EFiled: Mar 15 2019 03:59PM EDT
Transaction ID 63072386
Case No. 2019-0210-

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

BHARAT H. BARAI, INDIVIDUALLY AND AS TRUSTEE OF BHARAT H. BARAI, MD & PANNA B. BARAI, MD TRUST FBO SUNITI MEDICAL CORPORATION MPP & TRUST UA 11/30/87 on behalf of themselves and all other similarly situated former unitholders of CVR REFINING, LP, Plaintiffs, v. CVR REFINING, LP, CVR ENERGY, INC., CVR REFINING HOLDINGS, LLC, CVR REFINING GP, LLC, ICAHN ENTERPRISES, L.P., CARL C. ICAHN, SUNGHWAN CHO, JONATHAN FRATES, DAVID L. LAMP, ANDREW LANGHAM, LOUIS J. PASTOR, KENNETH SHEA, JON R. WHITNEY, AND GLENN R. ZANDER, Defendants.	C.A. No. _____

VERIFIED CLASS ACTION COMPLAINT

Plaintiffs Bharat H. Barai and Bharat H. Barai, MD & Panna B. Barai, MD TRS FBO Suniti Medical Corporation MPP & Trust UA 11/30/87 ("Plaintiffs") on behalf of themselves and all other similarly situated former holders of common units of CVR Refining, LP (the "Partnership"), by and through their undersigned attorneys, bring this Verified Class Action Complaint against the Partnership, CVR Refining GP, LLC (the "General Partner"), CVR Refining Holdings, LLC ("CVR

Holdings"), CVR Energy, Inc. ("CVR Energy"), Icahn Enterprises, L.P. ("Icahn"), and the Directors of the General Partner during the relevant time period (the "Individual Defendants") (collectively, "Defendants"). The allegations in this Complaint are based on Plaintiffs' knowledge with regard to themselves and based on information and belief, including the investigation of counsel and the review of publicly available information, as to all other matters.

NATURE OF THE ACTION

1. This suit challenges the multi-step plan by which Icahn, an investment firm controlled by Carl Icahn, acting through various entities, weaponized a call right in the limited partnership agreement of the Partnership (the "Call Right") in order to buy out the Partnership's public common unitholders on the cheap.

2. The Partnership is a Delaware master limited partnership ("MLP") that owns and operates petroleum refining and auxiliary businesses in the United States.

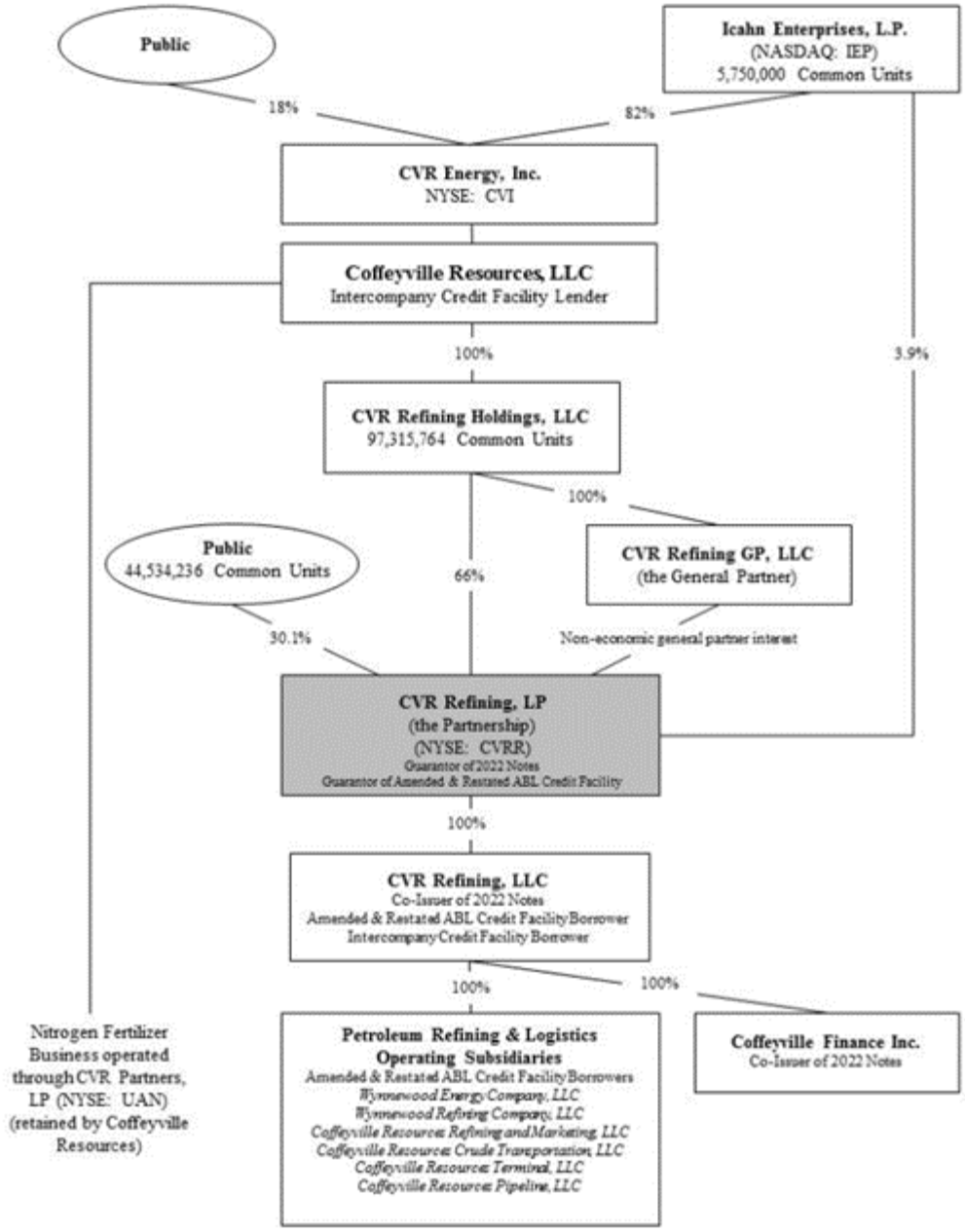
3. Prior to 2018, public investors in MLPs did not commonly realize that certain MLP partnership agreements contained contractual call rights that could potentially be abused. The terms of the Partnership's Call Right are specified in Section 15.1 of the First Amended and Restated Agreement of Limited Partnership of CVR Refining, LP, dated as of January 23, 2013 (the "Partnership Agreement").

4. In the spring of 2018, the general partner of an unrelated MLP, Boardwalk Pipeline Partners, L.P. ("Boardwalk"), drew market attention for

exercising its call right through a multi-step process that strategically drove down the market price of the public units prior to exercise, thus lowering its exercise cost. On May 10, 2018, Barclays issued an analyst report entitled "Digging deeper into call rights." Barclays explained how Boardwalk's general partner was incentivized to "tease the market" respecting the potential exercise of its call right, thereby "putting pressure on the stock and in essence, trying to time the potential purchase at a time that would be most favorable to them."

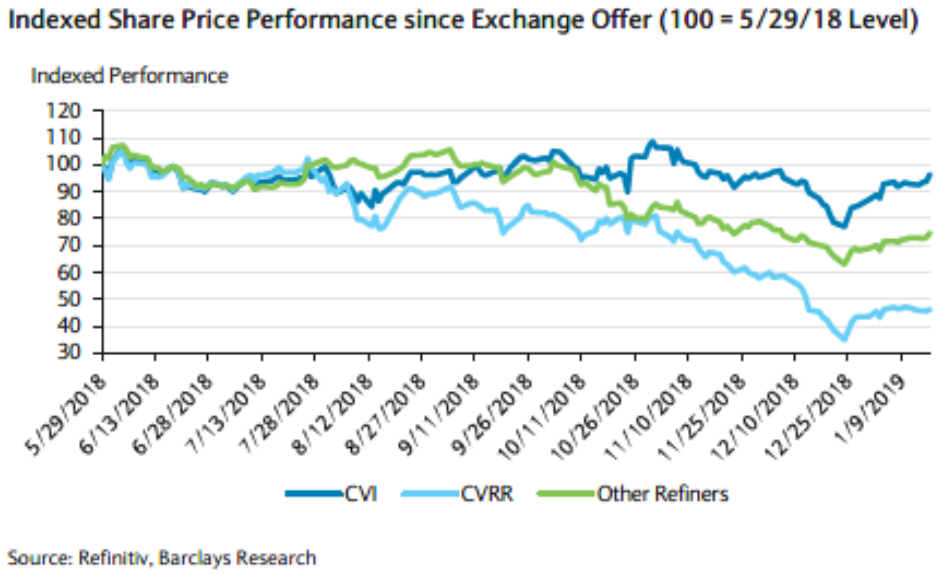
5. The manipulative exercise of the call right at Boardwalk created a playbook for Icahn. Icahn decided to cause the General Partner and its affiliates to increase their equity stake in the Partnership to allow CVR Energy to exercise the Call Right. Icahn would then create downward market pressure on the Partnership's common unit price before exercising the Call Right.

6. In May 2018, Icahn-controlled CVR Energy launched a partial exchange offer priced at $27.63 per common unit (the "Partial Exchange Offer"), representing a 25% premium over the immediately prior closing price of $22.10 per common unit. At that time, immediately prior to the Partial Exchange Offer, Icahn and certain of its controlled entities owned approximately 69.8% of the Partnership's common units, as depicted on the organization chart below:



7. Importantly, even though the tender offer would expose non-tendering unitholders to opportunism through later exercise of the Call Right, the Partnership's directors took no position on the Partial Exchange Offer. Upon consummation of the Partial Exchange Offer, Icahn and its controlled entities became the owner of 84.5% of the Partnership's common units, primed to exploit the remaining 15.5%.

8. During the Partial Exchange Offer, the Icahn-controlled entities maintained public silence over Icahn's secret plan to weaponize the Call Right and buy out the remaining publicly held common units of the Partnership on the cheap. Nonetheless, sophisticated institutional investors intuited Icahn's plan. Over the following few months, as it became increasingly clear that Icahn was going to cause CVR Energy to exercise the Call Right, public investors bid up the price of CVR Energy (CVR) and drove down the price of the Partnership's common units (CVRR):



Source: Refinitiv, Barclays Research

9. On November 29, 2018, just as occurred in the Boardwalk situation, Icahn teased that CVR Energy was "contemplating" exercising the Call Right without actually committing to exercise the Call Right at that time. That had the intended effect over subsequent weeks of driving down the price of Partnership units even further.

10. On January 29, 2019, Icahn completed its multi-step plan. On that date, CVR Energy exercised the Call Right, buying the remaining 15.5% of the common units at $10.50 per unit.

11. The Partnership Agreement proscribes bad faith acts or omissions and incorporates the implied covenant of good faith and fair dealing. As discussed below, Icahn could not implement its secret plan without causing the Partnership to mislead Partnership investors and without assistance from the Partnership's directors, including Carl Icahn and his cronies.

12. Moreover, the Partnership Agreement required that the call price be at least $16.7162 per unit, not $10.50 per unit. Under Section 15.1(a), CVR Energy was required to pay the greater of the 20-day trailing average for Partnership units, or the price paid by the General Partner or any of its Affiliates for any such units during the 90-day period preceding the date the notice described in Section 15.1(b) was mailed (*i.e.*, January 18, 2019). As detailed in an SEC Form 4 filed on January 15, 2019, on November 14, 2018 (well within 90 days), Janice T. DeVelasco, a CVR Energy and General Partner executive (VP-Environmental Health, Safety and Security, at each company) and an Affiliate as defined in the Partnership Agreement, purchased 236.2019 units of the Partnership at a price of $16.7162 per unit. As a result, the proper call price should have been, at a minimum, $16.7162 per unit.

PARTIES

Plaintiff

13. Plaintiff Bharat H. Barai was a common unitholder of the Partnership continuously from 2014 until his 64,697 Partnership units were involuntarily bought out by CVR Energy at an artificially depressed price through CVR Energy's January 2019 exercise of the Call Right.

14. Plaintiff Bharat H. Barai, MD & Panna B. Barai, MD Trust FBO Suniti Medical Corporation MPP & Trust UA 11/30/87 was a common unitholder of the Partnership continuously from 2013 until its 30,500 Partnership units were involuntarily bought out by CVR Energy at an artificially depressed price through CVR Energy's January 2019 exercise of the Call Right.

Entity Defendants

15. Defendant the Partnership is an oil refiner and marketer of transportation fuels organized as a limited partnership under the laws of the State of Delaware. It is headquartered at 2277 Plaza Drive, Suite 500 Sugar Land, Texas. Prior to the Call Right Purchase, its common units were traded on the NYSE under the symbol "CVRR."

16. Defendant the General Partner is a limited liability company organized and existing under the laws of the State of Delaware, and is an indirectly wholly owned subsidiary of CVR Energy through CVR Holdings. The General Partner is

the general partner of the Partnership, and has direct responsibility for conducting the Partnership's business and managing its operations.

17. Defendant CVR Holdings is a limited liability company organized and existing under the laws of the State of Delaware, and is an indirectly wholly owned subsidiary of CVR Energy. CVR Holdings owns and controls the General Partner. At all relevant times, CVR Holdings owned 97,315,764 common units of the Partnership, representing approximately 66% of the outstanding common units.

18. Defendant CVR Energy is a corporation organized and existing under the laws of the State of Delaware. Its stock trades on the NYSE under the symbol "CVI." The Partnership, CVR Holdings, and the General Partner are now wholly owned subsidiaries of CVR Energy. At all relevant times, CVR Energy controlled the General Partner.

19. Defendant Icahn is a limited partnership organized and existing under the laws of the State of Delaware. Its depositary units trade on the Nasdaq Global Select Market under the symbol "IEP." At all relevant times, Icahn and its affiliates owned approximately 82% of the outstanding common stock of CVR Energy. At all relevant times, Icahn either directly or indirectly controlled the actions of CVR Energy, CVR Holdings, the General Partner, and thus the Partnership.

Individual Defendants

20. On May 29, 2018, when the Partnership filed its Schedule 14D-9 in connection with the Partial Exchange Offer, the General Partner's Board of Directors (the "Board") was composed of the nine Individual Defendants listed below. The same Board made the determination on May 28, 2018 that the Board, the General Partner and the Partnership would not make any recommendation regarding the Partial Exchange Offer. Virtually all of the Board members have deep connections to Defendant Carl C. Icahn ("Carl Icahn") or Icahn-controlled entities, and/or disabling conflicts, by virtue of their employment, history, or other directorships.

21. On May 28, 2018, when the Board made the determination, and on May 29, 2018, when the General Partner, the Board, and the Partnership publicly expressed "no opinion" on whether the Partnership's limited partners should exchange their common units with CVR Energy pursuant to the Partial Exchange Offer, Board members were privy to CVR Energy's plan to exercise the Call Right at a depressed price by virtue of their ties to CVR Energy, Icahn and other Icahn-controlled entities.

22. Defendant Carl Icahn served as Chairman of the Board of the General Partner from January 2013 until July 2018, as well as Chairman of the Board of CVR Energy from June 2012 until July 2018. At all relevant times, Carl Icahn, directly or indirectly, wholly owned the general partner of Icahn and owned approximately

91% of Icahn's outstanding depositary units. At all relevant times, Carl Icahn either directly or indirectly controlled the actions of Icahn, CVR Energy, CVR Holdings, the General Partner, and the Partnership.

23. Defendant SungHwan Cho has served as a director of the General Partner since January 2013 and CVR Energy since May 2012. Since July 2018, Cho has served as Chairman of the boards of the General Partner and CVR Energy. Cho has been employed by Icahn since October 2006, serving in his most recent role as Icahn's Chief Financial Officer since March 2012. In addition to his service on the boards of the General Partner and CVR Energy, Cho has served on the boards of directors of several Icahn-controlled companies, including Icahn, Icahn Automotive Group LLC, CVR Partners, LP ("CVR Partners") (a public entity in which CVR Energy holds a 34% interest), Federal-Mogul Holdings LLC ("Federal-Mogul"), Ferrous Resources Limited ("Ferrous Resources"), American Railcar Industries, Inc. ("American Railcar Industries"), American Railcar Leasing LLC, WestPoint Home LLC, PSC Metals, LLC and Viskase Companies, Inc. ("Viskase Companies"). Cho also has served on the boards of directors of several companies in which Carl Icahn or his affiliates hold or held a significant non-controlling interest, including Hertz Global Holdings, Inc. and Take-Two Interactive Software, Inc.

24. Defendant Jonathan Frates has been a director of the General Partner since March 2016. Frates has been employed by Icahn as a Portfolio Company

Associate since November 2015. In addition to his service on the board of the General Partner, Frates also has served on the boards of multiple Carl Icahn-controlled companies, including CVR Partners, Ferrous Resources, American Railcar Industries and Viskase Companies, as well as companies in which Icahn holds or held a significant non-controlling interest, including SandRidge Energy Inc.

25. Defendant David L. Lamp has been a director of CVR Energy and the General Partner since January 2018. Since December 2017, Lamp has also been the President and CEO of both CVR Energy and the General Partner, as well as the Executive Chairman and a Director of the general partner of CVR Partners.

26. Defendant Andrew Langham has been a director of the General Partner since 2014. Langham has been employed by Icahn since 2005, serving in his most recent role as Icahn's General Counsel since 2014. In addition to his service on the board of the General Partner, Langham also served on the board of CVR Energy from 2014 to 2017, and has served on the board of CVR Partners since 2015. Langham also has served on the boards of companies in which Icahn or his affiliates holds or held a significant non-controlling interest, including Manitowoc Foodservice, Inc., Freeport-McMoRan Inc. and Cheniere Energy, Inc.

27. Defendant Louis J. Pastor was a director of CVR Energy and the General Partner until he resigned in September 2018. Pastor was employed by Icahn from May 2013 to September 2018, serving in his most recent role as Deputy

General Counsel since December 2015. In addition to his service on the boards of CVR Energy and the General Partner, Pastor also previously served on the board of Icahn-controlled Federal-Mogul, and currently serves as a director of Icahn-controlled HERC Holdings, Inc. and as a member of the executive committee of Icahn-controlled ACF Industries LLC.

28. Defendant Kenneth Shea has been a director of the General Partner since January 2013. During 2008 and 2009, Shea served as a Managing Director of Icahn Capital LP, a wholly owned subsidiary of Icahn, where he was responsible for all of Icahn Capital's principal investments in the gaming and leisure industries, including Icahn's acquisition of Tropicana Entertainment Holdings LLC.

29. Defendant Jon R. Whitney has been a director of the General Partner since January 2013. Whitney previously was a member of the board of CVR Partners' general partner from June 2011 until he resigned in January 2013.

30. Defendant Glenn R. Zander was a director of the General Partner from January 2013 until he resigned in July 2018. He previously served as a director of CVR Energy from May 2012 until January 2013. Icahn originally nominated Zander to the board of CVR Energy in February 2012 in a proxy contest for control of CVR Energy, and Icahn ultimately appointed Zander to the board of CVR Energy by agreement in May 2012 after Icahn succeeded in obtaining control of CVR Energy in a hostile takeover. From 1990 to 1994, Zander was Vice Chairman and Co-CEO

of Trans World Airlines Inc. ("TWA"), while Carl Icahn held controlling and significant non-controlling interests in TWA and served alongside Zander as Chairman of TWA's board. In 2011, Carl Icahn included Zander as a member of Icahn's slate in a contested election for control of the board of directors of The Clorox Company.

31. Defendants Carl Icahn, Cho, Frates, Lamp, Langham, Pastor, Shea, Whitney and Zander are collectively referred to herein as the "Individual Defendants."

32. All Defendants other than the Partnership are referred to herein as the "Icahn Group."

SUBSTANTIVE ALLEGATIONS

PARTNERSHIP BACKGROUND AND STRUCTURE

33. CVR Energy formed the Partnership in September 2012 in order to own and operate petroleum and auxiliary businesses as a limited partnership. On January 23, 2013, the Partnership completed its initial public offering of common units to the public at $25.00 per unit and began trading on the NYSE.

34. During the relevant time period, the Partnership's ownership structure was as follows. The Partnership had 147,600,000 common units outstanding. CVR Holdings, an indirectly wholly owned subsidiary of CVR Energy, owned 97,315,764 of those units, representing approximately 65.9% of the outstanding common units.

Icahn owned 3,750,000 common units and its wholly owned subsidiary, American Entertainment Properties Corp. ("AEP"), owned 2,000,000 common units, collectively representing approximately 3.9% of the outstanding common units.[1]

35. Prior to the Partial Exchange Offer, the remaining 44,534,236 common units represented approximately 30.2% of the outstanding common units. In the Partial Exchange Offer, CVR Energy acquired 21,625,106 of those common units. The diagram in paragraph 6 above is from the Partnership's SEC filings and reflects the Partnership's ownership structure prior to the Partial Exchange Offer.

THE CALL RIGHT

36. The Partnership Agreement is the Partnership's governing document. The Partnership Agreement includes the Call Right, which permits the General Partner to buy out the common units held by the public if certain conditions are met. The Call Right also contains protections for the Partnership's common unitholders.

37. The circumstances in which the Call Right can be exercised, as well as the pricing of the Call Right, are set forth in Section 15.1(a) of the Partnership Agreement:

> Notwithstanding any other provision of this Agreement, if at any time the General Partner and its Affiliates hold more than 95% of the total Limited Partner Interests of any class then Outstanding, the General Partner shall then have the right, which right it may assign and transfer in whole or in part to the Partnership or any Affiliate of the General

[1] As described below, Icahn owned 4,000,000 common units prior to its sale of 250,000 common units on August 2, 2016.

> Partner, exercisable in its sole discretion, to purchase all, but not less than all, of such Limited Partner Interests of such class then Outstanding held by Persons other than the General Partner and its Affiliates, at the greater of (x) the Current Market Price as of the date three days prior to the date that the notice described in Section 15.1(b) is mailed or (y) the highest price paid by the General Partner or any of its Affiliates for any such Limited Partner Interest of such class purchased during the 90-day period preceding the date that the notice described in Section 15.1(b) is mailed. Notwithstanding the foregoing, if, at any time, the General Partner and its Affiliates hold less than 70% of the total Limited Partner Interests of any class then Outstanding then, from and after that time, the General Partner's right set forth in this Section 15.1(a) shall be exercisable if the General Partner and its Affiliates subsequently hold more than 80% of the total Limited Partner Interests of such class.

38. Included within the text of Section 15.1(a) are several express protections for the Partnership's common unitholders in connection with the Call Right, which themselves imply certain additional protections, including the following.

39. *First*, the General Partner and its Affiliates must gain ownership of a sufficient number of common units to exercise the Call Right (the "Call Right Trigger"). The operative Call Right Trigger in present circumstances is found in the final sentence of Section 15.1(a), which states that the General Partner and its Affiliates may exercise the Call Right at any time after they go from holding "less than 70% of the total Limited Partner Interests" to holding "more than 80% of the total Limited Partner Interests". An implied term supporting the Call Right Trigger is that the General Partner and its Affiliates may not make false and misleading

statements in connection with the transaction by which they obtain ownership of the common units sufficient to satisfy the Call Right Trigger.

40. *Second*, Section 15.1(a) contains a 90-day price-protection provision, by which the price paid for exercise of the Call Right cannot be less than the price paid by the General Partner or its Affiliates to purchase any units within the preceding 90 days:

> the greater of (x) the Current Market Price as of the date three days prior to [the mailing of the Notice of Election to Purchase] or (y) the highest price paid by the General Partner or any of its Affiliates for any such Limited Partner Interest of such class purchased during the 90-day period preceding the date [of the mailing of the Notice of Election to Purchase].

The 90-day price-protection provision is akin to the "All Holders, Best Price" Rule of SEC Rule 14D-10, which stipulates that a tender offeror must pay all security holders the highest price paid to any other security holder in a tender offer. The 90-day price-protection provision is designed to prevent the General Partner and its Affiliates from proceeding by means of discrete purchases of common units so that some investors are paid more in an initial transaction (such as when satisfying the Call Right Trigger) than the price ultimately paid when exercising the Call Right. An additional corollary is that the General Partner and its Affiliates cannot make false or misleading statements in connection with discrete transactions (such as when satisfying the Call Right Trigger) so as to make investors believe that no subsequent exercise of the Call Right at a lower price is planned.

41. *Third*, Section 15.1(a) contains a price-protection provision respecting the "Current Market Price," which is defined as "the average of the daily Closing Prices per Partnership Interest of such class for the 20 consecutive Trading Days immediately prior to such date."[2] This language requires the General Partner and/or its Affiliates to pay a Call Right price that is unaffected by the announcement of the exercise of the Call Right. This is the purpose of calculating the Call Price retrospectively, based on the closing price for the 20 trading days preceding the mailing of the Notice of Election by three days. Announcing the potential future exercise of the Call Right subverts the purpose of this provision by manipulating the market price downward.

42. Section 7.9(a) of the Partnership Agreement prohibits the General Partner, acting in its capacity as General Partner, or its Board of Directors and any affiliates of the General Partner from making determinations, or taking or omiting to take actions, in bad faith.

43. In addition, Section 16.2 of the Partnership Agreement prohibits the General Partner from taking action that frustrates the purposes of the Partnership Agreement, including the protections afforded by Section 15.1: "The parties shall

[2] Under the Partnership Agreement, "Trading Days" is defined to mean, in pertinent part, "a day on which the principal National Securities Exchange on which such class of Limited Partnership Interests are listed [*i.e.*, the NYSE] is open for the transaction of business."

… take or refrain from taking action as may be necessary or appropriate to achieve the purposes of this Agreement."

44. Under Section 16.3, the Partnership Agreement "shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives and permitted assigns." Thus, any assignee of the Call Right is bound by the Partnership Agreement.

AUGUST 2016: ICAHN SELLS COMMON UNITS TO LOWER THE CALL RIGHT TRIGGER PERCENTAGE

45. As described above, the Call Right Trigger percentage permanently drops from 95% of the outstanding Limited Partner Interests to 80% of the outstanding Limited Partner Interests if, at any time, the General Partner and its Affiliates hold less than 70% of the total Limited Partner Interests.

46. The Partnership's 2015 Form 10-K, filed on February 16, 2016, explained that the Call Right Trigger at that time was "95% of the common units" but that "[i]f our general partner and its affiliates reduce their ownership percentage to below 70% of the outstanding units, the ownership threshold to exercise the call right will be permanently reduced to 80%."

47. Under the Partnership Agreement, directors and executive officers of the General Partner are "Affiliates" because they have the "power to direct or cause the direction of the management and policies" of the General Partner. Given the ownership information reported in the Partnership's 2015 Form 10-K, it is clear that

the General Partner and the Partnership recognized that "the General Partner and its Affiliates" for purposes of Section 15.1 included not only CVR Holdings, Icahn and AEP but also all of the directors and executive officers of the General Partner.

48. Specifically, the 2015 Form 10-K reported that CVR Holdings, Icahn and AEP collectively owned 103,315,764 common units representing only 69.997% of the outstanding common units – below the 70% threshold that would lower the Call Right Trigger percentage. But the 2015 Form 10-K further reported that the directors and officers other than Carl Icahn collectively owned an additional 232,000 common units, thereby bringing the total common units beneficially owned by all directors and executive officers of the General Partner to 103,548,764 common units, *i.e.*, 70.2% of the outstanding common units.

49. On August 2, 2016, Icahn sold 250,000 common units. The Schedule 13D amendment filed as a result of the sale explains that its purpose was to reduce the Call Right Trigger percentage by reducing the ownership interests of the General Partner and its Affiliates below 70% of the common units. Like the Partnership's 2015 Form 10-K, the Schedule 13D amendment recognizes that the General Partner and its Affiliates for purposes of Section 15.1 includes all of the directors and executive officers of the General Partner. This is evident from the statement in the Schedule 13D amendment that, following the sale, "the General Partner ***and its affiliates*** (including the Reporting Persons [i.e., CVR Holdings, Icahn and AEP])

collectively own[ed] 69.99% of the Common Units" even though the "Reporting Persons" themselves only owned "approximately 69.8% of the Issuer's outstanding Common Units."[3]

50. The August 2, 2016 Schedule 13D amendment also stated that the August 2, 2016 sale of common units "permanently reduced" the ownership threshold for the General Partner's call right from 95% to 80%.

APRIL AND MAY 2018: BOARDWALK HIGHLIGHTS THE POTENTIAL TO WEAPONIZE A CALL RIGHT

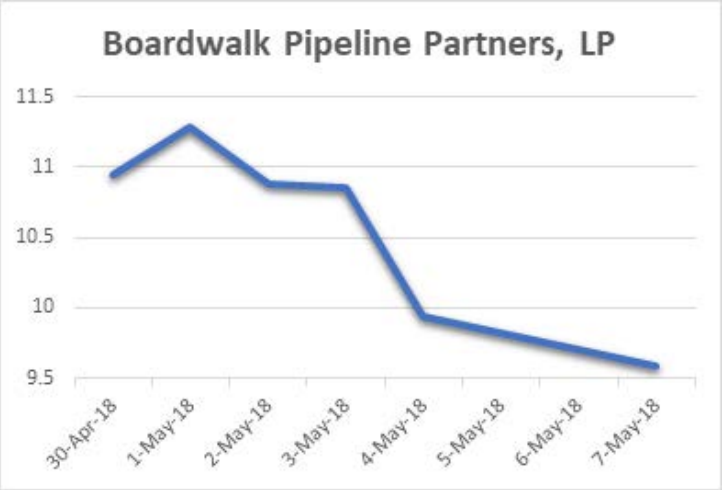
51. In late April and early May 2018, events at Boardwalk brought public attention to the ability of the controlling stockholder of an MLP to manipulate the pricing of the exercise of a call right.

52. Boardwalk was a publicly-traded MLP controlled and majority owned by Loews Corporation ("Loews"). One trigger for the Boardwalk call right was receipt of an opinion of counsel respecting Boardwalk's tax status. The predicate for receiving such an opinion was arguably satisfied by a March 15, 2018 revised tax policy statement issued by the Federal Energy Regulatory Commission.

53. On April 30, 2018, Loews publicly announced that it was "seriously considering" exercising the Boardwalk call right sometime in 2018. Over the next week, Boardwalk's unit price fell by over 16% (from $11.04 per unit to $9.26 per

[3] The Reporting Persons filing the Schedule 13D include Carl Icahn, Icahn, AEP, CVR Energy, CVR Holdings, and certain other Icahn-controlled entities.

unit) as the fear of Loews exercising its call option at some uncertain date and price led investors to sell units of the partnership.



54. The drop in Boardwalk's market price benefitted Loews at the expense of Boardwalk's public unitholders. Because the contractual call price depended on the market price for Boardwalk units for a defined number of days prior to the call exercise, each day that passed with the artificially deflated unit price lowered the ultimate call price.

55. On May 8, 2018, Boardwalk investor TAM Capital sent a public letter to the Loews board of directors expressing its "outrage" at Loews' attempt to "artificially depress the stock price of" Boardwalk so that it could "effect a buyout of the company for a fraction of its fair value and in contravention of terms and intent of the" Partnership Agreement, "which is designed to protect minor unitholders by ensuring that they receive an unaffected price."

56. As briefly mentioned above, on May 10, 2018, Barclays issued a report entitled "Digging deeper into call rights." The report analyzed the call rights for numerous MLPs and discussed the Boardwalk situation. Barclays criticized Loews for making a public statement that put downward pressure on the stock price in advance of the call right exercise:

> We do think the more appropriate thing for Loews to have done, if they were going to indeed buy in BWP, was to get the legal opinion and then just announce it would be buying in the MLP ***rather than just tease the market that they were "seriously considering" it, putting pressure on the stock*** and in essence, trying to time the potential purchase at a time that would be most favorable to them.

57. On May 15, 2018, JP Morgan issued an analyst report that recognized that "Loews publicly noting its call right will likely create a significant level of uncertainty that fuels BWP volatility." JP Morgan noted "the perception of securities manipulation."

THE ICAHN GROUP FORMULATES A PLAN TO WEAPONIZE THE CALL RIGHT

58. Against the public backdrop of price manipulation at Boardwalk, the Icahn Group conceived of a multi-step plan to buy out the Partnership's public unitholders on the cheap. *First*, CVR Energy would launch a partial tender offer to acquire sufficient Partnership common units to satisfy the Call Trigger while leaving a public stub that could be bought later at an artificially deflated call price. *Second*, the Board would facilitate consummation of the partial tender offer. *Third*, CVR

Energy would wait silently for the 90-day price protection period of Section 15.1 to expire. *Fourth*, CVR Energy would announce that it was "seriously considering" exercising the Call Right, which would prompt the common unit price to drop. *Fifth*, CVR Energy would exercise the Call Right at an artificially low price.

59. The plan required hiding the objective of the subsequent steps until after the 90-day price protection period expired.

60. On May 17, 2018, "representatives of [CVR Energy] met with representatives of [the Partnership] and discussed preliminarily the merits of [CVR Energy] possibly conducting an exchange offer for the Common Units." This disclosure about a meeting is illusory given that each of the Partnership's executive officers is also an executive officer of CVR Energy. Importantly, however, this meeting took place ***just 17 days*** after Loews publicly announced that it was "seriously considering" exercising its Boardwalk call right, which caused Boardwalk's unit price to fall by over 16% over the following week.

61. On May 24, 2018, the Board met and discussed the terms of the contemplated Partial Exchange Offer.

62. On May 28, 2018, the Board determined that neither the Board, the General Partner nor the Partnership would make any recommendation regarding the Partial Exchange Offer.

63. The Board's determination that the Board, the General Partner and the Partnership would not make any recommendation regarding the Partial Exchange Offer was made in bad faith and with the purpose of facilitating the Icahn Group's multi-step plan to buy out the minority unitholders on the cheap. The plan was highly unfair to the minority unitholders and the Partnership. Each of the Board members knew of the Icahn Group's plan and knew, in light of Boardwalk, that the unitholders that did not tender would ultimately be bought out using the Call Right at a manipulated, artificially low price. Had the Board acted in good faith and recommended that all minority unitholders tender their Partnership units, the Icahn Group would not have been in position to acquire the remaining 15% stub at depressed values.

64. Each of the Board members knew the Icahn Group's plan would harm the limited partners who did not tender. Each of the Board members also knew the Icahn Group's plan would harm the Partnership itself, by, among other things, harming the limited partners to benefit a non-partner (CVR Energy), causing reputational harm to the Partnership, increasing the Partnership's cost of capital, and requiring the Partnership to file a false and misleading Schedule 14D-9.

65. A clear alternative was available to the Board. The Board could have pursued a course of action expected of any board of directors confronted with a partial tender offer from a controller. The Board could have decided that it would

establish a committee of independent directors that would retain an independent financial advisor and negotiate with CVR Energy respecting the terms of the tender offer, such as seeking a commitment that any subsequent Call Right exercise would occur at the same price as the Partial Exchange Offer.

66. The Board's determination to stand aside reflects the Board's complicity with the Icahn Group's multi-step plan.

67. The Board's complicity is no surprise given its composition. Carl Icahn was the Board Chairman. Four additional Board members were Icahn employees (Cho, Frates, Langham, and Pastor). Lamp was CVR Energy's CEO and his continued employment depended on his loyalty to Carl Icahn. Shea and Zander had long-term ties to Carl Icahn.

68. The SEC suspected that the Partial Exchange Offer was a component of a secret multi-step plan by the Icahn Group. The SEC wrote to CVR Energy on June 5, 2018:

> We noticed [CVR Energy] and affiliated entities beneficially own approximately 69.8% of [the Partnership's] outstanding Common Units and are expected to own 95% of such class assuming the maximum number of tenders is accepted. … Given the disclosure regarding the absence of a requirement to pay a premium and corresponding obligation under the partnership agreement to offer to buy all remaining Common Units if any additional purchases are made once 80% of the outstanding Common Units have been acquired, ***please also address whether or not this tender offer constitutes the first step in a series of transactions that ultimately could produce one of the two specified going private effects***.

CVR Energy's response to the SEC, dated June 8, included the following statement: "[T]he Company views the offer as a discrete transaction and not the first step in a series of transactions that may occur in the future."

MAY 29, 2018: WHEN LAUNCHING THE PARTIAL EXCHANGE OFFER, CVR ENERGY FRAUDULENTLY OMITS A PLAN FOR DELAYED EXERCISE OF THE CALL RIGHT

69. On May 29, 2018, CVR Energy launched the Partial Exchange Offer to acquire up to 37,154,236 common units of the Partnership. The Partial Exchange Offer was conditioned on sufficient units tendering such that CVR Energy and its Affiliates would satisfy the Call Right Trigger percentage of 80% of the outstanding common units. Assuming the maximum number of common units were tendered and exchanged, CVR Energy and its affiliates would hold approximately 95% of the outstanding common units, thus leaving a public stub of at least 5% of the common units for the second step of the Icahn Group's plan.

70. The Partial Exchange Offer offered to exchange Partnership common units for 0.6335 shares of CVR Energy. On May 25, 2018, the last full trading day before launch of the Partial Exchange Offer, the closing price of CVR Energy common stock was $43.61 and the closing price of a Partnership common unit was $22.10. Based on those closing prices and the offered exchange ratio, the Partial Exchange Offer had a per common unit value of $27.63 per common unit,

representing a 25% premium over the Partnership's closing unit price on May 25, 2018.

71. On May 29, 2018, Icahn and CVR Energy filed a Schedule 13D amendment and CVR Energy filed a Registration Statement in connection with the Partial Exchange Offer.[4] Icahn and CVR Energy's Schedule 13D amendment and CVR Energy's Registration Statement misleadingly omitted the crux of the Icahn Group's plan – exercising the Call Right after the 90-day price protection period.

72. The Registration Statement uses misdirection to fraudulently suggest that no such plan of delayed exercise of the Call Right exists. The Registration Statement disclaims any intention to exercise the Call Right "upon the consummation" of the Partial Exchange Offer. The actual secret plan was to wait more than 90 days after consummation of the Partial Exchange Offer:

> Pursuant to the partnership agreement of [the Partnership] (the "partnership agreement"), once the general partner and its affiliates own more than 80% of the common units of [the Partnership], the general partner and its affiliates will have the right, but not the obligation, to purchase all, but not less than all, of the common units of [the Partnership] held by unaffiliated unitholders of [the Partnership] at a price not less than their then-current market price, as calculated pursuant to the terms of the partnership agreement (the "call right").
>
> Accordingly, the general partner and its affiliates will be entitled to exercise this call right after the consummation of the exchange. Pursuant to the partnership agreement, the general partner is not obligated to obtain a fairness opinion regarding the value of the

[4] The Reporting Persons filing the Schedule 13D include Carl Icahn, Icahn, AEP, CVR Energy, CVR Holdings, and certain other Icahn-controlled entities.

> common units of [the Partnership] to be repurchased by it upon exercise of the call right. Pursuant to the partnership agreement, the general partner may use its own discretion, free of fiduciary duty restrictions, in determining whether to exercise the call right. The general partner and its affiliates (including CVR Energy and Icahn Enterprises and its affiliates) have **no current plans to exercise the call right at this time or upon the consummation of the exchange**. However, there can be no assurance that the general partner and its affiliates will not exercise the call right in the future.

73. The same fraudulent misdirection is found in Icahn and CVR Energy's May 29, 2018 Schedule 13D amendment:

> "[T]he Reporting Persons and the Issuer will be entitled to exercise this call right after the consummation of the contemplated exchange. Pursuant to the partnership agreement, the general partner is not obligated to obtain a fairness opinion regarding the value of the common units of CVR Refining, LP to be repurchased by it upon exercise of the call right. Pursuant to the partnership agreement, the general partner may use its own discretion, free of fiduciary duty restrictions, in determining whether to exercise the call right. The Reporting Persons and the Issuer have **no current plans to exercise the call right at this time or upon the consummation of the contemplated exchange**. However, there can be no assurance that the general partner and its affiliates will not exercise the call right in the future.

74. To hide the Icahn Group's plan, CVR Energy's Registration Statement and Icahn's Schedule 13D amendment both misleadingly omit any reference to the Call Right's 90-day price protection provision. Instead, these filings state only that the Call Right price is "a price not less than [the CVR Refining common unit's] then-current market price." The omission of the 90-day price protection portion of the Call Right was material and intentional. Had the public disclosures referenced the

requirement to pay the same price as the Partial Exchange Offer if the Icahn Group exercised the Call Right within 90 days after the exchange was consummated, minority unitholders would have been more likely to question the misleading disclosure that the General Partner and its affiliates had "no current plans to exercise the call right at this time or upon the consummation of the exchange."

75. CVR Energy's Registration Statement also misleadingly omits that the true purpose of the Partial Exchange Offer was to obtain sufficient units to satisfy the Call Right Trigger percentage and then, after the Call Right's 90-day price protection expired, tease the Call Right exercise, driving down the unit price, and then exercise the Call Right at an artificially depressed price. Instead, the Registration Statement states only that "The purpose of the offer for CVR Energy is to increase its ownership in CVR Refining."

MAY 29, 2018: THE BOARD CAUSES THE PARTNERSHIP TO FILE A FRAUDULENT SCHEDULE 14D-9 AND TAKES NO POSITION ON THE PARTIAL EXCHANGE OFFER

76. On May 29, 2018, within an hour after CVR Energy filed the Registration Statement and Icahn and CVR Energy filed the Schedule 13D amendment, the Board caused the Partnership to file a Schedule 14D-9 concerning the Partial Exchange Offer.

77. The Partnership's Schedule 14D-9 did not correct the fraudulent Registration Statement and Schedule 13D amendment. Instead, despite the Board's

knowledge of the Icahn Group's plan, the Schedule 14D-9 expressly incorporated the misleading Registration Statement. Moreover, the Schedule 14D-9 hid the planned delayed exercise of the Call Right by stating: "The General Partner and its affiliates (including [CVR Energy] and Icahn Enterprises L.P. and its affiliates) have stated that they have **no current plans to exercise the call right at this time or upon the consummation of the Offer**."

78. The Schedule 14D-9 was signed by Defendant Lamp, who was the President, CEO and a Director of the General Partner, and also the President, CEO and a Director of CVR Energy, the maker of the Partial Exchange Offer. The Schedule 14D-9 failed to disclose the multi-step plan for CVR Energy to exercise the Call Right at a depressed price.

79. The Schedule 14D-9 followed through on the Board's prior commitment that the Board, the General Partner and the Partnership would not take a position on the Partial Exchange Offer:

> None of the Board of Directors of the General Partner (the "Board") (or any committee thereof), the General Partner or the Partnership is making any recommendation to any limited partner of the Partnership as to whether to exchange or refrain from exchanging any Common Units or as to the Offer Consideration at which limited partners of the Partnership may choose to exchange their Common Units. We have not authorized any person to make any such recommendation. The Board (including any committee thereof), the General Partner and the Partnership are ***expressing no opinion*** as to whether the limited partners of the Partnership should exchange their Common Units pursuant to the Offer and are ***remaining neutral*** with respect to the Offer.

80. The Schedule 14D-9 section addressing the "Reasons for Recommendation" does not explain why the Board, the General Partner and the Partnership expressed "no opinion" on the Partial Exchange Offer. Instead, it states that "Neither the Board (including any committee thereof), the General Partner nor the Partnership takes any responsibility for the Offer." This disclaimer of responsibility is hollow, given that at least four members of the Board were executives at CVR Energy, the entity making the Partial Exchange Offer, and virtually all Board members had close ties to other members of the Icahn Group.

81. The Schedule 14D-9 further stated as the "reason" for taking no position on the Partial Exchange Offer that: "The Board, the General Partner and the Partnership believe that each limited partner of the Partnership's decision on whether or not to exchange their Common Units and, if so, how many Common Units to exchange, is a personal investment decision dependent upon each individual limited partner's particular investment objectives and circumstances and their own consideration and evaluation of all of the Partnership's publicly available information."

82. This statement hid the true reason that the Board, the General Partner and the Partnership took no position on the Partial Exchange Offer – it was the first step of a multi-step plan to cash out non-tendering minority unitholders at a depressed price.

83. The Board's decisions to file a fraudulent Schedule 14D-9 and to take no position on the Partial Exchange Offer were made in bad faith. Those actions were highly unfair and adverse to the best interests of both the Partnership's common unitholders and the Partnership itself.

ANALYSTS REACT NEGATIVELY TO THE PARTIAL EXCHANGE OFFER

84. Some analysts warned that the Partial Exchange Offer set up the conditions for CVR Energy's future exercise of the Call Right, the prospect of which would depress the market price of the common units.

85. On May 29, 2018, Barclays issued a report entitled "[CVR Energy] Exchange Offer Sets Up for a Call Rights Exercise." The report stated that "[CVR Energy's] stated purpose for the exchange offer is to increase its stake in [the Partnership], specifically above 80%." The report added that, "According to the partnership agreement, once the general partner ([CVR Energy]) + its affiliates own more than 80% of [the Partnership]'s common units, [CVR Energy] can call the remaining units at market price, which would effectively fully buy in [the Partnership]." Barclays concluded that it "viewed this as an ongoing overhang for the [Partnership] unitholders."

86. On May 30, 2018, Macquarie Research reported that, "[a]ssuming the maximum number of common units of [the Partnership] is exchanged, CVR Energy and affiliates would hold ~95% of the outstanding common units of [the

Partnership]." Macquarie added that "[t]his would enable the general partner and affiliates to purchase all remaining units of [the Partnership] at the then-current market price, per the partnership agreement."

87. During the Partnership's July 26, 2018 earnings call, a Goldman Sachs analyst characterized the Partial Exchange Offer as "very unusual" and asked Defendant Lamp about its "strategic rationale" and what it "represents on a go-forward basis." Lamp referred the analyst to the language of CVR Energy's Registration Statement.

88. On the same earnings call, an analyst from Tudor, Pickering, Holt & Co. asked Lamp, "so looking at the S-4, it says that [the Partnership] is not making a recommendation here. If the exchange offer is successful, though, are you worried about how the remaining units of [the Partnership] will trade? You are looking at a stock with potentially a very low float, this call option from [CVR Energy]. We're not quite sure if it would stay in the Alerian [MLP index, the leading gauge of energy Master Limited Partnerships]. Do you have any concerns on just how [the Partnership] would trade going forward?" Lamp responded: "Matt, I really can't say anything more than what's in the S-4 today. And that's kind of our just no comment position."

89. On July 27, 2018, Barclays issued a report entitled "Privatization Risk Continues to Loom Over Potential Refining Upside." Barclays reported that it

believed even positive second quarter 2018 results for the Partnership would have only a "neutral impact" on the Partnership units' near-term performance because "Importantly, given the majority shareholder's right to force the privatization of the remaining shares anytime (once Icahn Enterprises and the related parties own more than 80% of the outstanding shares), without the need to pay any premium above their current share prices, we believe [the Partnership] will remain on the sidelines for any remaining prospective investors." The Barclays report concluded: "While [the Partnership] is highly levered to the improving refining macro backdrop that we forecast over the next several quarters, we believe there are better ways to play stronger industry margins for the foreseeable future given the privatization risk…"

90. The Partial Exchange Offer expired on July 27, 2018. Only 21,625,106 Partnership units were tendered – less than half of the outstanding minority units. Had the Icahn Group disclosed its plan to exercise the Call Right at an artificially low price, all or nearly all of the minority unitholders would have tendered their Partnership units.[5]

[5] As of July 27, 2018, the value of the CVR Energy shares received in the Partial Exchange Offer was approximately $23.96 per Partnership unit, based on the exchange ratio of .6335 and CVR Energy's closing stock price of $37.82 per share. CVR Energy shares have since traded as high as $44.46 per share, at which point the shares received in the Partial Exchange Offer were worth approximately $28.17 per Partnership unit.

91. Following the Partial Exchange Offer, the Icahn Group held approximately 84.5% of the Partnership's units.

92. On August 1, 2018, Macquarie Research discussed how the Partial Exchange Offer reduced the liquidity and value of the remaining shares: "the call right provision allows the [General Partner] to acquire remaining shares based on a stated formula …, without any takeout premium, fairness opinion, or tax considerations. We believe this combination could potentially create higher volatility and decrease unit holder[s'] ability to capture the long term underlying asset value." Macquarie summarized: "While fundamentals remain positive, lower liquidity and [the] call right provision create drawbacks for unit holders."

93. The day before the Partial Exchange Offer closed, Carl Icahn and his long-time crony, Defendant Zander, both resigned from the Board. Carl Icahn claimed his resignation was "due to his extremely busy schedule." Zander invoked "personal reasons." The resignations were timed so that the required public disclosure could be buried at the back of the Partnership's Form 10-Q.

94. Icahn and CVR Energy filed an amended Schedule 13D on August 1, 2018 that misleadingly reiterated the meaningless point that "The Reporting Persons and the Issuer have no current plans to exercise the call right at this time."

THE UNIT PRICE FALLS DESPITE POSITIVE FINANCIAL RESULTS, AS CVR ENERGY CONTINUES TO HIDE ITS PLAN

95. On October 24, 2018, the Partnership reported favorable third quarter 2018 adjusted EBITDA of $221 million, as compared to $139 million for the same period a year before. The Partnership also announced net income of $174 million on net sales of $1.857 billion for the third quarter of 2018, which compared very favorably to net income of $70 million on net sales of $1.386 billion for the third quarter of 2017. For the first nine months of 2018, net income was $439 million on net sales of $5.139 billion, compared to net income of $118 million on net sales of $4.148 billion for the comparable period a year earlier. Adjusted EBITDA for the first nine months of 2018 was $494 million, compared to adjusted EBITDA of $296 million for the first nine months of 2017. Earnings per unit and distribution were above consensus estimates.

96. Barclays reported in its "First Glance" at the Partnership's third quarter 2018 results that, "operationally, it was a strong quarter" with "margin capture" that was "surprisingly strong."

97. Nonetheless, Barclays also wrote that "existence of the call option by the parent corporation ... will likely mute the market response." Indeed, "privatization risk still serves as an overhang to any potential upside even after strong third quarter results."

98. During the Partnership's October 25, 2018 earnings call (at the end of the 90-day post-Partial Exchange Offer price protection period), in response to a question about the Call Right, Defendant Lamp denied that CVR Energy had plans to exercise the Call Right:

> **Matthew Robert Lovseth Blair (Tudor, Pickering, Holt & Co. Securities, Inc., Research Division)**: … And then it looks like [the Partnership] is trading at a fairly low valuation. Just given its recent results and think some would say this might be due to a call option that [CVR Energy] holds on [the Partnership]. So could you update us ***does [CVR Energy] have any plans to exercise this call option*** and from the [Partnership] shareholders perspective is there anything that can be done to, I guess remove this option or any sort of potential for just removing it going forward?
>
> **David Lamp**: Well, I'll go back to remember the reasons why we did this exchange in the first place, is we were trying to facilitate the potential sale of the company long-term as well as increase our ownership at the [CVR Energy] level of [the Partnership]. And those were the basic reasons, ***there was no intent of taking out [the Partnership] at any time or even contemplated at that time. And I don't think anything is changed in that scenario***. If you look at the yield right now with [the Partnership], it's what 13%, 14% almost and it will go up with this distribution to some degree. We're extremely undervalued and recognize it and I keep thinking the market will eventually wake up to the fact that, that yield is as high as it is. But no intentions of any change in strategy at this point.

99. In fact, Lamp and the Icahn Group always intended to exercise the Call Right a short time after expiration of the Call Right's 90-day price protection feature. They hid that plan in order to subvert the purpose of the price protection feature.

100. On October 25, 2018, the same day Lamp noted that Partnership units were "extremely undervalued," Partnership units opened at $19.37 per unit, and closed at $18.96 per unit.

101. On October 26, 2018, Barclays again reported that "existence of the call option by the parent corporation … will likely limit the upside." Barclays added: "We agree that [the Partnership] is cheap relative to the peer group, however we believe the discounted valuation will persist given the ownership situation" and "We remain skeptical that the shares will be able to sustainably outperform so long as the aforementioned call option risk lingers."

102. Macquarie's October 26, 2018 analyst report concluded that "While [the Partnership] maintains positive leverage to inland crude differentials …, and lower RFS costs, the decrease in liquidity and potential removal of a takeover premium make it a less favorable vehicle."

NOVEMBER 29, 2018: THE ICAHN GROUP TEASES THE MARKET ABOUT THE CALL RIGHT, FURTHER DEPRESSING THE UNIT PRICE

103. On November 29, 2018, one month after the expiration of the 90-day price protection period, Icahn and CVR Energy filed an amended Schedule 13D disclosing that CVR Energy was considering exercise of the Call Right:[6]

> On November 26, 2018, the Board of Directors (the "Board") of [CVR Energy] determined that, in light of current conditions, [CVR Energy]

[6] The Reporting Persons filing the Schedule 13D include Carl Icahn, Icahn, AEP, CVR Energy, CVR Holdings, and certain other Icahn-controlled entities.

> should consider exercising this call right. Though [CVR Energy] is now contemplating exercising the call right, there can be no assurance that [CVR Energy] will exercise the call right or as to the timing of any such exercise.

104. The Schedule 13D set out the pricing formula for acquisition of the outstanding units pursuant to the Call Right and noted: "Neither the General Partner nor any of its affiliates have purchased common units of the Issuer [the Partnership] during the 90-day period preceding the filing of this Schedule 13D/A." The logical conclusion from that disclosure was that exercise of the Call Right would be priced based on the 20-day average from the date CVR Energy chose to call the units.

105. If CVR Energy had exercised the Call Right on November 29, 2018, the Call Right price would have been approximately $17.16 per unit. The disclosure hinting at future exercise of the Call Right was intended to and did drive the Call Right price substantially lower.

106. Section 15.1(a) of the Partnership Agreement triggers the purchase price of any exercised call right off of the 20 consecutive trading days beginning three days prior to the Notice of Election to Purchase. In so doing, Section 15.1(a) expresses the parties' manifest intent that exercise of the Call Right be based upon a common unit price unaffected by the act of giving notice. Unitholders would never endorse allowing the General Partner and its affiliates to manipulate the exercise price downward.

107. On December 3, 2018, HITE Hedge Asset Management LLC ("HITE") issued an open letter to the CVR Energy board of directors. HITE encouraged CVR Energy to cut the Partnership's quarterly distribution to zero, and to execute the Call Right shortly thereafter. HITE wrote: "Simply put, continuing to pay [Partnership] unitholders is a waste of money." HITE wrote that "Given the recent downward trajectory of the [Partnership's] unit price, we believe that the call price will decline as time passes – especially if [the Partnership]'s unit price continues declining." HITE urged CVR Energy to "wait to exercise the call until [the Partnership]'s unit price has reached $10.00."

108. On December 20, 2018, *Bloomberg* issued a report noting the import of the disclosure that CVR Energy may exercise the Call Right, as well as the import of HITE's letter:

> [The Partnership]'s value discount relative to its holding company, CVR Energy, reflects an expectation that the parent will significantly cut [the Partnership]'s distribution. Using the current enterprise value, we calculate a control premium of 131% for Energy over the publicly listed assets' enterprise value. …
>
> ***CVR Energy's disclosure that it may exercise its call option on the outstanding shares was the most important trigger for [the Partnership]'s underperformance relative to its parent and the broader sector***. An open letter to Energy from its shareholder Hite Hedge asking to cut [the Partnership]'s distribution to zero added fuel to the fire and highlighted one of the key issues with variable-rate MLPs, as general partners aren't aligned with minorities. Energy shareholders would prefer to acquire Refining shares at their lowest price possible.

> Energy's management has shifted its stance after previously saying it didn't expect to roll up the remaining 15.5% of [the Partnership]. The right to a call option was triggered once Energy holdings eclipsed 80% of [the Partnership]'s shares, according to the partnership agreement.

JANUARY 17, 2019: CVR ENERGY EXERCISES THE CALL RIGHT

109. On January 17, 2019, the Partnership and CVR Energy both issued public announcements that the General Partner had assigned the Call Right to CVR Energy and that CVR Energy would exercise the Call Right to buy all of the publicly-owned common units of the Partnership for $10.50 per unit. The announcements stated that the "purchase price was determined in accordance with Section 15.1(a) of the Limited Partnership Agreement based on the average of the daily closing prices per Common Unit on the [NYSE] for the 20 consecutive trading days ending on January 14, 2019."

110. On January 18, 2019, CVR Energy and the General Partner caused the mailing of the Notice of Election informing the Partnership's minority unitholders of the Call Right Exercise. The Notice of Election stated that the purchase date was January 29, 2019 and that the purchase price was "$10.50 per Common Unit …, which is equal to the average of the daily Closing Prices on the New York Stock Exchange per Common Unit for the 20 consecutive Trading Days ending on January 14, 2019."

111. On January 29, 2019, in connection with its exercise of the Call Right, the Partnership announced that CVR Energy had completed its purchase of all of the

issued and outstanding common units representing limited partner interests in the Partnership not already owned by the General Partner or its affiliates at the price of $10.50 per common unit, or approximately $241 million in the aggregate.

112. As evidenced in the chart in paragraph 8, which is taken from a Barclays January 24, 2019 analyst report, sophisticated investors understood the Icahn Group's secret plan and invested long in CVR Energy while shorting Partnership units following the announcement of the Partial Exchange Offer. This caused below-market negative returns for the Partnership. CVR Energy depressed the Partnership's unit price before buying out the minority unitholders at a depressed price.

113. As Barclays summarized in the January 24, 2019 report: "Since 5/29/18, [CVR Energy] has outperformed [the Partnership] by ~50%, likely at least partly due to investors capitalizing on the limited upside in [Partnership] units by buying [CVR Energy] and selling [the Partnership] short." Carl Icahn is one of the world's most sophisticated investors. The effect observed by Barclays was intended and anticipated by the Icahn Group.

114. The undisclosed multi-step plan of the Icahn Group of making the Partial Exchange Offer, facilitating the Partial Exchange Offer without any opposition, publicly "contemplating" exercise of the Call Right, and then exercising the Call Right caused hundreds of millions of dollars in damage.

115. Additionally, the $10.50 call price breached Section 15.1 of the Partnership Agreement because CVR Energy was required to exercise the Call Right at a purchase price equal to the greater of the 20-day trailing average price, or the price paid by the General Partner or any of its Affiliates for any such units during the 90-day period preceding the date that CVR Energy gave formal notice of its intent to exercise the Call Right.

116. As alleged above, the "Affiliates" of the General Partner include those executive officers who control the General Partner. Specifically, the Partnership Agreement defines "Affiliate" to mean, "with respect to any Person, any other Person that directly or indirectly through one or more intermediaries Controls, is Controlled by or is under common Control with, the Person in question." Control is defined as "the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise."

117. The executive officers of the General Partner possessed the "power to direct or cause the direction of the management and policies" of the General Partner, exerted control over the General Partner, and were therefore "Affiliates" of the General Partner. As described above, the Icahn Group and the Partnership treated the "General Partner and Affiliates" for purposes of Section 15.1 as including all directors and executive officers of the General Partner in connection with the Icahn

Group's 2016 sale of Partnership units to lower the Call Trigger percentage and related SEC filings by the Partnership and the Icahn Group.

118. Janice T. DeVelasco, a CVR Energy and General Partner executive officer as the Vice President of Environmental, Health, Safety and Security at each company, is an Affiliate of the General Partner for purposes of Section 15.1. CVR Energy and the General Partner publicly represent that DeVelasco is one of their top executives and an important member of the management team. For example:

- DeVelasco is featured as a member of CVR Energy's and the General Partner's "Executive Team," with her resume and photograph displayed on the CVR Energy website.

- CVR Energy issued a press release on April 14, 2014 announcing DeVelasco's appointment as Vice President of the General Partner and CVR Energy. In connection therewith, Stan Rieman, CVR Energy's COO, stated: "Janice's expertise in environmental, health and safety management, as well as her intimate knowledge of our companies, will continue to drive CVR Energy's tradition of safe and reliable work practices" and "[s]he will be a valuable member of our management team."

- CVR Energy and the Partnership each filed a Form 8-K with the SEC on December 22, 2017, announcing DeVelasco's appointment as Vice President – Environmental, Health, Safety and Security for CVR Energy and the General Partner. This was a "major event" announcing an executive level appointment, which required the filing of a Form 8-K, since "Form 8-K is the 'current report' companies must file with the SEC to announce major events that shareholders should know about."

- CVR Energy and the Partnership identify DeVelasco as an executive officer of CVR Energy and the General Partner in their SEC filings, including CVR Energy's Proxy Statement filed on April 27, 2018 and the Partnership's Annual Report filed on February 26, 2018.

119. As detailed in an SEC Form 4 filed on January 15, 2019, on November 14, 2018 (within 90 days before the January 18, 2019 mailing of the Notice of Election), DeVelasco, an Affiliate as defined in the Partnership Agreement, purchased through a dividend reinvestment 236.2019 shares of the Partnership at a price of $16.7162.

120. Since DeVelasco is an Affiliate of the General Partner under the Partnership Agreement, the proper purchase price for the Call Right exercise was at least $16.7162 per unit, rather than the $10.50 call price. CVR Energy's purchase of the remaining units at the $10.50 call price breached the Partnership Agreement.

121. Section 15.1 of the Partnership Agreement is an affirmative obligation and it applies "[n]otwithstanding any other provision of the [Partnership] Agreement." It therefore does not implicate any discretionary provisions set forth elsewhere in the Partnership Agreement. Instead, the parties specifically agreed that the call price would be, at a minimum, $16.7162 per unit.

CLASS ACTION ALLEGATIONS

122. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Rules of the Court of Chancery of the State of Delaware on behalf of all former holders of the Partnership's common units who have been harmed by the conduct described herein and their successors in interest (the "Class"). Excluded from the Class are the Defendants named herein and any person, firm, trust, corporation, or

other entity related to or affiliated with any of the Defendants and their successors in interest.

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

124. A class action is superior to other available methods of fair and efficient adjudication of this controversy.

125. The Class is so numerous that joinder of all members is impracticable. During the relevant period, there were 147.6 million Partnership common units outstanding, of which approximately 23 million were part of the public float following the Partial Exchange Offer. Consequently, the number of Class members is believed to be in the hundreds or thousands and they are likely located across the globe.

126. There are questions of law and fact that are common to all Class members and that predominate over any questions affecting only individuals, including, but not limited to:

a) whether Defendants have breached the terms of the Partnership Agreement;

b) whether Defendants have breached the implied covenant of good faith and fair dealing; and

c) whether Defendants have engaged in tortious interference.

127. Plaintiffs' claims and defenses are typical of claims and defenses of other class members, and Plaintiffs have no interests that are antagonistic or adverse to the interest of other class members. Plaintiffs will fairly and adequately protect the interests of the Class.

128. Plaintiffs are committed to prosecuting this action and have retained competent counsel experienced in litigation of this nature.

129. Defendants have acted in a manner that affects Plaintiffs and all members of the Class alike, thereby making appropriate relief with respect to the Class as a whole.

130. 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 Defendants; or adjudications with respect to individual members of the Class that would, as a practical matter, be dispositive of the interests of other members or substantially impair or impede their ability to protect their interests.

CAUSES OF ACTION

COUNT I
Breach of Contract
(Against the Partnership, the General Partner, CVR Holdings and CVR Energy)

131. Plaintiffs restate and reallege each allegation above, as though fully set forth herein.

132. The Partnership, the General Partner, CVR Holdings and the minority unitholders are parties to the Partnership Agreement. As an assignee of the Call Right, CVR Energy is bound by the Partnership Agreement pursuant Section 16.3 of the Partnership Agreement.

133. Section 15.1 of the Partnership Agreement governs the requirements for exercise of the Call Right, and the timing and purchase price requirements in the event that the General Partner or its affiliates exercise that Call Right. At a minimum, under the circumstances and as explained above, the Partnership Agreement required CVR Energy to pay a purchase price of at least $16.712 per unit in its exercise of the Call Right, not $10.50 per unit.

134. Section 16.2 of the Partnership Agreement is a binding agreement that required "the parties," including the Partnership, the General Partner, and CVR Holdings, to "take or refrain from taking action as may be necessary or appropriate to achieve the purposes of this Agreement."

135. Section 7.9(a) of the Partnership Agreement also requires the General Partner, when acting or refraining from acting in its capacity as the general partner of the Partnership, to take or decline to take any such action in good faith. Section 7.9(a) of the Partnership Agreement further requires that, when the Board of the General Partner or any affiliates of the General Partner cause the General Partner to act or refrain from acting in its capacity as the general partner of the Partnership, the

Board and any affiliates of the General Partner must take or decline to take any such action in good faith.

136. By the actions and omissions alleged herein, the Partnership, the General Partner, CVR Holdings, and CVR Energy committed multiple breaches of the Partnership Agreement.

137. Plaintiffs and the Class suffered damages as a direct and proximate result of the breaches of the Partnership Agreement by the Partnership, the General Partner, CVR Holdings and CVR Energy in an amount to be proved at trial. Plaintiffs also seek the equitable remedies of specific performance or restitution, as may be awarded by the Court in its broad remedial discretion.

COUNT II
Breach of Implied Covenant of Good Faith and Fair Dealing
(Against the Partnership, the General Partner,
CVR Holdings and CVR Energy)

138. Plaintiffs restate and reallege each allegation above, as though fully set forth herein.

139. There is implied in every contract a covenant of good faith and fair dealing such that no party to such contract may act to deprive the other of the benefits and bargains of the agreement.

140. The Partnership, the General Partner, CVR Holdings, and CVR Energy were thus bound by an implied-in-law covenant under the Partnership Agreement to

perform their obligations in good faith and not take any action that might deprive Plaintiffs of the benefits of their bargain under the agreement.

141. The Partnership, the General Partner, CVR Holdings, and CVR Energy breached, in addition to and/or in the alternative to the breach of contract set forth in Count I, their duty to exercise good faith and deal fairly with Plaintiffs by, among other things, executing the fraudulent Partial Exchange Offer and subsequently teasing the market by disclosing that they were considering exercising the Call Right.

142. By the actions and omissions alleged herein, the Partnership, the General Partner, CVR Holdings, and CVR Energy violated the implied covenant of good faith and fair dealing.

143. The actions and omissions alleged herein by the Partnership, the General Partner, CVR Holdings, and CVR Energy substantially and directly impaired the value of the Partnership Agreement to Plaintiffs and are inconsistent with the intent of the parties.

144. The Partnership, the General Partner, CVR Holdings, and CVR Energy's material breaches of the implied covenant were intentional, knowing, and in willful and reckless disregard of the rights and interests of Plaintiffs and the Class.

145. Plaintiffs and the Class suffered damages as a direct and proximate result of the Partnership, the General Partner, CVR Holdings, and CVR Energy's

breaches of the Partnership Agreement and the implied covenant of good faith and fair dealing in an amount to be proved at trial.

COUNT III
Tortious Interference
(Against CVR Energy, Icahn and the Individual Defendants)

146. Plaintiffs restate and reallege each allegation above, as though fully set forth herein.

147. CVR Energy, Icahn and the Individual Defendants knew about the existence and validity of the Partnership Agreement, and intentionally and improperly procured a breach thereof without justification.

148. CVR Energy, Icahn and the Individual Defendants used their control over the Partnership and General Partner to cause those entities to breach the Partnership Agreement.

149. Plaintiffs and the Class have been injured by being deprived of the benefit of their bargain in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs seek the following relief:

a) A declaration that this action is properly maintainable as a class action, and certifying Plaintiffs as the representatives of the Class;

b) Finding that Defendants the Partnership, the General Partner, CVR Holdings and CVR Energy breached the terms of the Partnership Agreement, including Sections 7.9, 15.1 and 16.2;

c) Finding that Partnership, the General Partner, CVR Holdings and CVR Energy breached the implied covenant of good faith and fair dealing;

d) Finding that Defendants CVR Energy, Icahn and the Individual Defendants tortuously interfered with the Partnership Agreement;

e) Awarding all available damages for Defendants' breach of contract, breach of the implied covenant of good faith and fair dealing, and/or tortious interference;

f) Alternatively, ordering Defendants to specifically perform their obligations under the Partnership Agreement and pay the public unitholders a call price of at least $16.712 per unit plus interest;

g) Awarding Plaintiffs the costs, expenses, and disbursements of this action, including attorneys' and experts' fees; and

h) Awarding Plaintiffs and the Class such other and further relief as this Court may deem just, equitable, and proper.

FRIEDLANDER & GORRIS P.A.

/s/ Joel Friedlander
Joel Friedlander (Bar No. 3163)
Jeffrey Gorris (Bar No. 5012)
Christopher P. Quinn (Bar No. 5823)
1201 N. Market Street, Suite 2200
Wilmington, DE 19801
(302) 573-3500

ROSENTHAL MONHAIT & GODDESS

/s/ Jessica Zeldin
Jessica Zeldin (Bar No. 3558)
919 N. Market Street
P.O. Box 1070
Wilmington, DE 19899-1070
(302) 656-4433

Counsel to Plaintiffs

OF COUNSEL:

Mark Lebovitch
Adam Wierzbowski
BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
1251 Avenue of the Americas
New York, NY 10020
(212) 554-1400

Lawrence Deutsch
Michael Dell'Angelo
Barbara A. Podell
BERGER MONTAGUE
1818 Market Street, Suite 3600
Philadelphia, PA 19103
(215) 875-3062

Lawrence P. Eagel
Brandon Walker
Marion Passmore
BRAGAR EAGEL & SQUIRE, PC
885 Third Avenue, Suite 3040
New York, New York 10022
(212) 308-5858

Frank A. Bottini, Jr.
BOTTINI & BOTTINI, INC.
7817 Ivanhoe Avenue, Suite 102
La Jolla, CA 92037
(858) 914-2001

Dated: March 15, 2019

EFiled: Mar 15 2019 03:59PM EDT
Transaction ID 63072386
Case No. 2019-0210-

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

BHARAT H. BARAI, INDIVIDUALLY AND AS TRUSTEE OF BHARAT H. BARAI, MD & PANNA B. BARAI, MD TRUST FBO SUNITI MEDICAL CORPORATION MPP & TRUST UA 11/30/87, on behalf of themselves and all other similarly situated former unitholders of CVR REFINING, LP, Plaintiffs, v. CVR REFINING, LP, CVR ENERGY, INC., CVR REFINING HOLDINGS, LLC, CVR REFINING GP, LLC, ICAHN ENTERPRISES, L.P., CARL C. ICAHN, SUNGHWAN CHO, JONATHAN FRATES, DAVID L. LAMP, ANDREW LANGHAM, LOUIS J. PASTOR, KENNETH SHEA, JON R. WHITNEY, AND GLENN R. ZANDER, Defendants.	C.A. No. _____

VERIFICATION AND AFFIDAVIT OF BHARAT H. BARAI
PURSUANT TO COURT OF CHANCERY RULES 23(aa) AND 3(aa)

STATE OF Indiana)
) ss:
COUNTY OF Lake)

Bharat H. Barai, being duly sworn, deposes and says:

1. I am the plaintiff in this action, individually and as trustee of Bharat H. Barai, MD & Panna B. Barai, MD Trust FBO Suniti Medical Corporation MPP &

Trust UA 11/30/87 (the "Suniti Trust"), which is also a plaintiff in this action. I make all investment decisions for the Suniti Trust, and am authorized to file this action and make this Verification and Affidavit on its behalf.

2. I make this Verification and Affidavit pursuant to Court of Chancery Rules 23(aa) and 3(aa) in connection with the filing of the Verified Class Action Complaint (the "Complaint") in the above-captioned action

3. I and the Suniti Trust held units of CVR Refining, LP at all times relevant to the allegations in the Complaint.

4. I verify that I have reviewed the Complaint to be filed in this action and that the facts stated in the Complaint, as they concern my own acts and deeds and those of the Suniti Trust, are true based on my personal knowledge. I believe that all other facts pleaded in the Complaint are true on information and belief or investigation of counsel.

5. Neither I nor the Suniti Trust, nor anyone else affiliated with me or the Suniti Trust, have received, been promised or offered, nor will we accept, any form of compensation, directly or indirectly, for prosecuting this action or serving as representative parties in this action except (i) such damages or other relief as the Court may award us as members of the class, (ii) such fees, costs or other payments as the Court expressly approves to be paid to us or on our behalf, or (iii)

reimbursement, paid by our attorneys, of actual and reasonable out-of-pocket expenditures incurred directly in connection with the prosecution of this action.

BHARAT H. BARAI

SWORN to and SUBSCRIBED before me this 15th day of March, 2019

Patricia M. Bendt
Notary Public

PATRICIA M. BENDT
Notary Public- Seal
State of Indiana
My Commission Expires Oct 23, 2019

My Commission Expires: October 23, 2019

KAL8407444

SUPPLEMENTAL INFORMATION PURSUANT TO RULE 3(a)
OF THE RULES OF THE COURT OF CHANCERY

The information contained herein is for the use by the Court for statistical and administrative p only. Nothing stated herein shall be deemed an admission by or binding upon any party.

1. Caption of Case: Bharat H. Barai, Individually and as Trustee of Bharat H. Barai, MD & Panna B. Barai, MD Trust FBO Suniti Medical Corporation MPP & Trust UA 11/30/87 v. CVR Refining, LP, CVR Energy, Inc., CVR Refining Holdings, LLC, CVR Refining GP, LLC, Icahn Enterprises, L.P., Carl C. Icahn, SungHwan Cho, Jonathan Frates, David L. Lamp, Andrew Langham, Louis J. Pastor, Kenneth Shea, Jon R. Whitney and Glenn R. Zander

2. Date filed: March 15, 2019

3. Name and address of counsel for plaintiffs:

Joel Friedlander (Bar No. 3163)
Jeffrey M. Gorris (Bar No. 5012)
Christopher P. Quinn (Bar No. 5823)
Friedlander & Gorris, P.A.
1201 North Market Street, Suite 2200
Wilmington, DE 19801 (302) 573-3500

4. Short statement and nature of claim asserted: This action asserts claims for breach of contract, breach of the implied covenant of good faith and fair dealing, and tortious interference with contract concerning a publicly traded master limited partnership.

5. Substantive field of law involved (check one):

__ Administrative Law	____Labor Law	____Trusts, Wills and Estates
_X_ Commercial Law	____Real Property	____Consent trust petitions
__ Constitutional Law	____348 Deed Restriction	____Partition
__ Corporation Law	____Zoning	____Rapid Arbitration (Rules 96, 97)
___ Trade secrets/trade mark/or other intellectual property		____Other

6. Related case(s), including any Register of Wills matters, which requires copies of all documents in this matter to be filed with the Register of Wills: Cons. Case No. 2019-0062-KSJM

7. Basis of court's jurisdiction (including the citation of any statute conferring jurisdiction):
6 *Del. C.* § 17-111; 6 *Del. C.* § 17-105; 6 *Del. C.* § 18-105; 8 *Del. C.* § 321; 6 *Del. C.* § 18-109

8. If the complaint seeks preliminary equitable relief, state the specific preliminary relief sought:

9. If the complaint seeks a TRO, summary proceedings, a Preliminary Injunction, or Expedited Proceedings, check here _____. (If #9 is checked, a Motion to Expedite must accompany the transaction.)

10. If the complaint is one that in the opinion of counsel should not be assigned to a Master in the first instance, check here and attach a statement of good cause __X__.

/s/*Joel Friedlander*
Joel Friedlander (Bar No. 3163)

EFiled: Mar 15 2019 03:59PM EDT
Transaction ID 63072386
Case No. 2019-0210-

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

BHARAT H. BARAI, INDIVIDUALLY AND AS TRUSTEE OF BHARAT H. BARAI, MD & PANNA B. BARAI, MD TRUST FBO SUNITI MEDICAL CORPORATION MPP & TRUST UA 11/30/87 on behalf of themselves and all other similarly situated former unitholders of CVR REFINING, LP, Plaintiffs, v. CVR REFINING, LP, CVR ENERGY, INC., CVR REFINING HOLDINGS, LLC, CVR REFINING GP, LLC, ICAHN ENTERPRISES, L.P., CARL C. ICAHN, SUNGHWAN CHO, JONATHAN FRATES, DAVID L. LAMP, ANDREW LANGHAM, LOUIS J. PASTOR, KENNETH SHEA, JON R. WHITNEY, AND GLENN R. ZANDER, Defendants.	C.A. No. _____

STATEMENT OF GOOD CAUSE

It is the opinion of counsel that this action should not be assigned to a Master in the first instance because this is a putative class action asserting claims for breach of contract, breach of the implied covenant of good faith and fair dealing, and tortious interference with contract concerning a publicly traded master limited partnership. Related cases have been assigned to Vice Chancellor McCormick.

FRIEDLANDER & GORRIS P.A.

/s/ Joel Friedlander

Joel Friedlander (Bar No. 3163)
Jeffrey Gorris (Bar No. 5012)
Christopher P. Quinn (Bar No. 5823)
1201 N. Market Street, Suite 2200
Wilmington, DE 19801
(302) 573-3500

ROSENTHAL MONHAIT & GODDESS

Jessica Zeldin (Bar No. 3558)
919 N. Market Street
P.O. Box 1070
Wilmington, DE 19899-1070
(302) 656-4433

Counsel to Plaintiffs

OF COUNSEL:

Mark Lebovitch
Adam Wierzbowski
BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
1251 Avenue of the Americas
New York, NY 10020
(212) 554-1400

Lawrence Deutsch
Michael Dell'Angelo
BERGER MONTAGUE
1818 Market Street, Suite 3600
Philadelphia, PA 19103
(215) 875-3062

Lawrence P. Eagel
Brandon Walker
Marion Passmore
BRAGAR EAGEL & SQUIRE, PC
885 Third Avenue, Suite 3040
New York, New York 10022
(212) 308-5858

Frank A. Bottini, Jr.
BOTTINI & BOTTINI, INC.
7817 Ivanhoe Avenue, Suite 102
La Jolla, CA 92037
(858) 914-2001

Dated: March 15, 2019