



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

CITY OF NORTH MIAMI BEACH  
GENERAL EMPLOYEES’ RETIREMENT  
PLAN and MAITLAND POLICE  
OFFICERS AND FIREFIGHTERS  
RETIREMENT TRUST, on behalf of  
themselves and all other similarly situated  
stockholders of Dr Pepper Snapple Group,  
Inc.,

Plaintiffs,

v.

DR PEPPER SNAPPLE GROUP, INC., a  
Delaware corporation, MAPLE PARENT  
HOLDINGS CORP., a Delaware  
corporation, SALT MERGER SUB, INC., a  
Delaware corporation, LARRY YOUNG,  
DAVID E. ALEXANDER, ANTONIO  
CARRILLO, JOSÉ M. GUTIÉRREZ,  
PAMELA H. PATSLEY, RONALD G.  
ROGERS, WAYNE R. SANDERS, DUNIA  
A. SHIVE, and M. ANNE SZOSTAK,

Defendants.

C.A. No. \_\_\_\_\_

**VERIFIED CLASS ACTION COMPLAINT**

Plaintiffs City of North Miami Beach General Employees’ Retirement Plan and Maitland Police Officers and Firefighters Retirement Trust (collectively, “Plaintiffs”) on behalf of themselves and all other similarly situated public stockholders of Dr Pepper Snapple Group, Inc. (“DPSG” or the “Company”), by

and through their undersigned counsel, make the following allegations against DPSG, the members of DPSG's board of directors (the "Board"), Maple Parent Holdings Corp. ("Maple") and Salt Merger Sub, Inc. ("Merger Sub"), a wholly-owned subsidiary of DPSG, in support of Plaintiffs' claims relating to the Proposed Transaction, described below. The allegations of the Complaint are based on the personal knowledge of Plaintiffs as to themselves and on information and belief (including the investigation of counsel and review of publicly-available information) as to all other matters stated herein.

### **NATURE OF THE ACTION**

1. The availability of appraisal provides an important protection for all investors, including small investors who could not otherwise bear the expense and burden of pursuing appraisal actions on their own. This is because the assertion of appraisal rights by the investors who can justify the investment provides a deterrent to corporate misconduct and incentivizes fair pricing.

2. In all events, it is important that the Court carefully police steps taken by corporate insiders and buyers to manipulate deal structures in order to deny stockholders appraisal rights in change-of-control transactions that include cash as a part of the consideration.

3. The DPSG Board is currently attempting to manipulate the structure of a merger in order to deny stockholders their appraisal rights. This case involves

a straightforward corporate merger in which the target stockholders will receive cash and end up with just 13% of the combined entity.

4. Because of the cash component, the target stockholders are entitled to pursue appraisal rights under Section 262. The problem, however, is that the deal has been structured in a way only a contortionist can appreciate, in order to deny stockholders their rights. If permitted to get away with it here, others will surely follow, further harming the avenues available for stockholders of Delaware companies to protect their interests.

5. On January 29, 2018, the Board announced that it agreed to sell control of DPSG to Keurig Green Mountain, Inc. (“Keurig”). The deal is structured in an unusual way. As a technical matter, the Board is not asking stockholders to vote directly on the Proposed Transaction. Instead, it is asking stockholders to approve an amendment to the Company’s charter so as to more than double its shares outstanding, and to approve the issuance of 87% of the Company’s post-amendment authorized stock to Keurig stockholders (the “Proposed Transaction”).

6. Upon consummation, DPSG’s stockholders will receive a \$103.75 per share cash special dividend (the “Special Dividend”) and will collectively own a mere 13% of the post-closing Company. Keurig’s stockholders will own the remaining 87%. Keurig, which will become the controlling stockholder of the

Company after consummation of the Proposed Transaction, is currently a private company controlled by JAB Holding Company (“JAB”).

7. The Court saw through very similar shenanigans in *La. Mun. Police Employees Ret. Sys. v. Crawford*, 918 A.2d 1172, 1191 (Del. Ch. 2007), where the Court held a “special dividend” issued as part of a merger was simply cash consideration “dressed up in a none-too-convincing disguise,” implicating Section 262. The Court enjoined the vote on the merger and required the target company to notify stockholders of their statutory right to appraisal.

8. DPSG’s effort to avoid appraisal here is convoluted, but cannot be sustained. Through the Proposed Transaction, DPSG stockholders are asked to sell 87% control over their company in exchange for a cash payment of \$103.75 per share. Through machinations designed specifically to avoid providing appraisal rights, however, the parties have turned a simple merger authorized under Section 251 of the DGCL on its head.

9. Although DPSG stockholders are offered cash consideration in the transaction, thus implicating appraisal rights under Section 262, Defendants have incorrectly advised stockholders that appraisal rights are not available under Delaware law.

10. Defendants breached their statutory and fiduciary duties to Plaintiffs and the Class by issuing a preliminary proxy statement on March 8, 2018 in

connection with the Proposed Transaction (the “Preliminary Proxy”) that fails to disclose all material information to the Company’s public stockholders.

11. The Preliminary Proxy failed to provide notice to the Company’s public stockholders of their right to demand appraisal and failed to provide sufficient information to allow for a fully-informed decision to demand appraisal. Plaintiffs respectfully request that the Proposed Transaction be enjoined until and unless the parties provide for appraisal rights, and/or (only in the event the Proposed Transaction is not enjoined) damages be awarded to the proposed Class.

### **THE PARTIES**

12. Plaintiff City of North Miami Beach General Employees’ Retirement Plan holds and has held shares of common stock of DPSG at all times relevant herein.

13. Plaintiff Maitland Police Officers and Firefighters Retirement Trust holds and has held shares of common stock of DPSG at all time relevant herein.

14. Defendant DPSG, a Delaware corporation, is a leading integrated brand owner, manufacturer and distributor of non-alcoholic beverages in the United States, Mexico and the Caribbean, and Canada with a diverse portfolio of flavored (non-cola) CSDs and NCBs, including ready-to-drink teas, juices, juice drinks, water and mixers. DPSG’s common stock is listed on the New York Stock

Exchange under the symbol “DPS.” DPSG’s principal place of business is located at 5301 Legacy Drive, Plano, Texas 75024.

15. Defendant Maple, a Delaware corporation, is Keurig’s parent. Keurig is a leading producer of specialty coffee and innovative single-serve brewing systems, with its Keurig® brewers and single-serve hot beverages in more than 20 million homes and offices throughout North America. As a result of the Proposed Transaction, Keurig will be the controlling stockholder of DPSG. Keurig trades on the NASDAQ under the symbol “GMCR.” Keurig’s principal place of business is located at 33 Coffee Lane, Waterbury, Vermont 05676.

16. Defendant Merger Sub, a Delaware corporation and a wholly-owned subsidiary of DPSG, was formed solely for the purpose of facilitating the Proposed Transaction and the transactions contemplated thereby. Merger Sub has not carried on any activities or operations to date, except for those activities incidental to its formation and undertaken in connection with the Proposed Transaction and the transactions contemplated thereby. Pursuant to the Merger Agreement, at the effective time of the Proposed Transaction, Merger Sub will be merged with and into Maple, with Maple surviving the merger as a wholly-owned subsidiary of DPSG.

17. Defendant Larry Young (“Young”) has served as president, chief executive officer and as a director of DPSG since the Company’s formation in

October 2007. Following the Proposed Transaction, Young will serve as one of two members of DPSG's Board appointed by DPSG.

18. Defendant David E. Alexander ("Alexander") has served as a director of DPSG since November 2011.

19. Defendant Antonio Carrillo ("Carrillo") has served as a director of DPSG since February 2015.

20. Defendant José M. Gutiérrez ("Gutiérrez") has served as a director of DPSG since September 2016.

21. Defendant Pamela H. Patsley ("Patsley") has served as a director of DPSG since April 2006.

22. Defendant Ronald G. Rogers ("Rogers") has served as a director of DPSG since May 2008.

23. Defendant Wayne R. Sanders ("Sanders") has served as the Chairman of DPSG's Board since May 2006.

24. Defendant Dunia A. Shive ("Shive") has served as a director of DPSG since November 2014.

25. Defendant M. Anne Szostak ("Szostak") has served as a director of DPSG since May 2008.

26. Defendants Young, Alexander, Carrillo, Gutiérrez, Patsley, Rogers, Sanders, Shive and Szostak (the “Director Defendants”) and DPSG owe fiduciary duties to the public stockholders of DPSG.

### **SUBSTANTIVE ALLEGATIONS**

27. On January 29, 2018, the DPSG Board disclosed that it had entered into a definitive agreement to sell the Company to Keurig in a transaction that will transfer 87% control of the Company to Keurig in exchange for \$103.75 per share.

28. Pursuant the Agreement and Plan of Merger, dated as of January 29, 2018 (the “Merger Agreement”), DPSG proposes to hold a stockholder vote to amend its certificate of incorporation to increase its authorized shares by seven times, and pay a \$103.75 per share “special dividend” to DPSG stockholders.

29. Maple and Merger Sub will merge with and into Maple, the separate corporate existence of Merger Sub will cease with Maple surviving the Proposed Transaction as a wholly-owned subsidiary of DPSG (the “Surviving Corporation”).

30. Holders of shares of Maple’s common stock will receive shares of DPSG’s common stock as determined pursuant to the exchange ratio set forth in the Merger Agreement and the holders of Merger Sub’s common stock will receive one share of the Surviving Corporation’s common stock for each share of their Merger Sub common stock.



31. Following the Proposed Transaction, the equity interest holders of Maple will collectively own approximately 87% of the outstanding shares of common stock of the Surviving Corporation and the holders of DPSG's common stock will involuntarily own approximately 13% of it.

32. DPSG stockholders were notified of the Proposed Transaction pursuant to the Preliminary Proxy filed on March 8, 2018. According to the Preliminary Proxy, DPSG's Board has unanimously: (a) determined that the Merger Agreement and the transactions contemplated therein, including the Proposed Transaction, are fair to and in the best interests of DPSG and its stockholders, (b) authorized, approved and declared advisable the Merger Agreement, the Proposed Transaction and the other transactions contemplated in the Merger Agreement, on the terms and subject to the conditions set forth in the Merger Agreement, and (c) resolved to recommend that the stockholders of DPSG approve the DPSG Charter Amendment and the issuance of DPSG Common Stock in connection with the Proposed Transaction.

33. The Preliminary Proxy states: "***We are not seeking stockholder approval for the adoption of the merger agreement.***" Preliminary Proxy at Letter to Stockholders at 2, Notice of Annual Meeting at 2 (emphasis in original). However, stockholders are told the Proposed Transaction "cannot be completed

unless the stock issuance proposal and the charter amendment proposal are approved by our stockholders.” *See, e.g.*, Preliminary Proxy at 8, 16.

34. The Preliminary Proxy disclosed that DPSG and Maple expect the Proposed Transaction will be completed during the second calendar quarter of 2018. Preliminary Proxy at 6.

35. According to the Preliminary Proxy, at the effective time of the Proposed Transaction, upon consummation, DPSG’s stockholders will receive a \$103.75 per share cash Special Dividend and will collectively own a mere 13% of the post-closing Company. Keurig’s stockholders will own the remaining 87%.

36. The Merger Agreement repeatedly makes clear that the Special Dividend is an inextricable part of the consideration offered to stockholders in the Proposed Transaction. For example:

- a) A “Whereas Clause” states that DPSG intends to pay the Special Dividend “in connection with the [Proposed Transaction];”
- b) Section 3.01(c) provides a mechanism to adjust the amount of the Special Dividend should there be a stock split or the like prior to closing so as to provide stockholders “the same economic effect as contemplated by this Agreement[.]”

- c) Section 3.04 concerns tax withholdings in connection with the Proposed Transaction and Special Dividend and describes the Special Dividend as “consideration otherwise required to be distributed pursuant to this Agreement[.]”
- d) Section 6.02(d) prohibits DPSG from declaring dividends other than the Special Dividend prior to consummation of the Proposed Transaction;
- e) Section 7.05 provides for the adjustment of outstanding equity awards so that they will be entitled to receive the Special Dividend upon consummation of the Proposed Transaction;
- f) Section 7.13(c) states that the Special Dividend: (i) is conditioned on the consummation of the Proposed Transaction; (ii) will be payable to those stockholders owning DPSG as of the close of business on the business day immediately preceding the closing date; and (iii) will be paid on the business day immediately following the closing date; and
- g) Section 7.16 protects the entitlement of DPSG’s stockholders to the Special Dividend post-closing by only permitting those continuing DPSG directors (as opposed to the directors

installed by JAB) to take any action with respect to the Special Dividend.

37. The Proposed Transaction is no different than a standard merger effectuated pursuant to 8 *Del. C.* § 251, where two or more Delaware corporations merge into a single corporation pursuant to a merger agreement. Under § 251, the board of directors of each corporation must adopt a resolution approving the merger agreement and declaring its advisability. The merger agreement must state the terms and conditions of the merger, the merger consideration, the mode of effectuating the merger and that any amendments to the certificate of incorporation of the surviving corporation as a result of the merger shall be as reflected in an attachment to the merger agreement. A merger pursuant to § 251 must also be submitted to the stockholders of each constituent corporation for a vote.

38. Section 251 provides that appraisal rights are available in any merger where the stockholders of the target corporation are required to accept cash as an element of consideration. Here, if approved by the stockholders, DPSG stockholders would be required to accept \$103.75 per share in exchange for selling 87% control of the Company to Keurig.

39. Unless enjoined, through this backwards Proposed Transaction, Keurig will acquire a majority of DPSG's common stock and DPSG's common

stockholders will be denied their appraisal rights and right to vote on the Proposed Transaction.

### **CLASS ACTION ALLEGATIONS**

40. Plaintiffs, stockholders of DPSG at the time of the Proposed Transaction and all other relevant times, brings this action on their own behalf and as a class action pursuant to Court of Chancery Rule 23 on behalf of all DPSG public stockholders at the time of the Proposed Transaction (the “Class”).

41. The Class is so numerous that joinder of all members is impractical. As of February 8, 2018, DPSG had 1,208,320,697 shares of its common stock outstanding. Upon information and belief, DPSG’s common stock is owned by thousands of stockholders nationwide.

42. There are questions of law and fact that are common to the Class and that predominate over questions affecting any individual Class member. The common questions include whether Defendants violated 8 *Del. C.* § 262(d)(1) and their fiduciary duties.

43. Plaintiffs’ claims are typical of claims of other members of the Class. Plaintiffs have the same interests as other members of the Class. Plaintiffs are committed to prosecuting this action. Plaintiffs are adequate representatives of the Class and will fairly and adequately protect the interests of the Class.

44. Plaintiffs anticipate that there will not be any difficulty in the management of this litigation.

## COUNT I

### **Breach of Fiduciary Duty of Disclosure by DPSG**

45. Plaintiffs repeat and reallege each and every allegation above as if set forth fully herein.

46. The Director Defendants, as DPSG directors, owe the Class fiduciary duties of due care and loyalty, including the duty of disclosure. By virtue of their positions and their management of the business and affairs of DPSG, the Director Defendants had, at all relevant times the power to control and influence and did control and influence, the conduct of DPSG. Each Director Defendant was required to: (i) act in furtherance of the best interests of DPSG and its stockholders and not his/her own; and (ii) fully disclose all material facts about the Proposed Transaction so DPSG stockholders could make fully informed decisions about the Proposed Transaction, including whether to seek appraisal.

47. The Director Defendants failed to fulfill their fiduciary duties in connection with the Proposed Transaction by, among other things: (i) failing to inform the minority stockholders of DPSG that appraisal rights are available and include with such notice a copy of 8 *Del. C.* § 262 and (ii) causing DPSG to file the Preliminary Proxy that failed to inform the minority stockholders of DPSG that

appraisal rights are available and include with such notice a copy of 8 *Del. C.* § 262.

48. Under 8 *Del. C.* § 262(d)(1), DPSG, as the surviving entity of the Proposed Transaction, is required to mail not less than 20 days prior to the meeting, a notice to the minority stockholders of DPSG informing them that appraisal rights are available and include with such notice a copy of 8 *Del. C.* § 262.

49. The Preliminary Proxy expressly stated:

Q: Am I entitled to exercise appraisal rights in connection with the transactions contemplated by the merger agreement, including the merger?

A: Section 262 of the DGCL does not provide for appraisal rights in connection with the transactions contemplated by the merger agreement for holders of shares of DPSG common stock. For more information regarding appraisal rights, see the section entitled "No Appraisal Rights" beginning on page 185 of this proxy statement.

Preliminary Proxy at 4.

50. The Preliminary Proxy again disclosed:

No Appraisal Rights (page 185)

Section 262 of the DGCL does not provide for appraisal rights in connection with the transactions contemplated by the merger agreement for holders of shares of DPSG common stock.

Preliminary Proxy at 18.

51. Finally, at page 185 the Proxy Statement disclosed:

NO APPRAISAL RIGHTS

Section 262 of the DGCL does not provide for appraisal rights in connection with the transactions contemplated by the merger agreement for holders of shares of DPSG common stock.

Preliminary Proxy at 185.

52. According to the Preliminary Proxy, DPSG stockholders will receive a cash dividend equal to \$103.75 per share of DPSG common stock “payable on the date that is one business day after the effective time” of the Proposed Transaction. Thus, DPSG stockholders are required to accept \$103.75 per share in cash as merger consideration.

53. Under settled Delaware law, the notice of merger was required to disclose all material facts necessary for a reasonable, objective stockholder to make a fully-informed decision as to whether to demand appraisal. The Preliminary Proxy failed to include the disclosures required by 8 *Del. C.* § 262, including informing the stockholders of their right to an appraisal, and failed to include a copy of 8 *Del. C.* § 262. The Preliminary Proxy constituted a breach of the Defendants’ fiduciary duties to Plaintiffs and the Class. The Preliminary Proxy is defective because it told stockholders repeatedly that 8 *Del. C.* § 262 “does not provide for appraisal rights in connection with the transactions contemplated by the



merger agreement for holders of shares of DPSG common stock,” when exactly the opposite is true.

54. It was impossible for reasonable stockholders to make any type of realistic evaluation of the fairness of the Proposed Transaction and to make a fully-informed decision as to whether to demand appraisal without being told that 8 *Del. C.* § 262 provides for appraisal rights in connection with the Proposed Transaction.

## **COUNT II**

### **Violation of 8 *Del. C.* § 262(d)(1)**

55. Plaintiffs repeat and reallege each and every allegation above as if set forth fully herein.

56. The Preliminary Proxy did not inform stockholders of the availability of appraisal rights under 8 *Del. C.* § 262, include a copy of 8 *Del. C.* § 262 or a discussion of the stockholders’ appraisal rights, as required by 8 *Del. C.* § 262(d)(1). Instead, the Preliminary Proxy incorrectly told stockholders: “Section 262 of the DGCL does not provide for appraisal rights in connection with the transactions contemplated by the merger agreement for holders of shares of DPSG common stock.” *See* Preliminary Proxy at 4, 18, 185. Simply put, the Preliminary Proxy does not meet the statutory requirements of 8 *Del. C.* § 262(d)(1).

WHEREFORE, Plaintiffs respectfully request that the Court:

- a) Declare this action to be a proper class action and certify Plaintiffs as class representatives and Plaintiffs' counsel as class counsel.
- b) Declare that the Defendants breached their fiduciary duties to the Class;
- c) Enjoin the Proposed Transaction until Plaintiffs and the Class are provided their rights under 8 *Del. C.* § 262, or alternatively permit class members to demand and petition this Court for appraisal.
- d) Award fees, expenses and costs to Plaintiffs and Plaintiffs' counsel.
- e) Grant such other and further relief as the Court deems just and proper.

Date: March 28, 2018

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## General Information

<b>Court</b>	Delaware Court of Chancery
<b>Docket Number</b>	2018-0227

## Notes

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