seed of hope in the mind of listeners.” PX 325 (emphasis added).

96. On July 11, 2006, Xu sent an email to Cliff Wilson regarding the “update on revenue handled chart,” in which she said that such information is “***not something we would put in a Form 10 or road show***, but just for our internal analysis.” “We could understand how to ***optimally package the story***.” “***We will choose what to tell the rating agency and underwriters***.” *See* DX 261 (emphasis added).

a. The string of emails in DX 261 that precede Xu’s July 11, 2006 email quoted above reveals that the “revenue handled chart” was a document prepared by Wilson that showed general revenue trends, and Xu had asked Wilson in an email earlier

that day if "for the upcoming due diligence, it would be a good idea to do a regional breakdown, enable people to see which regions are stable, which ones are declining, and if anything is showing unexpected trend, and if it is caused by extraordinary factors." *Id*.

b. Wilson wrote back and said "Hear you but remember this is the whole reason why we stress the broad geographic base so must be mindful of how we use any regional data." *Id.*

c. This email illustrates that Verizon did not disclose to the rating agencies, Spin-off lenders or other market participants any regional or market-by-market breakdown of VIS's revenue trends, because they would have shown the large, double-digit declines in VIS's major northeastern urban markets, where most of VIS's business was concentrated, and would have foreshadowed the continued decline in VIS's overall business, contrary to the turnaround story of growth for VIS that Verizon was selling to the market. *Id*. *See also* Taylor, Vol. 3 44:2-45:11 **[**VIS's large, urban markets had higher broadband penetration than competitors' markets**]**.

d. The evidence presented by Plaintiff demonstrated that Verizon never disclosed to the ratings agencies, Spin-off lenders or other market participants any market by market data showing the materially adverse and double-digit revenue declines that VIS was suffering prior to the Spin-off in its major urban markets where its business was concentrated. Instead, Verizon only disclosed revenue trends at the top line across all markets. The Court finds that Verizon thereby painted a materially false and misleading picture of the trending of VIS's business to the market.

97. On July 25, 2006, Xu sent an email to Olson, Garrity, Kauffman, Fitzgerald and Marx. *See* PX 487.

a. In this email, Xu reported that the second quarter of 2006 for VIS was weaker both in revenue and cost than the first quarter.

b. She further reported that while annualized revenue for the full year of 2006 was on target, EBITDA was short ($1.454M vs. target $1.508M), and while print revenue was on target, electronic revenue was $20 million below target, "which isn't a great story."

c. Finally, she said "It is normal to have some fluctuation, but ***since we are desperately proving a turnaround story here, we need all the explanations and excuses we can get***." *Id*. (emphasis added).

98. Xu's emails indicate that Verizon not only concealed relevant and material information from the market concerning VIS's business, but did so intentionally in order to sell the market on a growth/turnaround story for VIS that Verizon knew to be false, unreasonable and unachievable.

99. At trial, Verizon attempted to discount Xu's statements in her emails by describing her as a junior analyst, implying she did not know what she was talking about.

100. However, Verizon's belated attempt to distance itself from Xu's revealing contemporaneous statements is unpersuasive and contradicted by the Verizon's glowing performance review of Xu for the year 2006, which gives her the highest possible performance rating ("leading") and commends her for her "overall project management," which was "instrumental" in implementing the Spin-off of Idearc. PX 129.

101. The Court finds that Xu's emails from the time of the transaction are persuasive contemporaneous evidence of the facts Verizon knew about VIS at the time of the Spin-off, which Verizon never disclosed to the ratings agencies, Spin-off lenders or other market participants.

S. Harless Email re Harvest Business

102. On January 19, 2007, Harless sent an email to several people then acting as Idearc board members stating that "we have been in a Harvest mode for three years." PX 1161.

103. This statement by Harless is consistent with Seidenberg's comments in his December 30, 2005 email that an independent owner would "slash costs big time, sell markets, probably reduce or curtail the electronic activity and focus on cash." PX 121.

104. A business in harvest mode is the opposite of a turnaround, growth business. *See* ¶ 127, *infra.*

105. Thus, Harless' statement that VIS had been in harvest mode for several years is directly contrary to the turnaround growth story that Verizon told the rating agencies, Spin-off lenders and other market participants.

106. Verizon never disclosed to the ratings agencies, Spin-off lenders or other market participants that VIS was in harvest mode, a fact that would have been material to the market's valuation of the business.

T. Jessica Kearns (JP Morgan) Testimony

107. Verizon presented testimony from Kearns, a representative of JP Morgan in their syndicated and leveraged finance group who was involved with structuring the debt component of the Idearc Spin-off. Kearns, Vol. 9B 80:9-18, 81:16-82:8.

108. Verizon elicited testimony from Kearns regarding DX 279, DX 488 (color version of PX 768), DX 494 (color version of PX 769), DX 313 (color version of PX 669), DX 314 and DX 416 (color version of PX 612), which were copies of the presentations to public and private side lenders and investors and the confidential information memoranda for public and private side lenders and rating agency presentation materials.

109. Kearns testified that the private side and rating agency presentation materials predicted continued decline in the incumbent print business (negative 1.9% CAGR (i.e., compound annual growth rate) for projected incumbent print revenue and negative 1.1% for incumbent print EBITDA in DX 279)(negative 1.4% CAGR for print revenue in DX 494 and 314)(negative 1.9% print revenue decline and negative 1.1% print EBITDA decline in DX 416).

These same materials also show a projected 21.5% increase in Internet revenue offsetting the print decline, which Verizon's internal documents revealed would not occur. *Id*. at 92:23-93:17, 94:15-95:8, 96:13-97:17, 98:7-99:17, 99:18-100:11, 110:12-112:4. *See also* DX 279, DX 488, DX 494, DX 313, DX 314 and DX 416, *see also* ¶¶ 161-184.

110. While Kearns testified that JP Morgan had market-by-market data for VIS performance (Kearns, Vol. 9B 93:18-94:4, Vol. 10A 11:10-12:7), which showed massive declines in VIS's urban markets, that information was *not* in the presentations to lenders and was *not* presented to the public markets. Kearns could not identify any private side lender who received that information. *Id.* at 17:17-19:10.

111. Kearns also confirmed that the ratings of the rating agencies can affect the stock price of the subject company, and if the debt is given anything other than a default rating by the rating agencies, the market assumes there is equity beyond the debt. *Id.* at 22:12-23:2. Thus, it is important for the rating agencies to get complete and accurate information in order to rate the company's debt. *Id.* at 16:8-17:4.

112. However, Verizon's presentations to the rating agencies do not contain disclosure of the material adverse facts concerning VIS that were replete in the internal Verizon documents and witnesses' testimony discussed above.

113. While Kearns gave testimony that JP Morgan believed that the business was worth more than the debt, her testimony must be weighed in light of the fact that her employer, JP Morgan, earned $45 to $50 million in fees on the transaction, and was therefore highly motivated to see that the transaction went forward at the highest amount possible. *Id.* at 15:14-20. Her testimony also revealed that JP Morgan maintains a long-term, lucrative relationship with Verizon. *Id*. at 15:3-7.

U. Jonathan Yourkoski (Morgan Stanley) Testimony

114. Verizon called Jonathan Yourkoski, a representative of Morgan Stanley, who acted as Verizon's financial advisor in connection with the Spin-off.

115. However, the Court finds that his testimony was biased. Cross-examination revealed that (a) Morgan Stanley earned $3 million in fees from its advisory role to Verizon (b) Morgan Stanley has a longstanding relationship with Verizon, (c) Yourkoski appeared voluntarily at the trial despite the fact he lived and worked in New York, (d) Verizon paid Yourkoski's expenses for travel to Dallas, and (e) Yourkoski had met several times with Verizon's counsel to prepare for his trial testimony. Yourkoski, Vol. 9A 43:3-24, 44:19-45:1.

116. While Verizon attempted to show that Morgan Stanley had possession of certain documentation concerning the market by market revenue declines that showed the large declines in Verizon's urban markets, Yourkoski admitted that Morgan Stanley only had this information in its capacity as an advisor to Verizon, and that they did not share that information with the public market. *Id*. at 49:13-50:2.

V. Michael Smith (Goldman Sachs) Testimony

117. Verizon also called Michael Smith, a representative of Goldman Sachs, who had attempted to pitch Verizon to hire Goldman Sachs for a lead role on the disposition of VIS in 2005, but Verizon hired JP Morgan and Bear Stearns instead. Smith, Vol. 8B 108:24-110:8.

118. Similar to Yourkoski, Smith voluntarily appeared at the trial despite the fact he works in New York; Verizon paid his expenses for travel to Dallas; he met several times with Verizon's counsel to prepare for his trial testimony; and he hoped to get business in the future from Verizon. *Id*. at 119:16-120:23.

119. Though Verizon elicited testimony from Smith concerning his opinion about the value of Verizon's directories business based on statements in Goldman Sachs's pitch presentation materials, Smith admitted that the pitch materials were used for the purpose of trying to convince Verizon to hire Goldman Sachs for an advisory role in the Spin-off, which would have been a very lucrative engagement. *Id*. at 109:14-110:8. Therefore, any statements about the value of the business made in the pitch material must be viewed in light of the fact they were contained within a document used for the purpose of attempting to solicit Verizon's business.

120. Further, Smith testified that Goldman Sachs's presentation materials were based solely on publicly available information and that Goldman Sachs had no access to non-public information held by VIS or to VIS management. *Id*. at 110:9-17, 111:20-113:16.

121. Smith also testified that after Verizon declined to hire Goldman Sachs in 2005, he had very little involvement with the VIS spin after that. *Id*. at 108:24-109:1, 117:19-118:9.

122. While Verizon elicited testimony from Smith about Goldman Sachs's credit memo and its participation in the loans to Idearc in connection with the Spin-off, Smith admitted on cross examination he did not recall reviewing the memo at the time and that he was not involved whatsoever in the due diligence process prior to preparation of the memo. *Id*. at 118:10-119:15, 122:14-123:17. Smith also testified that the statements in Goldman Sachs's credit memo were based on the same information available to other lenders, such as the confidential information memorandum, the data room, and presentations by VIS management. *Id*. at 122:18-25.

123. For these reasons, the Court gives little weight to the testimony from Smith about statements concerning the alleged value of VIS contained in the Goldman Sachs pitch presentation materials and credit memo.

W. Plaintiff's Valuation Expert Carlyn Taylor's Testimony Reinforces What Verizon Knew Internally and Failed to Disclose to the Market as a Basis for Disregarding the Stock Market Price of Idearc

124. Taylor explained that the McKinsey report (PX, 213, p. 9, and related demonstrative PX 1835) showed that the most important factor in the Internet's threat to print yellow pages was the rate of broadband penetration in the United States, and McKinsey found that VIS's markets (northeastern US, the Atlantic seaboard, Texas and California) suffered

higher broadband penetration than its incumbent competitors. Taylor, Vol. 3 44:2-45:11; 48:1-14.

125. Taylor was "***struck by what the picture was internally [at Verizon] versus the picture that was put in the offering documents and what was available to the public. There were very material differences between these two pictures***, and it wasn't until I had gone through that and had an understanding of all of that that I agreed to be an expert in this case." *Id.* at 53:8-17 (emphasis added)].

126. Normally, the market value of the stock is the best indicator of value of a company, but not in this case because of the material differences between what Verizon knew about VIS's business and what Verizon disclosed to the public. Verizon failed to provide information about VIS that investors would have expected to be told and know in order to make a decision. *Id.* at 56:17-57:4.

127. Verizon documents and testimony indicate that VIS was a "harvest business." In the telecom and media industry, a "harvest business" is one that is not going to grow. It has reached its peak and is going to slowly decline due to competitive and technology reasons. In that scenario, the strategy is to harvest as much cash as possible from the company as it slowly shrinks, rather than running the business for growth. *Id.* at 57:15-59:16.

128. As of December 30, 2005, VIS looked like a business that had been shrinking for a number of years. It had all the attributes of a harvest business. Specifically, the technological and structural changes in VIS's industry had created a product – the Yellow Pages print directories – that was unable to grow. As Seidenberg testified, Verizon had done a lot of work to try to turn VIS's business around but they had not been successful. *Id.* at 61:14-62:10.

129. A harvest business is valued differently than a growth business, and Taylor has experience in valuing Yellow Pages companies as harvest businesses, including Idearc before its bankruptcy filing. *Id*. at 62:11-15; 63:9-64:8.

130. The debt structure of a harvest business must be levered more conservatively than a growth business, because the value of a harvest business and its cash flow used to pay its loans will decline during the period of the loan. Thus, the debt structure of a harvest business must be amortized so that the debt is paid down over time and the refinancing risk at the end of the loan period is reduced. *Id*. at 65:23-66:14.

131. According to Taylor, Seidenberg's view of the VIS business, set forth in PX 121, is highly relevant to understanding what Verizon knew internally and would have been material and relevant to the market. Seidenberg viewed VIS as a business that could not grow and would continue declining. Verizon had figured that out before the rest of the market did. Taylor considered this evidence in deciding that the market capitalization was not a proper measure of Idearc's value on the spin date because Verizon did not disclose its internal view to the market. *Id*. at 66:15-67:3.

132. Each year, Verizon produced a "plan of record" for VIS, and each plan contained five-year projections for VIS's revenue and EBITDA. In each plan of record that Verizon produced in 2001-2005, Verizon projected growth for VIS in each five-year projection period,

but at a steadily declining rate. PX 27, p. 21 (reproduced in demonstrative PX 1803). Verizon knew that it had missed each of its forecasts by very large amounts. Taylor, Vol. 3 67:4-19; 68:13-16; 69:1-25; 72:4-17.

133. For four years running (2001-2004), Verizon's "plan of record" projections of EBITDA for VIS had been dropping, but Verizon continued to project growth. *Id*. at 72:25-74:2. PX 27, p. 21.

134. Verizon's pattern of continuing to project growth even though the VIS revenue and EBITDA were declining each year is relevant to the valuation of Idearc because it showed that Verizon could not make accurate projections about VIS's business. Verizon knew that its projections had been highly inaccurate and it should have informed the market about its inability to accurately project VIS's financial performance. Such information would have been highly relevant to the market in assessing Verizon's projections for VIS. Taylor, Vol. 3 74:3-13; 74:16-75:9.

135. In valuing Idearc, it is very important whether the information that Verizon put forth to the market was a fair representation. What was disturbing was how Verizon's internal view that the VIS business would keep shrinking, as set forth in PX 27, was the opposite of what it put forward in the market. *Id.* at 75:10-76:6. *See also* PX 27, p. 44.

136. Verizon's internal conclusion was that VIS's print directories business would likely continue to decline, VIS's ability to offset that decline with its electronic product was uncertain, and there was a significant risk that VIS would underperform its current plan of record. *Id.* As a whole, Verizon's AoA (PX 27) is a reasoned internal analysis by Verizon that VIS is underperforming, under attack from independents and electronic, and will continue to decline. Taylor, Vol. 3 76:7-20.

137. Verizon also concluded that VIS's business was deteriorating and that VIS's value was going to decline over time. PX 27, p. 44. This is consistent with Verizon's desire, expressed in other internal documents, to get rid of VIS, sell it promptly, and separate it from what will be New Verizon. Similarly, Seidenberg testified that Verizon wanted to dispose of VIS because it was a deteriorating business that would lose value in the future. *Id*. at 77:13-25.

138. Verizon's DCF (i.e., discounted cash flow) valuation of VIS in July 2005 shows a range of values based on assumptions about shrinkage or growth. PX 27, p. 26. (The chart on page p. 26 of PX references only the print portion of VIS's business, but VIS's electronic business contributed only 5% of VIS's total revenue at that time and an even smaller percentage of VIS's total EBITDA.) Verizon's DCF values of VIS range from $6.5 billion based on shrinkage of minus 5%; $7.6 billion at shrinkage of minus 2%; and $10.4 billion at an assumed growth rate of 2%. This wide variance shows how sensitive valuation is to small changes in growth rates. Taylor testified that PX 27 is the most important document she reviewed because it showed that Verizon knew VIS's print business had been shrinking at 5% and was worth only $6.5 billion if it continued shrinking at that rate. Verizon knew VIS's competitors were still growing while VIS was declining, and Verizon knew that if it could convince the market to perceive VIS as a growth company it could get a much higher valuation for VIS in the Spin-off. Taylor, Vol. 3 78:1-81:20. *See also* PX 27, p. 26.

139. Taylor was taken aback by a highly irregular process of Verizon finalizing its five-year projections for 2006 to be used in connection with the Spin-off. Taylor testified that the market expects projections that are "built from the bottom up in good faith. Taylor, Vol. 3 82:20-22. The e-mails that she reviewed showed that the financial projections for VIS's performance that Verizon used in the Spin-off were reverse-engineered. The pattern of all of Verizon's internal e-mails (regarding negotiations of projections and mandates) is more than disturbing. *Id.* at 81:20-83:5. *See also* PX 1808.

140. PX 1808 compares 2006-2010 EBITDA projections by VIS (after working with McKinsey) and by Verizon (which Verizon wanted VIS to use) with the projections that were actually used in connection with the Spin-off, i.e., in the projections given to underwriters, in the Confidential Information Memorandum to private-side lenders, to potential lenders on the term loan, and to the rating agencies that would rate the bonds. Taylor, Vol. 3 84:25; 85:9-15; and 85:20-86:8.

141. The EBITDA projections actually used (the green figures in PX 1808) project growth from 2008-2010, which (a) created the perception in the market that VIS would be a growing company, not a harvest/shrinking one, and (b) affects DCF valuation ("is hugely important to the value") because it affects the terminal value used in the DCF model. *Id.* at 86:21-87:10.

142. The info in PX 1808 and the "negotiations/mandate" emails are irregular and highly relevant to what the market should have known because Verizon knew VIS was a declining business and would continue to decline. Yet, Verizon insisted to McKinsey that VIS was not going to continue to decline, and Verizon issued a mandate to VIS to issue projections to the market that VIS would turn around and grow, which Verizon knew was incorrect. *Id.* at 87:14-21, 88:4-17.

143. McKinsey recommended that Verizon raise projections for VIS's electronic business, but lower the projections for its print business, which would cause a decline in VIS's EBITDA in later years. Verizon adopted McKinsey's proposed increase for the electronic business, but rejected McKinsey's proposed print declines and instead raised VIS's overall EBITDA forecasts for the later years, 2008-2010. This was highly relevant to what the market did not know because there were numerous indications that Verizon knew internally that the business was declining and would continue to do so, but Verizon gave the market the opposite picture, i.e., that the company would grow. *Id.* at 90:24-91:12, 91:23-92:11, 92:19-93:12. *See also* PX 213.

144. Verizon told the market, as part of the turnaround story for VIS, that the 2003 reduction in VIS's sales force was a reason for the subsequent declines in VIS's revenues and EBITDA. However, Taylor pointed out that before the voluntary reduction in sales force, VIS was inefficient and had too many salespeople, and after the reduction, VIS's sales force was as efficient as its competitors'. Taylor, Vol. 4A 40:22-41:18.

145. A VIS management presentation on March 22-23, 2006 showed that Verizon knew VIS's print business the large urban markets where the majority of its revenue came from was declining very fast, but there was nothing in the disclosure documents about these rates of

decline in urban markets vis-à-vis other smaller markets. This information would have been highly relevant to the market, because trends in the larger markets are an early indicator of where the overall business eventually is headed. Taylor, Vol. 3 93:13-94:22, 95:4-6.

146. VIS experienced drastic sales declines in its "NET7" market areas (esp. Boston and Manhattan) where Internet broadband penetration was highest, starting in early 2006. PX 233a. In fact, the Management Stabilization page from the March 22-23 Management Presentation (PX 233, p. 76 of 1681) shows a 50% drop in the Manhattan market revenue between 2002-2005, from $84 million in 2002 to $42.3 million in 2005. Taylor, Vol. 3 99:15-100:1. Information about how VIS was performing in these large markets would have been very important for the public market to know relative to the averages for VIS's overall performance that Verizon was disclosing. *Id.* at 96:17-99:14.

147. Information about VIS's double-digit declines in major urban markets was extremely material and relevant, but Verizon did not disclose that information to the market. Taylor, Vol. 3 101:4-10, 4A 12:2-21. The public market knew that VIS was in the more densely populated urban markets and that broadband penetration was higher in those markets. However, Verizon did not disclose to the market how such deep broadband penetration was impacting those markets and how fast VIS's business had been falling in those markets during the two years before the spin. *Id.* at 43:11-44:5; *see also* DX 261, Xu email dated July 11, 2006 to Wilson, stating that regional revenue information is "not something we put in Form 10 or roadshow."

148. Defendants cross-examined Taylor on this issue, referring to certain analyst reports that contained information regarding the level of competition Verizon was facing in its large, urban markets. However, these reports contained only vague statements about the level of competition in certain markets, and did not have any specific information that would reveal the magnitude of revenue declines VIS was experiencing in those markets. Taylor, Vol. 4B 91:17-93:23. Therefore, such cross-examination was ineffective to rebut Taylor's conclusion about this issue.

149. The excerpt from the VIS portion of the February 2005 Verizon Strategic Planning document marked as demonstrative PX 1828, which showed the large declines in VIS Manhattan print and Internet yellow pages revenue was not disclosed to the market. *Id.* at 44:20-45:3.

150. Rating agencies rate bonds and public bond investors, who do not have access to the company's projections, rely on those ratings. *Id*. at 105:17-106:4.

151. "Cost-per-reference" is a critical measure of the strength of VIS's product relative to its competing independent directories companies. There is a stark difference between what Verizon presented to the rating agencies (PX 620, p. 28) and what is in Verizon's internal management presentation (PX 233) about the relative cost-per-reference of VIS and its competitors. The rating agency report shows much more favorable figures than Verizon's internal management report. *Id*. at 107:18-110:6.

152. Taylor reviewed the Form 10 for the Idearc Spin-off, dated 11/1/06 (PX 901), to determine what facts were disclosed to the market and to understand, from a valuation standpoint, whether all material relevant facts were disclosed to the market. Taylor, Vol. 4A 7:10-24.

153. Seidenberg's view that VIS was a "harvest" company was very material, but was not disclosed to the market. *Id.* at 9:20-10:2.

154. The market was not aware that VIS's internal financial projections had consistently declined and had been missed for a number of years before the spin. *Id*. at 10:3-13.

155. Taylor has prepared financial forecasts for hundreds of companies. The internal Verizon emails (e.g., mandating VIS's projections) showed that Verizon predetermined the projections Verizon needed and then put together facts that would support those projections. The market presupposes that projections are not prepared in this manner. *Id.* at 10:14-11:14.

156. Verizon's conclusions about VIS's business (PX 27, p. 44) were not released to the market, and those conclusions would have been very material to the financial markets, because they would have disclosed that Verizon expected VIS to shrink. Taylor, Vol. 3A 13:4-14:1

157. The conclusions and recommendations in the McKinsey report were not reported to the market. This information would have been material to the market because it contained analysis about whether VIS was going to shrink or grow. *Id.* at 14:5-19; *see also* PX 330, 4/30/06 emails between Xu and Fitzgerald showing that Verizon wanted to withhold McKinsey report info from rating agencies and others.

158. Verizon's representations to private siders and rating agencies that VIS was a growth business is directly contrary to Seidenberg's conclusion that VIS was not a growth business. Seidenberg, Vol. 6A 104:24-104:2 ("we tried to stabilize it [VIS], but we were unable to change the fact that it was not a growth business").

159. Taken together, the facts that Verizon withheld from the market created a situation where the market did not have material relevant facts. Thus, the market value of the equity should not be determinative of Idearc's value or whether Idearc was solvent. Taylor, Vol. 4A 17:23-25; 18:1-3.

160. Taylor did not take lightly her conclusion that Idearc's stock price should be assigned zero weight when valuing Idearc on the spin date. During her career, Taylor had never before concluded that the lack of disclosure to the market was so material that the market price of a company's equity is an invalid indication of its value. *Id.* at 18:4-15.

X. Verizon Form 10, Lender and Rating Agency Presentations and Confidential Information Memoranda

161. None of the public and private disclosure documents (Form 10, Confidential Information Memorandum for Public and Private Side Lenders/Investors, Lender/Investor Presentations, Road Show Presentations or Ratings Agency Presentations) prepared and

disseminated by Verizon, its lawyers and advisors disclosed the material, negative facts discussed above regarding VIS, and instead repeatedly touted to the public markets and the ratings agencies Verizon's turnaround, growth story for VIS, thereby making the stock price of Idearc an unreliable indicator of Idearc's value as of the date of the Spin-off.

162. In spite of the internal documents discussing the fact VIS was no longer a growth business, Verizon repeatedly touted in its disclosure documents given to the public markets that VIS was going to turn around and grow in the next five years. "Spin-off Creates Opportunity for Growth", "Focus on Growth," "Responsible investment in growth initiatives." *See* DX 416 (Presentation to Moody's Investors Service, dated September 14, 2006), p. 22 of 77; DX 488 (Lenders' Presentation for Public Side Investors, dated October 16, 2006), p. 14 of 45; DX 1730 (Investor Presentation Idearc Inc., October 2006), p. 7 of 31.

163. "Incumbent print is large, highly profitable and presents opportunity for revenue growth." DX 416, pp. 10, 24 and 25 of 77; DX 488, p. 17 of 45.

164. "Invest in its core business and growth initiatives", Confidential Information Memorandum for Public-Siders dated October 2006, p. of 72; "Expansion and growth opportunities", Confidential Information Memorandum for Public-Siders dated October 2006, p. 39 of 72; and "Value-generating product portfolio positioned to capture growth," DX 488, p. 15 of 45, and Presentation to Moody's Investors Service, DX 416, p. 23 of 77; "…significant forecasted Internet growth", Lenders' Presentation for Public Side Investors, dated October 16, 2006, DX 488, at p. 15 of 45, and Presentation to Moody's Investors Service, date September 14, 2006, DX 41, p. 25 of 77. In contrast, see "Traditional print directories likely to continue to decline, ability to offset with electronic product is uncertain", Directories Analysis of Alternatives, dated July 2005, PX 27, p. 44, and "VIS electronic initiatives have had minimal traction – Revenue have not materialized," *id.* at 27.

165. "Rapid industry evolution provides significant growth opportunity," DX 488 (Lenders' Presentation to Public Side Investors), p. 28 of 45; "Spin-off creates opportunities for growth", *id.* at 44; and DX 416 (Presentation to Moody's Investors Service, dated September 14, 2006), p. 22 of 77; "Attractive markets and room to grow," "Robust growth initiatives," *id.* at 21; "Directory industry is large and growing," *id.* at 25; "To take advantage of long-term growth opportunity…," *id.*; "Tactics drive growth," *id.* at 35; "An industry leader with compelling growth opportunities," *id.* at 40; "Industry provides opportunity for growth," *id.*; "Industry growth trend," *id.* at 42; "Strong growth profile," *id.* at 42, 48; "Rapid industry evolution provides significant growth opportunity," *id.* at 42; "Solid industry growth trend," *id.* at 48; "We believe we have an opportunity to increase the revenue from our independent print and Internet yellow pages directories businesses over the next several years." PX 920 (Amendment 6 to Form 10), p. 10 of 152.

166. Similarly, although Diercksen acknowledged that leading up to and at the time of the Spin-off he believed that VIS's entire management team was incompetent and had caused VIS's value to decline by over $5 billion, Verizon repeatedly proclaimed to the market that VIS's management was "experienced and innovative." DX 1730 (Investor Presentation Idearc Inc., October 2006, , p. 8 of 31, and Lenders' Presentation for Public Side Investors, dated October 16, 2006, DX 488, p. 15 of 45, and Presentation to Moody's Investors Service, DX 416,

p. 23 of 77; "VDDC has a strong and experienced management team across all areas of its organization…", Confidential Information Memorandum for Public-Siders dated October 2006, p. 33 of 72, and PX 920, p. 76 of 152; "Executive team has experience with broad array of business activities". Lenders' Presentation for Public Side Investors, dated October 16, 2006, DX 488, p. 9 of 45; "Strengths – Management Expertise," *id.* at 44, and Presentation to Moody's Investors Service dated September 14, 2006, pp. 64, 67 of 77; "Ms. Harless will be supported by an experienced management team." PX 920, p. 7 of 152.

167. Verizon's own analysis of the relative value of VIS's directory products to those of other companies in the market also demonstrated that VIS's products were a "superior value proposition" in less than 45% of its markets. See DX 526, p. 48 of 367. *See also* Taylor, Vol. 3 107:18-110:6. Nevertheless, by "cherry-picking" a few markets, the implication was that VIS's products were universally superior. "Market Objective: Demonstrate Superior Value Proposition", :Idearc is an 83% better value in Worcester", "Idearc is a 71% better value in Richmond", Idearc is a 77% better value in Tampa", "Idearc is a 52% better value in Long Beach", Investor Presentation Idearc Inc., October 2006, DX 1730, at p. 16 of 31, and Lenders' Presentation for Public Side Investors, dated October 16, 2006, DX 488, at page 22 of 45. "Superior value proposition for VDDC's advertisers", Confidential Information Memorandum for Public-Siders dated October 2006, at page 28 of 72; "Superior value proposition", Presentation to Moody's Investors Service, dated September 14, 2006, DX 416, at page 31 of 77; "Superior value", *id.*, at p. 40 of 77;

168. Internally, Verizon knew the electronic side of its directory business had not achieved much traction, but that did not dissuade Verizon's claims of growth for VIS and a proven track record. "SuperPages.com has a Proven Track Record", "SuperPages.com is a key growth engine for Idearc,." Investor Presentation Idearc Inc., October 2006, DX 1730, at page 20 of 31, and Presentation to Moody's Investors Service, dated September 14, 2006, DX 416, at page 47 of 77.

169. With a debt load of $9.115 billion, plus an additional $400 million in unfunded OPEB (other post-employment benefits) obligations for retirees, and based on the amortization schedule for that debt, Idearc could not pay its debt as it became due. In spite of that reality, Idearc claimed it could service its debt and invest in the future. "Cash flow and margins create stable base to service debt and invest in the future." Investor Presentation Idearc Inc., October 2006, DX 1730, at page 24 of 31, and Presentation to Moody's Investors Service, DX 41, at page 21 of 77; ; "Ample cash flow available to service debt, pay dividend and invest prudently,", Lender's Presentation for Private-Side Investors, DX 494, at page 6 of 8, and Presentation to Moody's Investors Service dated September 14, 2006,DX 416 at page 59 of 77; "Free cash flow generation fully supports debt service requirements", Presentation to Moody's Investors Service dated September 14, 2006, DX 416, at page 60 of 77.

170. Verizon went to great lengths to concoct a turnaround story based upon the voluntary reduction in force that occurred in 2003. On the same page in the same document, Idearc stated "EBITDA adjusted to reflect impact of … employee related costs associated with the voluntary separation program offered in the fourth quarter of 2003", and "Despite significant sales force disruption, revenue experienced only a modest decline and EBITDA margins remained consistent at close to 50%." Investor Presentation Idearc Inc., October 2006, DX 1730,

at page 26 of 31; Confidential Information Memorandum for Public-Siders dated October 2006, at page 32 of 72, and Presentation to Moody's Investors Service dated September 14, 2006, at page 51 of 77. *See also* Amendment 6 to Form 10, PX 920, at page 58 of 152. Verizon inconsistently states that the voluntary reduction in force was a cause of the historical revenue declines, yet in other instances states it produced only a modest decline in revenue, two seemingly incongruous facts. See also, "EBITDA adjusted to reflect impact of … employee related costs associated with the voluntary separation program offered in the fourth quarter of 2003", Confidential Information Memorandum for Public-Siders, dated October 2006, DX 313, pp. 27, 53 of 72.

171. In a document entitled "Investor Presentation Idearc Inc.," dated October 2006 (DX 1730), the revenue numbers, based on the amortized view (the method Verizon used to report VIS's revenues since 2003), show a continuing drop, but on the same document includes a graph showing "200 bps improvement" with an upward pointing arrow. What is not clearly identified is that the upward pointing arrow and the improvement relates to the "published view," i.e., reporting revenue when the contract for advertising is signed. The "published view" was not used in October 2006, nor had it been used in the industry since 2003. DX 1730, p. 27 of 31.

172. Seidenberg testified that VIS was no longer a growth business when it was spun-off from Verizon in November 2006. He further testified he and Harless, the President of the directories business before it was spun-off, had tried everything to turn the business around. Despite those facts, Verizon claimed in its presentations to lenders and rating agencies that "Strategic initiatives [are] now in place and taking effect." Investor Presentation Idearc Inc., October 2006, DX 1730, at page 27 of 31, and Presentation to Moody's Investors Service dated September 14, 2006, DX 416, at page 52 of 77. In addition, in the Confidential Information Memorandum for Public Siders, Verizon stated that Kelsey Group estimated that the incumbent print industry could expect a decrease at a CAGR of approximately 1.7%. Confidential Information Memorandum for Public-Siders dated October 2006, DX 313, at page 57 of 72. However, Verizon knew that that VIS underperformed the industry. PX 27 (AoA, July 2005), p. 19. Therefore, based upon Verizon's own analysis that it did not disclose to the market, Verizon expected VIS's revenue to decrease by more than the industry standard of 1.7%. However, this fact was never disclosed.

173. In DX 416, Presentation to Moody's Investors Service dated September 14, 2006, at page 55 of 77, the "VDDC plan summary (2006-2010)" under the "Financial model assumptions," Verizon represents "Overall net revenue CAGR of 0.8% as Internet and Independent revenue growth compensate for core print decline." Whereas statements reflecting "Traditional print directories likely to continue to decline, ability to offset with electronic product is uncertain", Directories Analysis of Alternatives, dated July 2005, PX 27 at page 44, and "VIS electronic initiatives have had minimal traction – Revenue have not materialized", Id. at 27, are made in the internal documents of Verizon and VIS. In a moment of candor, at page 56 of 152 of PX 920, it is revealed that as a result of competition, "among other things", print product revenue in incumbent markets has declined. "However, these declines have been offset in part by growth in our independent directories business and Internet yellow pages business." Thus, in its ratings agency presentations,

174. A further assumption in the Lenders Presentation for Private-Siders, dated October 16, 2006, the "Plan Summary (2006-2010) reflects", "Bad debt expense declining from 4.5% of revenue in YTD 2006 to 3.3% in 2010,", DX 494, at page 4 of 8, and Presentation to Moody's Investors Service dated September 14, 2006, DX 416, at page 55 of 77. At no place in the evidence is it reflected that VIS had historically ever had a bad debt expense as low as 3.3%. Based on the evidence, such an assumption is neither well founded nor credible and is a material misrepresentation regarding the trend of bad debt expense.

175. In the Confidential Information Memorandum for Public Siders, dated October 2006, Verizon represented that as of December 31, 2005, VIS had a total of approximately 896,000 local customers and an additional 7,500 national customers print customers. DX 313, at page 21 of 72. In the Confidential Information Memorandum for Private-Siders, dated October 2006, the projections for VIS were based, in part, on an assumption the customer count would decrease 1.7% annually, from 753,000 in 2006 to 704,000 in 2010. DX 314, at page 9 of 14. The drop from 903,500 customers in December 31, 2005 to 753,000 customers in 2006 is more than 15%, not the stated assumed rate of 1.7% per year for the next 5 years. The difference between 1.7% and more than 15% is material and relevant by any standard.

176. Verizon had known for a long time that VIS's markets in the Northeast and Mid-Atlantic areas were being vigorously attacked and revenues were decreasing precipitously. In light of those financial results in those areas, in the Lenders' Presentation to Public Side Investors dated October 16, 2006, DX 488, at page 24 of 45, VDDC represented Mid-Atlantic and Northeastern markets were "Low business growth markets". That was a material misrepresentation since many of those markets had experienced and were experiencing double-digit declines in revenues. Additionally, in the Presentation to Moody's Investors Service, dated September 14, 2006, DX 416, at page 32 of 77, it was represented "VDDC has a well-balanced mix of attractive markets", when, in fact, most of the VDDC markets were in the large urban markets in the east and northeast where penetration of the Internet and competition from other directories companies was causing double-digit declines in revenues, hardly making VDDC's markets either well-balanced or attractive. At page 10 of 152 of Amendment 6 of Form 10, PX 920, the following, similar representation was made: "…we will continue to rely on … our diverse and attractive markets." In PX 920, at page 30 of 152, Verizon states that "[a] significant portion of our operation is in the Eastern areas of the United States, and we do not expect that we will significantly expand our operations outside those areas in the foreseeable future. As a result, we will likely continue to be dependent on our Eastern operations for a significant portion of our cash flow." This statement makes all the more clear the materiality of Verizon's non-disclosure of the double-digit revenue declines in its major northeastern markets.

177. Verizon has repeatedly claimed that the decline in Idearc's financial performance after the Spin-off leading up to Idearc's bankruptcy was the result of the "Great Recession". In the Lenders' Presentation to Public Side Investors dated October 16, 2006, DX 488, at page 27 of 45, and in the Presentation to Moody's Investors Service dated September 14, 2006, DX 416, at page 51 of 77, the following representation appears: "Lead time from sales to amortization is 12-18 months." Thus, based on that representation, the decline in Idearc's sales that began to appear in the 4th quarter of 2007 represented sales that occurred six-months prior to or at the time of the Spin-off, and were not the result of a decrease in sales in the 4th quarter of 2007. Decline in sales that appeared in mid-2008 would have been the result of efforts from January

2007 to June 2007, and not the result of a decrease in sales that occurred in 2008 as a result of the Great Recession as claimed by Verizon. *Accord* Taylor, 4B 83:12-84:7

178. On page 40 of 45 of DX 488, the Lenders' Presentation to Public Side Investors dated October 16, 2006, and at page 56 of 77 of the Presentation to Moody's Investors Service dated September 14, 2006, there is a list of "One-time costs" totaling $124 million. In the "Note:" beneath the table, the following statement appears: "…sufficient cash necessary to cover these expenditures will be left in the business at the time of the Spin-off." In point of fact, $100 million was "left in the business" at the time of the Spin-off on November 17, 2006. PX 920 (Amendment 6 to Form 10) at p. 13 of 152. At page 55 of 152 of PX 920, the payment of the $124 million of "One-time costs" would be paid out of available cash was reiterated.

179. The Tax Sharing Agreement, PX 1068, limits the access of Idearc to the equity and capital markets, but Verizon represented to the rating agencies that one of the means by which Idearc will "Manage Liquidity and financial flexibility" is by "Access to both equity and debt capital markets." Presentation to Moody's Investors Service dated September 14, 2006, DX 416, p. 62 of 77.

180. In PX 920, Amendment 6 to Form 10 filed by Idearc Inc., at page 6 of 152, in the "Questions and Answers about the Spin-off", and in response to the question, "What is Idearc and why is Verizon separating Idearc's operations and distributing its stock?", and at page 37 of 152, it is represented that the Verizon board of directors considered that the Spin-off may:

> allow each company to determine its own capital structure;
>
> enhance Idearc's ability to execute potential acquisition strategy more effectively; …

181. The evidence is clear that the capital structure of Idearc was not determined by Idearc but was, in fact, determined by Verizon. As a result of the Tax Sharing Agreement, Idearc could not change its capital structure or engage in any merger or acquisition that would require a change in its capital structure without potentially triggering a taxable event resulting in Idearc's liability for billions of dollars in taxes.

182. The Rating Agency Presentations to Moody's Investor Service and Standard & Poors that Verizon presented to the ratings agencies prior to the Spin-off failed to disclose the material, negative facts discussed above regarding VIS, and instead presented the growth turnaround story for VIS that Verizon knew to be unreasonable and unachievable, thereby allowing Verizon to secure higher ratings on Idearc's bonds, which artificially inflated Idearc's stock price and its perceived market value at the date of the Spin-off. DX 416; PX 612.

183. Contrary to Verizon's efforts to blame VIS's historical declines in revenue and EBITDA on disruption caused by a voluntary reduction in the sales force in 2003 in its public disclosures, Verizon represented just the opposite in its "Strictly Private and Confidential" presentations to the rating agencies. This fact is reflected in DX 416, p. 51 of 77, wherein Verizon expressly states in its presentation to Moody's that "despite significant sales force disruption, revenue experienced only a modest decline and EBITDA margins remained consistent at close to 50%" from 2004 to 2006.

184. This identical information was contained in Verizon's Presentation to Standard & Poors, as the same presentation materials were used with both rating agencies with the only difference being the cover page. *See* Kearns, Vol. 9B 110:1-22. *See also* cover letter of PX 612 and DX 416, which states that the Rating Agency Presentations were the same with different cover pages.

Y. Analyst Reports

185. Analyst reports that Verizon introduced into evidence also failed to consider the material, negative facts about VIS's business (discussed above) that Verizon withheld from the market, and instead contained references to Verizon's growth turnaround story for VIS, thereby causing the analysts to overvalue Idearc at the date of the Spin-off. *E.g.,* DX 822 (Lehman Brothers report, dated 1/12/07), p. 2 ("We believe the market is crediting [Idearc] shares for a potential turnaround in its core print business …"); DX 841 (Lehman Brothers report, dated 11/28/06), p. 2 ("Idearc may possess some structural advantages: first, the potential for a turnaround in sales productivity …; secondly, a strategy for growth …."); DX 1677 (Natexis Bleichroeder Inc. report), p. 3 ("SIGNS OF A TURNAROUND").

186. Further, the analysts who prepared the reports Verizon introduced that contained statements about the analysts' belief about the alleged value of VIS were not present at trial to be cross-examined about the basis for their opinions. The reports constitute hearsay to the extent offered for the truth of the matters asserted therein, including any opinion about Idearc's value. Thus, the Court will not consider any opinions contained in those reports about Idearc's value for the truth of the matter asserted. Further, because the person preparing the report was not available for cross-examination, the Court finds that the analyst reports should be given little weight to the extent they are admissible for any purpose other than the truth of the matters asserted therein.

IV. VALUATION OF IDEARC USING DISCOUNTED CASH FLOW METHOD AND MARKET-BASED METHODS INVOLVING COMPARABLE COMPANIES AND TRANSACTIONS

A. Introduction

187. Based on the foregoing findings, the Court finds that Verizon failed to disclose relevant, material information to the public market, and therefore, the Court further finds that the market value of Idearc's publicly traded stock on the spin date is not determinative of or relevant to Idearc's value on the spin date. *See also* Taylor, Vol. 3 56:13-57:4; Vol. 4A 17:19-18:3. Rather, the value of Idearc on the spin date must be determined by applying other relevant valuation methodologies.

188. The two relevant valuation methodologies are: the DCF method and a market-based method that uses other companies as proxies for the company being valued based on (a) market multiples of guideline public companies and (b) transactions involving comparable guideline companies. These methodologies have been standards for valuation experts for 50 years. Taylor, Vol. 4A 18:20-20:4, 20:18-25.

189. Carlyn Taylor, the Plaintiff's valuation expert, used these methods to value Idearc as of the spin date. This is the same approach that Verizon used in its own valuation before the spin, in July 2005 (*see* PX 27, p. 32). Taylor, Vol. 4A 21:1-7.

190. The Court finds that Taylor is exceedingly well-qualified to opine as to the value of Idearc as of November 17, 2006. Taylor, who earned undergraduate and graduate degrees in economics and was named valedictorian of her class at the University of Southern California, currently holds three investment banking licenses from FINRA (the regulatory agency for investment bankers), is a Certified Public Accountant, holds an accreditation in business valuation and is a certified insolvency and restructuring accountant. Taylor, Vol. 3 11:16-12:8. Taylor currently serves as a Senior Managing Director and is in charge of the telecom media and entertainment industry practice at FTI Consulting. *Id*. at 9:18-10:15. Over her 23-year career, Taylor has advised clients in 450-500 engagements, 90% of which have been in the telecom industry. *Id*. at 31:20-32:4. In that practice, Taylor has routinely advised clients with respect to valuation matters. *Id*. at 18:13-24:24; 25:4-28:5. Moreover, Taylor has significant experience advising clients in the yellow pages industry. *Id*. at 32:25-35:10. Taylor has worked on 11 different engagements in the yellow pages business, many of which involved performing valuations for investors. Taylor, Vol. 4A 31:22-24. In fact, Taylor performed a valuation of Idearc, at the request of its board of directors, prior to Idearc's bankruptcy filing. Taylor, Vol. 3 63:14-64:1, 65:10-18. Accordingly, the Court finds that Taylor is uniquely qualified to offer an opinion regarding Idearc's value as of November 17, 2006.

B. Valuation Applying DCF Method

191. A DCF valuation involves the following steps: (a) project Idearc's free cash flow (EBITDA[6] minus adjustments for capital expenditures and working capital changes) for a five-year period, here 2006-2010 (the "Projection Period"), and discount that projected cash flow back to the spin date using an appropriate discount rate[7]; (b) estimate a "terminal value" of the company 2010 (based on an estimated growth rate after the Projection Period), and discount that terminal value back to the spin date using the same discount rate used in step 1; and (c) add the values derived from the first two steps together. Taylor, Vol. 4A 21:8-22:9, 73:3-74:8.

192. As a key predicate for preparing her DCF valuation, Taylor studied both Idearc (e.g., its revenues, margins, and cash flow) and its competitors in order to understand Idearc's operating performance relative to other companies in the industry. Taylor, Vol. 4A 30:23-31:17, 32:7-17. In particular, such information is useful for determining the reasonableness of projections used for the DCF analysis. Taylor, Vol. 4A 36:22-24.

193. VIS's industry consisted of large incumbent directories companies. VIS was one of four to five companies in that industry. Taylor, Vol. 4A 33:1-9.

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[6] EBITDA refers to earnings before interest, taxes, depreciation and amortization, and is used as a proxy for cash flow before paying debt service and capital expenditures.

[7] The discount rate and the ultimate value are inversely related. The lower the discount rate, the higher the value, and vice versa. Taylor, Vol. 4A 75:1-5.

194. From 2004 through the first quarter of 2006, VIS's year-over-year (YOY) revenues were declining far more than any of its competitors and its YOY profitability (measured by EBITDA) was the lowest or second lowest among its competitors. Taylor, Vol. 4A 32:18-22, 33:10-36:14; PX 1834.

195. According to Verizon's own analysis, competition from independent directories companies was affecting VIS more than other incumbents in 2005 because VIS was more highly concentrated in the large urban markets where independents could more easily establish a competitive base. Taylor, Vol. 4A 38:11-39:17; PX 1815.

196. VIS also underperformed all of its competitors in 2004-2005 based on the average value of each customer order. Taylor, Vol. 4A 40:6-21; PX 1841.

197. In 2004, the efficiency of VIS's sales force (measured by number of advertisers per sales representative) was in line with its competitors. However, by 2005, VIS had more sales representatives per customer than its competitors, indicating that it was inefficient relative to its peers. Taylor, Vol. 4A 40:22-41:22; PX 1839. This information is consistent with McKinsey's finding and Diercksen's independent personal knowledge before the spin that VIS's SG&A (sales, general and administrative) expenses were higher than its competitors, which contributed to VIS's lower profitability compared to its peers. PX 213, pp. 32 ("lever" #5), 34, 38; PX 181 (Diercksen email dated 2/23/06, stating that "VIS has higher bad debt and SG&A costs than it's (*sic*) peers.").

198. As Seidenberg testified, the Internet was one of VIS's two primary competitive threats. VIS was in 6 of the 10 states with the highest broadband penetration, and was in only 1 of the 10 states with the lowest broadband penetration. That was a very material reason why VIS's markets were eroding so much faster than its competitors who were concentrated in smaller markets. Taylor, Vol. 4A 42:8-43;6; PX 1823.

199. Taylor reasonably concluded that among the incumbent competitors in its industry, VIS had the weakest overall business in terms of both growth and profitability. VIS's weakness from a growth standpoint was the most important characteristic because growth is a "huge" factor in determining value. Taylor, Vol. 4A 47:16-25.

200. Based on, *inter alia*, the foregoing information about VIS and its competitors and industry, Taylor prepared reasonable cash projections for VIS as a foundation for her DCF valuation. Taylor, Vol. 4A 48:1-6.

201. As the starting point for those projections, Taylor considered Verizon's own "base case" projections for the Projection Period (the "Base Case") (PX 673, pp. 7-10), which Verizon disclosed to the market (e.g., the debt underwriters) in connection with the spin. Taylor, Vol. 4A 48:7-18, 51:8-13, 54:15-25, 57:17-24; *see also* ¶ 55, *supra*. Taylor and her staff performed a detailed and thorough analysis of the voluminous financial data that VIS prepared in connection with its Base Case projections. Taylor, Vol. 4A 54:15-55:24.

202. Taylor also considered projections for the Projection Period that Houlihan prepared before the spin (the "HLHZ Downside Case"),[8] and analyzed the detailed work underlying Houlihan's projections Taylor, Vol. 4A 48:19-20, 51:20-52:1, 52:9-16; 57:25-58:5.

203. Taylor also considered projections for the Projection Period derived strictly from a mathematical extrapolation of the trend of VIS's actual historical performance from 2003-2006 (the "Trend Case"). Taylor, Vol. 4A 48:20-22; 53:3-9; PX 1849, PX 1851. According to the valuation literature, projections for a DCF analysis should not deviate from historical trends without a good explanation. Taylor, Vol. 4A 53:10-19.

204. Taylor examined VIS's actual revenue for the period 2003-2006, and VIS revenue for the Projection Period that was projected under the Base Case, the HLHZ Downside Case, and the Trend Case. Taylor 49:2-11, 50:14-18, 51:8-52:1, 53:3-9; PX 1849.

205. Taylor then analyzed VIS's actual EBITDA for the period 2003-2006, and the VIS EBITDA for the Projection Period that was projected under the Base Case, the HLHZ Downside Case, and the Trend Case. Taylor 56:23-57:9; PX 1851.

206. In the course of reviewing the detailed financial data and models that VIS prepared in support of its Base Case, Taylor identified four specific errors that caused material errors in the Base Case projections. Taylor then made adjustments to the Base Case to correct these four errors and, based on those corrections, prepared projections of VIS's revenue and EBITDA for the Projection Period (the "FTI Case"). Taylor, Vol. 4A 53:20-54:3, 54:15-55:6, 58:11-16; PX 1849, PX 1851.

207. The first correction concerned VIS's projection in the Base Case of its incumbent print revenue during the Projection Period. VIS projected a decline of only minus 1.9% per year (PX 673, p. 8), despite the fact that its actual incumbent print revenue declined at a rate of minus 4.8% per year from 2005-2006, and was going to decline even more quickly over time due to severe and accelerating competitive pressures. Taylor, Vol. 4A 59:3-60:1, 60:10-13. Further, Verizon itself had concluded there was a significant risk of continued deterioration in the incumbent business. Taylor, Vol. 4A 61:4-13; PX 27, p. 44 ("Traditional print directories likely to continue to decline"). Verizon's projected decline of only 1.9% per year was also inconsistent with industry projections of other analysts and with Verizon's structural disadvantages compared to its competitors. Taylor, Vol. 4A 61:13-16. Thus, the rate of incumbent print revenue decline in Verizon's Base Case projections (minus 1.9% per year) was arbitrary and Taylor corrected that rate to minus 4.8% per year and determined the impact of this correction on VIS's projected cash flow in the Projection Period. Taylor, Vol. 4A 59:13-23, 61:24-62:3; PX 1862. Taylor's first correction to the Base Case, as reflected in the FTI Case, is reasonable and correct.

208. Taylor's second correction addressed Verizon's projection in the Base Case of revenue that VIS would derive in the Projection Period from the independent print directories it launched against other incumbent companies (PX 673, p. 8). Taylor, Vol. 4A 62:4-12. Taylor concluded that the Base Case overstated such revenue because it erroneously assumed that VIS's independent revenue would grow at the same rate as other independent companies and failed to

[8] Verizon hired Houlihan to prepare an opinion regarding VIS's solvency. *See* PX 802.

account for the much lower growth rate applicable to older independent print directories such as those published by VIS. That is, VIS's older independent books had peaked and started to decline, unlike other companies in the independent market. Taylor, Vol. 4A 62:13-63:6. Taylor's FTI Case corrected this overstatement in the Base Case, which reduced the EBITDA associated with VIS's independent books for 2006-2010 by a total of $65 million. Taylor, Vol. 4A 63:7-16, 64:7-11; PX 1863; PX 1864. Taylor's second correction to the Base Case, as reflected in the FTI Case, is reasonable and correct.

209. Taylor's third correction concerned Verizon's erroneous failure to include certain expenses associated with its electronic (Internet) business in the Base Case projections of EBITDA during the Projection Period. Taylor, Vol. 4A 64:14-21. In the Base Case, Verizon increased VIS's electronic revenue from a prior model (based on McKinsey's recommendation), but Verizon mistakenly failed to include the costs directly associated with that increased revenue. Taylor, Vol. 4A 64:21-67:17. Taylor corrected Verizon's error by including those expenses, and that correction reduced the overall EBITDA in the Base Case by $68 million for the Projection Period. PX 1865. Taylor's third correction to the Base Case, as reflected in the FTI Case, is reasonable and correct.

210. Taylor's fourth correction addressed VIS's annual bad debt expense in the Base Case, which Verizon stated as 3.3% for the Projection Period. PX 673, p. 9; PX 1867. This rate was arbitrary because it was inconsistent with the actual average of 6.2% for 2002-2005. Taylor, Vol. 4A 68:5-20. It also ignored the facts that (a) in 2006, VIS had loosened its credit policies and raised the dollar limit that would subject a customer to a credit check, and (b) after the spin, customers would be billed by Idearc instead of Verizon and would no longer be required to pay their Yellow Pages bill as a condition for continuing to receive telephone service from Verizon. Taylor, Vol. 4A 68:21-69:14. Thus, the projections for bad debt in the Base Case were unreasonable and arbitrary. Taylor adjusted the bad debt expense using a rate of 5.0%, which was essentially the lowest actual rate VIS experienced from 2002-2006 and well below the 6.2% average for that period. Taylor, Vol. 4A 69:15-20. Taylor's correction was supported by her prior experience in analyzing bad debt and billing transitions with more than 20 other media companies. Taylor, Vol. 4A 69:21-70:9. Taylor's fourth correction to the Base Case, as reflected in the FTI Case, is reasonable and correct.

211. The FTI Case accounts for Taylor's four corrections to the Base Case and reflects their impact on VIS's projected EBITDA during the Projection Period. Taylor, Vol. 4A 70:21-25; PX 1868. The FTI Case projects that EBITDA would decline at a CAGR (compounded annual growth rate) of 5.3% during the Projection Period, whereas Verizon's Base Case projected that EBITDA would grow at a CAGR of 0.2% during the same period. Taylor, Vol. 4A 71:9-72:3; PX 1868. The HLHZ Downside Case projected that VIS's EBITDA would decline at 3.7% CAGR during the Projection Period, but Houlihan did not include Taylor's second correction for electronic expense and otherwise made changes that were purely subjective. Taylor, Vol. 4A 72:8-21.

212. As noted, Verizon's Base Case model projected EBITDA growth of 0.2% during the Projection Period. When Verizon produced the Base Case in April 2006, it was aware of VIS's actual EBITDA performance only through the end of 2005. However, during the first nine months of 2006 (i.e., between the time of the Base Case data and the spin date), VIS's EBITDA

actually declined by 9.5%. This decline contrasts sharply with the growth rate Verizon projected in the Base Case, and is far greater than the decline of 5.7% projected in the Trend Case, the model least favorable to the Defendants. Taylor, Vol. 4A 85:1-87:4. In addition to the preceding four corrections to the Base Case, these facts support the reasonableness of the FTI Case, which projected that EBITDA would decline by 5.3% during the Projection Period.

213. Based on her investigation and analysis, Taylor concluded that the projections in Verizon's Base Case model were very aggressive and were not reasonable under the circumstances. Taylor, Vol. 4A 71:4-8. The Court finds that Taylor's conclusion is reasonable and correct. The Court further finds that the projections in the FTI Case of VIS's EBITDA for the Projection Period are reasonable and more accurate than those in the Base Case or the HLHZ Downside Case.

214. Harless, Coticchio, and Jones, each a VIS executive at the time of the Spin-off, testified that they believed VIS's Base Case projections were reasonable and achievable. Harless, Vol. 9A 64:6-17; Coticchio, Vol. 9B 54:24-55:4; Jones, Vol. 5B 104:4-13, 108:11-18. However, the Court finds that this testimony is not credible and should be given little weight. As discussed above, VIS had seriously underperformed management's projections every year from 2001 through 2005 (which preceded the Projection Period in the Base Case), despite the fact that those projections had declined each year. *See* ¶ 21(l), *supra*. Further, the Base Case projections Verizon used for the Spin-off showed improvement over VIS's original plan of record, which McKinsey previously advised was not credible, and were the result of a "mandate" from Verizon. *See* ¶¶ 21(d), 54, *supra*. Finally, Harless, Coticchio, and Jones are defendants in pending securities fraud litigation arising from their alleged misrepresentations and omissions about Idearc's financial condition. *See Buettgen, et al., v. Harless, et al.*, Case No. 3:09-cv-791, in the United States District Court for the Northern District of Texas. Because their admission in this case that Idearc presented financial projections and other information that they knew to be unrealistic or unachievable could subject these witnesses to personal liability in the *Buettgen* case, the Court accords little or no weight to their testimony that the Base Case projections were reasonable.

215. The next step in the DCF analysis is to convert the EBITDA numbers to free cash flow. Taylor performed that step by using Verizon's own numbers for capital expenditures, working capital changes and tax calculations. Taylor, Vol. 4A 73:3-15. The Court finds that Taylor's derivation of free cash flow for the DCF analysis is reasonable and accurate.

216. In her DCF analysis, Taylor used a discount rate of 9.75% under a standard accepted formula called the weighted average cost of capital ("WACC"). Taylor, Vol. 4A 74:9-13. That is effectively the same rate Verizon used in the valuation it performed in the summer of 2005.[9] Taylor, Vol. 4A 74:14-17. Taylor's discount rate is supported by the literature on valuation standards, and is substantially lower than the discount rate she used in the valuation she

[9] When Verizon performed its valuation in the summer of 2005, it used a discount rate (WACC) that weighted out to 9.25%. PX 27, p. 25. At that time, interest rates were 50 basis points (i.e., one-half of one percent) lower than when Taylor performed her DCF calculation using a discount rate of 9.75%. Taylor, Vol. 5A 48:3-10. After adjusting for this interest-rate differential, the discount rates used by Verizon and Taylor are equivalent.

performed at the request of Idearc's board of directors shortly before its bankruptcy filing in March 2009. Taylor, Vol. 3 63:14-64:1, Vol. 4A 74:18-25.

217. Taylor calculated her WACC according to a standard formula that uses two components, the cost of equity and the cost of capital,[10] and then weighted those two components based on Idearc's optimal capital structure. Taylor, Vol. 4A 75:11-76:14. Taylor also added a specific company discount rate of 2% in her calculation of cost of equity, which added 1% to the overall discount rate after weighting the cost of equity with the cost of debt. Taylor's specific company discount is consistent with applicable valuation standards and properly accounts for the disadvantages and issues unique to VIS (e.g., operations concentrated in low-growth, highly competitive urban markets, performance that lagged competitors, inexperienced management with a poor track record of projecting performance and the Tax Sharing Agreement ("TSA"), which restricted Idearc's ability to execute various strategic and financial options, *see* ¶¶ 244-247, *infra*). Taylor, Vol.4A 76:15-77:2.

218. The Court finds that a discount rate of 9.75% is reasonable and proper in calculating Idearc's value under the DCF analysis.

219. The next step in the DCF analysis is to determine a "terminal value," or "terminal growth rate," which projects a growth rate for VIS into infinity following the initial five-year Projection Period. Taylor, Vol. 4A 77:3-10.

220. Taylor derived her terminal growth rate using the Gordon Growth Model, which is the standard in the valuation literature. Taylor, Vol. 4A 81:1-9.[11]

221. The terminal growth rate Taylor used was the same as the growth rate she used for the five-year Projection Period. Her terminal growth rate was reasonable and conservative because, given the secular decline in VIS's print directories business, she could have used a lower terminal growth rate (reflecting a greater rate of decline after the Projection Period). Taylor, Vol. 4A 77:11-78:5.

222. In order to determine a range for Idearc's value on the spin date under the DCF method, Taylor applied the DCF calculations to three different models. PX 1852.

223. The first model began with the HLHZ Downside Case. Taylor accepted Houlihan's projection that VIS's EBITDA would decline at an annual rate of minus 3.7% during the Projection Period. Taylor then adjusted the HLHZ Downside Case by (a) applying her discount rate of 9.75% (instead of Houlihan's discount rate of 8.5%), and (b) applying her terminal growth rate instead of Houlihan's, which ignored the decline during the Projection

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[10] WACC is determined by calculating the company's costs of debt and equity, adding risk-related premiums (e.g., equity risk, size risk, and company-specific risk), and then weighting the resulting figures by the relative percentages of equity and debt in the company's overall capital structure. *See, e.g., In re CBN Int'l, Inc.*, 393 B.R. 306, 320 (Bankr. W.D.N.Y. 2008); *In re Mirant Corp.*, 334 B.R. 800, 817 (Bankr. N.D. Tex. 2005).

[11] In its DCF analysis, Houlihan failed to use the Gordon Growth model and instead applied its own arbitrary judgment to determine a terminal growth rate of 0.9%, which is akin to making up the answer and is thus unreliable. Taylor, Vol. 4A 79:15-25. Houlihan's terminal growth rate is unrealistic as an expected long-term growth rate for VIS, which experienced average annual EBITDA declines of -5.3% from 2003-2006.

Period and instead arbitrarily assumed positive growth thereafter. Taylor, Vol. 4A 82:10-83:5; PX 1852 (*see* FTI DCF-HLHZ Downside Case).

224. Taylor used the FTI Case as the second model for calculating Idearc's DCF value. Taylor, Vol. 4A 83:6-14; PX 1852 (*see* FTI Adjusted Case).

225. Taylor used the Trend Case as the third model for calculating Idearc's DCF value. Taylor, Vol. 4A 83:15-21; PX 1852 (*see* Trended Case).

226. Taylor concluded that the value of Idearc on the spin date derived from applying the DCF valuation method to the foregoing three models ranged from a low of $5.3-5.4 billion to a high of $6.3 billion. Her ultimate opinion was that Idearc's value on the spin date under the DCF approach was $5.85 billion, the mid-point of that range. Taylor, Vol. 4A 83:22-84:4, 92:14-93:3; PX 1852, PX 1882.

227. The range of DCF values as determined by Taylor are consistent with Verizon's own analysis in July 2005, when it concluded that VIS had a DCF value of $6.5 billion assuming VIS would decline at the annual rate of 5%. Taylor, Vol. 4A 84:5-9; PX 27, p. 27.

228. Taylor prepared a sensitivity analysis showing how variations in the rate of growth or decline in Idearc's cash flow would affect the value of Idearc under the DCF method. PX 1881.[12] That analysis shows that Idearc's DCF value would exceed a debt level of $9.515 billion (including OPEB liabilities of $400 million) on the spin date *only* if one assumes that Idearc could achieve a positive annual growth rate of 0.2%. The Court finds that such an assumption is not credible and is refuted by the evidence. The evidence shows that Idearc's cash flow would not grow, and supports Taylor's conclusion that Idearc's cash flow would decline at an annual rate of over 5% from 2006-2010 (i.e., during the Projection Period). This conclusion supports Taylor's determination of Idearc's value on November 17, 2006 under the DCF method. Taylor, Vol. 4A 118:1-119:7.

229. The Court finds that both the range of values and the ultimate value of Idearc on the spin date, as determined by Taylor under the DCF method, are reasonable and accurate.

C. Valuation Applying Market-Based Methods

230. In addition to a DCF valuation, Taylor considered the value of Idearc using two common market-based methods, the "guideline public companies" approach and the "guideline transactions" approach. Taylor, Vol. 4A 19:19-20:4, 93:4-10. In each instance, the analysis focuses on whether data about other companies can be used as a proxy for the company being valued (here, Idearc). Taylor, Vol. 4A 19:19-23, 20:18-25, 36:15-21, 94:12-17.

231. Each method is useful only if companies or transactions in the respective sample sets are sufficiently similar to Idearc to provide a relevant comparison. The degree to which so-called comparable companies are, or are not, relevant proxies for Idearc significantly affects the appropriate weighting of the values derived from the DCF and market-based valuation

[12] *See* footnote 4, *supra*.

methodologies and, thus, determining the overall value of Idearc on the spin date. Taylor, Vol. 4A 97:20-25.

232. As a baseline for valuing Idearc under these market methods, Taylor used the same companies and transactions that Houlihan used in its analysis. Taylor, Vol. 4A 93:11-16; PX 666, pp. 41, 73-77.

233. For the "comparable companies" method, Houlihan selected five public companies, which were the only ones available at the time. The primary problem with this set of companies, which undermines their use as proxies for valuing Idearc, is that only one (RH Donnelley, "RHD") is an incumbent print company in the U.S., like Idearc; the other incumbents were not public companies. Taylor, Vol. 4A 93:17-94:11, 95:20-96:5; DPX 1.

234. At least three of the companies Houlihan cited as "comparables" were significantly dissimilar to Idearc because, unlike Idearc, they had diverse businesses in addition to print directories. Eniro, a Scandinavian company had an operator assistance business (i.e., 411 directory assistance) and a mobile phone-based search business. Seat Pagine Gialle SpA an Italian company, had a TV and broadcasting division and an office products and services division. And Yellow Pages Income Fund, a Canadian company, had a significant portion of its business in classified advertising websites. Taylor, Vol. 4A 95:3-19, 96:6-13, 96:23-97:8.

235. Similarly, Yell Group plc, a UK-based company, was the largest company launching independent directories in the U.S. It was not an incumbent company like Idearc. Taylor, Vol. 4A 96:14-22.

236. Taylor prepared charts comparing the revenue and EBITDA growth rates for these five companies for the 12-month period ending September 30, 2006 (using data from Houlihan's report) to the declines in Idearc's revenue and EBITDA during the same period. Taylor, Vol. 4A 94:18-95:2; DPX 1.

237. All five of these "comparable" companies experienced revenue growth, and four had EBITDA growth in the 12-month period ending September 30, 2006 (six weeks before the spin). In stark contrast, Idearc's revenue and EBITDA declined 2.9% and 9.0%, respectively, during the same period. Taylor, Vol. 4A 97:12-19.

238. In addition, when RHD bought the Dex directories company, it received over $10 billion in net operating losses ("NOLs"). Those NOLs conferred tremendous tax benefits on RH Donnelley, to the extent that it has not paid any income tax since it acquired Dex in 2006. The NOLs increased RHD's value by $2-2.5 billion. Taylor, Vol. 4A 98:1-20, 105:3-106:15. Idearc had no such tax assets or advantages following the spin.

239. Based on the foregoing information, there were significant differences between Idearc and the five companies cited by Houlihan that undermine their use as proxies for valuing Idearc under the "comparable companies" method.

240. Taylor also examined the valuation of Idearc under the "comparable transactions" market-based approach. That method examines sales of comparable companies (public and

private) to derive a valuation multiple implied by each sale that can be applied, with appropriate adjustments, to the subject company. Taylor, Vol. 4A 99:3-10.

241. Taylor's analysis began with the list of 17 company transactions compiled by Houlihan. PX 666, p. 39. Taylor then independently examined all available information regarding each transaction and determined the extent to which those transactions were relevant, useful comparables for valuing Idearc. Taylor, Vol. 4A 99:11-23; PX 1850.

242. Very few of those 17 transactions involved recent sales of companies in the U.S., which undermined their comparability to Idearc because of how much and how quickly the market was changing. Further, many of those companies had various businesses in addition to Yellow Pages directories, unlike Idearc. All of the companies had healthy, positive growth rates, while Idearc's revenue and EBITDA showed significant declines. And several transactions involved the sale of companies that were much smaller (in terms of EBITDA) than Idearc. For these reasons, the companies involved in the transactions cited by Houlihan were substantially dissimilar to Idearc. Taylor, Vol. 4A 99:19-100:16.

243. The "comparable companies" valuation also requires consideration of the subject company's tax liabilities, contingent liabilities and tax status. The Tax Sharing Agreement is relevant to that evaluation. Taylor, Vol. 4A 108:15, 108:25-109:3, 109:8-14; PX 1068.

244. The TSA, the Credit Agreement, and the Indenture Agreement affect the valuation of Idearc under the "comparable transaction" method because they restricted Idearc's ability to engage in transactions in the capital markets, including a sale of the company, as follows:

a. Before and during the Spin-off, Verizon and VDDC anticipated that Idearc would need to participate in industry consolidation after the Spin-off by using Idearc's stock to acquire other businesses.[13]

b. The Indenture Agreement that Idearc entered into with its lenders during the Spin-off authorized the lenders to force Idearc to immediately repay $2,850,000,000 of the debt Idearc undertook in the Spin-off if 50% or more of Idearc's stock were to be acquired.[14]

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[13] PX 1087, Skadden Opinion Letter, at VZIDEARC-00005548 (stating that a business purpose for the Spin-off was "Enhancing the Ability of Controlled to Execute a Potential Acquisition Strategy More Effectively by Creating a More Attractive Acquisition Currency . . . [and that] Controlled would likely benefit strategically and create shareholder value by participating in industry consolidation."); PX 920, Idearc Inc. Form 10-12B/A filed November 1, 2006, p. 1 (p. 13 of the exhibit) ("Verizon's board of directors considered that the Spin-off may: . . . enhance Idearc's ability to execute a potential acquisition strategy more effectively . . . .").

[14] PX 1084, Indenture Agreement, at VZIDE-00003943 (the "Securities" total $2,850,000,000), VZIDE-00003946 ("Change in Control" occurs if 50% or more of Idearc's stock is acquired) & § 4.08, VZIDE-00003994 (lenders may require Idearc to purchase 101% of the principal amount of the Securities upon a Change in Control); *see also* testimony of Thomas Wessel, Vol. 6B 91:15- 92:8 (Spin-off lenders could force Idearc to immediately repay all debt if Idearc were purchased on November 17, 2006).

c. The Credit Agreement that Idearc entered into with its lenders during the Spin-off authorized the lenders to force Idearc to immediately repay $6,265,000,000 of the debt Idearc undertook in the Spin-off if 35% or more of Idearc's stock were to be acquired.[15]

d. Therefore, in the event Idearc was purchased on November 17, 2006, Idearc's lenders could force Idearc to immediately repay the $9,115,000,000 in debt Idearc undertook in the Spin-off.

e. This would cause (1) the $9,115,000,000 in debt Idearc undertook during the Spin-off to fail to qualify as a security for federal income tax purposes and (2) Verizon to owe $2,502,500,000 in federal income taxes on the $7,150,000,000 in Verizon debt that Verizon cancelled through the debt exchange during the Spin-off (i.e., 35% of $7,150,000,000).[16]

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[15] DX 237, Credit Agreement, at § 2.01(b) & (c) (lenders shall make the "Tranche A" and "Tranche B" loans to Idearc), at Schedule 2.01 VZNIDEARC-00204901 ("Tranche A" loan totals $1,515,000,000), at Schedule 2.01 VZNIDEARC-00204902 ("Tranche B" loan totals $4,750,000,000), at VZNIDEARC-00204792 ("Change in Control" occurs if 35% or more of Idearc's stock is acquired) & VZNIDEARC-00204881, Article VII(m) ("Change in Control" is an event of default) & at VZNIDEARC-00204881 (lenders may declare the loans "then outstanding to be due and payable in whole or in part" immediately if an event of default occurs); *see also* Wessel, Vol. 6B 91:15-92:8 (Spin-off lenders could force Idearc to immediately repay all debt if Idearc were purchased on November 17, 2006).

[16] I.R.S. Priv. Ltr. Rul. 7928003 (Mar. 23, 1979) (promissory note that spun-off corporation issued to its former parent did not qualify as a "security" for purposes of Internal Revenue Code Sections 368(a)(1)D) and 355 and was, therefore, taxable because – despite the four year term of the note – the debtor corporation repaid more than 90% of the principal balance of the note within three months after the Spin-off and repaid the remainder within 15 months after the Spin-off); I.R.S. Priv. Ltr. Rul. 8026012 (Mar. 20, 1980) (promissory note that spun-off corporation issued to its former parent did not qualify as a "security" for purposes of Internal Revenue Code Sections 368(a)(1)D) and 355 because the debtor corporation repaid the note within two years after the Spin-off). The applicable federal income tax rate applicable in 2006 is 35%. 26 U.S.C. § 11(b) (2006) (35% tax rate for annual income in excess of $10,000,000). This tax rate is applied to the full $7.15 billion in Verizon debt that Verizon cancelled in the Spin-off because Verizon's basis in the directory business was less than $300 million at the time of the Spin-off and Verizon received more than two billion dollars in cash above that basis during the Spin-off. PX 52, October 20, 2005 E-mail from Paul Kelly to Thomas Bartlett (stating Verizon's basis was less than $300 million); GTE Corp.'s Answer, Defenses, and Affirmative Defenses to Pls.' Am. Compl. 2, 5-6, Feb. 27, 2012, ECF No. 245 (admitting that Verizon Financial Services, LLC received approximately $2.4 billion in cash from Idearc, by way of various financial institutions; and that Verizon reduced its debt by $7.15 billion through the debt exchange during the Spin-off); Verizon Commc'ns Inc.'s Answer, Defenses, and Affirmative Defenses to Pls.' Am. Compl. 2, 5-6, Feb. 27, 2012, ECF No. 246 (same); John W. Diercksen's Answer, Defenses, and Affirmative Defenses to Pls.' Am. Compl. 2, 5-6, Feb. 27, 2012, ECF No. 247 (same); and Verizon Fin. Servs., LLC's Answer, Defenses, and Affirmative Defenses to Pls.' Am. Compl. 2, 5-6, Feb. 27, 2012, ECF No. 248 (same); *see also* PX 1541a, October 20, 2006 E-mail by VIS Director of Tax, Kevin BalsLey, p. 1 (stating "the tax bill for failing to meet the restrictions [in the Tax Sharing Agreement, including the prohibition against Idearc pre-paying its debt] would roughly be in the $5B range (39%-40% tax rate . . .."); PX 31b, October 29, 2008 E-mail by John Diercksen (stating that the act of Idearc "restructuring their debt would open the tax liabilities to" Verizon and "there is significant dollar at risk" should Idearc do so); PX 1568, October 31, 2008 E-mail by John Diercksen (stating that Idearc breaching the Tax Sharing Agreement by pre-paying debt "will create an overhang that could scare off any new investors").

f. As part of the Spin-off on November 17, 2006, Idearc undertook the liability to indemnify Verizon for any Spin-off related taxes that Verizon incurred as a result of any action taken by Idearc after the Spin-off.[17]

g. A willing buyer of Idearc on November 17, 2006, would reduce the purchase price paid to acquire Idearc by the $2,502,500,000 in federal income taxes that Idearc would be required to reimburse to Verizon pursuant to the indemnity provision in the Tax Sharing Agreement.

245. Thus, the TSA imposed very important restrictions (akin to a Catch 22) on Idearc's ability to sell the company or engage in any merger or acquisition transactions. Taylor, Vol. 4A 109:15-110:9; PX 1068, § 3.03.

246. In an internal email dated October 20, 2006, less than three weeks before the spin, Kevin Balsley, a vice president in Verizon's tax department, noted that the tax bill for Idearc if it violated the TSA would be in the $5 billion range and characterized it as a "poison pill." Taylor, Vol. 4A 112:10-11, 113:3-11; PX 1541a.

247. Based on Taylor's experience in considering tax issues in large merger and acquisition transactions, she concluded that the restrictions in the TSA impaired the marketability of Idearc on the spin date and would have a negative influence on how buyers would look at the company as a potential acquisition. Taylor, Vol. 4A 111:4-8, 111:14-112:3. Thus, she further concluded that The TSA affected the appropriate weight given to the "comparable companies" valuation. Taylor, Vol. 4A 109:3-7. The Court agrees with Taylor's conclusions.

248. The market multiples used in a valuation method involving comparable companies and comparable transactions are very volatile. A relatively small difference between the growth rates of the "comparable" companies and the growth (or decline) rate of the subject company can cause a big change in the market multiple applicable to the subject company, which can greatly affect its value under these valuation methods. Taylor, Vol. 4A 108:11-14; Taylor, Vol. 4A 102:15-104:4, 106:23-108:14, DX 213, p. 33 (Verizon analysis illustrating large sensitivity of value to minor change in EBITDA multiple).

249. Thus, valuations under the market-based methods are highly sensitive to growth rates in revenues and cash flows. Idearc's revenue and EBITDA were materially inferior to the companies Houlihan cited as "comparable," which is a very significant factor in determining the weight assigned to the market-based values relative to the DCF valuation. Taylor, Vol. 4A 102:7-14; DPX 1.

D. Weighting of DCF and Market-Based Valuations; Ultimate Valuation of Idearc on November 17, 2006

250. Under relevant valuation standards, there are two ways to adjust values derived from the market-based methods when, as here, the companies cited as comparables are dissimilar to the company being valued. One method is to adjust the EBITDA multiples used to calculate

[17] PX 1068, Tax Sharing Agreement, ¶4.01(b); Wessel, Vol. 6B 93:21-94:7, 110:18-110:21, 111:22-112:1.

those values (i.e., use a lower multiple for the subject company than the multiples derived from the comparable companies or transactions). The other method is to adjust the weight assigned to the market-based values relative to the weight assigned to the DCF value when determining the overall value of the subject company. Taylor, Vol. 4A 98:21-99:2.[18]

251. Taylor adopted the second method to account for the multiple discrepancies, noted above, between Idearc and the comparable companies and transactions Houlihan used in its market-based valuations. Specifically, her analysis started with values ranging from $11.7 billion to $13.2 billion under the market multiple ("comparable companies") approach. Her value under the comparable transactions method ranged from a low of $13.4 billion to a high of $15.8 billion. These value ranges were identical to those in the report that Houlihan prepared in October 2006 at the request of Verizon's board. Taylor, Vol. 4A 114:7-25; PX 1882; PX 666, p. 20. Taylor did not adjust the underlying EBITDA multiples Houlihan used. Instead, as explained below, she made appropriate adjustments to the weight assigned to the market-based values derived by applying those multiples.

252. After determining Idearc's value on the spin date under the DCF method and the two market-based methods, Taylor assigned a relative weight to each value to reach her final value opinion. She assigned 30% to the market-based method and 70% to the DCF approach. Taylor, Vol. 4A 115:1-10.

253. Taylor assigned 30% weight to the market-comparable valuations because, as she previously showed, VIS was significantly inferior to the other guideline public companies; the transactions Houlihan cited did not involve reasonably comparable companies; and the other companies used in both market-based valuations were growth companies, while Idearc's revenue and EBITDA were declining. Moreover, the TSA's restrictions prevented Idearc from accessing the transaction market, which conflicts with the essential premise of the "comparable transaction" method, i.e., that the subject company (Idearc) has the ability to access the market. Taylor, Vol. 4A 115:11-116:10.

254. Further, based on her experience, knowledge and training, Taylor concluded that of the three valuation methods in her analysis, buyers rely most heavily on the DCF analysis to determine what a company is worth. Taylor, Vol. 4A 113:13-24.

255. Taylor's relative weighting of the values yielded by the DCF method (70%) and the market-based methods (30%) was credible, well-reasoned, and supported by the evidence and applicable valuation standards.

256. Based on the foregoing weighted averages of the DCF and market-based valuations, Taylor determined that Idearc's enterprise value from operations (without considering non-operating liabilities) ranged from $7.5 billion to $8.8 billion. Taylor's ultimate opinion was that Idearc's enterprise value from operations as of November 17, 2006 was $8.15 billion, the mid-point of that range. Taylor, Vol. 4A 116:11-18, PX 1882.

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[18] DX 1731 (excerpts from Pratt, Shannon P., et al., *Valuing a Business* (4th ed. 2000)), p. 188 of 273 (weight given guideline company valuation method should be diminished relative to other valuation methods when available data for such method is not strong or compelling).

257. The Court finds that Taylor's ultimate opinion was reasonable and correct. Therefore, the Court further finds that the value of Idearc on November 17, 2006 was $8.15 billion.

258. The Court limited the Phase I trial to the issue of Idearc's value on November 17, 2006. Having now determined that issue, the amount of Idearc's debt must be considered in order to determine whether it was solvent on the spin date. That debt consists of the actual liabilities of $9.515 billion (including $400 million of OPEB obligations) that was imposed on Idearc on the spin date, plus the contingent liability arising from the potential tax indemnification under the TSA. Taylor, Vol. 4A 116:19-117:2. The Court will consider these issues and determine Idearc's solvency in another phase in the trial to be scheduled by the Court.

V. DEFENDANTS' EXPERTS' OPINIONS

A. Hopkins

259. The Court finds that Hopkins is less qualified than Taylor to give opinion testimony regarding the value of Idearc on the date of the Spin-off. Hopkins, who holds a degree in chemistry, is not a certified public accountant, chartered accountant, or a certified financial analyst. Hopkins, Vol. 8A 116:15-25. Hopkins lacks experience in the yellow pages industry. Unlike Taylor, he has never been asked to value a yellow pages business. Hopkins Volume 7B 114:23-115:3; Hopkins Volume 8A 118:20-23. In fact, Hopkins has never been asked by a yellow pages company to do anything. Hopkins, Vol. 7B 114:23-115:3; Hopkins, Vol. 8A 118:25-119:2. The Court concludes that Hopkins's lack of experience in valuing yellow pages businesses renders him less qualified than Taylor to value Idearc's business.

260. In addition, the Court finds that Hopkins' testimony is less credible than that of Taylor. Hopkins contacted Verizon to offer his services after reading about this lawsuit in the press. Hopkins, Vol. 7B 116:11-15; Hopkins, Vol. 8A 70:1-10. Based on this unsolicited contact Verizon retained Hopkins, paying him $350,000 per month for his services through trial in this case. Hopkins, Vol. 8A 70:13-71:2. Hopkins expects to collect a total of approximately $5.3 million dollars. *Id*. The Court finds that Hopkins' employment solicitation and significant compensation render his testimony less credible than Taylor's.

261. The Court also finds that Hopkins' testimony is unreliable for the following reasons. First, Hopkins testified that he made no effort to determine whether material information was withheld from the market in connection with the Spin-off. *Id*. at 77:9-79:7. Because that issue is central to determining whether the public market accurately valued Idearc, the Court finds Hopkins' testimony regarding Idearc's market value unreliable. Next, Hopkins' testified that VIS management's performance projections were reasonable to rely upon for his analysis (*id*. at 86:18-23) despite acknowledging that:

a. the projections assumed that declines in incumbent print revenue would be more than offset by increases in Internet and independent print revenue even though VIS and McKinsey had predicted the opposite (*id*. at 93:23-94:5);

b. 4% even though VIS's bad debt expense had never been that low in its ii) the projections did not incorporate McKinsey's finding that print revenue declines would decline more than VIS's projections predicted (*id*. at 97:7-99:4); and

c. (iii) the projections anticipated that VIS would reduce its bad debt expenses to below history (*id*. at 99:5-100:9).

B. Balcombe

262. The Court finds that Jeff Balcombe, one of Defendants' paid experts, is less qualified to offer opinion testimony regarding Idearc's value than Taylor. Balcombe clearly has less relevant media and yellow pages expertise than Taylor. Further, he was not retained to provide an opinion of value, but only to attempt to rebut Taylor's work. Balcombe could not recall the size of the largest media business that he had valued for a non-litigation purpose. Balcombe, Vol. 10A, 93:19-22. The only yellow pages-related engagement on which Balcombe has ever worked involved a financial forensics exercise for a company that delivered yellow pages books. *Id.* at 96:15-22. And unlike Taylor, Balcombe has not previously worked with Idearc in a non-litigation setting. *Id.* at 96:13-98:1.

263. The Court also finds that Balcombe is not credible. When asked about his prior experience, Balcombe repeatedly testified that he could not remember general information about prior engagements. *Id.* at 93:19-22, 95:17-23, 96:19-20. Balcombe also testified that his firm has worked with Defendants' counsel approximately half a dozen times in the past 10-12 years. *Id.* at 92:24-93:1-3, 9-14. Finally, Balcombe's firm will have billed Defendants approximately $1.9 million for services performed through the end of Phase I trial in this case. *Id.* at 33:1-8; 92:21-23. The Court concludes that these facts suggest that Balcombe's testimony is not credible.

VI. ADDITIONAL FINDINGS AND CONCLUSIONS REGARDING IDEARC'S FAILURE TO PROPERLY CONSTITUTE BOARD OR AUTHORIZE ISSUANCE OF STOCK AND ENTRY INTO DISTRIBUTION AGREEMENT

A. Findings

264. The parties stipulated that PX 2018 is the official minute book of Idearc thru the date of the Spinoff.

265. VDDC was incorporated in Delaware on June 20, 2006. PX 2018, PX 885.

266. The incorporator of VDDC was Gregory Feldman, a junior attorney at Debevoise and Plimpton. PX 2018.

267. The VDDC Certificate of Incorporation authorized 100 shares of common stock and provided that the number of directors would be provided by the bylaws. PX 2018.

268. On June 20, 2006 Gregory Feldman, as the sole incorporator of VDDC, adopted bylaws of VDDC (the "Bylaws"). PX 2018.

269. On June 20, 2006 Gregory Feldman, as the sole incorporator of VDDC, authorized the board of directors of VDDC to sell common stock of VDDC at such prices per share as may be approved by the board of directors and to accept in payment therefor money or other property, tangible or intangible, actually received, or labor or services actually performed for VDDC. PX 2018.

270. Section 1.10 of the VDDC Bylaws authorizes a consent of the stockholders of VDDC in writing if the consent is delivered to the registered office of VDDC in Delaware, the principal place of business of VDDC or an officer or agent of VDDC having custody of the book in which proceedings of meetings of stockholders are recorded and that no written consent is effective until so delivered. PX 2018.

271. Section 2.02 of the VDDC Bylaws provides that the number of directors constituting the entire board of directors shall be two. PX 2018.

272. On June 20, 2006 Gregory Feldman, as the sole incorporator of VDDC, elected John Diercksen as a director of VDDC. PX 2018.

273. Section 2.06 of the VDDC Bylaws provides that a majority of the total authorized number of directors shall constitute a quorum for the transaction of business. PX 2018.

274. Section 2.08 of the VDDC Bylaws authorizes unanimous consent of the board of directors if the consent is filed with the minutes of proceedings of the board of directors. PX 2018.

275. Section 5.01 of the VDDC Bylaws provides that the shares of VDDC shall be represented by certificates unless the board of directors provides by resolution that some or all of the shares shall be uncertificated shares. PX 2018.

276. Section 5.01 of the VDDC Bylaws provides that any resolution providing for uncertificated shares shall not apply to shares represented by a certificate until each certificate is surrendered to VDDC. PX 2018.

277. Section 5.04 of the VDDC Bylaws provides that upon surrender to VDDC, or the transfer agent of VDDC, of a certificate for shares, duly endorsed or accompanied by appropriate evidence of succession, assignment or authority to transfer, VDDC shall issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction on its books. If the stock is uncertificated, VDDC shall send to the registered owner a written notice containing the information required to be set forth or stated on certificates pursuant to Sections 151, 156, 202(a) or 218(a) of the General Corporation Law of the State of Delaware. PX 2018.

278. On June 22, 2006 John Diercksen executed what purports to be a unanimous consent of the board of directors of VDDC electing Katherine J. Harless as President of VDDC, and purports to issue one share of common stock of VDDC to Verizon Communications, Inc. ("VCI") upon the receipt by an appropriate officer of VDDC of full payment by VCI to VDDC for such shares. This purported resolution does not fix a price for the share to be issued to VCI. PX 2018.

279. The purported director consent of June 22, 2006 states that an executed copy of the consent shall be filed with the minutes of the proceedings of the board of directors of VDDC. PX 2018.

280. There is no evidence that a price was ever fixed or that the appropriate officer of VDDC ever received payment for the share of VDDC stock to be issued to VCI.

281. On October 13, 2006 John Diercksen executed what purports to be a unanimous consent of the board of directors of VDDC electing Bill Mundy as Vice President, Secretary and General Counsel of VDDC and Andy Coticchio as Chief Financial Officer and Treasurer of VDDC. PX 2018.

282. The purported director consent of October 13, 2006 states that an executed copy of the consent shall be filed with the minutes of the proceedings of the board of directors of VDDC. PX 2018.

283. On October 18, 2006 John Diercksen executed what purports to be a unanimous consent of the board of directors of VDDC authorizing the change of the name of VDDC to Idearc, Inc.

284. The purported director consent of October 18, 2006 requires shareholder consent to become effective.

285. The purported director consent of October 18, 2006 states that an executed copy of the consent shall be filed with the minutes of the proceedings of the board of directors of VDDC.

286. The purported director consent of October 18, 2006 does not appear in the official minute book of VDDC/Idearc. PX 2018.

287. On October 18, 2006 John Diercksen executed what purports to be a unanimous consent of VCI as sole shareholder of VDDC authorizing the change of the name of VDDC to Idearc, Inc. This purported shareholder consent does not indicate in what capacity John Diercksen executes the consent.

288. There is no evidence that the purported shareholder consent of October 18, 2006 was ever delivered to the registered office of VDDC in Delaware, the principal place of business of VDDC or an officer or agent of VDDC having custody of the book in which proceedings of meetings of stockholders are recorded. PX 2018.

289. On October 18, 2006 VDDC filed a Certificate of Amendment to its certificate of incorporation purportedly changing its name to Idearc, Inc. The Certificate was signed by William G. Mundy as Vice President. The amendment to the Certificate was adopted pursuant to Section 242 of the General Corporation Law of the State of Delaware (the "DGCL") which authorizes amendments by directors of corporations. Section 241 of the DGCL authorizes amendments by the incorporators of corporations. PX 2018.

290. On October 30, 2006 John Diercksen executed what purports to be a unanimous consent of the board of directors of Idearc authorizing amendments to the Certificate of Incorporation and the Bylaws of Idearc. The amendment to the Certificate was adopted pursuant to Section 242 of the DGCL, which authorizes amendments by directors of corporations. Section 241 of the DGCL authorizes amendments by the incorporators of corporations. The amendment purportedly increased the authorized shares of common stock from 100 shares to 225 million shares. The amendment appears to have been executed by William G. Mundy as Vice President of Idearc.

291. The purported director consent of October 30, 2006 states that an executed copy of the consent shall be filed with the minutes of the proceedings of the board of directors of VDDC.

292. The purported director consent of October 30, 2006 does not appear in the official minute book of VDDC/Idearc. PX 2018.

293. On October 30, 2006 John Diercksen executed what purports to be a unanimous consent of VCI as sole shareholder of Idearc authorizing the amendment to the Idearc certificate of incorporation purportedly increasing the authorized shares of common stock from 100 shares to 225 million shares.

294. There is no evidence that the purported shareholder consent of October 30, 2006 was ever delivered to the registered office of VDDC in Delaware, the principal place of business of VDDC or an officer or agent of VDDC having custody of the book in which proceedings of meetings of stockholders are recorded. PX 2018.

295. On October 30, 2006 Idearc filed a purported Amended and Restated Certificate of Incorporation pursuant to Section 242 of the DGCL changing the authorized common stock of Idearc from 100 shares to 225 million shares. The amendment appears to have been executed by William G. Mundy as Vice President. PX 885.

296. On October 31, 2006 John Diercksen executed what purports to be a unanimous consent of the board of directors of Idearc authorizing the transactions resulting in the acquisition by Idearc of the yellow pages business of VCI and the Spin-off of shares of Idearc to the shareholders of VCI (the “Spin”), including authorization of the incurrence of billions of dollars of debt by Idearc. The consent also authorized uncertificated shares of Idearc. PX 893

297. The purported director consent of October 31, 2006 states that an executed copy of the consent shall be filed with the minutes of the proceedings of the board of directors of Idearc. PX 893.

298. VIS represented to the Internal Revenue Service that it was the sole shareholder of VDDC/Idearc. PX 645, PX 648.

299. On November 13, 2006 Andrew Coticchio signed the distribution agreement purportedly approving the Spin (the “Distribution Agreement”). PX 985.

300. No stock certificate of VDDC/Idearc existed prior to November 15, 2006.

301. On or about November 15, 2006 agents of VIS created a false stock certificate purporting to evidence ownership of VDDC stock by VIS. PX 2018.

B. Conclusions

302. The board of directors of VDDC was never properly constituted.

303. There is no evidence that an executed copy of the purported consent of directors of VDDC/Idearc of October 13, 2006 was ever filed with the minutes of the proceedings of the board of directors of VDDC.

304. All purported consents and resolutions of the board of directors of VDDC/Idearc are invalid.

305. The Spin was never validly authorized by either the VDDC/Idearc board of directors or its incorporator.

306. Katherine J. Harless, Bill Mundy and Andy Coticchio were never validly elected as officers of VDDC/Idearc.

307. The purported amendment of the Certificate of Incorporation of VDDC/Idearc increasing the authorized shares of VDDC/Idearc from 100 shares to 225 million shares is invalid.

308. No shares of VDDC/Idearc were ever validly authorized by either the VDDC/Idearc board of directors or its shareholders and no shares of VDDC/Idearc were ever validly issued.

309. Any purported shares of VDDC/Idearc are void.

310. Any debt of VDDC/Idearc purportedly authorized by VDDC/Idearc director or shareholder consents was not properly authorized.

311. The stock market was not aware that all purported consents and resolutions of the board of directors of VDDC/Idearc were invalid, that no shares of VDDC/Idearc were validly issued or that the Spin was not validly authorized.

312. The Distribution Agreement was not validly authorized.

Dated: November 16, 2012

Respectfully submitted,

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ATTORNEYS FOR U.S. BANK NATIONAL ASSOCIATION
as Litigation Trustee on Behalf of the Idearc Inc. *et al*. Litigation Trust

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing document was served on all attorneys of record through the Court's ECF system in accordance with Fed. R. Civ. P. 5(b)(3) on November 16, 2012:

/s/ Nicholas A. Foley
Nicholas A. Foley

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