



TO: CVR Energy, Inc.  
2277 Plaza Drive, Suite 500  
Sugar Land, Texas 77479

CT Company  
Corporation Trust Center  
1209 Orange Street  
Wilmington, Delaware 19801  
*Registered Agent for CVR Energy, Inc.*

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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GOLDMAN, SACHS & CO., : Index No.  
Plaintiff, :  
- against - : **COMPLAINT**  
CVR ENERGY, INC., :  
Defendant. :

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Plaintiff Goldman, Sachs & Co. (“Goldman Sachs” or “Plaintiff”), by and through its attorneys, Stroock & Stroock & Lavan LLP, as and for its complaint against Defendant CVR Energy, Inc. (“CVR”), alleges upon knowledge with respect to itself and its own acts, and upon information and belief with respect to all other matters, as follows.

**BACKGROUND AND THE PARTIES**

1. This is an action for breach of contract to recover fees and expenses owed to Goldman Sachs for services it provided to CVR pursuant to the terms of a contract dated March 21, 2012 (the “Engagement Letter”).

2. Pursuant to the Engagement Letter, Goldman Sachs was engaged by CVR to act as financial advisor to assist CVR and its Board of Directors in their analysis and consideration of, among other things, the tender offers that certain of Carl Icahn’s affiliate companies (collectively, “Icahn”) had made for shares of CVR stock, and to assist with other matters described in the Engagement Letter.

3. Goldman Sachs fully performed all of its obligations pursuant to the Engagement Letter.

4. Icahn acquired over 50% of CVR's outstanding stock on or about May 4, 2012 (the "Transaction"). Goldman Sachs' fee and expenses in respect of the financial advisory services it provided under the Engagement Letter became payable immediately prior to the consummation of the Transaction.

5. Despite demand by Goldman Sachs, CVR has refused to pay Goldman Sachs' fee, as well as its reimbursable expenses, in the amount of \$18,497,291.04. CVR's refusal to pay Goldman Sachs' fee and expenses despite the clear terms of the Engagement Letter constitutes a breach of contract for which Goldman Sachs seeks appropriate relief.

#### **THE PARTIES**

6. Plaintiff Goldman, Sachs & Co. is a limited partnership organized under the laws of the State of New York, with its principal office located in New York, New York. Goldman, Sachs & Co. has one general partner and one limited partner. Its general partner is The Goldman, Sachs & Co. L.L.C., a limited liability company organized under the laws of the State of Delaware with its principal place of business in New York, and whose sole member is The Goldman Sachs Group, Inc. Goldman, Sachs & Co.'s limited partner is The Goldman Sachs Group, Inc., a corporation organized under the laws of the State of Delaware with its principal place of business in New York.

7. Defendant CVR Energy, Inc. is a corporation organized under the laws of Delaware.

#### **VENUE**

8. Pursuant to CPLR 501 and 503(a), venue is proper in this Court because the forum selection clause in the Engagement Letter provides for exclusive jurisdiction and venue in any state court located in the City and County of New York for any suit or proceeding arising

with respect to the Engagement Letter, and, for the further reason, because Plaintiff has its principal office in New York County.

### **FACTS**

9. On or about March 21, 2012, CVR entered into the Engagement Letter with Goldman Sachs. Under the terms of the Engagement Letter, Goldman Sachs was engaged by CVR to act:

... as financial advisor to the Company and its Board of Directors to assist them in their analysis and consideration of the tender offer (the "Offer") that IEP Energy LLC and Icahn Enterprises Holdings, L.P. (collectively, the Offeror"), Carl. C. Icahn or any of their respective affiliates (collectively, the "Icahn Affiliates") has made, the attempt that the Icahn Affiliates have made to acquire control of the Company's Board of Directors (the "Board"), any other attempt the Offeror or any other person, group (as defined in Section 13 of the Exchange Act), company or entity unaffiliated with the Icahn Affiliates (the "Third Party") (the Icahn Affiliates and the Third Party collectively, the "Interested Party") may make, to acquire control of the Company or the Board, the possible purchase of all or a portion of the stock or assets of the Company by an Interested Party or any other party, other significant transactions involving the Company that may arise from [Goldman Sachs'] advisory services hereunder or the potential sale of the Company by way of a tender offer, exchange offer, merger, business combination or otherwise to the Interested Party or any other party.

10. The Engagement Letter provides for compensation to Goldman Sachs under various scenarios in accordance with the amounts and formulas set forth therein. As relevant here, Goldman Sachs is due to receive in cash immediately prior to the consummation of any "Sale Transaction," as defined in the Engagement Letter, a transaction fee equal to 0.525% of the "Aggregate Consideration" paid in connection with the Sale Transaction. The Aggregate Consideration is:

... (i) the total amount of cash and the fair market value on the date which is five days prior to the consummation of the Sale Transaction (the "Valuation Date") of all other property, securities

or otherwise paid or payable directly or indirectly to the Company or any of its stockholders in connection with such Sale Transaction ..., plus (ii) amounts paid to holders of any warrants or convertible or exchangeable securities of the Company and to holders of any options or stock appreciation rights issued by the Company, whether or not vested, plus (iii) the principal amount of all indebtedness for borrowed money or similar non-trade liabilities or obligations (including, without limitation, unfunded pension liabilities, guarantees, capitalized leases, lending lease obligations, and the like) of the Company repaid, taken subject to, retired, extinguished or assumed in connection with, or which otherwise remains outstanding as of the closing of, such Sale Transaction, (A) in the case of a sale of all or a portion of the Company's equity securities, as set forth on the Valuation Date, and (B) in all other cases, assumed by the purchaser, ....

11. The Engagement Letter also provides that CVR:

...agree[s] to reimburse [Goldman Sachs] quarterly, and upon consummation of the transaction or transactions contemplated hereby or upon termination of [Goldman Sachs'] services pursuant to [the Engagement Letter], for [Goldman Sachs'] reasonable out of pocket expenses, including the reasonable fees and disbursements of [Goldman Sachs'] attorneys, arising in connection with any matter referred to in [the Engagement Letter.]

12. On or about May 3, 2012, CVR instructed Goldman Sachs to send the invoice for its services to CVR. Accordingly, and in anticipation of the imminent consummation of the Sale Transaction, on May 3, 2012, Goldman Sachs sent to CVR an invoice for its fee of \$18,415,007.06 and for expenses in the amount of \$82,283.98, for a total amount due to Goldman Sachs of \$18,497,291.04.

13. On or about May 4, 2012, a Sale Transaction within the meaning of the Engagement Letter was consummated as a result of Icahn's acquisition, in the Transaction, of over 50% of CVR's outstanding stock.

14. However, on or about May 7, 2012, CVR informed Goldman Sachs that Icahn had instructed CVR not to pay the invoice.

15. All conditions to CVR's obligation to pay Goldman Sachs' fee and expenses have been met.

16. CVR has wrongfully refused, and continues to refuse, to pay Goldman Sachs' fee and expenses.

17. To date, CVR has not paid any amounts due to Goldman Sachs pursuant to the Engagement Letter.

**AS AND FOR A CAUSE OF ACTION**

**(BREACH OF CONTRACT)**

18. Plaintiff repeats and realleges the foregoing paragraphs as if fully set forth herein.

19. The Engagement Letter constitutes a binding and enforceable contract between Goldman Sachs and CVR.

20. Goldman Sachs performed all of the services required under the Engagement Letter.

21. Pursuant to the Engagement Letter, Goldman Sachs requested payment of its fee and expenses on or about May 3, 2012.

22. In accordance with the terms of the Engagement Letter, Goldman Sachs' fee and expenses became payable in cash immediately prior to the consummation of the Transaction, which occurred on or about May 4, 2012. However, CVR has refused to pay Goldman Sachs' fee and expenses.

23. As a result of CVR's failure and continued refusal to pay Goldman Sachs' fee and expenses, CVR has breached the Engagement Letter.

24. As a consequence of the foregoing, Goldman Sachs has been damaged in an amount not less than \$18,497,291.04.

**WHEREFORE**, Plaintiff demands that a judgment be entered in favor of Goldman

Sachs granting the following relief:

- a. Damages in an amount of not less than \$18,497,291.04;
- b. Reasonable attorneys' fees, the costs and disbursements of this action, and interest; and
- c. Such other and further relief as this Court deems just and proper.

Dated: New York, New York  
June 21, 2012

STROOCK & STROOCK & LAVAN LLP

By: \_\_\_\_\_



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*Attorneys for Goldman, Sachs & Co.*