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CRAIG GUTMANN  
684 Thorngate Lane  
Riverwoods, IL 60015  
on Behalf of Himself and All Others Similarly  
Situated and Derivatively on Behalf of THE  
PEP BOYS – MANNY, MOE & JACK,

Plaintiff,

v.

MICHAEL R. ODELL  
691 W. Valley Road  
Wayne, PA 19087-5317,

ROBERT H. HOTZ  
37 Cameron Road  
Saddle River, NJ 07458-2944,

JANE SCACCETTI  
2418 Naudain Street  
Philadelphia, PA 19146-1035,

JOHN T. SWEETWOOD  
6215 Riverwood Drive N.W.  
Atlanta, GA 30328-3736,

M. SHÂN ATKINS  
4302 Olde Indian Creek Lane  
Long Grove, IL 60047,

JAMES A. MITAROTONDA  
322 Central Park West, Apt. 14B  
New York, NY 10025-7629,

NICK WHITE  
81 Champions Boulevard  
Rogers, AR 72758-9568,

JAMES A. WILLIAMS  
901 W. Parkway Avenue  
High Point, NC 27262-2903,

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COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY,  
PENNSYLVANIA

Case No.

VERIFIED SHAREHOLDER DERIVATIVE  
AND CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

IRVIN D. REID )  
 15 E. Kirby Street, Apt. 1118 )  
 Detroit, MI 48202-4033, )  
 )  
 THE GORES GROUP, LLC )  
 10877 Wilshire Boulevard, 18th Floor )  
 Los Angeles, CA 90024, )  
 )  
 AUTO ACQUISITION COMPANY, LLC )  
 c/o Registered Agent )  
 Corporation Service Company )  
 2711 Centerville Road, Suite 400 )  
 Wilmington, DE 19808, )  
 )  
 AUTO MERGERSUB, INC. )  
 c/o Registered Agent )  
 C T Corporation System )  
 116 Pine Street, Suite 320 )  
 Harrisburg, PA 17101, )  
 )  
 Defendants. )  
 -and- )  
 THE PEP BOYS – MANNY, MOE & JACK, )  
 a Pennsylvania corporation, )  
 3111 W. Allegheny Avenue )  
 Philadelphia, PA 19132, )  
 )  
 Nominal Defendant. )

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**PLAINTIFF'S VERIFIED DERIVATIVE COMPLAINT**

Plaintiff, by his attorneys, alleges as follows:

**SUMMARY OF THE ACTION**

1. This is a stockholder class and derivative action brought by plaintiff on behalf of himself and holders of common stock of The Pep Boys – Manny, Moe & Jack ("Pep Boys" or the "Company") and on behalf of Pep Boys, against The Gores Group, LLC ("Gores Group"), Auto Acquisition Company, LLC ("AAC"), Auto Mergersub, Inc. ("Merger Sub"), and the members of the Pep Boys Board of Directors (the "Board"). This action seeks to enjoin defendants from further breaching their fiduciary duties in their pursuit of a sale of the Company at an unfair price through an unfair and self-serving process to Gores Group (the "Proposed Acquisition"). Defendants

announced on January 30, 2012, that the Board had agreed to sell Pep Boys to Gores Group for \$15 per share (the "Proposed Consideration").

2. Pep Boys, founded in 1921, is the leading automotive aftermarket chain in the United States. The Company provides name-brand tires, automotive maintenance and repair, parts, and expert automotive advice through 700 locations across thirty-five states and Puerto Rico. The Company's industry, like most industries in the United States, had suffered from strong macroeconomic headwinds which temporarily depressed the operational performance and stock price of Pep Boys. In fact, after recording four consecutive years of net losses through the fiscal year ended January 31, 2009, the stock price of Pep Boys had plummeted to below \$3 per share. But after a management shakeup in late 2008 led to substantial cost-cutting measures and aggressive growth, Pep Boys has reported two consecutive years of strong, growing profits and is on track to report a third, nearly matching the previous year's profit through just three quarters of the current fiscal year.

3. Despite the resultant rebound in the Company's stock price and the strong prospects for continued growth, the Board has decided to sell Pep Boys now at the grossly inadequate price of \$15.00 per share, rather than allowing shareholders to continue to participate in the Company's upside. Though it represents a one-day premium to Pep Boys's stock price, the Proposed Consideration represents a *6% discount* to the price of \$15.96 at which the Company's stock traded just one year ago. The Proposed Consideration also falls below the target prices set for the Company's stock by equity analysts. Indeed, one analyst commented in response to the Proposed Acquisition that it is "a very good deal for the acquirer," and that "[a] high teens offer is probably more realistic than a \$15 bid." The members of the Board are breaching their fiduciary duties by deciding to sell the Company now for the unfair Proposed Consideration.

4. Further, the members of the Board also breached their fiduciary duties by agreeing to preclusive deal protection devices in connection with the Agreement and Plan of Merger the

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Company, AAC, and Merger Sub entered into on January 29, 2012 (the "Merger Agreement"). These provisions further diminish the chances of obtaining maximum value for the Company's shareholders. As part of the Proposed Acquisition, the defendants negotiated a go-shop period of forty-five days that allows Pep Boys to solicit superior proposals from third parties. However, even if Pep Boys did receive a superior proposal during the go-shop period, the Company is obligated to provide Gores Group a right to match any superior proposal within three business days. Given this matching rights provision, the likelihood of superior rival bids emerging is remote.

5. In addition, even if Pep Boys was inclined to accept a superior proposal during the go-shop period, the defendants deterred potential bidders by agreeing to pay a \$10 million termination fee. According to the Merger Agreement, there were over 52.7 million shares of Pep Boys common stock outstanding as of January 28, 2012. Thus, the termination fee adds another \$0.19 per share to the price tag for any interested suitors seeking to bid for the Company. And, following the end of the go-shop period, the termination fee skyrockets to \$25 million, which would add over \$0.47 per share to the cost of a competing bid. This termination fee deters other bidders by adding transaction costs for a bidder who makes a superior offer. The termination fee also improperly limits the ability of shareholders to receive a superior offer for their shares.

6. While the Board is intent on cashing out the Company's shareholders at an unfair price, the Company's fiduciaries will receive immediate benefits from the closing of the Proposed Acquisition. For instance, as part of the Proposed Acquisition, Pep Boys's fiduciaries' stock options and restricted stock units will vest immediately and be converted into massive cash payments. Additionally, defendant Michael R. Odell ("Odell"), Pep Boys's President, Chief Executive Officer ("CEO"), and a director, is expected to continue his lucrative employment with the post-Proposed Acquisition company. As a safeguard, Odell is also in line for an additional cash payout of approximately \$3.5 million should his employment instead be terminated following the closing of the Proposed Acquisition.

7. Because defendants dominate and control the business and corporate affairs of Pep Boys, there exists an imbalance and disparity of economic power between them and the public shareholders of Pep Boys. Therefore, it is inherently unfair for defendants to execute and pursue any Proposed Acquisition agreement under which they will reap disproportionate benefits to the exclusion of obtaining the maximum shareholder value. Nonetheless, instead of attempting to negotiate a contract reflecting the best consideration reasonably available for Pep Boys shareholders, who they are duty-bound to serve, defendants disloyally placed their own interests and the interests of Gores Group first and tailored the terms and conditions of the Proposed Acquisition to meet their own personal needs and objectives.

8. To remedy the Individual Defendants' (as defined herein) breaches of fiduciary duty and other misconduct, plaintiff seeks, inter alia: (i) injunctive relief preventing consummation of the Proposed Acquisition unless and until the Company adopts and implements a procedure or process to obtain a transaction that provides the best possible terms for shareholders; (ii) a directive to the Individual Defendants to exercise their fiduciary duties to obtain a transaction which is in the best interests of Pep Boys shareholders; and (iii) rescission of, to the extent already implemented, the Merger Agreement or any of the terms thereof.

#### **JURISDICTION AND VENUE**

9. This Court has jurisdiction over each defendant named herein because each defendant is either a corporation that conducts business in and maintains operations in this County, or is an individual who has sufficient minimum contacts with Pennsylvania so as to render the exercise of jurisdiction by the Pennsylvania courts permissible under traditional notions of fair play and substantial justice.

10. Venue is proper in this Court because one or more of the defendants either resides in or maintains executive offices in this County, a substantial portion of the transactions and wrongs complained of herein, including the defendants' primary participation in the wrongful acts detailed

herein and aiding and abetting and conspiracy in violation of fiduciary duties owed to Pep Boys occurred in this County, and defendants have received substantial compensation in this County by doing business here and engaging in numerous activities that had an effect in this County.

#### **PARTIES**

11. Plaintiff Craig Gutmann was a shareholder of Pep Boys at the time of the wrongdoing of which plaintiff complains and has been continuously since.

12. Nominal defendant Pep Boys is a Pennsylvania corporation and the leading national automotive aftermarket chain. Through its 7,000 service bays in more than 700 locations throughout thirty-five states and Puerto Rico, Pep Boys provides automotive services, tires, parts, and accessories to customers. Upon completion of the Proposed Acquisition, Pep Boys will become a wholly owned subsidiary of AAC. The principal executive offices of Pep Boys are located at 3111 W. Allegheny Avenue, Philadelphia, Pennsylvania.

13. Defendant Odell is the CEO of Pep Boys and has been since September 2008, a director and has been since July 2008, and President and has been since June 2010. Odell was also Executive Vice President – Chief Operating Officer of Pep Boys from September 2007 to September 2008. Upon completion of the Proposed Acquisition, Odell will remain as an officer at the go-forward company.

14. Defendant Robert H. Hotz ("Hotz") is the Chairman of the Board of Pep Boys and has been since September 2011 and a director and has been since 2005.

15. Defendant Jane Scaccetti ("Scaccetti") is a director of Pep Boys and has been since 2002.

16. Defendant John T. Sweetwood ("Sweetwood") is a director of Pep Boys and has been since 2002.

17. Defendant M. Shân Atkins ("Atkins") is a director of Pep Boys and has been since 2004.

18. Defendant James A. Mitarotonda ("Mitarotonda") is a director of Pep Boys and has been since August 2006.

19. Defendant Nick White ("White") is a director of Pep Boys and has been since August 2006.

20. Defendant James A. Williams ("Williams") is a director of Pep Boys and has been since August 2006.

21. Defendant Irvin D. Reid ("Reid") is a director of Pep Boys and has been since December 2007.

22. Defendant Gores Group is a Delaware limited liability company focused on acquiring controlling interests in mature and growing businesses. The Gores Group is a leading private equity investor, primarily in the technology, telecommunications, business services, industrial, healthcare, media, and consumer and retail sectors. The principal executive offices of the Gores Group are located at 10877 Wilshire Boulevard, 18th Floor, Los Angeles, California.

23. Defendant AAC is a Delaware limited liability company formed by affiliates of the Gores Group solely for the purpose of engaging in the Proposed Acquisition.

24. Defendant Merger Sub is a Pennsylvania corporation and a wholly owned subsidiary of AAC. Merger Sub was formed by affiliates of the Gores Group solely for the purpose of engaging in the Proposed Acquisition. Upon completion of the Proposed Acquisition, Merger Sub will merge with and into Pep Boys and will cease its separate corporate existence.

25. The defendants named above in ¶¶13-21 are sometimes collectively referred to herein as the "Individual Defendants."

#### **INDIVIDUAL DEFENDANTS' FIDUCIARY DUTIES**

26. Under Pennsylvania law, in any situation where the directors of a publicly traded corporation undertake a transaction that will result in a change in corporate control, the directors have an affirmative fiduciary obligation to obtain the highest value reasonably available for the

corporation's shareholders, including a significant control premium. This duty arises in at least the following three circumstances: (i) when a corporation initiates an active bidding process seeking to sell itself or to effect a business reorganization involving a clear break-up of the company; (ii) where, in response to a bidder's offer, a target abandons its long-term strategy and seeks an alternative transaction involving the break-up of the company; or (iii) when approval of a transaction results in a sale or change of control. To diligently comply with these duties, neither the officers nor the directors may take any action that:

- (a) adversely affects the value provided to the corporation's shareholders;
- (b) will discourage, inhibit, or deter alternative offers to purchase control of the corporation or its assets;
- (c) contractually prohibits themselves from complying with their fiduciary duties;
- (d) will otherwise adversely affect their duty to secure the best value reasonably available under the circumstances for the corporation's shareholders; and/or
- (e) will provide the officers and/or directors with preferential treatment at the expense of, or separate from, the public shareholders.

27. In accordance with their duties of loyalty and good faith, the Individual Defendants, as officers and/or directors of Pep Boys, are obligated under Pennsylvania law to refrain from:

- (a) participating in any transaction where the officers' or directors' loyalties are divided;
- (b) participating in any transaction where the officers or directors receive, or are entitled to receive, a personal financial benefit not equally shared by the public shareholders of the corporation; and/or
- (c) unjustly enriching themselves at the expense or to the detriment of the public shareholders.



28. Defendants, separately and together, in connection with the Proposed Acquisition, are knowingly or recklessly violating their fiduciary duties and/or aiding and abetting such breaches, including the Individual Defendants' duties of loyalty, good faith, and independence owed to plaintiff and other public shareholders of Pep Boys. Certain of the Individual Defendants are engaging in self-dealing, and are obtaining for themselves personal benefits, including personal financial benefits not shared equally by plaintiff or the Class (as defined herein). Accordingly, the Proposed Acquisition will benefit the Individual Defendants in significant ways not shared with Class members. As a result of the Individual Defendants' self-dealing and divided loyalties, neither plaintiff nor the Class will receive adequate or fair value for their Pep Boys common stock in the Proposed Acquisition.

29. Because the Individual Defendants are knowingly or recklessly breaching their duties of loyalty, good faith, and independence in connection with the Proposed Acquisition, the burden of proving the inherent or entire fairness of the Proposed Acquisition, including all aspects of its negotiation, structure, price, and terms, is placed upon defendants as a matter of law.

### THE PROPOSED ACQUISITION

30. On Monday, January 30, 2012, Pep Boys issued the following press release announcing that the Company had entered into an agreement to be acquired by Gores Group for \$15 per share. The press release stated:

The Pep Boys – Manny, Moe & Jack (NYSE: PBY), the nation's leading automotive aftermarket service and retail chain, today announced that it has entered into a definitive merger agreement under which it will be acquired by The Gores Group, one of the nation's leading investment firms, led by founder and CEO, Alec Gores. Total enterprise value of the transaction is approximately \$1.0 billion.

Under the terms of the merger agreement, The Gores Group will acquire all the outstanding common shares of Pep Boys for \$15.00 per share in cash. This represents a premium of 24% percent over Pep Boys' closing price of \$12.08 on January 27, 2012 and a premium of 36% percent over Pep Boys' volume weighted average closing price over the last 30 trading days.

Pep Boys' Board of Directors has unanimously approved the merger agreement and recommended that Pep Boys' shareholders approve the transaction. It is expected that

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Mike Odell, Pep Boys' President & Chief Executive Officer and other members of the senior management team will continue in their roles with the Company after the completion of the transaction.

"Partnering with The Gores Group delivers a significant premium for Pep Boys' shareholders and ensures a strong foundation for us to continue our expansion," said Mr. Odell. "Our Board firmly believes that this transaction is in the best interests of all of our stakeholders and delivers an ongoing commitment to excellence for our customers and employees."

Lee Bird, Managing Director of Operations and Consumer Practice Leader at The Gores Group, said, "Pep Boys' strong brand awareness and management's strategy to be the automotive solutions provider of choice for the value-oriented customer positions Pep Boys for growth. We are excited to help Pep Boys build on this vision and enable the Company to take the brand and business to the next level by effectively scaling its powerful differentiated service platform."

Ryan Wald, Managing Director of Mergers & Acquisitions at The Gores Group, said, "For over 90 years, Pep Boys has been the leading automotive service and retail chain and we look forward to supporting the Company's continued growth and expansion with our substantial equity resources."

The agreement provides for a 45-day "go-shop" period and contains customary closing conditions, including receiving the approval of Pep Boys' shareholders and all applicable regulatory approvals. A special meeting of Pep Boys' shareholders will be held following the filing of a definitive proxy statement with the U.S. Securities and Exchange Commission (the "SEC") and subsequent mailing of the proxy statement to shareholders. The Gores Group has fully committed financing and the transaction is not subject to a financing condition.

The transaction is currently expected to close in the second fiscal quarter of 2012. Following completion of the transaction, Pep Boys will become a privately held company and its stock will no longer trade on the New York Stock Exchange. Pep Boys noted that, in light of the proposed transaction, it will not host a conference call to discuss financial results for the 2011 fiscal year, but intends to file its year-end results with the SEC. In addition in anticipation of the transaction, Pep Boys has suspended its quarterly dividend.

31. On January 30, 2012, Pep Boys also filed a Form 8-K with the U.S. Securities and Exchange Commission ("SEC"), wherein it disclosed the Merger Agreement. The announcement and filing reveal that the Proposed Acquisition is the product of a flawed sales process and, unless the offer price is increased, would be consummated at an unfair price. The Merger Agreement also reveals that the Individual Defendants agreed to numerous deal protection devices designed to preclude any competing bids for Pep Boys.

32. Though the Merger Agreement has a go-shop provision that allows the Company to negotiate with other bidders, this provision is actually illusory when considered among other preclusive terms in the Merger Agreement. To discourage superior offers for Pep Boys, Gores Group is entitled to a matching rights period of three business days under the Merger Agreement. Specifically, section 7.3(d) of the Merger Agreement provides the following:

Notwithstanding anything in this Agreement to the contrary, the Board of Directors of the Company may at any time prior to obtaining the Company Shareholder Approval if the Company receives a Competing Proposal that the Board of Directors of the Company concludes in good faith (after consultation with outside legal counsel) constitutes a Superior Proposal (A) effect a Change of Recommendation and/or (B) terminate this Agreement to enter into a definitive agreement with respect to such Superior Proposal; *provided, however*, that the Board of Directors may not effect a Change of Recommendation relating to a Superior Proposal pursuant to the foregoing clause (A) or terminate this Agreement pursuant to the foregoing clause (B) unless the Company shall have provided prior written notice to Parent and Merger Sub, at least three (3) Business Days in advance of such Change of Recommendation or such termination (the "Notice Period"), of its intention to effect a Change of Recommendation in response to such Superior Proposal or terminate this Agreement to enter into a definitive agreement with respect to such Superior Proposal, which notice shall specify the material terms and conditions of any such Superior Proposal (including the identity of the Person making such Superior Proposal). *Prior to effecting such Change of Recommendation or terminating this Agreement to enter into a definitive agreement with respect to such Superior Proposal, the Company shall, and shall cause its Representatives to, during such Notice Period, negotiate with Parent in good faith to make such adjustments in the terms and conditions of this Agreement so that such Competing Proposal ceases to constitute a Superior Proposal.*

33. This provision sets strict limitations on the Company's ability to accept a superior proposal should one present itself. According to the matching rights provision, the Company must notify Gores Group of the bidder's offer, and should the Board determine that the unsolicited offer is superior, Gores Group is granted three business days to amend the terms of the Merger Agreement to make a counter offer that only needs to be as favorable to the Company's shareholders as the competing offer. The Gores Group is able to match the competing offer because it is granted unfettered access to the competing offer, in its entirety, eliminating leverage that the Company has in receiving the competing offer. Accordingly, no rival bidder is likely to emerge because the Merger

Agreement unfairly assures that any "auction" will be competitively skewed in favor of the Gores Group.

34. Also, pursuant to section 9.4 of the Merger Agreement, Pep Boys must pay Gores Group a \$10 million termination fee if it accepts a superior proposal during the go-shop period. This provision all but ensures that no competing offer will be forthcoming. The termination fee equates to approximately \$0.19 per Pep Boys share that would be paid to Gores Group rather than the Company's shareholders in the case that any competing bidder does emerge.

35. These onerous and preclusive deal protection devices operate in conjunction to discourage competing offers from emerging for the Company, ensuring that the unfair transaction is consummated so that the Individual Defendants can secure their own personal benefits under the Proposed Acquisition. Accordingly, the Individual Defendants' efforts to put their own personal interests before that of the Company's shareholders have resulted in a proposed transaction presented to Pep Boys shareholders at an untenable and inadequate offer price.

#### **THE PROPOSED ACQUISITION UNDERVALUES PEP BOYS**

36. The Proposed Acquisition significantly undervalues the Company and its future prospects. Pep Boys has emerged from the economic downturn as a better-led, more cost-efficient firm that is well-positioned for future growth and profits by capitalizing on its operational superiority and strong brand name. These factors, along with the value of the Company's real estate and strong cash position, have led equity analysts to value Pep Boys in the high teens, above the inadequate value represented by the Proposed Consideration. Nonetheless, the Individual Defendants have agreed to sell the Company for the unfair Proposed Consideration of \$15 per Pep Boys share.

37. Pep Boys, like many retail businesses, struggled through the economic downturn in the United States. By the Company's fiscal year ended January 31, 2009, Pep Boys had reported four consecutive years of net losses. That month, the Company's stock price plummeted to below \$3

per share, its weakest price in decades. Pep Boys had just named a new CEO after the previous one left after barely more than a year in charge of the Company.

38. Then the Company's fortunes began to improve. Pep Boys implemented hardline cost-cutting measures to streamline operations, which have saved the Company \$11 million per year. Consumers, still reeling from the recession, held onto older cars longer instead of buying new ones, raising the average age of a car on the road to a record of nearly eleven years and increasing the need for goods and services provided by Pep Boys. And the Company honed its focus as a streamlined operational force to growth initiatives.

39. The early results for the Company's financial results have been profound. In the two full fiscal years reported since January 2009, Pep Boys has reported consecutive profitable years with net income of \$23 million and \$36.6 million in the years ended January 30, 2010 and January 29, 2011, respectively. This strong growth is expected to continue in the most recent fiscal year, as Pep Boys has already earned profits of \$33.3 million in just the first nine months of the year, as reported in the Company's third quarter 2011 earnings press release from December 5, 2011.

40. Pep Boys's strong profits have enabled it to fund an aggressive growth program as well, setting the Company up for continued and growing success as the economy continues to recover. In the Company's December 6, 2011 conference call, defendant Odell described the economics of the Company's sustained profit growth and the ability to continue funding growth initiatives well into the future:

We have also made great progress in returning Pep Boys to profitability. We have improved our profitability each quarter for 11 consecutive quarters. We have grown our service business. We have funded our service and tire center growth with internally generated funds. After funding all of our service and tire center growth this year, we still have approximately \$81 million in cash on hand and remain undrawn on our credit facility. So, our balance sheet is well positioned to support the continuation of our growth plans.

41. The Chief Financial Officer of Pep Boys, Raymond L. Arthur ("Arthur"), echoed this sentiment in the December 5, 2011 press release and, in fact, reported that the Company was ahead

of its growth goals. Additionally, Arthur forecasted the Company's intention to use its strong balance sheet to refinance existing debt and further streamline the efficiency of Pep Boys's financial structure. The press release stated:

"We opened six Service & Tire Centers during the quarter bringing our total to 159. Due to our acquisitions, we are well ahead of our 2011 targeted openings and expect to continue our aggressive growth in 2012," added CFO Ray Arthur. "While we expect to be able to continue to fund our strategic growth through our operating cash flow and revolving line of credit, we continue to monitor the credit markets with an eye toward opportunistically refinancing our 2013 and 2014 maturities."

42. The Company's stellar performance over the past eleven quarters, coupled with its substantial investment in growth opportunities and the early positive impact of those initiatives have propelled Pep Boys stock price upwards from the January 2009 lows. By January 2011, Pep Boys stock traded as high as \$15.96, over 6% above the Proposed Consideration. Despite the Company's strong performance and growth prospects, the Board has decided to sell Pep Boys now for the grossly inadequate Proposed Consideration.

43. Equity analysts agree that the Proposed Consideration undervalues the Company and would shortchange its shareholders. Prior to the announcement of the Proposed Acquisition, numerous analysts had maintained target prices for Pep Boys above the Proposed Consideration, and in response to the Proposed Acquisition announcement, still more analysts expressed that the Proposed Consideration does not reflect the true value of Pep Boys.

44. For example, David Schick of Stifel Nicolaus maintained a buy rating and a target price of \$17 per Pep Boys share, *over 13% above the Proposed Consideration*. Similarly, Bret Jordan ("Jordan") of Avondale Partners had a target price of \$16 per Company share. In the wake of the announcement of the Proposed Acquisition, Jordan was critical of the Proposed Consideration agreed to by the Board. *Reuters* reported the following on January 30, 2012 based on Jordan's analysis:

"This is probably a very good deal for the acquirer," Bret Jordan, an analyst with Avondale Partners, told Reuters. *"A high teens offer is probably more realistic than a \$15 bid."*

Jordan said a rival bid could potentially come from other private equity firms. None of Pep Boys' peers would be keen as they are either service or retail companies, unlike Pep Boys which does both.

"I would not be surprised by a higher offer given the earnings potential and underlying asset value of real estate. *This would seem to be a fairly discounted offer,*" said Jordan.

Pep Boys' most recent real estate appraisal in June 2011 valued the company's owned real estate at about \$690 million.

45. The value of the Company's real estate, coupled with its strong cash position, provide further evidence that the Proposed Consideration undervalues Pep Boys. In June 2011, a property appraisal valued the Company's real estate holdings at about \$690 million, which figure has likely grown in the interim. Additionally, the Company's most recently reported cash position was over \$80 million. Taken together, these assets already amount to \$14.61 per share in value, before factoring in over \$600 million worth of inventory and, importantly, the value inherent in the Company's strong profits and growth prospects.

46. In sum, as seen above, the consideration offered in the Proposed Acquisition does not reflect the true inherent value of the Company that was known only to defendants, as directors and/or officers of Pep Boys, at the time the Proposed Acquisition was announced.

#### **SELF-DEALING**

47. Because the Individual Defendants dominate and control the business and corporate affairs of Pep Boys and have access to material, non-public information concerning the Company's condition and business prospects, there exists an imbalance and disparity of knowledge and economic power between them and the public shareholders of Pep Boys. Therefore, it is inherently unfair for the Individual Defendants to execute and pursue any proposed merger agreement under which they will reap disproportionate benefits to the exclusion of obtaining the best reasonable shareholder value. Nonetheless, instead of attempting to negotiate a contract reflecting the best

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consideration reasonably available for the Pep Boys shareholders who they are duty-bound to serve, the Individual Defendants disloyally placed their own interests first, and tailored the terms and conditions of the Proposed Acquisition to meet their own personal needs and objectives.

48. Following consummation of the Proposed Acquisition, defendant Odell is expected to retain his prestigious and lucrative position with Pep Boys, enabling him to continue to earn substantial compensation and benefit from the Company's expected growth whereas members of the Class will have no such opportunity. For example, in fiscal year 2010, the recent period for which the Company reported compensation figures, Odell was paid a total of nearly \$3.4 million. Further, in the unlikely event that Odell's employment instead ceases in connection with the Proposed Acquisition, he will be entitled to a substantial change in control termination payout. According to the Company's 2011 Annual Proxy, such a payment would likely be in excess of \$3.5 million, conferring on Odell a substantial financial benefit not shared with public stockholders of Pep Boys.

49. Additionally, under sections 2.8(a) through (f) of the Merger Agreement, all Company stock options, restricted stock units, performance stock units, and deferred stock units held by the Individual Defendants will immediately vest and be cashed out upon closing of the Proposed Acquisition. The provisions will generate an immediate cash windfall for the Individual Defendants.

50. The proposed sale is wrongful, unfair, and harmful to public shareholders of Pep Boys, and represents an effort by defendants to aggrandize their own financial position and interests at the expense of and to the detriment of Class members. Specifically, defendants are attempting to deny plaintiff and the Class their shareholder rights via the sale of Pep Boys on terms that do not adequately value the Company. Accordingly, the Proposed Acquisition will benefit defendants and Gores Group at the expense of Pep Boys shareholders.

#### **THE UNFAIR AND INADEQUATE PROCESS**

51. In order to meet their fiduciary duties, the Individual Defendants are obligated to explore transactions that will maximize shareholder value, and not structure a preferential deal for



themselves. Due to the Individual Defendants' eagerness to enter into a transaction with Gores Group, they are failing to implement a process to obtain the maximum price for Pep Boys shareholders.

52. As a result of defendants' conduct, public stockholders of Pep Boys have been and will continue to be denied the fair process and arm's-length negotiated terms to which they are entitled in a sale of their Company. The proposed consideration does not reflect the true inherent value of the Company that was known only to the Individual Defendants, as officers and directors of Pep Boys, and Gores Group, AAC, and Merger Sub at the time the Proposed Acquisition was announced.

53. In light of the foregoing, the Individual Defendants must, as their fiduciary obligations require:

- Withdraw their consent to the sale of Pep Boys and allow the shares to trade freely – without impediments including the matching rights provision and termination fee;
- Act independently so that the interests of Pep Boys's public stockholders will be protected;
- Adequately ensure that no conflicts of interest exist between defendants' own interests and their fiduciary obligation to maximize stockholder value or, if such conflicts exist, to ensure that all conflicts be resolved in the best interests of Pep Boys's public stockholders; and
- Solicit competing bids to Gore Group's offer without the impediments listed above to ensure that the Company's shareholders are receiving the maximum value for their shares.

#### **CLASS ACTION ALLEGATIONS**

54. Plaintiff brings this action on his own behalf and as a class action on behalf of all holders of Pep Boys stock who are being and will be harmed by defendants' actions described herein (the "Class"). Excluded from the Class are defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated with any defendants.

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

56. The Class is so numerous that joinder of all members is impracticable. According to Pep Boys's SEC filings, there were more than 52.7 million shares of Pep Boys outstanding as of January 28, 2012.

57. There are questions of law and fact which are common to the Class and which predominate over questions affecting any individual Class member. The common questions include, inter alia, the following:

(a) whether the Individual Defendants have breached their fiduciary duties of undivided loyalty, independence, or due care with respect to plaintiff and the other members of the Class in connection with the Proposed Acquisition;

(b) whether the Individual Defendants are engaging in self-dealing in connection with the Proposed Acquisition;

(c) whether the Individual Defendants have breached their fiduciary duty to secure and obtain the best value reasonably available under the circumstances for the benefit of plaintiff and the other members of the Class in connection with the Proposed Acquisition;

(d) whether the Individual Defendants are unjustly enriching themselves and other insiders or affiliates of Pep Boys;

(e) whether the Individual Defendants have breached any of their other fiduciary duties to plaintiff and the other members of the Class in connection with the Proposed Acquisition, including the duties of good faith, diligence, honesty, and fair dealing;

(f) whether Gores Group, AAC and/or Merger Sub aided and abetted the Individual Defendants in breaching their fiduciary duties; and

(g) whether plaintiff and the other members of the Class would be irreparably harmed were the transactions complained of herein consummated.

58. Plaintiff's claims are typical of the claims of the other members of the Class and plaintiff does not have any interests adverse to the Class.

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

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

61. Plaintiff anticipates that there will be no difficulty in the management of this litigation. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

62. Defendants have acted on grounds generally applicable to the Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole.

#### **DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS**

63. Plaintiff also brings this action derivatively in the right and for the benefit of Pep Boys to redress injuries suffered, and to be suffered, by Pep Boys as a direct result of breaches of fiduciary duty and waste of corporate assets by the Individual Defendants. As to the derivative claims, Pep Boys is named as a nominal defendant solely in a derivative capacity. This is not a collusive action to confer jurisdiction on this Court that it would not otherwise have.

64. Plaintiff will adequately and fairly represent the interests of Pep Boys in enforcing and prosecuting its rights.

65. Plaintiff was a shareholder of Pep Boys at the time of the wrongdoing of which plaintiff complains and has been continuously since.

66. The current Board of Pep Boys consists of the following nine individuals: defendants Odell, Hotz, Scaecetti, Sweetwood, Atkins, Mitarotonda, White, Williams, and Reid.

67. Plaintiff has not made a demand upon the Board because the Company faces irreparable injury. The Individual Defendants have already caused the Company to enter into the Merger Agreement, which, as explained herein, significantly affects the Company's ability to shop itself. Once the Proposed Acquisition is completed, it would be impossible to "unmerge" the companies and recreate an auction atmosphere.

### **FIRST CAUSE OF ACTION**

#### **Claim for Breach of Fiduciary Duties Against the Individual Defendants Brought Directly on Behalf of Plaintiff and the Class**

68. Plaintiff incorporates by reference and realleges each and every allegation contained above as though fully set forth herein. Plaintiff brings this claim directly on behalf of himself and the Class.

69. The Individual Defendants have violated the fiduciary duties of care, loyalty, good faith, and independence owed to the public shareholders of Pep Boys and have acted to put their personal interests ahead of the interests of Pep Boys shareholders.

70. By the acts, transactions, and course of conduct alleged herein, defendants, individually and acting as a part of a common plan, are attempting to unfairly deprive plaintiff and other members of the Class of the true value inherent in and arising from Pep Boys.

71. The Individual Defendants have violated their fiduciary duties by proposing and entering Pep Boys into the Proposed Acquisition without regard to the effect of the proposed transaction on Pep Boys shareholders.

72. As demonstrated by the allegations above, the Individual Defendants failed to exercise the care required, and breached their duties of loyalty, good faith, and independence owed to the shareholders of Pep Boys because, among other reasons:

(a) they failed to take steps to maximize the value of Pep Boys to its public shareholders;

(b) they failed to properly value Pep Boys and its various assets and operations;  
and

(c) they ignored or did not protect against the numerous conflicts of interest resulting from the Individual Defendants' own interrelationships or connection with the Proposed Acquisition.

73. Because the Individual Defendants dominate and control the business and corporate affairs of Pep Boys, have access to private corporate information concerning Pep Boys's assets, business, and future prospects, there exists an imbalance and disparity of knowledge and economic power between them and the public shareholders of Pep Boys which makes it inherently unfair for them to pursue and recommend any proposed transaction wherein they will reap disproportionate benefits to the exclusion of maximizing shareholder value.

74. By reason of the foregoing acts, practices, and course of conduct, the Individual Defendants have failed to exercise ordinary care and diligence in the exercise of their fiduciary obligations toward plaintiff and the other members of the Class.

75. The Individual Defendants are engaging in self-dealing, are not acting in good faith toward plaintiff and the other members of the Class, and have breached and are breaching their fiduciary duties to the members of the Class.

76. As a result of the Individual Defendants' unlawful actions, plaintiff and the other members of the Class will be irreparably harmed in that they will not receive their fair portion of the value of Pep Boys's assets and operations. Unless the Proposed Acquisition is enjoined by the Court, the Individual Defendants will continue to breach their fiduciary duties owed to plaintiff and the members of the Class, will not engage in arm's-length negotiations on the Proposed Acquisition terms, and may consummate the Proposed Acquisition, all to the irreparable harm of the members of the Class.

77. Plaintiff and the 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 which defendants' actions threaten to inflict.

## **SECOND CAUSE OF ACTION**

### **Claim for Breach of Fiduciary Duties Against the Individual Defendants Brought Derivatively on Behalf of Pep Boys**

78. Plaintiff incorporates by reference and realleges each and every allegation contained above as though fully set forth herein. Plaintiff brings this claim derivatively on behalf of Pep Boys.

79. The Individual Defendants have violated the fiduciary duties of care and loyalty owed to Pep Boys and have acted to put their personal interests ahead of the interests of the Company.

80. The Individual Defendants have violated their fiduciary duties by proposing and entering Pep Boys into the Proposed Acquisition without regard to the effect of the proposed transaction on Pep Boys or its shareholders.

81. As demonstrated by the allegations above, the Individual Defendants failed to exercise the care required, and breached their duty of loyalty owed to Pep Boys because, among other reasons:

- (a) they failed to take steps to maximize the value of Pep Boys;
- (b) they failed to properly value Pep Boys and its various assets and operations;

and

- (c) they ignored or did not protect against the numerous conflicts of interest resulting from the Individual Defendants' own interrelationships or connection with the Proposed Acquisition.

82. Because the Individual Defendants dominate and control the business and corporate affairs of Pep Boys, have access to private corporate information concerning Pep Boys's assets, business, and future prospects, there exists an imbalance and disparity of knowledge and economic

power between them and the public shareholders of Pep Boys which makes it inherently unfair for them to pursue and recommend any proposed transaction wherein they will reap disproportionate benefits to the exclusion of maximizing shareholder value.

83. By reason of the foregoing acts, practices, and course of conduct, the Individual Defendants have failed to exercise ordinary care and diligence in the exercise of their fiduciary obligations toward the Company.

84. The Individual Defendants are engaging in self-dealing, are not acting in good faith toward the Company, and have breached and are breaching their fiduciary duties to the Pep Boys.

85. As a result of the Individual Defendants' unlawful actions, Pep Boys will be irreparably harmed because it will be sold to Gores Group for an unfair amount as a result of an unfair process. Unless the Proposed Acquisition is enjoined by the Court, the Individual Defendants will continue to breach their fiduciary duties owed to the Company, will not engage in arm's-length negotiations on the Proposed Acquisition terms, and may consummate the Proposed Acquisition, all to the irreparable harm of the Company.

86. Pep Boys has no adequate remedy at law. Only through the exercise of this Court's equitable powers can the Company be fully protected from the immediate and irreparable injury which defendants' actions threaten to inflict.

### **THIRD CAUSE OF ACTION**

#### **Claim for Aiding and Abetting Breaches of Fiduciary Duty Against Gores Group, AAC, and Merger Sub Brought Directly on Behalf of Plaintiff and the Class**

87. Plaintiff incorporates by reference and realleges each and every allegation contained above as though fully set forth herein. Plaintiff brings this claim directly on behalf of himself and the Class.

88. The Individual Defendants owed to plaintiff and the members of the Class certain fiduciary duties as fully set out herein.

89. By committing the acts alleged herein, the Individual Defendants breached their fiduciary duties owed to plaintiff and the members of the Class.

90. Defendants Gores Group, AAC, and Merger Sub colluded in or aided and abetted the Individual Defendants breaches of fiduciary duties, and were active and knowing participants in the Individual Defendants' breaches of fiduciary duties owed to plaintiff and the members of the Class.

91. Defendants Gores Group, AAC, and Merger Sub participated in the breach of the fiduciary duties by the Individual Defendants for the purpose of advancing their own interests. Gores Group, AAC, and Merger Sub obtained and will obtain both direct and indirect benefits from colluding in or aiding and abetting the Individual Defendant's breaches. Gores Group, AAC, and Merger Sub will benefit, inter alia, from the acquisition of the Company at an inadequate and unfair consideration if the Proposed Acquisition is consummated.

92. Plaintiff and the members of the Class shall be irreparably injured as a direct and proximate result of the aforementioned acts.

#### **FOURTH CAUSE OF ACTION**

##### **Claim for Aiding and Abetting Breaches of Fiduciary Duty Against Gores Group, AAC, and Merger Sub Brought Derivatively on Behalf of Pep Boys**

93. Plaintiff incorporates by reference and realleges each and every allegation contained above as though fully set forth herein. Plaintiff brings this claim derivatively on behalf of Pep Boys.

94. The Individual Defendants owed to the Company certain fiduciary duties as fully set out herein.

95. By committing the acts alleged herein, the Individual Defendants breached their fiduciary duties owed to the Company.

96. Defendants Gores Group, AAC, and Merger Sub colluded in or aided and abetted the Individual Defendants' breaches of fiduciary duties, and were active and knowing participants in the Individual Defendants' breaches of fiduciary duties owed to Pep Boys.



97. Defendants Gores Group, AAC, and Merger Sub participated in the breach of the fiduciary duties by the Individual Defendants for the purpose of advancing their own interests. Gores Group, AAC, and Merger Sub obtained and will obtain both direct and indirect benefits from colluding in or aiding and abetting the Individual Defendants' breaches. Gores Group, AAC, and Merger Sub will benefit, inter alia, from the acquisition of the Company at an inadequate and unfair consideration if the Proposed Acquisition is consummated.

98. The Company shall be irreparably injured as a direct and proximate result of the aforementioned acts.

#### **FIFTH CAUSE OF ACTION**

##### **Claim for Waste of Corporate Assets Against the Individual Defendants Brought Derivatively on Behalf of Pep Boys**

99. Plaintiff incorporates by reference and realleges each and every allegation contained above as though fully set forth herein. Plaintiff brings this claim derivatively on behalf of Pep Boys.

100. As a result of the misconduct described above, the Individual Defendants wasted corporate assets by entering into the Merger Agreement.

101. As a result of the waste of corporate assets, the Individual Defendants are liable to the Company.

102. Plaintiff, on behalf of Pep Boys, has no adequate remedy at law.

#### **PRAYER FOR RELIEF**

WHEREFORE, plaintiff demands injunctive relief, in his favor and in favor of the Class and the Company and against defendants as follows:

- A. Declaring that this action is properly maintainable as a derivative and class action;
- B. Declaring and decreeing that the Merger Agreement was entered into in breach of the fiduciary duties of Individual Defendants and is therefore unlawful and unenforceable;
- C. Enjoining Defendants, their agents, counsel, employees, and all persons acting in concert with them from consummating the Proposed Acquisition, unless and until the Board adopts

and implements a procedure or process reasonably designed to enter into a merger agreement providing the best possible value for shareholders;

D. Directing the Individual Defendants to exercise their fiduciary duties to commence a sale process that is reasonably designed to secure the best possible consideration for Pep Boys and obtain a transaction which is in the best interests of Pep Boys shareholders;

E. Rescinding, to the extent already implemented, the Merger Agreement;

F. Imposition of a constructive trust, in favor of plaintiff and members of the Class, upon any benefits improperly received by defendants as a result of their wrongful conduct;

G. Awarding plaintiff the costs and disbursements of this action, including reasonable attorneys' and experts' fees; and

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

DATED: January 31, 2012

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