Section 1: SC 14D9/A (SC 14D9/A)

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14D-9

(Rule 14d-101)

SOLICITATION/RECOMMENDATION STATEMENT
UNDER SECTION 14(d)(4) OF THE SECURITIES EXCHANGE ACT OF 1934
(Amendment No. 2)

Aerohive Networks, Inc.

(Name of Subject Company)

Aerohive Networks, Inc.

(Name of Person Filing Statement)

Common Stock, par value $0.001 per share
(Title of Class of Securities)

007786106
(CUSIP Number of Class of Securities)

David K. Flynn
President and Chief Executive Officer
Aerohive Networks, Inc.
1011 McCarthy Boulevard
Milpitas, California 95035
(408) 510-6100
(Name, address and telephone number of person authorized to receive notices and communications on behalf of the persons filing statement)

With copies to:

Mark Baudler & Robert Ishii
Wilson Sonsini Goodrich & Rosati, Professional Corporation
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Steve Debenham
Vice President, General Counsel & Secretary
Aerohive Networks, Inc.
1011 McCarthy Boulevard
Milpitas, California 95035
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☐ Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

This Amendment No. 2 (this "**Amendment No. 2**") amends and supplements the Solicitation/Recommendation Statement on Schedule 14D-9 filed by Aerohive Networks, Inc., a Delaware corporation ("**Aerohive**" or the "**Company**"), with the Securities and Exchange Commission (the "**SEC**") on July 12, 2019 (together with subsequent amendments and supplements thereto, including this Amendment No. 2, the "**Schedule 14D-9**"). The Schedule 14D-9 relates to the tender offer by Clover Merger Sub, Inc., a Delaware corporation ("**Purchaser**") and a wholly-owned subsidiary of Extreme Networks, Inc., a Delaware corporation ("**Extreme**"), as disclosed in the Tender Offer Statement on Schedule TO (together with the exhibits thereto, as amended, the "**Schedule TO**"), filed by Purchaser and Extreme with the Securities and Exchange Commission (the "**SEC**") on July 12, 2019 pursuant to which Purchaser has offered to purchase all of the outstanding Shares for a purchase price of $4.45 per Share, in cash (the "**Offer Price**"), without interest, subject to any applicable withholding of taxes, upon the terms and subject to the conditions set forth in Purchaser's Offer to Purchase, dated July 12, 2019 (the "**Offer to Purchase**"), and in the related Letter of Transmittal (the "**Letter of Transmittal**"), which, together with the Offer to Purchase and other related materials, as each may be amended, supplemented or otherwise modified from time to time in accordance with the Merger Agreement (as defined below), constitute the "**Offer**." A copy of the Offer to Purchase and Letter of Transmittal are filed as Exhibits (a)(1)(A) and (a)(1)(B) to the Schedule 14D-9, respectively, and are incorporated herein by reference.

Except to the extent specifically provided in this Amendment No. 2, the information set forth in the Schedule 14D-9 remains unchanged and is incorporated herein by reference as relevant to the items in this Amendment No. 2. Capitalized terms used but not defined herein have the meanings ascribed to them in the Schedule 14D-9.

Item 4. The Solicitation or Recommendation.

Item 4 of the Schedule 14D-9 is hereby amended and supplemented as follows:

The third paragraph on page 15 of the Schedule 14D-9 under the subheading "*Background*" under the heading "***Recommendation of the Board***" is deleted and replaced with the following sentence:

"On August 8, 2018, David Flynn, Aerohive's President and Chief Executive Officer and Chair of the Board, was introduced to Ed Meyercord, Extreme's President and Chief Executive Officer and member of Extreme's board of directors."

Item 8. Additional Information.

Item 8 of the Schedule 14D-9 is hereby amended and supplemented as follows:

The last sentence in the paragraph under the subheading "*German Antitrust Compliance*" under the heading "***Regulatory Approvals***" on page 41 of the Schedule 14D-9 is deleted and replaced with the following sentences:

"Extreme notified the FCO of the proposed transaction on July 5, 2019. On July 29, 2019, the FCO cleared the proposed transaction under the German ARC. Accordingly, the condition to the Offer relating to the clearance of the proposed transaction by the FCO has been satisfied."

The following section is added as a new section at the end of the last paragraph on page 47 of the Schedule 14D-9:

"***Certain Litigation.***

Between July 16, 2019 and July 22, 2019, five actions relating to the Transactions were filed by purported Company shareholders against the Company and the Board. Two actions were filed in the United States District Court for the Northern District of California. These cases are captioned *Silverberg v. Aerohive Networks, Inc., et al.* (Case No. 3:19-cv-04089) (brought as a putative class action on behalf of all shareholders of the Company), and *Naik v. Aerohive Networks, Inc., et al.* (Case No. 5:19-cv-04160). One action was filed in the United States District Court for the Southern District of New York, captioned *Shirley v. Aerohive Networks, Inc., et al.* (Case No. 1:19-cv-06742). *Shirley v. Aerohive Networks, Inc., et al.* also names as a defendant the Company's co-founder Changming Liu. Two actions were filed in the United States District Court for the District of Delaware. These cases are captioned *Plumley v. Aerohive Networks, Inc., et al.* (Case No. 1:19-cv-01322) (brought as a putative class action on behalf of all shareholder of the Company), and *Smith v. Aerohive Networks, Inc., et al.* (Case No. 1:19-cv-01359). *Plumley v. Aerohive Networks, Inc., et al.* also names as defendants Extreme and the Purchaser. The complaints generally allege that the Schedule 14D-9 filed by the Company omits material information necessary for Aerohive stockholders to make an informed decision regarding the tender offer, and assert claims for violation of Sections 14 and 20(a) of the Securities Exchange Act of 1934. The complaints seek, among other things, to enjoin the tender offer or, should it be consummated, to rescind it or award damages, as well as an award of the plaintiffs' attorneys' fees and costs in the actions.

The Company believes that the claims asserted in the actions are without merit and will vigorously defend against such claims. However, litigation is inherently uncertain and there can be no assurance that the Company's defense of the actions will be successful. Additional complaints containing substantially similar allegations may be filed in the future."

Item 9. Exhibits.

Item 9 of the Schedule 14D-9 is hereby amended and supplemented by adding the following exhibits:

Exhibit No.	Description
(a)(5)(W)	Complaint filed on July 17, 2019 (*Silverberg v. Aerohive Networks, Inc., et al.*, Case No. 3:19-cv-04089).
(a)(5)(X)	Complaint filed on July 19, 2019 (*Naik v. Aerohive Networks, Inc., et al.*, Case No. 5:19-cv-04160).
(a)(5)(Y)	Complaint filed on July 19, 2019 (*Shirley v. Aerohive Networks, Inc., et al.*, Case No. 1:19-cv-06742).
(a)(5)(Z)	Complaint filed on July 16, 2019 (*Plumley v. Aerohive Networks, Inc., et al.*, Case No. 1:19-cv-01322).
(a)(5)(AA)	Complaint filed on July 22, 2019 (*Smith v. Aerohive Networks, Inc., et al.*, Case No. 1:19-cv-01359).

SIGNATURE

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this Schedule 14D-9 is true, complete and correct.

AEROHIVE NETWORKS, INC.

By: /s/ David K. Flynn
Name: David K. Flynn
Title: President and Chief Executive Officer
Chair of the Board of Directors

Dated: July 30, 2019
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Section 2: EX-99.(A)(5)(W) (EX-99.(A)(5)(W))

Exhibit (a)(5)(W)

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

HERBERT SILVERBERG, on Behalf of Himself and All Others Similarly Situated, Plaintiff, vs. AEROHIVE NETWORKS, INC., INGRID BURTON, REMO CANESSA, DAVID K. FLYNN, CURT GARNER, FRANK MARSHALL, JOHN GORDON PAYNE, and CONWAY RULON-MILLER, Defendants.	Case No.: 19-4089 CLASS ACTION **CLASS ACTION COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS** **JURY TRIAL DEMANDED**

Plaintiff Herbert Silverberg ("Plaintiff"), on behalf of himself and all others similarly situated, by his undersigned attorneys, alleges the following based upon personal knowledge as to his own acts and information and belief as to all other matters, based upon the investigation conducted by and through his attorneys, which included, among other things, a review of Defendants' public documents, conference calls and announcements, U.S. Securities and Exchange Commission ("SEC") filings, wire and press releases published by and regarding Aerohive Networks, Inc. ("Aerohive" or the "Company"), and advisories about the Company and its proposed acquisition, as described below.

NATURE OF THE ACTION

1. This is a class action brought pursuant to Sections 14(d)(4), 14(e) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. §§78n(d)(4), 78n(e), 78t(a), and

SEC Rule 14d-9, 17 C.F.R. §240.14d-9(d) ("Rule 14d-9"), to enjoin the expiration of a tender offer (the "Offer") which, if completed, will result in Extreme Networks, Inc., through its affiliate Clover Merger Sub, Inc. ("Purchaser" and collectively with Extreme Networks, Inc., "Extreme"), acquiring Aerohive (the "Proposed Transaction") without Defendants making disclosure of relevant material facts. Alternatively, should the Proposed Transaction close based upon an uninformed shareholder vote, Plaintiff seeks appraisal damages for all damages sustained as a result of Defendants' wrongdoing.

2. On June 26, 2019, Extreme and Aerohive issued a joint press release announcing that they had entered into an Agreement and Plan of Merger, dated June 26, 2019 (the "Agreement"), pursuant to which Extreme proposes to acquire all of the outstanding shares of common stock of Aerohive at a price of $4.45 per share in cash (the "Offer Price"), in a transaction valued at approximately $272 million, and which assigns an enterprise value of approximately $210 million to Aerohive after accounting for its net cash balance of approximately $62 million. The Information Agent for the Offer is MacKenzie Partners, Inc., 1407 Broadway, New York, New York 10018, and the Offer is Pursuant to the Agreement. Extreme commenced the Offer on July 12, 2019. The Offer is scheduled to expire at midnight (New York City Time) at the end of the day on Thursday, August 8, 2019 (the "Expiration Time").

3. On July 12, 2019, Aerohive filed, with the SEC, a Solicitation/Recommendation Statement under Section 14(d)(4) of the Exchange Act on Schedule 14D-9 (the "Recommendation Statement") recommending that Aerohive's stockholders tender their shares in favor of the Proposed Transaction. The Recommendation Statement omits or misrepresents material information regarding, among other things: (a) Aerohive's Financial Projections, including the projections relied upon by Evercore, its financial advisor; (b) Evercore's Analyses and Fairness Opinion; and (c) the Process Leading up to the Proposed Transaction.

4. The Board proposes, through the Recommendation Statement and without fully disclosing all material information, that Aerohive's public stockholders divest of valuable Company equity. As a result of the Board's omissions, Aerohive stockholders are unable to make a fully informed decision whether to tender their shares in support of the Proposed Transaction or seek appraisal, in violation of the Exchange Act. To remedy Defendants' violations, Plaintiff seeks to enjoin the expiration of the Offer unless and until such problems are remedied.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this Action pursuant to Section 27 of the Exchange Act, 15 U.S.C. §78aa, 28 U.S.C. §§1331.

6. Venue is proper in this Court pursuant to Section 27 of the Exchange Act, 15 U.S.C. §78aa, and 28 U.S.C. §1391. Many of the acts and transactions giving rise to the violations of law complained of herein occurred in this District and this is the District in which the Company maintains its principal place of business. In connection with the acts, conduct and other wrongs complained of herein, Defendants used the means and instrumentalities of interstate commerce. Moreover, Aerohive is headquartered in this District.

PARTIES

7. Plaintiff is, and has been at all times relevant hereto, a continuous stockholder of Aerohive.

8. Defendant Aerohive, according to its most recent Form 10-Q filed with the SEC, "has designed and developed a leading cloud networking platform and product portfolio using cloud management, machine learning and artificial intelligence to simplify and secure the access network." The Company is headquartered at 1011 McCarthy Boulevard, Milpitas, California 95035, is incorporated under the laws of the State of Delaware, with its common stock traded on the New York Stock Exchange (the "NYSE") under the ticker symbol "HIVE."

9. Defendant Ingrid Burton ("Burton") has served as a member of the Company's Board of Directors (the "Board") since March 20, 2019 and serves on its compensation committee and its nominating and corporate governance committee.

10. Defendant Remo Canessa has served as a member of the Board since September 2013 and serves as chair of its audit committee and a member of its compensation committee.

11. Defendant David K. Flynn ("Flynn") has served Chair of the Board since July 2013, as a member of the Board since July 2006, as Aerohive's Chief Executive Officer since July 2007, and as Aerohive's President since November 2007.

12. Defendant Curt Garner has served as a member of the Board since June 2015 and serves on its audit committee.

13. Defendant Frank Marshall ("Marshall") has served as a member of the Board since March 2011 and serves as chair of its nominating and corporate governance committee.

14. Defendant John Gordon Payne ("Payne") has served as a member of the Board since March 2014 and serves as chair of its compensation committee and as a member of its audit committee.

15. Defendant Conway Rulon-Miller ("Rulon-Miller") has served as a member of the Board since May 2009 and serves on its compensation committee.

16. The defendants named in ¶¶ 9-15 are collectively referred to herein as the "Individual Defendants."

17. The Individual Defendants, along with defendant Aerohive, are collectively referred to herein as "Defendants."

RELEVANT NON-PARTIES

18. Extreme, according to the June 26, 2016, joint press release announcing the Proposed Transaction, "delivers software-driven solutions from the enterprise edge to the cloud that are agile, adaptive, and secure to enable digital transformation." It is based in San Jose, California and was founded in 1996.

19. Clover Merger Sub, Inc. is a wholly owned subsidiary of Extreme and was formed solely for the purpose of facilitating the acquisition of Aerohive by Extreme. Purchaser has not carried on any activities other than those related to its formation, the Offer and the Merger. Upon consummation of the proposed Merger, Purchaser will merge with and into Aerohive and will cease to exist.

SUBSTANTIVE ALLEGATIONS

A. Background to the Proposed Transaction

20. In February 2017, Aerohive engaged Evercore Group L.L.C. ("Evercore") to serve as its financial advisor in connection with evaluating potential strategic alternatives following an approach from an activist investor. Evercore continued to advise the Company from time to time concerning strategic alternatives.

21. In late 2017, Aerohive received an unsolicited inquiry from a strategic "Party A" and an unsolicited inquiry from a strategic "Party B" during early 2018. In March 2018, the Board, with the assistance of Aerohive's executive management and Evercore, undertook efforts to contact four other potential acquriors, none of which resulted in a proposal to acquire Aerohive.

22. On August 8, 2018, Flynn was introduced to Ed Meyercord ("Meyercord"), Extreme's President and Chief Executive Officer and Chairman of Extreme's board of directors.

23. On August 9, 2018, Meyercord emailed Flynn indicating that Extreme had been contemplating ways in which Extreme and Aerohive might work together. Flynn and Meyercord planned to meet during September 2018.

24. On September 18, 2018, Flynn and Meyercord met. Meyercord indicated that, given various parameters, Aerohive could be an attractive and realistic acquisition target for Extreme. Meyercord suggested that the second calendar quarter of 2019 might be a preferable time to engage in collaborative discussions about a potential acquisition. Flynn and Meyercord agreed that they would stay in touch with respect to such matters.

25. On October 24, 2018, the Board met and discussed, among other things, Aerohive's potential strategic alternatives, including the interest Meyercord had indicated in his prior discussions with Flynn, certain of the unsolicited inquiries that Aerohive had received during 2017 and early 2018, and the strategic outreach conducted during 2018. The Board directed Aerohive's executive management to request Evercore to give a presentation at the next regular meeting concerning market and competitive positioning of Aerohive and potential strategic alternatives.

26. On January 8, 2019, Stanphyl Capital Management published a letter to its investors disclosing a position in the Company, and stating, in part:

> **Also new to the fund in December are shares of Aerohive Networks (NYSE:HIVE)**, a cash-flow positive maker of enterprise level wi-fi equipment with a 65% gross margin and a massive amount of net cash on the balance sheet (over $1.30/share of our $3.28/share purchase price), for which we paid just a hair over 1x annual gross profit (on an EV basis). Aerohive is a "busted IPO"

from 2014, abandoned by the market due to a disappointing lack of revenue growth, but at the price we paid the high-margin revenue is so cheap that - as with many of our long positions - it makes an attractive target for a strategic buyer if the company is unable to grow itself.

An acquisition price at an EV of just 1.5x revenue (reasonable for a 65% gross margin company with 29% subscription revenue) would be around $5.60/share. By way of comparison, Brocade bought Ruckus Networks, Aerohive's most direct competitor, for around 2.5x revenue in 2016, and although at that time Ruckus was still in "growth mode," it was earnings and cash-flow negative.

27. On January 25, 2019, Flynn called Meyercord and indicated that at an upcoming meeting the Board would discuss Aerohive's go-forward strategies and potential strategic alternatives and inquired about Extreme's continued interest in a potential acquisition of Aerohive. Meyercord confirmed that Extreme would be interested in exploring a potential acquisition of Aerohive and that the second calendar quarter of 2019 continued to be Extreme's preferred time to engage in discussions. On January 25, 2019, Aerohive's stock closed at $4.21 per share.

28. On January 30, 2019, the Board held a meeting, which was attended by certain members of Aerohive's executive management and representatives of Evercore and Wilson Sonsini Goodrich & Rosati, P.C. ("Wilson Sonsini"), Aerohive's outside legal counsel, during which, among other things, representatives of Evercore gave a presentation regarding Aerohive's market and competitive positioning and potential strategic alternatives available to Aerohive. Members of the Board and representatives of Evercore discussed various communications from third parties regarding levels of potential interest in discussions relating to a potential strategic transaction involving Aerohive, including the discussions that Flynn had with Meyercord. The Board also discussed the unsolicited inquiries that Aerohive had received during 2017 and early 2018 and the strategic outreach conducted during 2018, and the landscape of potential parties that might have interest in pursuing a strategic transaction with Aerohive.

29. On March 13, 2019, Flynn emailed Meyercord to inquire about Extreme's continued interest in pursuing an acquisition of Aerohive on the timeline previously discussed, and, in response, on March 14, 2019, Meyercord reaffirmed Extreme's interest.

30. During the first week of April 2019, after conducting a preliminary review of the results of its operations for the first fiscal quarter of 2019 ("1Q19"), Aerohive's executive management determined that Aerohive's operating results for 1Q19 would likely underperform previously stated guidance.

31. On April 2, 2019, Flynn called Meyercord to follow-up on their previous conversations regarding a potential strategic transaction. Meyercord reaffirmed Extreme's potential interest in pursuing a potential strategic transaction with Aerohive and proposed that Extreme and Aerohive schedule a preliminary meeting regarding a potential strategic transaction.

32. On April 3, 2019, the Board held a meeting. Flynn and John Ritchie ("Ritchie"), Aerohive's Senior Vice President, Chief Financial Officer, and Chief Operating Officer, presented a summary of the preliminary review of Aerohive's operating results for 1Q19. The Board then discussed such preliminary review and, in particular, the fact that such preliminary review indicated that Aerohive had underperformed its previously stated guidance for 1Q19 and the anticipated public announcement of the operating results for 1Q19. Following such discussion, Flynn updated the Board on his recent exchange with Meyercord and, after discussing the matter and again considering Aerohive's preliminary review of its 1Q19 operating results, and after consulting with representatives of Evercore, the Board determined that Flynn should further engage with Meyercord regarding a potential strategic transaction.

33. On April 4, 2019, Flynn emailed Meyercord indicating that Aerohive would be willing to make representatives of its management available for a preliminary meeting with Extreme if Extreme entered into a non-disclosure agreement, a form of which was attached to the email and did not contain a standstill provision.

34. On April 8, 2019, Aerohive and Extreme entered into a mutual Non-Disclosure Agreement, and Extreme provided Aerohive an initial list of preliminary due diligence items it wanted to review.

35. From April 9, 2019 to April 18, 2019, Ritchie and Rémi Thomas ("Thomas"), Extreme's Chief Financial Officer, held telephonic discussions concerning certain financial matters related to Extreme's potential acquisition of Aerohive.

36. On April 10, 2019, Flynn communicated to Meyercord that Aerohive's executive management determined that Aerohive's operating results for 1Q19 underperformed Aerohive's previously stated guidance.

37. On April 15, 2019, Aerohive publicly announced that its revenue for 1Q19 was expected to be approximately $33 million, which was below Aerohive's previous guidance of between $36 million to $38 million; that, on a GAAP basis, Aerohive expected net loss per share for 1Q19 to be in the range of $0.15 to $0.16, compared with previously stated guidance of a net loss range of $0.08 to $0.10 per share; and that, on a non-GAAP basis, Aerohive expected net loss per share to be in the range of $0.09 to $0.10, compared with previously stated guidance of a net loss range of $0.01 to $0.03 per share.

38. On April 17, 2019, Aerohive and Extreme held an in-person due-diligence meeting attended by Flynn and Ritchie and Alan Amrod ("Amrod"), Aerohive's Senior Vice President, Product & Sales, and Meyercord and other members of Extreme's management. During the meeting, the Aerohive representatives discussed, among other things, Aerohive's product portfolio, marketing positioning, go-to-market strategy, and financial performance, and the attendees engaged in various related discussions.

39. On April 22, 2019, Meyercord communicated to Flynn an oral indication of interest contemplating that Extreme would be willing to acquire Aerohive for up to $4.00 per share in cash, subject to confirmatory due diligence. In response, Flynn expressed an expectation that a substantially higher price would likely be needed to be proposed for the Board to be supportive of a potential transaction.

40. On April 24, 2019, the Board met and Flynn provided an update on communications with Extreme. The Board discussed potential interest of other potential strategic transaction counterparties. As part of such discussions, representatives of Evercore gave a presentation with respect to various strategies that the Board might consider in connection with its evaluation of Aerohive's strategic alternatives, and, in consultation with Evercore, the Board determined which strategic parties and financial sponsors would likely have the most strategic interest and financial ability to acquire Aerohive and, of these, to whom outreach should be made regarding a potential

sale of Aerohive, which included Party A and Party B. The Board discussed the composition and function of a Special Transactions Committee of the Board and its engagement with Extreme and other third parties and the Board concerning a potential strategic transaction. The Board formed a "Special Transactions Committee" consisting of Marshall and Payne, to facilitate executive management's negotiations with respect to a potential transaction in the event that Board review and input was required but the convening of a meeting of the full Board was not practicable, while ensuring that all material issues be considered at a meeting of the full Board.

41. Beginning on April 25, 2019, representatives of Evercore and members of Aerohive's executive management contacted 10 parties (as well as certain of their financial sponsors), including Party A and Party B, and three parties expressed initial interest: (i) Party B, which was initially contacted on April 25, 2019; (ii) a financial sponsor with a strategic portfolio company ("Party C"), which was initially contacted on April 25, 2019; and (iii) one other strategic party ("Party D"), which was initially contacted on May 7, 2019.

42. On April 26, 2019, Ritchie and Amrod held a telephonic discussion with Thomas and Nabil Bukhari, Extreme's Vice President of Product, regarding Aerohive's cloud business and related matters.

43. On April 26, 2019, representatives of Evercore held a call with representatives of Party B, who indicated that Party B would be interested in assessing a potential acquisition of Aerohive and conducting related due diligence.

44. On April 27, 2019, Flynn and a representative of Party A held a telephonic discussion during which the representative of Party A stated that Party A would not pursue a potential acquisition of Aerohive.

45. On April 29, 2019, the Board met and Flynn gave an update on the strategic outreach undertaken by Evercore and certain members of Aerohive's executive management, including further communications with Extreme as well as Party B. Flynn informed the Board of Party A's decision not to pursue further discussions. The Board then discussed the varying levels of potential interest in considering a potential strategic transaction expressed by Extreme, Party B, and other third parties. The Board then discussed and considered the terms and conditions of a proposed renewed engagement letter between Evercore and Aerohive and approved the terms and conditions of such engagement letter.

46. On May 1, 2019, the Special Transactions Committee held a meeting, also attended by Burton and Flynn, certain members of Aerohive's executive management and representatives of Evercore and Wilson Sonsini. Flynn and Evercore gave an update on the strategic outreach undertaken by Evercore and certain members of Aerohive's executive management, including discussions with Extreme and Party B. The Special Transactions Committee directed Evercore and members of Aerohive's executive management team to continue to engage in strategic outreach and specific discussions with Extreme and Party B. At the request of the Strategic Transactions Committee, representatives of Evercore also gave a presentation concerning Evercore's preliminary valuation analysis of Aerohive.

47. On May 2, 2019, Aerohive and Party C entered into a non-disclosure agreement, which, among other things, included a customary standstill provision that permitted Party C to make non-public proposals and that automatically terminated if Aerohive entered into a definitive agreement for a change of control transaction.

48. On May 3, 2019, Flynn and Meyercord engaged in a telephonic discussion concerning the plan for the parties' engagement going forward.

49. On May 9, 2019, Flynn and Meyercord telephonically discussed Aerohive's process for evaluating a potential sale of Aerohive. Meyercord indicated that Extreme would be willing to increase its proposal to acquire Aerohive to $4.25 per share in cash and, in response, Flynn said that the Board was anticipating a price closer to $4.80 per share in cash.

50. On May 10, 2019, Ritchie and Amrod held a telephonic discussion with Thomas and Bob Gault, Extreme's Chief Revenue and Services Officer, during which the parties discussed Aerohive's business and other related matters.

51. On May 10, 2019, Extreme delivered to Aerohive a written non-binding indication of interest contemplating that Extreme would acquire Aerohive for $4.25 per share in cash.

52. Over the next several weeks, Aerohive and Extreme exchanged information.

53. On May 13, 2019, a representative of Evercore and a representative of Extreme engaged in telephonic discussion regarding the discussions between Aerohive and Extreme and indicated that Aerohive expected to complete its process within one or two more weeks.

54. On May 16, 2019, a representative of Party D, which did not engage in any substantive discussions regarding a potential acquisition of Aerohive and did not enter into a non-disclosure agreement, emailed representatives of Evercore indicating that it was no longer interested in pursuing a potential acquisition of Aerohive.

55. Also on May 13, 2019, the Special Transactions Committee held a meeting which was also attended by Rulon-Miller and Flynn. The Special Transactions Committee discussed, *inter alia*, Aerohive's ongoing business and existing strategic partners and how both might be affected by pursuing a potential strategic transaction with Extreme, Party B, or another third party.

56. On May 20, 2019, Flynn and Meyercord engaged in a telephonic discussion about, *inter alia*, Extreme and Aerohive's process for evaluating a potential sale of Aerohive.

57. On May 21, 2019, Aerohive and Party B entered into a letter agreement extending to April 1, 2020 the terms of a previously executed non-disclosure agreement. That same day, Aerohive's and Party B's managements held an in-person due diligence meeting.

58. On May 22, 2019, a representative of Party B and representatives of Evercore held a telephonic discussion, during which the representative of Party B communicated an oral indication of interest between $3.95 and $4.10 per share in cash.

59. On May 24, 2019, representatives of Party C indicated to representatives of Evercore that it was no longer willing to proceed towards a potential acquisition of Aerohive considering Aerohive's then-current trading levels and the overall transaction timing.

60. On May 24, 2019, a representative of Evercore and a representative of Extreme held a telephonic discussion during which the Evercore representative, at the direction of the Special Transactions Committee, stated that Extreme's proposal to acquire Aerohive for $4.25 per share in cash was insufficient and made a counter-proposal of $4.80 per share in cash.

61. On May 25, 2019, a representative of Extreme sent an email to representatives of Evercore stating, among other things, that Extreme would increase its proposal to acquire Aerohive to $4.30 per share in cash and requesting that the parties enter exclusive discussions immediately.

62. On May 28, 2019, Party B delivered a written non-binding indication of interest contemplating that Party B would acquire Aerohive at a price per share in cash ranging between $4.00 and $4.30, not subject to any financing condition, and attached a form exclusivity agreement.

63. On May 28, 2019, the Board met, during which, among other things, Flynn and representatives of Evercore summarized the recent proposals from, and gave an update on the discussions with, Extreme and Party B. Representatives of Evercore also confirmed that it had completed its strategic outreach and no other third party continued to express interest in a potential strategic transaction involving Aerohive. The Board then discussed the indications of interest. At the Board's request, representatives of Evercore also gave a presentation concerning Evercore's updated preliminary valuation analysis of Aerohive. The Board directed Evercore and members of Aerohive's executive management team to continue to negotiate with Extreme as well as Party B for the highest price reasonably attainable.

64. On May 28, 2019, a representative of Evercore called a representative of Extreme and, at the direction of the Board and after consulting with members of Aerohive's executive management, proposed that Extreme acquire Aerohive for $4.70 per share in cash and indicated that, assuming such terms were acceptable to Extreme, Aerohive would be willing to enter into an exclusivity agreement with Extreme on terms that would be reflected in a revised draft exclusivity agreement. Following such call, the representative of Evercore sent the representative of Extreme a revised draft exclusivity agreement.

65. On May 29, 2019, a representative of Evercore and a representative of Extreme held a telephonic discussion during which the representative of Extreme indicated that Extreme would be willing to increase its proposal to acquire Aerohive to $4.40 per share in cash.

66. On May 29, 2019, at the direction of the Special Transactions Committee and after consulting with members of Aerohive's management, a representative of Evercore called a representative of Extreme and made a counterproposal of $4.55 per share in cash. Also on May 29, 2019, a representative of Evercore sent a representative of Extreme a revised draft of the exclusivity agreement.

67. On May 29, 2019, representatives of Evercore and a representative of Party B held a telephonic discussion during which the representative of Party B indicated that Party B would be able to proceed in discussions regarding an acquisition of Aerohive at $4.30 per share in cash, the top end of its previously communicated range.

68. On May 30, 2019, a representative of Evercore and a representative of Extreme held a telephonic discussion during which the representative of Extreme stated that Extreme would deliver a written non-binding indication of interest contemplating that Extreme would acquire Aerohive for $4.45 per share in cash, which would be Extreme's "best and final" offer, and would require that Aerohive enter into an exclusivity agreement with Extreme.

69. Thereafter on May 30, 2019, a representative of Evercore and a representative of Party B held a telephonic discussion during which the representative of Evercore indicated that Party B would need to enhance its proposal in order to present a compelling offer to Aerohive and, in response, the representative of Party B indicated that Party B would not be willing to increase its proposal.

70. On May 30, 2019 Flynn updated the Board on recent communications with Extreme as well as Party B. The Board then adopted resolutions, among other things, approving a form of exclusivity agreement with Extreme and authorizing the officers of Aerohive to enter into such exclusivity agreement, subject to Aerohive's receipt of a written non-binding indication of interest to acquire Aerohive for $4.45 per share in cash.

71. On May 30, 2019, Extreme delivered a written non-binding indication of interest stating Extreme's proposal to acquire Aerohive for $4.45 per share in cash, not subject to any financing condition, and a proposed exclusivity agreement, which contemplated that the parties would enter into exclusive discussions until June 30, 2019.

72. On May 31, 2019, Aerohive executed and delivered the exclusivity agreement, which set forth certain terms on which Extreme and Aerohive would continue negotiations.

73. From June 1, 2019 until June 26, 2019, Aerohive and Extreme, and their counsel and advisors, engaged due diligence.

74. On June 25, 2019, Aerohive hit a 52-week low of $3.12 per share.

75. On June 26, 2019, the Board met and resolved to enter into the Agreement based upon, *inter alia*, Evercore's oral opinion to the Board, subsequently confirmed in writing.

76. The Agreement contains: a "no solicitation" provision that forbids the Individual Defendants from soliciting, communicating, and negotiating with potential buyers; requires Extreme to be advised promptly of any unsolicited proposals or inquiries about a superior proposal; and, only allows the Board to change its recommendation in limited circumstances where Extreme has refused to match a superior proposal.

B. The Proposed Transaction

77. Before the opening of markets in the United States on June 26, 2019, Aerohive and Extreme issued a joint press release announcing the Proposed Transaction. The press release stated, in part:

> **SAN JOSE, Calif., and Milpitas, Calif., June 26, 2019** — Extreme Networks, Inc. (Nasdaq: EXTR), a software-driven networking company, and Aerohive Networks (NYSE: HIVE), a pioneer in cloud-managed networking, today announced they have entered into a definitive agreement under which Extreme will acquire all of the outstanding shares of common stock of Aerohive at a price of $4.45 per share in cash, representing an aggregate purchase price of approximately $272 million. Accounting for Aerohive's net cash balance of $62 million at the end of March, the deal is equivalent to an enterprise value of $210 million. ***The acquisition of Aerohive will add critical cloud management and edge capabilities to Extreme's portfolio of end-to-end, edge to cloud networking solutions. It will provide a strong subscription revenue stream and strengthen Extreme's position in wireless LAN at a critical technology transition to Wi-Fi 6. Extreme expects the acquisition to be accretive to non-GAAP earnings per share starting in fiscal year 2020.***
>
> Aerohive is a leader in cloud management, AI and machine learning. It was among the first companies to offer controller-less Wi-Fi and cloud network management, including cloud-managed Wi-Fi and network access control (NAC), and today is the second leading provider of Cloud Managed Wireless LAN Services[1]. It recently delivered the industry's first trio of Wi-Fi 6 access points, along with

the industry's first pluggable access point. Aerohive has a global footprint of 30,000 cloud wireless LAN customers in verticals including education, healthcare, state and local government, and retail. This acquisition will bring new automation and intelligence capabilities to Extreme's Elements portfolio. It will expand Extreme's technology leadership in Wi-Fi and NAC, adding cloud-managed Wi-Fi and NAC solutions to complement its on-premises Wi-Fi and NAC technology, driving Extreme deeper into key verticals and presenting numerous opportunities for cross-sell and up-sell within the combined portfolios.

Extreme expects to gain new SD-WAN capabilities, in all expanding its total addressable market by a total of $1B in a market with a CAGR of 19% 2019 through 2022.[2] At a time when many of Extreme's customers and partners are turning toward as-a-service/subscription models to reduce costs and gain efficiencies, Aerohive will expand Extreme's mix of revenues to approximately 30% from subscription recurring revenue.

With Aerohive, Extreme will offer customers and partners more choices for cloud and on-premises wired and wireless technology, and an industry-leading solution for cloud-based network management – all from a single vendor and backed by its award-winning, insourced services and support team. Post-acquisition, customers and partners of Extreme and Aerohive will be able to mix and match a broader array of software, hardware, and services Elements to create networks that support their unique needs and that may be managed and automated from end-to-end – from the enterprise edge to the cloud – to advance their digital transformation efforts.

1 Cloud-Managed Networking Market Report – 2019, June 6, 2019, IHS Markit
2 Worldwide SD-WAN Infrastructure Forecast, 2018–2022, August 2018, IDC

Terms of the Agreement

The acquisition is structured as an all-cash tender offer for all outstanding common stock of Aerohive, followed by a merger of a wholly-owned subsidiary of Extreme with and into Aerohive. Under the terms of the merger agreement, Extreme will commence a tender offer to acquire all of the outstanding shares of Aerohive's common stock at a price of $4.45 per share in cash, representing an aggregate purchase price of $272 million, plus the assumption of unvested options and restricted stock units. The Board of Directors of both Extreme and Aerohive have unanimously approved the terms of the merger agreement, and the Board of Directors of Aerohive has

resolved to recommend that Aerohive's stockholders accept the offer once it is commenced. The acquisition is not subject to a financing condition and Extreme expects to fund the acquisition from a combination of available cash and committed debt financing. The acquisition is subject to customary conditions, including the tender of the majority of the outstanding shares of Aerohive's common stock and regulatory approvals in the U.S. and Germany. The acquisition is expected to close during Extreme's first quarter of the fiscal year 2020.

Latham & Watkins LLP acted as legal advisor to Extreme. Evercore Group LLC acted as financial advisor to Aerohive and Wilson Sonsini Goodrich & Rosati, Professional Corporation acted as legal advisor to Aerohive.

Executive Perspectives

Ed Meyercord, President and CEO, Extreme Networks

"The acquisition of Aerohive establishes our leadership in cloud, AI, and ML, adding a proven and mature cloud services platform and subscription service model for Extreme's customers and partners. Extreme continues to invest in software and AI to expand the automation capabilities across our portfolio of edge-to-cloud networking solutions. The ability to improve user experiences, lower operating expenses, and deliver cloud-managed networks is key to our strategy."

"After scaling Extreme's business to $1B in revenue and expanding our portfolio to include end-to-end enterprise networking solutions, we are now taking the next step to transform our business to add sustainable, subscription-oriented cloud-based solutions that will enable us to drive recurring revenue and improved cash flow generation. Extreme expects this deal to be accretive to our FY20 outlook as it accelerates our plans to achieve over 60% gross margin and 15% operating income on an exit run rate."

"As we close out our fiscal fourth quarter 2019, we are confident in our guidance and continue to see strong wins in the market across our product portfolio, in cross-selling opportunities and targeted industry verticals in all of our geographies, along with improved linearity. Beginning in our fiscal fourth quarter, Extreme will incur charges in the range of $14 to $16 million through the second quarter of fiscal 2020, inclusive, as we take steps to bring down our cost structure, demonstrating our commitment to achieving the gross and operating margin targets we have laid out. This will lead to annualized cost savings in the range of $24 to $27 million."

David Flynn, President and CEO of Aerohive

"This acquisition by Extreme is a major milestone for Aerohive. The role that cloud-managed technology plays in modern enterprises is impossible to overstate – it is where digital transformation is won and lost. Aerohive's expertise and excellence in cloud management and edge technology, combined with Extreme's extensive solutions portfolio and continued investment in software and AI for automation, gives our customers the most advanced digital experiences in the market. Together we will push networking into a new era – making infrastructure smarter, more autonomous, and the driver of business value."

Conference Call:

Please join Extreme Networks' management and Aerohive Networks' management on a conference call at 8:30 a.m. Eastern (5:30 a.m. Pacific) today to discuss the announcement. The conference call will be available to the public through a live audio web broadcast via the internet at http://investor.extremenetworks.com. The conference call may also be heard by dialing 1 (877) 303-9826 or 1 (224) 357-2194 from outside the U.S. Supplemental information to be discussed during the conference call will be posted at http://investor.extremenetworks.com. The encore recording will be available through July 3, 2019 on the investor section of the Extreme website, or it can be accessed by dialing 1 (855) 859-2056 or 1 (404) 537-3406from outside the U.S. using conference ID # 3494282.

About Extreme Networks

Extreme Networks, Inc. (EXTR) delivers software-driven solutions from the enterprise edge to the cloud that are agile, adaptive, and secure to enable digital transformation. Our 100% in-sourced services and support are number one in the industry. Even with 30,000 customers globally, including half of the Fortune 50 and some of the world's leading names in business, hospitality, retail, transportation and logistics, education, government, healthcare and manufacturing, we remain nimble and responsive to ensure customer and partner success. We call this Customer-Driven Networking™. Founded in 1996, Extreme is headquartered in San Jose, California. For more information, visit Extreme's website or call 1-888-257-3000.

About Aerohive Networks

Aerohive uses Cloud Management, Machine Learning, and Artificial Intelligence to radically simplify and secure the Access Network. Our Cloud-Managed Wireless, Switching, Routing, and Security technologies provide unrivalled flexibility in deployment, management, and licensing. Credited with pioneering Controller-

less Wi-Fi and Cloud Management, Aerohive delivers continuous innovation at Cloud-speed that constantly challenges the industry norm, allowing customers to rethink what's possible. Our innovations and global cloud footprint radically simplify Access Network operation for 30,000+ customers and 10+ million daily users. See how at www.aerohive.com/customers.

Aerohive was founded in 2006 and is headquartered in Milpitas, CA. For more information, please visit www.aerohive.com, call us at 408-510-6100, follow us on Twitter @Aerohive, subscribe to our blog, or become a fan on our Facebook page.

Additional Information and Where to Find It

The description contained herein is for informational purposes only and is not a recommendation, an offer to buy or the solicitation of an offer to sell any shares of Aerohive's common stock. The tender offer for the outstanding shares of Aerohive's common stock described in this report has not commenced. At the time the tender offer is commenced, Extreme will file or cause to be filed a Tender Offer Statement on Schedule TO with the SEC and Aerohive will file a Solicitation/Recommendation Statement on Schedule 14D-9 with the SEC related to the tender offer. The Tender Offer Statement (including an Offer to Purchase, a related Letter of Transmittal and other tender offer documents) and the Solicitation/Recommendation Statement will contain important information that should be read carefully before any decision is made with respect to the tender offer. Those materials will be made available to Aerohive's stockholders at no expense to them. In addition, all of those materials (and any other documents filed with the SEC) will be available at no charge on the SEC's website at www.sec.gov. [emphasis added]

78. During the conference call identified in the joint press release, Christian David Schwab, a senior research analyst at Craig-Hallum Capital Group LLC, noted that he thinks "this is a wonderful deal for Extreme" and Cynthia L. Paul Cynthia L. Paul, founder & CIO of Lynrock Lake LP partook in the following colloquy:

I have actually, in 25 years of being a public investor, I've never asked a question on a call before. So look, I think your companies belong together. I'm really scratching my head at the valuation. ***I feel like Extreme is stealing Aerohive here. I mean, I don't understand why not print another good quarter. The stock was just at $5 a few months ago. You have a strong second half. You said you're going to make the quarter. Why not let the stock just get above these levels naturally on its own?*** And then maybe you can

think about M&A, but you have a good organic growth story here. So I'd like to understand what the process was and why the Board is selling out here at frankly way too lower valuation you're letting Ed steal the company from you?

EDWARD B. MEYERCORD: Cynthia, it's great to have you on the call. I mean, I think Dave, I think we've kind of pushed this over, but Cynthia, I will comment that what you're talking about as a 40% premium to where the stock has been trading, which is a pretty full premium. And from our standpoint, what I would say is that, it really gets back down to scale. And that was the conversation that I think we have with Dave and the Board about what is that — when you're up, when you're competing against the kinds of players that we're competing against on a global scale, you need to have scale. And so that was a big part of it as we're all kind of transitioning to WiFi 6. And from a 90 — if you look at it from a 90-day perspective, there's still a decent — there's still a decent premium that were banked with the asset. Dave, do you want to comment?

DAVID K. FLYNN: Yes. Cynthia, obviously, we see a good opportunity in the combination with Extreme. And I'm aware the stock was, was at higher price before we had disappointing Q1, but we did have a disappointing Q1 where we were meaning to rebuild off of that. And despite the fact, we did indicate we have a strong E-Rate season. That was public knowledge and presumably factored into the share price. So you're going to rerun a process, given that purchased by Extreme and did market checks, we and the Board deemed that this was an attractive path for the company relative to where the stock was trading, and we're excited about the combination with the 2 companies.

CYNTHIA L. PAUL: ***So the market's inability to value your stock appropriately means that long-term shareholders don't get the right value, I mean, looking at where MIS just sold, I mean, I'm looking at where other assets have sold, it doesn't seem unreasonable to have gotten something more like 2x sales. I mean, we can take this conversation off-line. I'm a little confused at the decision here.*** [emphasis added]

C. Insiders' Interests in the Proposed Transaction

79. Aerohive insiders have secured unique benefits for themselves from the Proposed Transaction not available to Plaintiff and the public stockholders of Aerohive.

80. Company insiders stand to reap a substantial financial windfall for securing the deal with Extreme. Pursuant to the Merger Agreement, all unvested equity-based awards held by Company executives and directors will be converted into the right to receive cash payments. The following tables set forth the cash payments Aerohive's executive officers and directors stand to receive in connection with their vested and unvested equity awards:

Name	Number of Shares Owned(1)	Cash Consideration for Owned Shares ($)(2)
Non-Employee Directors		
Ingrid Burton	0	0
Remo Canessa	124,195	552,669
Curtis E. Garner	82,615	367,637
Frank J. Marshall(3)	380,579	1,693,577
Conway "Todd" Rulon-Miller	179,961	800,826
John Gordon Payne	105,910	471,300
Executive Officers		
David K. Flynn*(4)	1,632,966	7,266,699
John Ritchie	287,380	1,278,841
Alan Cuellar Amrod	58,036	258,260

* Mr. Flynn is both a director and an executive officer.
(1) Based on the number of Shares owned as of July 8, 2019.
(2) Calculated based on (i) the number of owned Shares, multiplied by (ii) $4.45.
(3) Includes 112,384 Shares held by Big Basin Partners LP, of which Mr. Marshall serves as a General Partner.
(4) Includes 1,345,427 Shares held by the David and Pamela Flynn co-ttees Flynn Living Trust dtd 07/22/99.

81. Moreover, if they are terminated in connection with the merger, Aerohive's named executive officers will receive substantial severance benefits, including cash payments, in the form of golden parachute compensation, as set forth in the following table:

Name	Salary Severance ($)(1)	Bonus Severance ($)(2)	Prorated Bonus Severance ($)(3)	Other Benefits ($)(4)	Total ($)
David K. Flynn	380,000	376,200	228,552	31,387	1,016,138
John Ritchie	365,000	216,700	131,651	31,387	744,738
Alan Cuellar Amrod	365,000	216,700	131,651	22,512	735,864

(1) Represents the lump sum cash amount equal to 12 months of the executive officer's base salary.
(2) Represents the lump sum cash amount equal to 100% of the executive officer's target annual bonus for 2019 (which is the greater of (a) the executive officer's most recent actual annual bonus or (b) the executive officer's then-target annual bonus).
(3) Represents the lump sum cash amount equal to 100% of the executive officer's target annual bonus for 2019 (which is the greater of (a) the executive officer's most recent actual annual bonus or (b) the executive officer's then-target annual bonus), prorated for partial year of service from January 1, 2019, through August 9, 2019, which for purposes of this table assumes that the executive officer's employment terminates on such date.
(4) Represents the estimated value of reimbursement of continued health coverage under COBRA for a period of 12 months.

II. MATERIAL MISSTATEMENTS OR OMISSIONS

A. The Recommendation Statement

82. The Recommendation Statement filed with the SEC and disseminated to Aerohive's stockholders was materially incomplete and misleading. As a result, the Company's stockholders cannot make an informed decision whether to tender their shares in connection with the Offer or seek appraisal.

83. Specifically, as set forth below, the Recommendation Statement fails to provide Company stockholders with material information or provides them with materially misleading information concerning: (a) Aerohive's Financial Projections, including the projections relied

upon by Evercore, its financial advisor; (b) Evercore's Analyses and Fairness Opinion; and (c) the Process Leading up to the Proposed Transaction. Accordingly, Aerohive stockholders are being asked to make a decision whether to tender their shares in connection with the Offer or seek appraisal without all material information at their disposal.

1. Aerohive's Financial Projections

84. The Recommendation Statement is materially deficient because it fails to disclose material information relating to the Company's intrinsic value and prospects going forward.

85. The Recommendation Statement fails to disclose material information relating to the Company's projections provided by Aerohive's management and relied upon by Evercore for its financial analyses, discussed below.

86. The Recommendation Statement discloses (at page 27) that:

> In response to the Company's operating results for 1Q19, and in connection with and in light of evolving business conditions and other circumstances, Aerohive's management prepared a revised operating plan for calendar year 2019 in conjunction with financial projections for calendar years 2019 through 2021, which were, in connection with the financial analysis conducted by Evercore (see the discussion under the caption "*—Opinion of Aerohive's Financial Advisor*" below), later extrapolated out to 2023 by Aerohive's management (such financial projections and extensions, collectively, the "**Projections**"). The Projections were provided to the Board and Evercore, and certain portions of the Projections were provided to Extreme, during the evaluation of the Transactions.

87. The "Projected Financial Information" disclosed by the Recommendation Statement, fails to disclose all line items used to calculate each of the metrics not presented in accordance with generally accepted accounting principles ("GAAP"). The disclosure of projected financial information is material because it provides stockholders with a basis to project the future financial performance of a company, and allows stockholders to better understand the financial analyses performed by the company's financial advisor in support of its fairness opinion.

88. The Recommendation Statement further recognizes that it "contains non-GAAP financial measures including EBIT, EBITDA (as defined below) and Unlevered Free Cash Flow…. A material limitation associated with the use of the above non-GAAP financial measures

is that they have no standardized measurement prescribed by GAAP and may not be comparable with similar non-GAAP financial measures used by other companies. Non-GAAP financial measures should not be considered in isolation from, or as a substitute for, financial information presented in accordance with GAAP."

89. Evercore's analysis also states, in part, that "it considered estimated earnings before interest, tax, depreciation, and amortization ("**EBITDA**"), for calendar years 2019 and 2020" and that "[t]he EBITDA for all of the selected public companies generally excludes the impact of stock-based compensation expense, amortization of acquired finite-lived intangibles and other non-recurring expenses[.]"

90. The Recommendation Statement fails to provide line item projections for the metrics used to calculate these non-GAAP measures or otherwise reconcile the non-GAAP projections to GAAP. The omission of the line item projections renders the non-GAAP projections included in the Recommendation Statement materially misleading and incomplete.

91. The disclosure of projected financial information is material because it provides stockholders with a basis to project the future financial performance of a company and allows stockholders to better understand the financial analyses performed by the company's financial advisor in support of its fairness opinion.

2. Evercore's Analyses and Fairness Opinion

92. With respect to Evercore's *Discounted Cash Flow Analysis*, the Recommendation Statement says that "Evercore estimated a terminal value for Aerohive by applying a perpetuity growth rate of 2.5% to 4.5% to the estimated fiscal year 2023 unlevered free cash flow, adjusted to assume an equivalent level of projected capital expenditure and projected depreciation and amortization." The recommendation statement omits Evercore's basis for using an assumed perpetuity growth rate of 2.5% to 4.5% in calculating a range of terminal values for Aerohive. Evercore's *Discounted Cash Flow Analysis* also fails to disclose the terminal value for Aerohive and Aerohive's net debt.

93. With respect to Evercore's *Selected Public Companies Trading Multiples* analysis, the Recommendation Statement fails to disclose (i) the basis or parameters used, if any, for the determination that (a) the companies selected were similar for purposes of the analysis and (b) the financial information of the selected companies were similar for purposes of the analysis; (ii) the parameters for determining the market size and product profile for the selected companies; and (iii) the inputs and specific information used in calculating the specific Enterprise Value Multiple of EBITDA for each of the selected companies.

94. With respect to Evercore's *Precedent Transaction Analysis*, the Recommendation Statement fails to explain why 23 (40%) of 58 precedent transactions were selected and included when there was no publicly available data that Evercore was aware of, how such transactions could provide any precedent absent any financial data, and whether and how the inclusion of such data affected calculation of any percentiles or averages.

95. With respect to Evercore's *Premium Paid Analysis*, the Solicitation Statement fails to disclose the transactions observed by Evercore and the premiums paid therein.

96. With respect to the Evercore *Research Analyst Price Targets* factor, the Recommendation Statement fails to disclose which public equity research analysts were reviewed and each of their specific price targets. This is particularly important where, as here, Evercore disclosed that it "reviewed publicly available share price targets of research analysts' estimates known to Evercore as of June 25, 2019."

97. Additionally, Evercore's *Discounted Cash Flow Analysis* "was … reduced by the amount of Aerohive's net debt (calculated as debt less cash and cash equivalents and short-term investments) as of June 21, 2019," and its *Precedent Transaction Analysis* states that it calculated "by reducing the range of implied enterprise values by the amount of Aerohive's net debt (calculated as debt less cash and cash equivalents and short-term investments) as of June 21, 2019." Aerohive's net debt as of June 21, 2019 is undisclosed. However, as of March 31, 2019, Aerohive had $20 million outstanding under a revolving credit facility and no other debt, and as of the Offer, Aerohive had a net cash balance of approximately $62 million. The Recommendation Statement does not disclose how or why resulting values were reduced by debt given the Company's large cash balance, or whether or to what extent the Company's cash balance factored into the various analyses by Evercore.

98. When a banker's endorsement of a transaction's fairness is touted to shareholders in seeking their approval of a proposed transaction, the valuation methods used to arrive at that opinion as well as the key inputs and range of ultimate values generated by those analyses must also be fairly disclosed.

3. The Process Leading up to the Proposed Transaction

99. The Recommendation Statement provides that "On May 21, 2019, Aerohive and Party B entered into a letter agreement extending to April 1, 2020 the terms of a previously executed non-disclosure agreement."

100. The Recommendation Statement says that on August 8, 2018, Flynn was introduced to Meyercord, and that the two met to discuss a strategic transaction on September 18, 2019. The Recommendation Statement does not disclose if or when Flynn was authorized by the Board to engage in that conversation.

101. Unlike the disclosure with respect to the "customary non-disclosure agreement" with Party C that is disclosed to have "automatically terminated" when Aerohive entered into a definitive agreement for a change of control transaction, there is no specification as to the previously executed non-disclosure agreement with Party B.

102. The Recommendation Statement thus fails to disclose whether the agreements with Party B contain don't-ask-don't-waive ("DADW") standstill provisions that are currently precluding Party B, which was the only other significant bidder for the Company, from making a topping bid for the Company.

103. The Recommendation Statement discloses that Party C said "indicated … that it was no longer willing to proceed towards a potential acquisition of Aerohive in light of [*inter* alia] the overall transaction timing." The Recommendation Statement does not disclose any reason that Aerohive was in a rush to sell, or why timing would be an immediate concern to it.

104. The Recommendation Statement discloses that on May 1, 2019, Evercore presented a preliminary valuation analysis of Aerohive to the Special Transaction Committee and on May 28, 2019, Evercore presented the Board with an updated preliminary valuation analysis of Aerohive. The Recommendation Statement omits, however, the valuations arrived at by Evercore and the reason that Evercore's analysis was updated.

* * *

105. The omission of the foregoing information renders the "Background"; "*Reasons for the Board's Recommendation*", "***Projected Financial Information"*** and "***Opinion of Aerohive's Financial Advisor***" sections of the Recommendation Statement materially incomplete, in contravention of the Exchange Act.

PLAINTIFF'S CLASS ACTION ALLEGATIONS

106. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(2) and/or (b)(3) on behalf of a class consisting of all public holders of the Company's common stock (the "Class"). Excluded from the Class are Defendants, Extreme, Purchaser, Evercore and any person, firm, trust, corporation, or other entity related to or affiliated with any defendant or other excluded entity.

107. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes that there are thousands of members in the proposed Class. As of July 8, 2019, there were 57,385,708 Shares of Aerohive Stock issued and outstanding.

108. Record owners and other members of the Class may be identified from records maintained by Aerohive and/or its transfer agent(s) and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

109. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is complained of herein.

110. Plaintiff will fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in class and securities litigation.

111. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

a. Whether Defendants have violated Section 14(d)(4) of the Exchange Act and Rule 14d-9 promulgated thereunder;

b. Whether the Individual Defendants have violated Section 14(e) of the Exchange Act;

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

d. Whether Plaintiff and the other members of the Class would suffer irreparable injury were the Proposed Transaction consummated.

112. Defendants have acted or refused to act on grounds generally applicable to the entire class, making final injunctive relief appropriate.

113. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

COUNT I

AGAINST ALL DEFENDANTS
FOR VIOLATIONS OF SECTION 14(d) and SEC RULE 14d-9

114. Plaintiff repeats and realleges each and every allegation above as if fully set forth herein.

115. Defendants have caused the Recommendation Statement to be issued with the intention of soliciting Aerohive stockholders to tender their shares in the Offer.

116. Section 14(d)(4) of the Exchange Act and SEC Rule 14d-9 promulgated thereunder require full and complete disclosure of all material information in connection with tender offers.

117. The Recommendation Statement violates Section 14(d)(4) and Rule 14d-9 because it omits material facts, including those set forth above, which omission renders the Recommendation Statement materially false and/or misleading.

118. The misrepresentations and omissions in the Recommendation Statement are material to Plaintiff and the other members of the Class, who will be deprived of their right to make an informed decision whether to tender their shares or seek appraisal if such misrepresentations and omissions are not corrected prior to the expiration of the Offer. Plaintiff and the other members of the Class have no adequate remedy at law. Only through the exercise of this Court's equitable powers can Plaintiff and the Class be fully protected from the immediate and irreparable injury that Defendants' actions threaten to inflict.

COUNT II

AGAINST ALL DEFENDANTS
FOR VIOLATIONS OF SECTION 14(e)

119. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein.

120. Defendants violated Section 14(e) of the Exchange Act by issuing the Recommendation Statement in which they made untrue statements of material facts or failed to state all material facts necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading, or engaged in deceptive or manipulative acts or practices, in connection with the Offer.

121. Defendants knew that Plaintiff and the other members of the Class would rely upon the Recommendation Statement in determining whether to tender their shares pursuant to the Offer or seek appraisal.

122. As a direct and proximate result of these Defendants' unlawful course of conduct in violation of Section 14(e) of the Exchange Act, absent injunctive relief from the Court, Plaintiff and the other members of the Class have sustained and will continue to sustain irreparable injury by being denied the opportunity to make an informed decision in deciding whether or not to tender their shares or seek appraisal.

COUNT III

AGAINST THE INDIVIDUAL DEFENDANTS
FOR VIOLATIONS OF SECTION 20(a)

123. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein.

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

125. The Individual Defendants were provided with or had unlimited access to copies of the Recommendation Statement and other statements alleged by Plaintiff to be misleading prior to or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

126. In particular, each of the Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company, and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same. The Recommendation Statement at issue contains the unanimous recommendation of each of the Individual Defendants to approve the Proposed Transaction. They were, thus, directly involved in the making of this document.

127. In addition, as the Recommendation Statement sets forth at length, and as described herein, the Individual Defendants were each involved in negotiating, reviewing, and approving the Proposed Transaction. The Recommendation Statement purports to describe the various issues and information that they reviewed and considered — descriptions which had input from the Individual Defendants.

128. By virtue of their positions as controlling persons, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and other members of the Class suffered damages in connection with their purchases of the Company's securities during the Class Period.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

(a) Determining that this action is a proper class action, designating Plaintiff as class representative under Rule 23 of the Federal Rules of Civil Procedure and Plaintiff's counsel as Class Counsel;

(b) Preliminarily and permanently enjoining Defendants and all persons acting in concert with them from proceeding with, consummating, or closing the Proposed Transaction;

(c) In the event Defendants consummate the Proposed Transaction, rescinding it and setting it aside or awarding rescissory damages to Plaintiff and the Class;

(d) Awarding compensatory, including appraisal damages in favor of Plaintiff and the other Class members against all Defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

(e) Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

(f) Awarding such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

ABRAHAM, FRUCHTER & TWERSKY, LLP

Dated: July 17, 2019

By: /s/ *Takeo A. Kellar*

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Section 3: EX-99.(A)(5)(X) (EX-99.(A)(5)(X))

Exhibit (a)(5)(X)

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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

SANDEEP NAIK, Plaintiff, v. AEROHIVE NETWORKS, INC., INGRID BURTON, REMO CANESSA, DAVID K. FLYNN, CURTIS GARNER, FRANK MARSHALL, JOHN GORDON PAYNE, and CONWAY RULON-MILLER, Defendants.	Case No. **COMPLAINT FOR VIOLATIONS OF THE SECURITIES EXCHANGE ACT OF 1934** **DEMAND FOR JURY TRIAL**

Plaintiff Sandeep Naik ("Plaintiff"), by and through his undersigned attorneys, brings this action against Aerohive Networks, Inc. ("Aerohive" or the "Company"), Ingrid Burton, Remo Canessa, David K. Flynn, Curt Garner, Frank Marshall, John Gordon Payne, and Conway Rulon-Miller, the members of Aerohive's board of directors (collectively referred to as the "Board" or the "Individual Defendants," and together with Aerohive, "Defendants") for violations of Sections 14(e) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. §§ 78n(e), 78t(a), and SEC Rule 14d-9, 17 C.F.R. 240.14d-9, in connection with a tender offer by Extreme Networks, Inc. ("Extreme"), through its subsidiary Clover Merger Sub, Inc. ("Merger Sub"),

to acquire all outstanding shares of Aerohive common stock (the "Tender Offer"). Plaintiff alleges the following based upon personal knowledge as to himself, and upon information and belief, including the investigation of his counsel, as to all other matters.

NATURE OF THE ACTION

1. On June 26, 2019, Aerohive entered into an Agreement and Plan of Merger ("Merger Agreement") with Extreme and Merger Sub, pursuant to which Merger Sub would initiate a tender offer to acquire all outstanding stock of Aerohive.

2. To effect the Proposed Transaction, Merger Sub commenced the Tender Offer on July 12, 2019 to purchase each share of Aerohive common stock for $4.45 in cash (the "Merger Consideration"). The Tender Offer is set to expire at midnight Eastern Time, on August 8, 2019 (the "Expiration Date").

3. In connection with the commencement of the Exchange Offer on July 12, 2019, the Company filed a Solicitation/Recommendation Statement on Schedule 14D-9 (the "Recommendation Statement") with the United States Securities and Exchange Commission (the "SEC"). The Recommendation Statement is materially deficient and misleading because, *inter alia*, it fails to disclose material information about the financial analysis conducted by the Board's financial advisor, Evercore Group L.L.C. ("Evercore") in preparing its fairness opinion, and the process leading up to entry into the Merger Agreement. Without all material information, Aerohive stockholders are materially mislead regarding their decisions to exchange their shares. The failure to adequately disclose such material information constitutes violations of §§ 14(e) and 20(a) of the Exchange Act

4. For these reasons and as set forth in detail herein, the Individual Defendants have violated federal securities laws. Accordingly, Plaintiff seeks to enjoin the Proposed Transaction or, in the event the Proposed Transaction is consummated, recover damages resulting from the Individual Defendants' violations of these laws. Judicial intervention is warranted here to rectify existing and future irreparable harm to Plaintiff and other Aerohive stockholders.

PARTIES

5. Plaintiff is, and at all relevant times has been, a stockholder of Aerohive.

6. Defendant Aerohive is a company organized under the laws of the state of Delaware. Aerohive maintains its principal executive offices at 1011 McCarthy Boulevard, Milpitas, California, 95035. Aerohive's common stock is listed for trading on the New York Stock Exchange under the ticker symbol "HIVE."

7. Defendant Ingrid Burton has served as a director of the Company since March 2019.

8. Defendant Remo Canessa has served as a director of the Company since September 2013.

9. Defendant David K. Flynn has served as a director of the Company since July 2006, as its Chief Executive Officer ("CEO") since July 2007, as President since November 2007, and as Chairman of the Board since July 2013.

10. Defendant Curtis E. Garner has served as a director of the Company since June 2015.

11. Defendant Frank J. Marshall has served as a director of the Company since March 2011 and is the Company's lead independent director.

12. Defendant John Gordon Payne has served as a director of the Company since March 2014.

13. Defendant Conway Rulon-Miller has served as a director of the Company since May 2009.

JURISDICTION AND VENUE

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

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

16. Venue is proper in this District under Section 27 of the Exchange Act, 15 U.S.C. § 78aa, as well as under 28 U.S.C. § 1391, because: (i) the conduct at issue took place and had an effect in this District; (ii) Aerohive maintains its principal place of business in this District and each of the Individual Defendants, and Company officers or directors, either resides in this District or has extensive contacts within this District; (iii) a substantial portion of the transactions and wrongs

complained of herein, occurred in this District; (iv) most of the relevant documents pertaining to Plaintiff's claims are stored (electronically and otherwise), and evidence exists, in this District; and (v) Defendants have received substantial compensation in this District by doing business here and engaging in numerous activities that had an effect in this District.

SUBSTANTIVE ALLEGATIONS

Company Background and the Proposed Transaction

17. Aerohive is a technology company that uses cloud management, machine learning, and artificial intelligence to cloud-based networking and connectivity.

18. On June 26, 2019, Aerohive and Extreme announced the Proposed Transaction through a press release, which states in relevant part:

SAN JOSE, Calif., and Milpitas, Calif. — June 26, 2019 — Extreme Networks, Inc. (Nasdaq: EXTR), a software-driven networking company, and Aerohive Networks (NYSE: HIVE), a pioneer in cloud-managed networking, today announced they have entered into a definitive agreement under which Extreme will acquire all of the outstanding shares of common stock of Aerohive at a price of $4.45 per share in cash, representing an aggregate purchase price of approximately $272 million. Accounting for Aerohive's net cash balance of $62 million at the end of March, the deal is equivalent to an enterprise value of $210 million. The acquisition of Aerohive will add critical cloud management and edge capabilities to Extreme's portfolio of end-to- end, edge to cloud networking solutions. It will provide a strong subscription revenue stream and strengthen Extreme's position in wireless LAN at a critical technology transition to Wi-Fi 6. Extreme expects the acquisition to be accretive to non-GAAP earnings per share starting in fiscal year 2020.

Aerohive is a leader in cloud management, AI and machine learning. It was among the first companies to offer controller-less Wi-Fi and cloud network management, including cloud-managed Wi-Fi and network access control (NAC), and today is the second leading provider of Cloud Managed Wireless LAN Services. It recently delivered the industry's first trio of Wi-Fi 6 access points, along with the industry's first pluggable access point. Aerohive has a global footprint of 30,000 cloud wireless LAN customers in verticals including education, healthcare, state and local government, and retail. This acquisition will bring new automation and intelligence capabilities to Extreme's Elements portfolio. It will expand Extreme's technology leadership in Wi-Fi and NAC, adding cloud-managed Wi-Fi and NAC solutions to complement its on-premises Wi-Fi and NAC technology, driving Extreme deeper into key verticals and presenting numerous opportunities for cross-sell and up-sell within the combined portfolios.

Extreme expects to gain new SD-WAN capabilities, in all expanding its total addressable market by a total of $1B in a market with a CAGR of 19% 2019 through 2022. At a time when many of Extreme's customers and partners are turning toward as- a-service/subscription models to reduce costs and gain efficiencies, Aerohive will expand Extreme's mix of revenues to approximately 30% from subscription recurring revenue.

With Aerohive, Extreme will offer customers and partners more choices for cloud and on-premises wired and wireless technology, and an industry-leading solution for cloud-based network management – all from a single vendor and backed by its award-winning, insourced services and support team. Post-acquisition, customers and partners of Extreme and Aerohive will be able to mix and match a broader array of software, hardware, and services Elements to create networks that support their unique needs and that may be managed and automated from end-to-end – from the enterprise edge to the cloud – to advance their digital transformation efforts.

Terms of the Agreement

The acquisition is structured as an all-cash tender offer for all outstanding common stock of Aerohive, followed by a merger of a wholly-owned subsidiary of Extreme with and into Aerohive. Under the terms of the merger agreement, Extreme will commence a tender offer to acquire all of the outstanding shares of Aerohive's common stock at a price of $4.45 per share in cash, representing an aggregate purchase price of $272 million, plus the assumption of unvested options and restricted stock units. The Board of Directors of both Extreme and Aerohive have unanimously approved the terms of the merger agreement, and the Board of Directors of Aerohive has resolved to recommend that Aerohive's stockholders accept the offer once it is commenced. The acquisition is not subject to a financing condition and Extreme expects to fund the acquisition from a combination of available cash and committed debt financing. The acquisition is subject to customary conditions, including the tender of the majority of the outstanding shares of Aerohive's common stock and regulatory approvals in the U.S. and Germany. The acquisition is expected to close during Extreme's first quarter of the fiscal year 2020.

Latham & Watkins LLP acted as legal advisor to Extreme. Evercore Group LLC acted as financial advisor to Aerohive and Wilson Sonsini Goodrich & Rosati, Professional Corporation acted as legal advisor to Aerohive.

Executive Perspectives

Ed Meyercord, President and CEO, Extreme Networks

"The acquisition of Aerohive establishes our leadership in cloud, AI, and ML, adding a proven and mature cloud services platform and subscription service model for Extreme's customers and partners. Extreme continues to invest in software and AI to expand the automation capabilities across our portfolio of edge-to-cloud networking solutions. The ability to improve user experiences, lower operating expenses, and deliver cloud-managed networks is key to our strategy."

"After scaling Extreme's business to $1B in revenue and expanding our portfolio to include end-to-end enterprise networking solutions, we are now taking the next step to transform our business to add sustainable, subscription-oriented cloud-based solutions that will enable us to drive recurring revenue and improved cash flow generation. Extreme expects this deal to be accretive to our FY20 outlook as it accelerates our plans to achieve over 60% gross margin and 15% operating income on an exit run rate."

"As we close out our fiscal fourth quarter 2019, we are confident in our guidance and continue to see strong wins in the market across our product portfolio, in cross- selling opportunities, and targeted industry verticals in all of our geographies, along with improved linearity. Beginning in our fiscal fourth quarter, Extreme will incur charges in the range of $ 14 to $16 million through the second quarter of fiscal 2020, inclusive, as we take steps to bring down our cost structure, demonstrating our commitment to achieving the gross and operating margin targets we have laid out. This will lead to annualized cost savings in the range of $24 to $27 million."

David Flynn, President and CEO of Aerohive

"This acquisition by Extreme is a major milestone for Aerohive. The role that cloud-managed technology plays in modern enterprises is impossible to overstate – it is where digital transformation is won and lost. Aerohive's expertise and excellence in cloud management and edge technology, combined with Extreme's extensive solutions portfolio and continued investment in software and AI for automation, gives our customers the most advanced digital experiences in the market. Together we will push networking into a new era – making infrastructure smarter, more autonomous, and the driver of business value."

The Recommendation Statement Is Materially Incomplete and Misleading

19. On July 12, 2019, in order to convince Aerohive stockholders to exchange their shares in favor of the Proposed Transaction, Defendants authorized the filing of a materially incomplete and misleading Recommendation Statement containing the recommendation of the Board. Defendants were obligated to carefully review the Recommendation Statement before it was filed with the SEC and disseminated to the Company's stockholders to ensure that it did not contain any material misrepresentations or omissions. However, the Recommendation Statement misrepresents and/or omits material information that is necessary for the Company's stockholders to make an informed decision concerning whether to vote in favor of the Proposed Transaction, in violation of Sections 14(e) and 20(a) of the Exchange Act.

Evercore's Valuation Analyses and Fairness Opinion

20. The Recommendation Statement describes Evercore's fairness opinion and the various valuation analyses it performed in support of its opinion. However, the description of Evercore's fairness opinion and analyses fails to include key inputs and assumptions underlying these analyses. Without this information, as described below, Aerohive stockholders are unable to fully understand these analyses and, thus, are unable to determine what weight, if any, to place on Evercore's fairness opinion in determining how to cast their vote on the Proposed Transaction. This omitted information, if disclosed, would significantly alter the total mix of information available to Aerohive stockholders.

21. With respect to Evercore's *Discounted Cash Flow Analysis*, the Recommendation Statement fails to disclose (i) the terminal value for Aerohive; (ii) Evercore's basis for applying a perpetuity growth rate of 2.5% to 4.5%; (iii) the individual inputs and assumptions underlying the range of discount rates from 11.5% to 13.5%; and (iv) Aerohive's net debt.

22. With respect to Evercore's *Premium Paid Analysis*, the Recommendation Statement omits the transactions observed by Evercore and the premiums paid in those transactions.

23. With respect to Evercore's *Research Analyst Price Targets Analysis*, the Recommendation Statement omits the price targets for the Company, and the sources thereof.

The Terms of a Key Non-Disclosure Agreement

24. The Recommendation Statement discloses that Aerohive entered into non-disclosure agreements with Extreme, and a "Party C" that included standstill provisions that expired with the entry into the Merger Agreement. However, the Recommendation Statement omits whether a non-disclosure agreement between the Company and a "Party B," extended during the process leading up to the Merger Agreement, contained a standstill provision and/or"don't-ask-don't-waive" ("DADW") provisions that would preclude Party B from making a topping bid for the Company.

25. Such information is material to Aerohive stockholders as a reasonable Aerohive stockholder would find it material and important to their tendering decision whether or not parties that had previously been interested in a potential acquisition of the Company are now foreclosed from submitting superior proposals. Indeed Party B indicated its interest to purchase the Company at a price of $4.30 per share as late as May 30, 2019. If it is bound by a standstill agreement and/or DADW provision, Party B would not be contractually permitted to submit a proposal superior to the Proposed Transaction.

26. Defendants' failure to provide Aerohive stockholders with the foregoing material information renders the statements in the *Background of the Merger* section of the Recommendation Statement false and/or materially misleading.

27. In sum, the omission of the above-referenced information renders statements in the Recommendation Statement materially incomplete and misleading in contravention of the Exchange Act. Absent disclosure of the foregoing material information prior to the expiration of the Exchange

Offer, Plaintiff will be unable to make a fully-informed decision regarding whether to exchange his shares in favor of the Proposed Transaction, and is thus threatened with irreparable harm, warranting the injunctive relief sought herein.

CLAIMS FOR RELIEF

COUNT I

Claim for Violation of Section 14(e) of the Exchange Act and Rule 14d-9
Against the Individual Defendants and Aerohive

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

29. Section 14(e) of the Exchange Act provides that it is unlawful "for any person to make any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading…" 15 U.S.C. § 78n(e).

30. As discussed above, Aerohive filed and delivered the Recommendation Statement to its stockholders, which defendants knew or recklessly disregarded contained material omissions and misstatements as set forth above.

31. Defendants violated § 14(e) of the Exchange Act and Rule 14d-9 by issuing the Recommendation Statement in which they made untrue statements of material facts or failed to state all material facts necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or engaged in deceptive or manipulative acts or practices, in connection with the exchange offer commenced in conjunction with the Proposed Transaction. Defendants knew or recklessly disregarded that the Recommendation Statement failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

32. The Recommendation Statement was prepared, reviewed and/or disseminated by defendants. It misrepresented and/or omitted material facts, including material information about the consideration offered to stockholders via the exchange offer, the intrinsic value of the Company, and potential conflicts of interest faced by certain Individual Defendants.

33. In so doing, defendants made untrue statements of material facts and omitted material facts necessary to make the statements that were made not misleading in violation of § 14(e) of the Exchange Act. By virtue of their positions within the Company and/or roles in the process and in the preparation of the Recommendation Statement, defendants were aware of this information and their obligation to disclose this information in the Recommendation Statement.

34. The omissions and incomplete and misleading statements in the Recommendation Statement are material in that a reasonable stockholder would consider them important in deciding whether to exchange their shares. In addition, a reasonable investor would view the information identified above which has been omitted from the Recommendation Statement as altering the "total mix" of information made available to stockholders.

35. Defendants knowingly or with deliberate recklessness omitted the material information identified above from the Recommendation Statement, causing certain statements therein to be materially incomplete and therefore misleading. Indeed, while defendants undoubtedly had access to and/or reviewed the omitted material information in connection with approving the Proposed Transaction, they allowed it to be omitted from the Recommendation Statement, rendering certain portions of the Recommendation Statement materially incomplete and therefore misleading.

36. The misrepresentations and omissions in the Recommendation Statement are material to Plaintiff, and Plaintiff will be deprived of their entitlement to make a fully informed decision if such misrepresentations and omissions are not corrected prior to the expiration of the exchange offer.

COUNT II

Claim for Violation of Section 20(a) of the Exchange Act
Against the Individual Defendants

37. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

38. The Individual Defendants acted as controlling persons of Aerohive within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their positions as officers and/or directors of Aerohive and participation in and/or awareness of the Company's operations and/or intimate knowledge of the false statements contained in the Recommendation

Statement, they had the power to influence and control and did influence and control, directly or indirectly, the decision making of the Company, including the content and dissemination of the various statements that Plaintiff contends are false and misleading.

39. Each of the Individual Defendants was provided with or had unlimited access to copies of the Recommendation Statement alleged by Plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause them to be corrected.

40. In particular, each of the Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company, and, therefore, is presumed to have had the power to control and influence the particular transactions giving rise to the violations as alleged herein, and exercised the same. The Recommendation Statement contains the unanimous recommendation of the Individual Defendants to approve the Proposed Transaction. They were thus directly involved in the making of the Recommendation Statement.

41. By virtue of the foregoing, the Individual Defendants violated Section 20(a) of the Exchange Act.

42. As set forth above, the Individual Defendants had the ability to exercise control over and did control a person or persons who have each violated Section 14(e) of the Exchange Act and Rule 14d-9, by their acts and omissions as alleged herein. By virtue of their positions as controlling persons, these Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of Defendants' conduct, Plaintiff is threatened with irreparable harm.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against defendants jointly and severally, as follows:

(A) declaring that the Recommendation Statement is materially false or misleading;

(B) enjoining, preliminarily and permanently, the Proposed Transaction;

(C) in the event that the transaction is consummated before the entry of this Court's final judgment, rescinding it or awarding Plaintiff rescissory damages;

(D) directing that Defendants account to Plaintiff for all damages caused by them and account for all profits and any special benefits obtained as a result of their breaches of their fiduciary duties;

(E) awarding Plaintiff the costs of this action, including a reasonable allowance for the fees and expenses of Plaintiff's attorneys and experts; and

(F) granting Plaintiff such further relief as the Court deems just and proper.

JURY DEMAND

43. Plaintiff demands a trial by jury on all issues so triable.

DATED: July 19, 2019

Respectfully submitted,

LEVI & KORSINSKY, LLP

By: */s/ Rosanne L. Mah*

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Counsel for Plaintiff Sandeep Naik

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Section 4: EX-99.(A)(5)(Y) (EX-99.(A)(5)(Y))

Exhibit (a)(5)(Y)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DONALD SHIRLEY, Plaintiff, -against- AEROHIVE NETWORKS, INC., DAVID K. FLYNN, CHANGMING LIU, FRANK MARSHALL, INGRID BURTON, REMO E. CANESSA, CURTIS EVANDER GARNER III, JOHN GORDON PAYNE, and CONWAY RULON-MILLER, Defendants.	CASE NO.: _____

COMPLAINT FOR VIOLATION OF THE SECURITIES EXCHANGE ACT OF 1934

Plaintiff, Donald Shirley ("Plaintiff"), by and through his attorneys, alleges the following upon information and belief, including investigation of counsel and review of publicly-available information, except as to those allegations pertaining to Plaintiff, which are alleged upon personal knowledge:

NATURE OF THE ACTION

1. This is an action brought by Plaintiff against Aerohive Networks, Inc. ("Aerohive" or the "Company") and the members of the Company's board of directors (collectively referred to as the "Board" or the "Individual Defendants" and, together with Aerohive, the "Defendants") for their violations of Sections 14(d)(4), 14(e), and 20(a) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78n(d)(4), 78n(e), 78t(a), respectively, and United States Securities and Exchange Commission ("SEC") Rule 14d-9, 17 C.F.R. §240.14d-9(d) ("Rule 14d-9"). Plaintiff's claims arise in

connection with the proposed tender offer by Extreme Networks, Inc. ("Extreme") through its wholly-owned subsidiary Clover Merger Sub, Inc. ("Purchaser"), to acquire all of the issued and outstanding shares of Aerohive (the "Tender Offer").

2. On June 26, 2019, Aerohive entered into an Agreement and Plan of Merger (the "Merger Agreement") with Extreme and Purchaser, pursuant to which Purchaser will be merged with and into Aerohive, with Aerohive continuing as the surviving corporation and a wholly-owned subsidiary of Extreme (the "Proposed Transaction").

3. Under the terms of the Merger Agreement, Aerohive shareholders will be entitled to receive $4.45 in cash per share of Aerohive common stock owned (the "Offer Price").

4. On July 12, 2019, in order to convince Aerohive public common stockholders to tender their shares, the Board authorized the filing of a materially incomplete and misleading Schedule 14D-9 Solicitation/Recommendation Statement (the "Recommendation Statement") with the SEC.

5. In particular, the Recommendation Statement contains materially incomplete and misleading information concerning: (i) the inputs used to calculate Adjusted EBITDA for the Company; and (ii) the valuation analyses performed by Aerohive's financial advisor, Evercore Group LLC ("Evercore"), in support of its fairness opinion.

6. The Tender Offer is scheduled to expire at 12:00 a.m. Eastern Time, on August 8, 2019 (the "Expiration Time"). It is imperative that the material information that has been omitted from the Recommendation Statement is disclosed to the Company's stockholders prior to the Expiration Time, so Aerohive shareholders can properly determine whether to tender their shares.

7. For these reasons, and as set forth in detail herein, Plaintiff asserts claims against Defendants for violations of Sections 14(d)(4), 14(e), and 20 (a) of the Exchange Act and Rule 14d-9. Plaintiff seeks to enjoin Defendants from closing the Tender Offer or taking any steps to consummate the Proposed Transaction unless and until the material information discussed below

is disclosed to Aerohive public common stockholders sufficiently in advance of the Expiration Time or, in the event the Proposed Transaction is consummated, to recover damages resulting from the Defendants' violations of the Exchange Act.

JURISDICTION AND VENUE

8. This Court has jurisdiction over all claims asserted herein pursuant to Section 27 of the 1934 Act because the claims asserted herein arise under Sections 14(d)(4), 14(e), and 20(a) of the Exchange Act and Rule 14d-9.

9. Personal jurisdiction exists over each Defendant either because the Defendant conducts business in or maintains operations in this District, or is an individual who is either present in this District for jurisdictional purposes or has sufficient minimum contacts with this District as to render the exercise of jurisdiction over each Defendant by this Court permissible under the traditional notions of fair play and substantial justice. "Where a federal statute such as Section 27 of the [Exchange] Act confers nationwide service of process, the question becomes whether the party has sufficient contacts with the United States, not any particular state." *Sec. Inv'r Prot. Corp. v. Vigman*, 764 F.2d 1309, 1315 (9th Cir. 1985). "[S]o long as a defendant has minimum contacts with the United States, Section 27 of the Act confers personal jurisdiction over the defendant in any federal district court." *Id.* at 1316.

10. Venue is proper in this District under Section 27 of the Exchange Act, 15 U.S.C. § 78aa, as well as 28 U.S.C. § 1391, because Defendants are found or are inhabitants or transact business in this District. Indeed, Aerohive common stock trades on the New York Stock Exchange, which is headquartered in this District. *See, e.g., United States v. Svoboda*, 347 F.3d 471, 484 n.13 (2d Cir. 2003) (collecting cases).

PARTIES

11. Plaintiff is, and has been continuously throughout all times relevant hereto, the owner of Aerohive common stock.

12. Defendant, Aerohive is a Delaware corporation with its principal place of business located at 1011 McCarthy Boulevard, Milpitas, California 95035. Aerohive common stock trades on the New York Stock Exchange under the ticker symbol "HIVE."

13. Defendant David K. Flynn is, and has been at all relevant times, Chairman of the Board, President, and Chief Executive Officer of the Company.

14. Defendant Changming Liu is, and has been at all relevant times, a director of the Company.

15. Defendant Frank Marshall is, and has been at all relevant times, a director of the Company.

16. Defendant Ingrid Burton is, and has been at all relevant times, a director of the Company.

17. Defendant Remo E. Canessa is, and has been at all relevant times, a director of the Company.

18. Defendant Curtis Evander Garner III is, and has been at all relevant times, a director of the Company.

19. Defendant John Gordon Payne is, and has been at all relevant times, a director of the Company.

20. Defendant Conway Rulon-Miller is, and has been at all relevant times, a director of the Company.

21. The Defendants identified in paragraphs 13 through 20 are collectively referred to herein as the "Board" or the "Individual Defendants," and together with Aerohive, the "Defendants."

SUBSTANTIVE ALLEGATIONS

Background of the Company and the Proposed Transaction

22. Aerohive Networks, together with its subsidiaries, has designed and developed a cloud-managed mobile networking platform that enables enterprises to deploy and manage a mobile-centric network edge. The Company's portfolio of products and solutions is built around primary sets of technologies and solutions, which include Enterprise Cloud Networking, Wireless Fidelity (Wi-Fi) Connectivity and Application and Insights. Aerohive conducts its business in geographic regions, including: the Americas, Europe, the Middle East and Africa, and Asia Pacific. The Company's product portfolio includes hardware products, cloud-based network management and applications, and support services. Aerohive hardware products include access points, branch routers and access switches.

23. On June 26, 2019, the Board caused the Company to enter into the Merger Agreement.

24. Pursuant to the terms of the Merger Agreement, the Company's current stockholders only expect to receive $4.45 in cash for each share of Aerohive common stock they own.

25. On June 26, 2019, the Company issued a press release announcing the Proposed Transaction, which stated in relevant part:

Extreme Networks to Acquire Aerohive Networks

Acquisition Extends Extreme's Leadership in Cloud Management and Wireless Networking, Adding Strong Subscription and Services Business **SAN JOSE, Calif., and Milpitas, Calif., June 26, 2019** — Extreme Networks, Inc. (Nasdaq: EXTR), a software-driven networking company, and Aerohive Networks (NYSE: HIVE), a pioneer in cloud-managed networking, today announced they have entered into a definitive agreement under which Extreme will acquire all of the outstanding shares of common stock of Aerohive at a price of $4.45 per share in cash, representing an aggregate purchase price of approximately $272 million. Accounting for Aerohive's net cash balance of $62 million at the end of March, the deal is equivalent to an enterprise value of $210 million. The acquisition of Aerohive will add critical cloud management and edge capabilities to Extreme's portfolio of end-to-end, edge to cloud networking solutions. It will provide a strong subscription revenue stream and strengthen Extreme's position in wireless LAN at a critical technology transition to Wi-Fi 6. Extreme expects the acquisition to be accretive to non-GAAP earnings per share starting in fiscal year 2020.

Aerohive is a leader in cloud management, AI and machine learning. It was among the first companies to offer controller-less Wi-Fi and cloud network management, including cloud-managed Wi-Fi and network access control (NAC), and today is the second leading provider of Cloud Managed Wireless LAN Services[1]. It recently delivered the industry's first trio of Wi-Fi 6 access points, along with the industry's first pluggable access point. Aerohive has a global footprint of 30,000 cloud wireless LAN customers in verticals including education, healthcare, state and local government, and retail. This acquisition will bring new automation and intelligence capabilities to Extreme's Elements portfolio. It will expand Extreme's technology leadership in Wi-Fi and NAC, adding cloud-managed Wi-Fi and NAC solutions to complement its on-premises Wi-Fi and NAC technology, driving Extreme deeper into key verticals and presenting numerous opportunities for cross-sell and up-sell within the combined portfolios.

Extreme expects to gain new SD-WAN capabilities, in all expanding its total addressable market by a total of $1B in a market with a CAGR of 19% 2019 through 2022.[2] At a time when many of Extreme's customers and partners are turning toward as-a-service/subscription models to reduce costs and gain efficiencies, Aerohive will expand Extreme's mix of revenues to approximately 30% from subscription recurring revenue.

With Aerohive, Extreme will offer customers and partners more choices for cloud and on-premises wired and wireless technology, and an industry-leading solution for cloud-based network management – all from a single vendor and backed by its award-winning, insourced services and support team. Post-acquisition, customers and partners of Extreme and Aerohive will be able to mix and match a broader array of software, hardware, and services Elements to create networks that support their unique needs and that may be managed and automated from end-to-end – from the enterprise edge to the cloud – to advance their digital transformation efforts.

Terms of the Agreement

The acquisition is structured as an all-cash tender offer for all outstanding common stock of Aerohive, followed by a merger of a wholly-owned subsidiary of Extreme with and into Aerohive. Under the terms of the merger agreement, Extreme will commence a tender offer to acquire all of the outstanding shares of Aerohive's common stock at a price of $4.45 per share in cash, representing an aggregate purchase price of $272 million, plus the assumption of unvested options and restricted stock units. The Board of Directors of both Extreme and Aerohive have unanimously approved the terms of the merger agreement, and the Board of Directors of Aerohive has resolved to recommend that Aerohive's stockholders accept the offer once it is commenced. The acquisition is not subject to a financing condition and Extreme expects to fund the acquisition from a combination of available cash and committed debt financing. The acquisition is subject to customary conditions, including the tender of the majority of the outstanding shares of Aerohive's common stock and regulatory approvals in the U.S. and Germany. The acquisition is expected to close during Extreme's first quarter of the fiscal year 2020.

Latham & Watkins LLP acted as legal advisor to Extreme. Evercore Group LLC acted as financial advisor to Aerohive and Wilson Sonsini Goodrich & Rosati, Professional Corporation acted as legal advisor to Aerohive.

Executive Perspectives

Ed Meyercord, President and CEO, Extreme Networks

"The acquisition of Aerohive establishes our leadership in cloud, AI, and ML, adding a proven and mature cloud services platform and subscription service model for Extreme's customers and partners. Extreme continues to invest in software and AI to expand the automation capabilities across our portfolio of edge-to-cloud networking solutions. The ability to improve user experiences, lower operating expenses, and deliver cloud-managed networks is key to our strategy."

"After scaling Extreme's business to $1B in revenue and expanding our portfolio to include end-to-end enterprise networking solutions, we are now taking the next step to transform our business to add sustainable, subscription-oriented cloud-based solutions that will enable us to drive recurring revenue and improved cash flow generation. Extreme expects this deal to be accretive to our FY20 outlook as it accelerates our plans to achieve over 60% gross margin and 15% operating income on an exit run rate."

"As we close out our fiscal fourth quarter 2019, we are confident in our guidance and continue to see strong wins in the market across our product portfolio, in cross-selling opportunities and targeted industry verticals in all

of our geographies, along with improved linearity. Beginning in our fiscal fourth quarter, Extreme will incur charges in the range of $14 to $16 million through the second quarter of fiscal 2020, inclusive, as we take steps to bring down our cost structure, demonstrating our commitment to achieving the gross and operating margin targets we have laid out. This will lead to annualized cost savings in the range of $24 to $27 million."

David Flynn, President and CEO of Aerohive

"This acquisition by Extreme is a major milestone for Aerohive. The role that cloud-managed technology plays in modern enterprises is impossible to overstate – it is where digital transformation is won and lost. Aerohive's expertise and excellence in cloud management and edge technology, combined with Extreme's extensive solutions portfolio and continued investment in software and AI for automation, gives our customers the most advanced digital experiences in the market. Together we will push networking into a new era – making infrastructure smarter, more autonomous, and the driver of business value."

Conference Call:

Please join Extreme Networks' management and Aerohive Networks' management on a conference call at 8:30 a.m. Eastern (5:30 a.m. Pacific) today to discuss the announcement.

The Recommendation Statement Omits Material Information

26. On July 12, 2019, Defendants filed a materially incomplete and misleading Recommendation Statement with the SEC. The Individual Defendants were obligated to carefully review the Recommendation Statement before it was filed with the SEC and disseminated to the Company's stockholders to ensure that it did not contain any material misrepresentations or omissions. However, the Recommendation Statement misrepresents or omits material information that is necessary for Aerohive public common stockholders to make an informed decision concerning whether to tender their shares, in violation of Sections 14(d)(4), 14(e), and 20(a) of the Exchange Act and Rule 14d-9.

27. In particular, the Recommendation Statement contains materially incomplete and misleading information concerning: (i) the inputs used to calculate Adjusted EBITDA for the Company; and (ii) the valuation analyses performed by Evercore.

28. First, the Recommendation Statement fails to disclose the inputs used to calculate Adjusted EBITDA, which renders the Recommendation Statement materially misleading. Recommendation Statement at 29.

29. If a Recommendation Statement discloses financial projections and valuation information, such information must be complete and accurate. The question here is not the duty to speak, but liability for not having spoken enough. With regard to future events, uncertain figures, and other so-called soft information, a company may choose silence or speech elaborated by the factual basis as then known—but it may not choose half-truths. *See Campbell v. Transgenomic, et al.*, No. 18-2198 (8th Cir., March 1, 2019) (noting that "half-truths" are actionable misrepresentations under securities laws and collecting cases). Accordingly, Defendants failure to disclose the inputs used to calculate Adjusted EBITDA for Aerohive renders the Recommendation Statement materially misleading.

30. Second, the valuation analyses conducted by Evercore omits material information and is thus misleading as well.

31. With respect to Evercore's *Discounted Cash Flow Analysis*, the Recommendation Statement fails to disclose: (i) the terminal value for Aerohive; (ii) how the perpetuity growth rate of 2.5% to 4.5% was selected; and (iii) Aerohive's net debt. *Id.* at 33.

32. These key inputs are material to Aerohive stockholders, and their omission renders the summary of Evercore's *Discounted Cash Flow Analysis* incomplete and misleading. As a highly-respected professor explained in one of the most thorough law review articles regarding the fundamental flaws with the valuation analyses bankers perform in support of fairness opinions, in a discounted cash flow ("DCF") analysis a banker takes management's forecasts, and then makes

several key choices "each of which can significantly affect the final valuation." Steven M. Davidoff, *Fairness Opinions*, 55 Am. U.L. Rev. 1557, 1576 (2006). Such choices include "the appropriate discount rate, and the terminal value…" *Id.* As Professor Davidoff explains:

> *There is substantial leeway to determine each of these, and any change can markedly affect the discounted cash flow value. For example, a change in the discount rate by one percent on a stream of cash flows in the billions of dollars can change the discounted cash flow value by tens if not hundreds of millions of dollars…* This issue arises not only with a discounted cash flow analysis, but with each of the other valuation techniques. *This dazzling variability makes it difficult to rely, compare, or analyze the valuations underlying a fairness opinion* ***unless full disclosure is made of the various inputs in the valuation process, the weight assigned for each, and the rationale underlying these choices***. The substantial discretion and lack of guidelines and standards also makes the process vulnerable to manipulation to arrive at the "right" answer for fairness. This raises a further dilemma in light of the conflicted nature of the investment banks who often provide these opinions.

Id. at 1577-78 (emphasis added). Without the above-mentioned information, Aerohive stockholders cannot evaluate for themselves the reliability of Evercore's *Discounted Cash Flow Analysis*.

33. With respect to Evercore's *Premium Paid Analysis*, the Recommendation Statement does not disclose the premiums paid for each of the precedent transactions reviewed. Recommendation Statement at 37.

34. With respect to Evercore's *Research Analyst Price Targets*, the Recommendation Statement fails to disclose the share price targets reviewed by Evercore. Further, the Recommendation Statement only discloses the high and low share price targets for Aerohive but does not disclose the median and average share price targets. *Id.*

35. In sum, the omission of the above-referenced information renders the Recommendation Statement materially incomplete and misleading, in contravention of the

Exchange Act. Absent disclosure of the foregoing material information prior to the Expiration Time, Plaintiff will be unable to make an informed decision concerning whether to tender his shares, and he is thus threatened with irreparable harm, warranting the injunctive relief sought herein.

COUNT I

(Against All Defendants for Violation of Section 14(e) of the Exchange Act)

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

37. Section 14(e) of the Exchange Act provides that it is unlawful "for any person to make any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading…" 15 U.S.C. §78n(e).

38. Defendants violated § 14(e) of the Exchange Act by issuing the Recommendation Statement in which they made untrue statements of material facts or failed to state all material facts necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, in connection with the Tender Offer. Defendants knew or recklessly disregarded that the Recommendation Statement failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

39. The Recommendation Statement was prepared, reviewed, and/or disseminated by Defendants. It misrepresented and/or omitted material facts, including material information about the consideration offered to stockholders via the Tender Offer and the intrinsic value of the Company.

40. In so doing, Defendants made untrue statements of fact and/or omitted material facts necessary to make the statements made not misleading. Each of the Individual Defendants, by virtue of their roles as officers and/or directors, were aware of the omitted information but failed to disclose such information, in violation of Section 14(e). The Individual Defendants were therefore reckless, as they had reasonable grounds to believe material facts existed that were misstated or omitted from the Recommendation Statement, but nonetheless failed to obtain and disclose such information to stockholders although they could have done so without extraordinary effort.

41. The omissions and incomplete and misleading statements in the Recommendation Statement are material in that a reasonable stockholders would consider them important in deciding whether to tender their shares. In addition, a reasonable investor would view the information identified above which has been omitted from the Recommendation Statement as altering the "total mix" of information made available to stockholders.

42. Defendants knowingly or with deliberate recklessness omitted the material information identified above from the Recommendation Statement, causing certain statements therein to be materially incomplete and therefore misleading. Indeed, while Defendants undoubtedly had access to and/or reviewed the omitted material information in connection with approving the Proposed Transaction, they allowed it to be omitted from the Recommendation Statement, rendering certain portions of the Recommendation Statement materially incomplete and therefore misleading.

43. The misrepresentations and omissions in the Recommendation Statement are material to Plaintiff, and Plaintiff will be deprived of his entitlement to make a fully informed decision if such misrepresentations and omissions are not corrected prior to the Expiration Time.

COUNT II

(Against all Defendants for Violations of Section 14(d)(4) of the Exchange Act

and SEC Rule 14d-9, 17 C.F.R. § 240.14d-9)

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

45. Defendants have caused the Recommendation Statement to be issued with the intention of soliciting stockholder support of the Proposed Transaction.

46. Section 14(d)(4) of the Exchange Act and SEC Rule 14d-9 promulgated thereunder require full and complete disclosure in connection with tender offers. Specifically, Section 14(d)(4) provides that:

> Any solicitation or recommendation to the holders of such a security to accept or reject a tender offer or request or invitation for tenders shall be made in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

47. SEC Rule 14d-9(d), which was adopted to implement Section 14(d)(4) of the Exchange Act, provides that:

> Information required in solicitation or recommendation. Any solicitation or recommendation to holders of a class of securities referred to in section 14(d)(1) of the Act with respect to a tender offer for such securities shall include the name of the person making such solicitation or recommendation and the information required by Items 1 through 8 of Schedule 14D-9 (§ 240.14d-101) or a fair and adequate summary thereof.

48. In accordance with Rule 14d-9, Item 8 of a Schedule 14D-9 requires a Company's directors to:

> Furnish such additional information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not materially misleading.

49. The omission of information from a recommendation statement will violate Section 14(d)(4) and Rule 14d-9(d) if other SEC regulations specifically require disclosure of the omitted information.

50. The Recommendation Statement violates Section 14(d)(4) and Rule 14d-9 because it omits material facts, including those set forth above, which omissions render the Recommendation Statement false and/or misleading. Defendants knowingly or with deliberate recklessness omitted the material information identified above from the Recommendation Statement, causing certain statements therein to be materially incomplete and therefore misleading. Indeed, while Defendants undoubtedly had access to and/or reviewed the omitted material information in connection with approving the Proposed Transaction, they allowed it to be omitted from the Recommendation Statement, rendering certain portions of the Recommendation Statement materially incomplete and therefore misleading.

51. The misrepresentations and omissions in the Recommendation Statement are material to Plaintiff, and Plaintiff will be deprived of his entitlement to make a fully informed decision if such misrepresentations and omissions are not corrected prior to the Expiration Date.

COUNT III

(Against all Defendants for Violations of Section 20(a) of the Exchange Act)

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

53. The Individual Defendants acted as controlling persons of Aerohiveb within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their positions as officers and/or directors of Aerohive, and participation in and/or awareness of the Company's operations and/or intimate knowledge of the incomplete and misleading statements contained in

the Recommendation Statement filed with the SEC, they had the power to influence and control and did influence and control, directly or indirectly, the decision making of the Company, including the content and dissemination of the various statements that Plaintiff contends are materially incomplete and misleading.

54. Each of the Individual Defendants was provided with or had unlimited access to copies of the Recommendation Statement and other statements alleged by Plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

55. In particular, each of the Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company, and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the Exchange Act violations alleged herein, and exercised the same. The Recommendation Statement contains the unanimous recommendation of each of the Individual Defendants to approve the Tender Offer. They were thus directly involved in preparing the Recommendation Statement.

56. In addition, as the Recommendation Statement sets forth at length, and as described herein, the Individual Defendants were involved in negotiating, reviewing, and approving the Merger Agreement. The Recommendation Statement purports to describe the various issues and information that the Individual Defendants reviewed and considered. The Individual Defendants participated in drafting and/or gave their input on the content of those descriptions.

57. By virtue of the foregoing, the Individual Defendants have violated Section 20(a) of the Exchange Act.

58. As set forth above, the Individual Defendants had the ability to exercise control over and did control a person or persons who have each violated Sections 14(e) and 14(d)(4) and Rule 14d-9, by their acts and omissions as alleged herein. By virtue of their positions as controlling persons, these defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of Individual Defendants' conduct, Plaintiff will be irreparably harmed.

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment and relief as follows:

A. Preliminarily enjoining Defendants and all persons acting in concert with them from proceeding with the Tender Offer or taking any steps to consummate the Proposed Transaction, unless and until the Company discloses the material information discussed above which has been omitted from the Recommendation Statement;

B. Directing the Defendants to account to Plaintiff for all damages sustained as a result of their wrongdoing;

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

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

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: July 19, 2019

MONTEVERDE & ASSOCIATES PC

By: */s/ Juan E. Monteverde*

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Attorneys for Plaintiff

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Section 5: EX-99.(A)(5)(Z) (EX-99.(A)(5)(Z))

Exhibit (a)(5)(Z)

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

PATRICK PLUMLEY, Individually and On Behalf of All Others Similarly Situated,	)	
Plaintiff,	)	Case No. _____
v.	)	JURY TRIAL DEMANDED
AEROHIVE NETWORKS, INC., DAVID K. FLYNN, FRANK J. MARSHALL, INGRID BURTON, REMO E. CANESSA, CURTIS E. GARNER III, JOHN GORDON PAYNE, CONWAY RULON-MILLER, EXTREME NETWORKS, INC., and CLOVER MERGER SUB, INC.,	)	CLASS ACTION
Defendants.	)	

COMPLAINT FOR VIOLATION OF THE SECURITIES EXCHANGE ACT OF 1934

Plaintiff, by his undersigned attorneys, for this complaint against defendants, alleges upon personal knowledge with respect to himself, and upon information and belief based upon, *inter alia*, the investigation of counsel as to all other allegations herein, as follows:

NATURE OF THE ACTION

1. This action stems from a proposed transaction announced on June 26, 2019 (the "Proposed Transaction"), pursuant to which Aerohive Networks, Inc. ("Aerohive" or the "Company") will be acquired by Extreme Networks, Inc. ("Parent") and Clover Merger Sub, Inc. ("Merger Sub," and collectively with Parent, "Extreme").

2. On June 26, 2019, Aerohive's Board of Directors (the "Board" or "Individual Defendants") caused the Company to enter into an agreement and plan of merger (the "Merger Agreement") with Extreme. Pursuant to the terms of the Merger Agreement, Merger Sub commenced a tender offer (the "Tender Offer") to acquire all of Aerohive's outstanding common stock for $4.45 per share in cash. The Tender Offer is scheduled to expire on August 8, 2019.

3. On July 12, 2019, defendants filed a Solicitation/Recommendation Statement (the "Solicitation Statement") with the United States Securities and Exchange Commission ("SEC") in connection with the Proposed Transaction.

4. The Solicitation Statement omits material information with respect to the Proposed Transaction, which renders the Solicitation Statement false and misleading. Accordingly, plaintiff alleges herein that defendants violated Sections 14(e), 14(d), and 20(a) of the Securities Exchange Act of 1934 (the "1934 Act") in connection with the Solicitation Statement.

JURISDICTION AND VENUE

5. This Court has jurisdiction over all claims asserted herein pursuant to Section 27 of the 1934 Act because the claims asserted herein arise under Sections 14(e), 14(d), and 20(a) of the 1934 Act and Rule 14a-9.

6. This Court has jurisdiction over defendants because each defendant is either a corporation that conducts business in and maintains operations within this District, or is an individual with sufficient minimum contacts with this District so as to make the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

7. Venue is proper under 28 U.S.C. § 1391 because a substantial portion of the transactions and wrongs complained of herein occurred in this District.

PARTIES

8. Plaintiff is, and has been continuously throughout all times relevant hereto, the owner of Aerohive common stock.

9. Defendant Aerohive is a Delaware corporation and maintains its principal executive offices at 1011 McCarthy Boulevard, Milpitas, California 95035. Aerohive's common stock is traded on the New York Stock Exchange under the ticker symbol "HIVE."

10. Defendant David K. Flynn is Chief Executive Officer and Chairman of the Board of the Company.

11. Defendant Frank L. Marshall is Lead Director of the Company.

12. Defendant Ingrid Burton is a director of the Company.

13. Defendant Remo E. Canessa is a director of the Company.

14. Defendant Curtis E. Garner III is a director of the Company.

15. Defendant John Gordon Payne is a director of the Company.

16. Defendant Conway Rulon-Miller is a director of the Company.

17. The defendants identified in paragraphs 10 through 16 are collectively referred to herein as the "Individual Defendants."

18. Defendant Parent is a Delaware corporation and a party to the Merger Agreement.

19. Defendant Merger Sub is a Delaware corporation, a wholly-owned subsidiary of Parent, and a party to the Merger Agreement.

CLASS ACTION ALLEGATIONS

20. Plaintiff brings this action as a class action on behalf of himself and the other public stockholders of Aerohive (the "Class"). Excluded from the Class are defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated with any defendant.

21. This action is properly maintainable as a class action.

22. The Class is so numerous that joinder of all members is impracticable. As of June 21, 2019, there were approximately 57,369,022 shares of Aerohive common stock outstanding, held by hundreds, if not thousands, of individuals and entities scattered throughout the country.

23. Questions of law and fact are common to the Class, including, among others, whether defendants will irreparably harm plaintiff and the other members of the Class if defendants' conduct complained of herein continues.

24. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature. Plaintiff's claims are typical of the claims of the other members of the Class and plaintiff has the same interests as the other members of the Class. Accordingly, plaintiff is an adequate representative of the Class and will fairly and adequately protect the interests of the Class.

25. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for defendants, or adjudications that would, as a practical matter, be dispositive of the interests of individual members of the Class who are not parties to the adjudications or would substantially impair or impede those non-party Class members' ability to protect their interests.

26. Defendants have acted, or refused to act, on grounds generally applicable to the Class as a whole, and are causing injury to the entire Class. Therefore, final injunctive relief on behalf of the Class is appropriate.

SUBSTANTIVE ALLEGATIONS

Background of the Company and the Proposed Transaction

27. Aerohive has designed and developed a leading cloud networking platform and product portfolio using cloud management, machine learning, and artificial intelligence to simplify and secure the access network.

28. The Company's Cloud-Managed Wireless, Switching, Routing, and Security technologies provide unrivalled flexibility in deployment, management, and licensing.

29. The Company is credited with pioneering Controller-less WiFi and Cloud Management, delivering continuous innovation at Cloud-speed that constantly challenges the industry norm.

30. The Company's innovations and global cloud footprint radically simplify Access Network operation for 30,000+ customers and 10+ million daily users.

31. On June 26, 2019, Aerohive's Board caused the Company to enter into the Merger Agreement with Extreme.

32. Pursuant to the terms of the Merger Agreement, Merger Sub commenced the Tender Offer to acquire all of Aerohive's outstanding common stock for $4.45 per share in cash.

33. According to the press release announcing the Proposed Transaction:

> Extreme Networks, Inc. (Nasdaq: EXTR), a software- driven networking company, and Aerohive Networks (NYSE: HIVE), a pioneer in cloud-managed networking, today announced they have entered into a definitive agreement under which Extreme will acquire all of the outstanding shares of common stock of Aerohive at a price of $4.45 per share in cash, representing an aggregate purchase price of approximately $272 million. Accounting for Aerohive's net cash balance of $62 million at the end of March, the deal is equivalent to an enterprise value of $210 million. The acquisition of Aerohive will add critical cloud management and edge capabilities to Extreme's portfolio of end-to-end, edge to cloud networking solutions. It will provide a strong subscription revenue stream and strengthen Extreme's position in wireless LAN at a critical technology transition to Wi-Fi 6. Extreme expects the acquisition to be accretive to non-GAAP earnings per share starting in fiscal year 2020. . . .
>
> Terms of the Agreement
>
> The acquisition is structured as an all-cash tender offer for all outstanding common stock of Aerohive, followed by a merger of a wholly-owned subsidiary of Extreme with and into Aerohive. Under the terms of the merger agreement, Extreme will commence a tender offer to acquire all of the outstanding shares of Aerohive's common stock at a price of $4.45 per share in cash, representing an aggregate purchase price of $272 million, plus the assumption of unvested options and restricted stock units. The Board of Directors of both Extreme and Aerohive have unanimously approved the terms of the merger agreement, and the Board of Directors of Aerohive has resolved to recommend that Aerohive's stockholders accept the offer once it is commenced. The acquisition is not subject to a financing condition and Extreme expects to fund the acquisition from a combination of available cash and committed debt financing. The acquisition is subject to customary conditions, including the tender of the majority of the outstanding shares of Aerohive's common stock and regulatory approvals in the U.S. and Germany. The acquisition is expected to close during Extreme's first quarter of the fiscal year 2020.

Latham & Watkins LLP acted as legal advisor to Extreme. Evercore Group LLC acted as financial advisor to Aerohive and Wilson Sonsini Goodrich & Rosati, Professional Corporation acted as legal advisor to Aerohive.

34. The Merger Agreement contains a "no solicitation" provision that prohibits the Individual Defendants from soliciting alternative proposals and severely constrains their ability to communicate and negotiate with potential buyers who wish to submit or have submitted unsolicited alternative proposals. Sections 5.3(a) and 5.3(b) of the Merger Agreement provide:

(a) The Company shall and shall cause each of the Company Subsidiaries and its Representatives to (i) immediately cease and cause to be terminated any solicitation, encouragement, discussions or negotiations with any Persons that may be ongoing with respect to a Competing Proposal or Competing Inquiry and (ii) within five (5) Business Days after the date hereof, request each Person that has previously executed a confidentiality agreement within six (6) months of the date hereof in connection with such Person's consideration of a Competing Proposal to return to the Company or destroy any non-public information previously furnished to such Person or to any Person's Representatives by or on behalf of the Company or any Company Subsidiary.

(b) From and after the date of this Agreement until the Effective Time or, if earlier, the termination of this Agreement in accordance with ARTICLE VII, the Company shall not and shall cause each of the Company Subsidiaries and its and their Representatives not to, directly or indirectly, (i) solicit, initiate, knowingly facilitate or knowingly encourage (including by way of furnishing non-public information in a manner that would reasonably be expected to lead to a Competing Proposal or Competing Inquiry) any Competing Proposal or Competing Inquiry, (ii) engage in, continue or otherwise participate in any discussions or negotiations regarding (other than, in response to an inquiry not solicited in breach of this Section 5.3, solely informing the Person making such inquiry of the existence of the provisions contained in this Section 5.3 or to the extent necessary to ascertain facts or clarify terms with respect to a Competing Proposal in order for the Company Board to be able to have sufficient information to make the determination described in Section 5.3(c)), or furnish to any other Person any information or afford to any other Person access to the business, properties, assets, books, records or any personnel of the Company or its Subsidiaries, in each case in connection with or for the purpose of encouraging or facilitating, a Competing Proposal or Competing Inquiry, (iii) approve, endorse, recommend, execute or enter into, or publicly propose to approve, endorse, recommend, execute or enter into any term sheet, letter of intent, memorandum of understanding, agreement in principle, acquisition agreement,

merger agreement or similar Contract (other than an Acceptable Confidentiality Agreement) with respect to any Competing Proposal (an "Alternative Acquisition Agreement"), (iv) take any action to make the provisions of any Takeover Statute (including Section 203 of the DGCL) or any applicable anti-takeover provision in the Company's organizational documents inapplicable to any transactions contemplated by a Competing Proposal, (v) terminate, amend, release, modify or knowingly fail to enforce any provision of, or grant any permission, waiver or request under, any standstill, confidentiality or similar contract entered into by the Company in respect of or in contemplation of a Competing Proposal (other than to the extent the Company Board determines in good faith, after consultation with the Company's independent financial advisors and outside legal counsel, that failure to take any such actions under this Section 5.3(b)(vi) would be reasonably likely to result in a breach of its fiduciary duties under applicable Law) or (vi) propose, resolve or agree to do any of the foregoing.

35. Additionally, the Company must promptly advise Extreme of any proposals or inquiries received from other parties. Section 5.3(d) of the Merger Agreement states:

From and after the date of this Agreement until the Acceptance Time or, if earlier, the termination of this Agreement in accordance with ARTICLE VII, the Company shall promptly (and in any event within 24 hours) notify Parent in the event that the Company, any Company Subsidiary or any of their Representatives receiving (i) any Competing Proposal, (ii) any request for non-public information relating to the Company or any Company Subsidiary that would reasonably be expected to lead to a Competing Proposal, other than, for the avoidance of doubt, requests for information in the ordinary course of business consistent with past practice and unrelated to a Competing Proposal or Competing Inquiry, or (iii) any Competing Inquiry or request for discussions or negotiations regarding any Competing Proposal. In connection with such notice, the Company shall indicate the identity of such Person or group of Persons, provide a description of the material terms and conditions of any such Competing Inquiry, Competing Proposal, request for information and provide a copy of all material written materials provided by such Third Party in connection with such Competing Inquiry, Competing Proposal, or request, including any modifications thereto. Thereafter, the Company shall keep Parent informed (orally and in writing) on a current basis (and in any event at Parent's written request and otherwise no later than 24 hours after the occurrence of any material changes, developments, discussions or negotiations) of the status of any Competing Inquiry, Competing Proposal, or request (including the material terms and conditions thereof and of any modification thereto), and any material developments, discussions and negotiations, including furnishing copies of all material written materials received by the Company or its Subsidiaries or their respective Representatives relating thereto. Neither the Company nor any Company Subsidiary will enter into any confidentiality agreement or other Contract with any Person subsequent to the date hereof which prohibits the Company from providing any information to Parent in accordance with this Section 5.3.

36. Moreover, the Merger Agreement contains a "fiduciary out" provision permitting the Board to change its recommendation of the Proposed Transaction under extremely limited circumstances, and grants Extreme a "matching right" with respect to any "Superior Offer" made to the Company. Section 5.3(e) and (f) of the Merger Agreement provide:

> (e) From and after the date of this Agreement until the Acceptance Time or, if earlier, the termination of this Agreement in accordance with ARTICLE VII, except as expressly permitted by this Section 5.3(e) and subject in all respects to Section 5.3(f), neither the Company Board nor any committee thereof shall (i) withhold, withdraw, qualify or modify, or publicly propose to withhold, withdraw, qualify or modify the Company Board Recommendation, (ii) fail to include the Company Board Recommendation in the Schedule 14D-9, (iii) if a tender offer or exchange offer for shares of capital stock of the Company other than the Offer is commenced, fail to publicly recommend against acceptance of such tender offer or exchange offer by the stockholders of the Company (taking no position with respect to the acceptance of such tender offer or exchange offer by the stockholders of the Company, shall constitute a failure to recommend against acceptance of such tender offer or exchange offer) within ten (10) Business Days after commencement thereof or fail to reaffirm the Company Board Recommendation within two (2) Business Days after Parent so requests in writing (provided that Parent may only make one such request per Competing Proposal), (iv) adopt, approve or recommend, or publicly propose to adopt, approve or recommend, any Competing Proposal made or received after the date of this Agreement until the Acceptance Time or, if earlier, the termination of this Agreement in accordance with ARTICLE VII (any of the actions described in clauses (i) through (iv) of this Section 5.3(e), an "Adverse Recommendation Change") or (v) cause or permit the Company or any Company Subsidiary to enter into any Alternative Acquisition Agreement. Notwithstanding anything to the contrary set forth in this Agreement, at any time prior to the Acceptance Time, the Company Board shall be permitted to effect any Adverse Recommendation Change (x) of a type described in clause (i) above solely with respect to a Superior Proposal, subject to compliance with Section 5.3(f), if the Company Board (A) has received a bona fide written Competing Proposal that the Company Board determines in good faith, after consultation with the Company's independent financial advisors and outside legal counsel, constitutes a Superior Proposal, after having complied with, and giving effect to all of the adjustments which may be offered by Parent and the Purchaser pursuant to Section 5.3(f) and (B) determines in good faith, after consultation with its legal advisors, that failure to take such action would be reasonably likely to result in a breach of its fiduciary duties under applicable Law or (y) in response to an Intervening Event, the Company Board determines in good faith, after consultation with its legal advisors, that failure to make an Adverse Recommendation Change would be reasonably likely to result in a breach of its fiduciary duties under applicable Law; provided, that the Company Board may not make an Adverse Recommendation Change in

response to an Intervening Event unless the Company (A) provides Parent with a written description of such Intervening Event in reasonable detail, (B) keeps Parent reasonably informed of material developments with respect to such Intervening Event, (C) notifies Parent in writing at least four (4) Business Days before making an Adverse Recommendation Change with respect to such Intervening Event of its intention to do so and specifying the reasons therefor and (D) during such four (4) Business Day period, either (1) Parent does not make a bona fide proposal to amend the terms of this Agreement or (2) Parent makes a bona fide proposal to amend the terms of this Agreement that the Company Board considers in good faith, but following which the Company Board again determines in good faith, after consultation with its legal advisors and taking into account the terms of such proposal, that failure to make an Adverse Recommendation Change as a result of the applicable Intervening Event would be reasonably likely to result in a breach of its fiduciary duties under applicable Law.

(f) From and after the date of this Agreement until the Acceptance Time or, if earlier, the termination of this Agreement in accordance with ARTICLE VII , the Company Board shall not be entitled to effect an Adverse Recommendation Change with respect to a Superior Proposal unless (i) none of the Company, any Company Subsidiary or any of their Representatives has breached this Section 5.3 in any material respect as relates to such Superior Proposal, including with respect to any related Competing Proposal or Competing Inquiry (ii) the Company has provided written notice (a "Notice of Superior Proposal") to Parent and the Purchaser that the Company intends to take such action, which notice includes an unredacted copy of the Superior Proposal that is the basis of such action (including the identity of the Third Party making the Superior Proposal) and copies of all relevant documents (other than immaterial correspondence by electronic mail) relating to such Superior Proposal, (iii) during the four (4) Business Days period following Parent's and the Purchaser's receipt of the Notice of Superior Proposal, the Company shall, and shall cause the its Representatives to, negotiate with Parent and the Purchaser in good faith (to the extent Parent and the Purchaser desire to negotiate) to make such adjustments in the terms and conditions of this Agreement so that such Superior Proposal would cease to constitute a Superior Proposal and (iv) following the end of the four (4) Business Days period, the Company Board shall have determined in good faith, after consultation with the Company's independent financial advisors and outside legal counsel, taking into account any changes to this Agreement proposed in writing by Parent and the Purchaser in response to the Notice of Superior Proposal or otherwise, that the Superior Proposal giving rise to the Notice of Superior Proposal continues to constitute a Superior Proposal. Any amendment to the financial terms or any other material amendment of such Superior Proposal shall require a new Notice of Superior Proposal and the Company shall be required to comply again with the requirements of this Section 5.3(f); provided, however, that for purposes of this sentence, references to the four (4) Business Day period above shall be deemed to be references to a two (2) Business Day period.

37. The Merger Agreement also provides for a "termination fee" of $11.4 million payable by the Company to Extreme if the Individual Defendants cause the Company to terminate the Merger Agreement.

The Solicitation Statement Omits Material Information, Rendering It False and Misleading

38. Defendants filed the Solicitation Statement with the SEC in connection with the Proposed Transaction.

39. As set forth below, the Solicitation Statement omits material information with respect to the Proposed Transaction, which renders the Solicitation Statement false and misleading.

40. First, the Solicitation Statement omits material information regarding the Company's financial projections.

41. The Solicitation Statement fails to disclose: (i) all line items used to calculate EBITDA and EBIT; and (ii) a reconciliation of all non-GAAP to GAAP metrics.

42. The disclosure of projected financial information is material because it provides stockholders with a basis to project the future financial performance of a company, and allows stockholders to better understand the financial analyses performed by the company's financial advisor in support of its fairness opinion.

43. Second, the Solicitation Statement omits material information regarding the analyses performed by the Company's financial advisor in connection with the Proposed Transaction, Evercore Group LLC ("Evercore").

44. With respect to Evercore's Discounted Cash Flow Analysis, the Solicitation Statement fails to disclose: (i) the terminal value for Aerohive; (ii) Evercore's basis for applying a perpetuity growth rate of 2.5% to 4.5%; (iii) the individual inputs and assumptions underlying the range of discount rates from 11.5% to 13.5%; and (iv) Aerohive's net debt.

45. With respect to Evercore's Premium Paid Analysis, the Solicitation Statement fails to disclose: (i) the transactions observed by Evercore in the analysis; and (ii) the premiums paid in the transactions.

46. With respect to Evercore's Research Analyst Price Targets analysis, the Solicitation Statement fails to disclose: (i) the price targets for the Company; and (ii) the sources thereof.

47. When a banker's endorsement of the fairness of a transaction is touted to shareholders, the valuation methods used to arrive at that opinion as well as the key inputs and range of ultimate values generated by those analyses must also be fairly disclosed.

48. Third, the Solicitation Statement fails to disclose the terms of the non-disclosure agreement executed by the Company and Party B.

49. The omission of the above-referenced material information renders the Solicitation Statement false and misleading, including, *inter alia*, the following section of the Solicitation Statement: The Solicitation or Recommendation.

50. The above-referenced omitted information, if disclosed, would significantly alter the total mix of information available to the Company's stockholders.

COUNT I

(Claim for Violation of Section 14(e) of the 1934 Act Against Defendants)

51. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

52. Section 14(e) of the 1934 Act states, in relevant part, that:

> It shall be unlawful for any person to make any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading . . . in connection with any tender offer or request or invitation for tenders[.]

53. Defendants disseminated the misleading Solicitation Statement, which contained statements that, in violation of Section 14(e) of the 1934 Act, in light of the circumstances under which they were made, omitted to state material facts necessary to make the statements therein not misleading.

54. The Solicitation Statement was prepared, reviewed, and/or disseminated by defendants.

55. The Solicitation Statement misrepresented and/or omitted material facts in connection with the Proposed Transaction as set forth above.

56. By virtue of their positions within the Company and/or roles in the process and the preparation of the Solicitation Statement, defendants were aware of this information and their duty to disclose this information in the Solicitation Statement.

57. The omissions in the Solicitation Statement are material in that a reasonable shareholder will consider them important in deciding whether to tender their shares in connection with the Proposed Transaction. In addition, a reasonable investor will view a full and accurate disclosure as significantly altering the total mix of information made available.

58. Defendants knowingly or with deliberate recklessness omitted the material information identified above in the Solicitation Statement, causing statements therein to be materially incomplete and misleading.

59. By reason of the foregoing, defendants violated Section 14(e) of the 1934 Act.

60. Because of the false and misleading statements in the Solicitation Statement, plaintiff and the Class are threatened with irreparable harm.

61. Plaintiff and the Class have no adequate remedy at law.

COUNT II

(Claim for Violation of 14(d) of the 1934 Act Against Defendants)

62. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

63. Section 14(d)(4) of the 1934 Act states:

> Any solicitation or recommendation to the holders of such a security to accept or reject a tender offer or request or invitation for tenders shall be made in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

64. Rule 14d-9(d) states, in relevant part:

> Any solicitation or recommendation to holders of a class of securities referred to in section 14(d)(1) of the Act with respect to a tender offer for such securities shall include the name of the person making such solicitation or recommendation and the information required by Items 1 through 8 of Schedule 14D-9 (§ 240.14d-101) or a fair and adequate summary thereof[.]

Item 8 requires that directors must "furnish such additional information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not materially misleading."

65. The Solicitation Statement violates Section 14(d)(4) and Rule 14d-9 because it omits the material facts set forth above, which renders the Solicitation Statement false and/or misleading.

66. Defendants knowingly or with deliberate recklessness omitted the material information set forth above, causing statements therein to be materially incomplete and misleading.

67. The omissions in the Solicitation Statement are material to plaintiff and the Class, and they will be deprived of their entitlement to make a fully informed decision with respect to the Proposed Transaction if such misrepresentations and omissions are not corrected prior to the expiration of the tender offer.

68. Plaintiff and the Class have no adequate remedy at law.

COUNT III

(Claim for Violation of Section 20(a) of the 1934 Act Against the Individual Defendants and Extreme)

69. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

70. The Individual Defendants and Extreme acted as controlling persons of Aerohive within the meaning of Section 20(a) of the 1934 Act as alleged herein. By virtue of their positions as directors of Aerohive and participation in and/or awareness of the Company's operations and/or intimate knowledge of the false statements contained in the Solicitation Statement filed with the SEC, they had the power to influence and control and did influence and control, directly or indirectly, the decision making of the Company, including the content and dissemination of the various statements that plaintiff contends are false and misleading.

71. Each of the Individual Defendants and Extreme was provided with or had unlimited access to copies of the Solicitation Statement alleged by plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause them to be corrected.

72. In particular, each of the Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company, and, therefore, is presumed to have had the power to control and influence the particular transactions giving rise to the violations as alleged herein, and exercised the same. The Solicitation Statement contains the unanimous recommendation of the Individual Defendants to approve the Proposed Transaction. They were thus directly connected with and involved in the making of the Solicitation Statement.

73. Extreme also had direct supervisory control over the composition of the Solicitation Statement and the information disclosed therein, as well as the information that was omitted and/or misrepresented in the Solicitation Statement.

74. By virtue of the foregoing, the Individual Defendants and Extreme violated Section 20(a) of the 1934 Act.

75. As set forth above, the Individual Defendants and Extreme had the ability to exercise control over and did control a person or persons who have each violated Section 14(e) of the 1934 Act and Rule 14a-9, by their acts and omissions as alleged herein. By virtue of their positions as controlling persons, these defendants are liable pursuant to Section 20(a) of the 1934 Act.

76. As a direct and proximate result of defendants' conduct, plaintiff and the Class are threatened with irreparable harm.

77. Plaintiff and the Class have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for judgment and relief as follows:

A. Enjoining defendants and all persons acting in concert with them from proceeding with, consummating, or closing the Proposed Transaction;

B. In the event defendants consummate the Proposed Transaction, rescinding it and setting it aside or awarding rescissory damages;

C. Directing the Individual Defendants to file a Solicitation Statement that does not contain any untrue statements of material fact and that states all material facts required in it or necessary to make the statements contained therein not misleading;

D. Declaring that defendants violated Sections 14(e), 14(d), and 20(a) of the 1934 Act, as well as Rule 14a-9 promulgated thereunder;

E. Awarding plaintiff the costs of this action, including reasonable allowance for plaintiff's attorneys' and experts' fees; and

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

JURY DEMAND

Plaintiff hereby demands a trial by jury.

Dated: July 16, 2019

RIGRODSKY & LONG, P.A.

By: */s/ Gina M. Serra*

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CERTIFICATION OF PLAINTIFF

I, Patrick Plumley ("Plaintiff"), hereby declare as to the claims asserted under the federal securities laws that:

1. Plaintiff has reviewed the complaint and authorizes its filing.

2. Plaintiff did not purchase the security that is the subject of this action at the direction of Plaintiff's counsel or in order to participate in any private action.

3. Plaintiff is willing to serve as a representative party on behalf of the class, either individually or as part of a group, and I will testify at deposition or trial, if necessary. I understand that this is not a claim form and that I do not need to execute this Certification to share in any recovery as a member of the class.

4. Plaintiff's purchase and sale transactions in the Aerohive Networks, Inc. (NYSE: HIVE) security that is the subject of this action during the class period is/are as follows:

PURCHASES

Buy Date	Shares	Price per Share
2/26/19	100	$4.90

SALES

Sell Date	Shares	Price per Share

Please list additional transactions on separate sheet of paper, if necessary.

5. Plaintiff has complete authority to bring a suit to recover for investment losses on behalf of purchasers of the subject securities described herein (including Plaintiff, any co-owners, any corporations or other entities, and/or any beneficial owners).

6. During the three years prior to the date of this Certification, Plaintiff has not moved to serve as a representative party for a class in an action filed under the federal securities laws.

7. Plaintiff will not accept any payment for serving as a representative party on behalf of the class beyond Plaintiff's *pro rata* share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the class as ordered or approved by the Court.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 16th day of July, 2019.

Patrick Plumley

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Section 6: EX-99.(A)(5)(AA) (EX-99.(A)(5)(AA))

Exhibit (a)(5)(AA)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

LOGAN SMITH, Plaintiff, v. AEROHIVE NETWORKS, INC., DAVID K. FLYNN, FRANK MARSHALL, INGRID BURTON, REMO CANESSA, CURT E. GARNER, JOHN GORDON PAYNE, and CONWAY RULON-MILLER, Defendants.	Case No: JURY TRIAL DEMANDED

COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS

Plaintiff Logan Smith ("Plaintiff"), by Plaintiff's undersigned attorneys, for Plaintiff's complaint against Defendants (defined below), alleges the following based upon personal knowledge as to Plaintiff and Plaintiff's own acts, and upon information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through Plaintiff's attorneys.

NATURE OF THE ACTION

1. This is an action against Aerohive Networks, Inc. ("Aerohive" or the "Company") and its Board of Directors (the "Board" or the "Individual Defendants") for their violations of Sections 14(e), 14(d)(4), and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. §§ 78n(e), 78n(d)(4), and 78t(a), and Rule 14d-9 promulgated thereunder by SEC, 17 C.F.R. § 240.14d-9, in connection with Extreme Networks, Inc.'s ("Extreme Networks") proposed acquisition of Aerohive (the "Proposed Transaction").

JURISDICTION AND VENUE

2. The claims asserted herein arise under and pursuant to Sections 14(e), 14(d)(4), and 20(a) of the Exchange Act (15 U.S.C. §§ 78n(e), 78n (d)(4), and 78t(a)) and Rule 14d-9 promulgated thereunder by the SEC (17 C.F.R. § 240.14d-9).

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331, and Section 27 of the Exchange Act, 15 U.S.C. § 78aa.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and Section 27 of the Exchange Act (15 U.S.C. § 78aa(c)) as a substantial portion of the transactions and wrongs complained of herein had an effect in this District and/or the Company is incorporated in and/or conducts business in this District.

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

PARTIES

6. Plaintiff is, and has been at all relevant times hereto, an owner of Aerohive common stock.

7. Defendant Aerohive, together with its subsidiaries, designs and develops cloud networking and enterprise Wi-Fi solutions worldwide. Aerohive is incorporated in Delaware with principal executive offices located in Milpitas, California. Aerohive's common stock trades on the New York Stock Exchange under the ticker symbol, "HIVE."

8. Defendant David K. Flynn ("Flynn") is Chief Executive Officer, President, and Chairman of the Board of Aerohive.

9. Defendant Frank Marshall ("Marshall") is a director of Aerohive and serves as its lead independent director.

10. Defendant Ingrid Burton ("Burton") is a director of Aerohive.

11. Defendant Remo Canessa ("Canessa") is a director of Aerohive.

12. Defendant Curtis E. Garner ("Garner") is a director of Aerohive.

13. Defendant John Gordon Payne ("Payne") is a director of Aerohive.

14. Defendant Conway Rulon-Miller ("Rulon-Miller") is a director of Aerohive.

15. Defendants Flynn, Marshall, Burton, Canessa, Garner, Payne, and Rulon-Miller are collectively referred to herein as the "Individual Defendants."

16. Defendants Aerohive and the Individual Defendants are collectively referred to herein as the "Defendants."

SUBSTANTIVE ALLEGATIONS

A. The Proposed Transaction

17. On June 26, 2019, Aerohive and Extreme Networks issued a press release announcing that they had entered into a definitive merger agreement. According to the press release, Extreme Networks would commence a cash tender offer to purchase all outstanding shares of Aerohive common stock for $4.45 per share. The press release states, in pertinent part:

Extreme Networks to Acquire Aerohive Networks

Acquisition Extends Extreme's Leadership in Cloud Management and Wireless Networking, Adding Strong Subscription and Services Business

NEWS PROVIDED BY
Extreme Networks, Inc.
Jun 26, 2019, 06:30 ET

SAN JOSE, Calif., and MILPITAS, Calif., June 26, 2019 /PRNewswire/ — Extreme Networks, Inc. (Nasdaq: EXTR), a software-driven networking company, and Aerohive Networks (NYSE: HIVE), a pioneer in cloud-managed

networking, today announced they have entered into a definitive agreement under which Extreme will acquire all of the outstanding shares of common stock of Aerohive at a price of $4.45 per share in cash, representing an aggregate purchase price of approximately $272 million. Accounting for Aerohive's net cash balance of $62 million at the end of March, the deal is equivalent to an enterprise value of $210 million. The acquisition of Aerohive will add critical cloud management and edge capabilities to Extreme's portfolio of end-to-end, edge to cloud networking solutions. It will provide a strong subscription revenue stream and strengthen Extreme's position in wireless LAN at a critical technology transition to Wi-Fi 6. Extreme expects the acquisition to be accretive to non-GAAP earnings per share starting in fiscal year 2020.

Aerohive is a leader in cloud management, AI and machine learning. It was among the first companies to offer controller-less Wi -Fi and cloud network management, including cloud-managed Wi- Fi and network access control (NAC), and today is the second leading provider of Cloud Managed Wireless LAN Services[1]. It recently delivered the industry's first trio of Wi-Fi 6 access points, along with the industry's first pluggable access point. Aerohive has a global footprint of 30,000 cloud wireless LAN customers in verticals including education, healthcare, state and local government, and retail. This acquisition will bring new automation and intelligence capabilities to Extreme's Elements portfolio. It will expand Extreme's technology leadership in Wi-Fi and NAC, adding cloud-managed Wi-Fi and NAC solutions to complement its on-premises Wi-Fi and NAC technology, driving Extreme deeper into key verticals and presenting numerous opportunities for cross-sell and up-sell within the combined portfolios.

* * *

Terms of the Agreement

The acquisition is structured as an all-cash tender offer for all outstanding common stock of Aerohive, followed by a merger of a wholly-owned subsidiary of Extreme with and into Aerohive. Under the terms of the merger agreement, Extreme will commence a tender offer to acquire all of the outstanding shares of Aerohive's common stock at a price of $4.45 per share in cash, representing an aggregate purchase price of $272 million, plus the assumption of unvested options and restricted stock units. The Board of Directors of both Extreme and Aerohive have unanimously approved the terms of the merger agreement, and the Board of Directors of Aerohive has resolved to recommend that Aerohive's stockholders accept the offer once it is commenced. The acquisition is not subject to a financing condition and Extreme expects to fund the acquisition from a combination of available cash and committed debt financing. The acquisition is subject to customary conditions, including the tender of the majority of the outstanding shares of Aerohive's common stock and regulatory approvals in the U.S. and Germany. The acquisition is expected to close during Extreme's first quarter of the fiscal year 2020.

Latham & Watkins LLP acted as legal advisor to Extreme. Evercore Group LLC acted as financial advisor to Aerohive and Wilson Sonsini Goodrich & Rosati, Professional Corporation acted as legal advisor to Aerohive.

Executive Perspectives

Ed Meyercord, President and CEO, Extreme Networks

"The acquisition of Aerohive establishes our leadership in cloud, AI, and ML, adding a proven and mature cloud services platform and subscription service model for Extreme's customers and partners. Extreme continues to invest in software and AI to expand the automation capabilities across our portfolio of edge-to-cloud networking solutions. The ability to improve user experiences, lower operating expenses, and deliver cloud-managed networks is key to our strategy."

* * *

David Flynn, President and CEO of Aerohive

"This acquisition by Extreme is a major milestone for Aerohive. The role that cloud-managed technology plays in modern enterprises is impossible to overstate – it is where digital transformation is won and lost. Aerohive's expertise and excellence in cloud management and edge technology, combined with Extreme's extensive solutions portfolio and continued investment in software and AI for automation, gives our customers the most advanced digital experiences in the market. Together we will push networking into a new era – making infrastructure smarter, more autonomous, and the driver of business value."

18. On July 12, 2019, Aerohive filed a Schedule 14D-9 Solicitation/Recommendation Statement under Section 14(d)(4) of the Exchange Act (the "Solicitation Statement") with the SEC in connection with the Proposed Transaction.

B. The Solicitation Statement Contains Materially False and Misleading Statements and Omissions

19. The Solicitation Statement, which recommends that Aerohive shareholders tender their shares to Extreme Networks in connection with the Proposed Transaction, omits and/or misrepresents material information concerning: (i) Aerohive's financial projections; (ii) the financial analyses performed by Aerohive's financial advisor, Evercore Group L.L.C. ("Evercore"), in connection with its fairness opinion; and (iii) the sales process leading up to the Proposed Transaction.

20. The omission of the material information (referenced below) renders the following sections of the Solicitation Statement false and misleading, among others: (i) Recommendation of the Board; (ii) Reasons for the Board's Recommendation; (iii) Projected Financial Information; and (iv) Opinion of Aerohive's Financial Advisor.

21. Extreme Networks's tender offer is set to expire on August 8, 2019 (the "Expiration Date"). It is imperative that the material information that was omitted from the Solicitation Statement be disclosed to the Company's shareholders prior to the Expiration Date to enable them to make an informed decision as to whether to tender their shares. Plaintiff may seek to enjoin Defendants from closing the tender offer or the Proposed Transaction unless and until the material misstatements and omissions (referenced below) are remedied. In the event the Proposed Transaction is consummated, Plaintiff may seek to recover damages resulting from Defendants' misconduct.

1. Material Omissions Concerning Aerohive's Financial Projections

22. The Solicitation Statement omits material information concerning Aerohive's financial projections.

23. The Solicitation Statement states that "Aerohive's management prepared a revised operating plan for calendar year 2019 in conjunction with financial projections for calendar years 2019 through 2021, which were, in connection with the financial analysis conducted by Evercore . . . later extrapolated out to 2023 by Aerohive's management[.]" These financial projections and extensions are collectively referred to herein as the "Projections."

24. The Solicitation Statement, however, fails to disclose a reconciliation of all non-GAAP to GAAP metrics for the Projections.

25. When a company discloses non-GAAP financial metrics in a Solicitation Statement that was relied upon by its board in recommending that shareholders tender their shares pursuant to a tender offer, the company must also disclose all projections and information necessary to make the non-GAAP metrics not misleading, and must provide a reconciliation (by schedule or other clearly understandable method) of the differences between the non-GAAP financial metrics disclosed or released with the most comparable financial metrics calculated and presented in accordance with GAAP. 17 C.F.R. § 244.100. The SEC has increased its scrutiny of a company's use of non-GAAP financial measures as such measures can be misleading and "crowd out" more reliable GAAP information.[1]

26. Accordingly, in order to cure the materially misleading nature of Aerohive's projections, Defendants must provide a reconciliation table of the aforementioned non-GAAP metrics to their most comparable GAAP metrics.

27. The above-referenced omitted information, if disclosed, would significantly alter the total mix of information available to Aerohive shareholders.

2. Material Omissions Concerning Evercore's Financial Analyses

28. In connection with the Proposed Transaction, the Solicitation Statement omits material information concerning analyses performed by Evercore.

[1] Mary Jo White, *Keynote Address, International Corporate Governance Network Annual Conference: Focusing the Lens of Disclosure to Set the Path Forward on Board Diversity, Non-GAAP, and Sustainability* (June 27, 2016), https://www.sec.gov/news/speech/chair-white-icgn-speech.html (footnotes omitted) (last visited July 10, 2019) ("And last month, the staff issued guidance addressing a number of troublesome practices which can make non-GAAP disclosures misleading: the lack of equal or greater prominence for GAAP measures; exclusion of normal, recurring cash operating expenses; individually tailored non-GAAP revenues; lack of consistency; cherry-picking; and the use of cash per share data. I strongly urge companies to carefully consider this guidance and revisit their approach to non-GAAP disclosures.").

29. The Solicitation Statement fails to disclose the following concerning Evercore's "*Discounted Cash Flow Analysis*": (1) the terminal value for Aerohive; (2) the individual inputs and assumptions underlying (i) the discount rates ranging from 11.5% to 13.5%, based on an estimate of Aerohive's weighted average cost of capital, and (ii) the perpetuity growth rate of 2.5% to 4.5%; and (3) Aerohive's net debt.

30. The Solicitation Statement fails to disclose the following concerning Evercore's "*Selected Public Companies Trading Multiples*": (1) Evercore's rationale for using the limited number of selected companies as comparable companies to Aerohive; (2) the financial metrics for each company selected by Evercore; and (3) the inputs and assumptions underlying Evercore's calculation of the enterprise values of the selected public companies.

31. The Solicitation Statement fails to disclose the following concerning Evercore's "*Precedent Transaction Analysis*": (1) Evercore's rationale for selecting precedent transactions for which Evercore states there was no publicly available data (notated in Solicitation Statement as "NA—Not Available"), how these transactions could provide precedent without this data, and how the absence of this data impacted Evercore's analysis; (2) the underlying financial metrics for each transaction selected by Evercore; and (3) the premiums paid in each transaction, to the extent relied upon by Evercore.

32. The Solicitation Statement fails to disclose the following concerning Evercore's "*Premium Paid Analysis*": (1) each transaction "reviewed and analyzed" by Evercore; and (2) the individual premiums paid in each transaction utilized by Evercore.

33. The Solicitation Statement fails to disclose the following concerning Evercore's "*Research Analyst Price Targets*": (1) the price targets for Aerohive observed by Evercore in the analysis; and (2) the sources of those price targets.

34. The valuation methods, underlying assumptions, and key inputs used by Evercore in rendering its purported fairness opinion must be fairly disclosed to Aerohive shareholders. The description of Evercore's fairness opinion and analyses, however, fails to include key inputs and assumptions underlying those analyses. Without the information described above, Aerohive shareholders are unable to fully understand Evercore's fairness opinion and analyses, and are thus unable to determine how much weight, if any, to place on it in determining whether to tender their shares to Extreme Networks. This omitted information, if disclosed, would significantly alter the total mix of information available to Aerohive shareholders.

3. Material Omissions Concerning the Sales Process Leading to the Proposed Transaction

35. The Solicitation Statement omits material information concerning the sales process leading up to the Proposed Transaction.

36. The Solicitation Statement discloses that Aerohive entered into a non-disclosure agreement with "Party C" that "included a customary standstill provision" that would terminate if Aerohive entered into a definitive agreement for a change of control transaction. Similarly, the Solicitation Statement discloses that Aerohive entered into a non-disclosure agreement with Extreme Networks "which did not contain a standstill provision[.]"

37. The Solicitation Statement discloses that Aerohive and "Party B entered into a letter agreement extending to April 1, 2020 the terms of a previously executed non-disclosure agreement."

38. Unlike the Solicitation Statement's specific disclosure of: (i) the standstill provision in Party C's non-disclosure agreement with Aerohive; and (ii) the absence of a standstill provision in Extreme Networks's non-disclosure agreement with Aerohive, the Solicitation Statement fails to disclose whether the agreement between Aerohive and Party B included a standstill provision, and whether that standstill contained a "don't ask, don't waive" provision (including its time of enforcement) that would preclude Party B from making a superior proposal for Aerohive. Indeed, in May 2019, Party B indicated an interest to purchase Aerohive for as high as $4.30 per share.

39. Without this information, Aerohive shareholders may have the mistaken belief that Party B was or is permitted to submit superior proposals for the Company, when in fact it is or was contractually prohibited from doing so. This information is material because a reasonable Aerohive shareholder would want to know, prior to tendering their shares to Extreme Networks, whether Party B is or was foreclosed from submitting a superior proposal.

40. The above-referenced omitted information, if disclosed, would significantly alter the total mix of information available to Aerohive shareholders.

COUNT I
For Violations of Section 14(e) of the Exchange Act
Against All Defendants

41. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

42. Section 14(e) of the Exchange Act states, in relevant part:

> It shall be unlawful for any person to make any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading . . . in connection with any tender offer or request or invitation for tenders[.]

43. During the relevant period, Defendants, individually and in concert, directly or indirectly, disseminated or approved the false and misleading Solicitation Statement specified above, which failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, in violation of Section 14(e) of the Exchange Act.

44. Each of the Individual Defendants, by virtue of their positions within the Company as officers and/or directors, were aware of materially false and/or misleading and/or omitted information but failed to disclose such information, in violation of Section 14(e) of the Exchange Act. Defendants, by use of the mails and means and instrumentalities of interstate commerce, solicited and/or permitted the use of their names to file and disseminate the Solicitation Statement with respect to the Proposed Transaction.

45. The false and misleading statements and omissions in the Solicitation Statement are material in that a reasonable shareholder would consider them important in deciding whether to tender their shares in connection with the Proposed Transaction.

46. Defendants acted knowingly or with deliberate recklessness in filing or causing the filing of the materially false and misleading Solicitation Statement.

47. By reason of the foregoing, Defendants violated Section 14(e) of the Exchange Act.

48. Because of the false and misleading statements in the Solicitation Statement, Plaintiff is threatened with irreparable harm.

COUNT II
For Violations of Section 14(d)(4) of the Exchange Act and Rule 14d-9 Promulgated Thereunder
Against All Defendants

49. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

50. Defendants caused the Solicitation Statement to be issued with the intent to solicit shareholder support for the Proposed Transaction.

51. Section 14(d)(4) of the Exchange Act and SEC Rule 14d-9 promulgated thereunder require full and complete disclosure in connection with tender offers. Specifically, Section 14(d)(4) states, in relevant part:

> Any solicitation or recommendation to the holders of such a security to accept or reject a tender offer or request or invitation for tenders shall be made in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

52. SEC Rule 14d-9(d), adopted to implement Section 14(d)(4) of the Exchange Act, states, in relevant part:

> Any solicitation or recommendation to holders of a class of securities referred to in section 14(d)(1) of the Act with respect to a tender offer for such securities shall include the name of the person making such solicitation or recommendation and the information required by Items 1 through 8 of Schedule 14D-9 (§ 240.14d-101) or a fair and adequate summary thereof[.]

53. In accordance with SEC Rule 14d-9, Item 8 of Schedule 14D-9 requires that a company:

> Furnish such additional material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not materially misleading.

54. During the relevant period, Defendants, individually and in concert, directly or indirectly, disseminated or approved the false and misleading Solicitation Statement specified above, which failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, in violation of Section 14(d)(4) of the Exchange Act and SEC Rule 14d-9.

55. Each of the Individual Defendants, by virtue of their positions within the Company as officers and/or directors, were aware of materially false and/or misleading and/or omitted information but failed to disclose such information, in violation of Section 14(d)(4) of the Exchange Act and SEC Rule 14d-9. Defendants, by use of the mails and means and instrumentalities of interstate commerce, solicited and/or permitted the use of their names to file and disseminate the Solicitation Statement with respect to the Proposed Transaction.

56. Defendants acted knowingly or with deliberate recklessness in filing the materially false and misleading Solicitation Statement which omitted material information.

57. The false and misleading statements and omissions in the Solicitation Statement are material in that a reasonable shareholder would consider them important in deciding whether to tender their shares in connection with the Proposed Transaction.

COUNT III
Violations of Section 20(a) of the Exchange Act
Against the Individual Defendants

58. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

59. The Individual Defendants acted as control persons of the Company within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their senior positions as officers and/or directors of the Company and participation in and/or awareness of the Company's operations and/or intimate knowledge of the false statements contained in the Solicitation Statement filed with the SEC, they had the power to and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the false and misleading Solicitation Statement.

60. Each of the Individual Defendants was provided with or had unlimited access to copies of the Solicitation Statement and other statements alleged by Plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected. As officers and/or directors of a publicly owned company, the Individual Defendants had a duty to disseminate accurate and truthful information with respect to the Solicitation Statement, and to correct promptly any public statements issued by the Company which were or had become materially false or misleading.

61. In particular, each of the Individual Defendants had direct and supervisory involvement in the operations of the Company, and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged

herein, and exercised the same. The Individual Defendants were provided with or had unlimited access to copies of the Solicitation Statement and had the ability to prevent the issuance of the statements or to cause the statements to be corrected. The Solicitation Statement at issue contains the unanimous recommendation of the Individual Defendants to approve the Proposed Transaction. Thus, the Individual Defendants were directly involved in the making of the Solicitation Statement.

62. In addition, as the Solicitation Statement sets forth at length, and as described herein, the Individual Defendants were involved in negotiating, reviewing, and approving the Proposed Transaction. The Solicitation Statement purports to describe the various issues and information that they reviewed and considered—descriptions which had input from the Individual Defendants.

63. By virtue of the foregoing, the Individual Defendants have violated Section 20(a) of the Exchange Act.

64. As set forth above, the Individual Defendants had the ability to exercise control over and did control a person or persons who have each violated Sections 14(e), 14(d)(4), and Rule 14d-9 promulgated thereunder, by their acts and omissions as alleged herein. By virtue of their positions as controlling persons, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of Defendants' conduct, the Company's shareholders will be irreparably harmed.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment and relief as follows:

A. Preliminarily and permanently enjoining Defendants and all persons acting in concert with them from proceeding with, consummating, or closing the Proposed Transaction and the tender offer in connection with the Proposed Transaction, unless and until Defendants disclose and disseminate the material information identified above to the Company's shareholders;

B. In the event Defendants consummate the Proposed Transaction, rescinding it and setting it aside or awarding Plaintiff rescissory damages;

C. Declaring that Defendants violated Sections 14(e), 14(d)(4), and 20(a) of the Exchange Act, and Rule 14d-9 promulgated thereunder;

D. Awarding Plaintiff reasonable costs and expenses incurred in this action, including counsel fees and expenses and expert fees; and

E. Granting such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

Dated: July 22, 2019

Respectfully submitted,

FARNAN LLP

/s/ Michael J. Farnan

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