

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Joint Application of

HYDRO ONE LIMITED and AVISTA
CORPORATION

For an Order Authorizing Proposed
Transaction

DOCKET U-170970

DECLARATION OF DAVID J. MEYER
IN SUPPORT OF HYDRO ONE
LIMITED AND AVISTA
CORPORATION'S OPPOSITION TO
LAUREN FINK AND CHADWICK L.
WESTON'S PETITION TO INTERVENE

I, David J. Meyer, declare under penalty of perjury and in accordance with the laws of the State of Washington, that:

1. I am Vice President and Chief Counsel for Regulatory and Governmental Affairs for Avista Corporation (Avista). I make this declaration based on my own personal knowledge, am competent to testify to the matters stated herein, and make this declaration in support of Hydro One Limited and Avista Corporation's Opposition to Lauren Fink and Chadwick L. Weston's Petition to Intervene.

2. On September 15, 2017, Lauren Fink, purporting to act on behalf of Avista's shareholders, filed a lawsuit, *Fink v. Morris, et al.*, case no. 17203616-6, in the Superior Court for the State of Washington for Spokane County. (Attached here to marked as **Exhibit A** is a true and correct copy of the Class Action Complaint Based Upon Breach of Fiduciary Duty, dated September 15, 2017, in *Fink v. Morris, et al.*, case no. 17203616-6, in the Superior Court for the State of Washington in and for Spokane County.) Fink's Superior Court suit named Scott L. Morris, Kristianne Blake, R. John Taylor, Erik J. Sanderson, Heidi B. Stanley, Marc Racicot, Rebecca A. Klein, Donald C. Burke, Janet D. Widman, and Scott H. Maw (the "Avista Declaration of David J. Meyer in Support of Hydro One Limited and Avista Corporation's Opposition to Lauren Fink and Chadwick L. Weston's Petition to Intervene

Directors”), as well as Hydro One, Olympus Holding Corp., and Olympus Corp. as defendants. (*Id.*) The suit alleged that the Avista Directors breached their fiduciary duties in relation to the merger, aided and abetted by Hydro One, Olympus Holding Corp., and Olympus Corp., and sought to enjoin the merger. (*Id.*)

3. On September 25 and 26, 2017, four different plaintiffs’ law firms filed three separate actions in the U.S. District Court for the Eastern District of Washington: (i) *Jenß v. Avista Corp., et al.*, case no. 2:17-cv-333 (E.D. Wash. filed Sept. 25, 2017), (ii) *Samuel v. Avista Corp., et al.*, case no. 2:17-cv-334 (E.D. Wash. filed Sept. 26, 2017), and (iii) *Sharpenter v. Avista Corp., et al.*, case no. 2:17-cv-336 (E.D. Wash. filed Sept. 26, 2017). The suits were substantially similar, each alleging that the proxy statement filed by Avista in connection with the merger omitted material facts necessary to make the statements therein not false or misleading, in violation of federal securities laws. *See* Compl., *Jenß*, case no. 2:17-cv-333; Compl., *Samuel*, case no. 2:17-cv-334; Compl., *Sharpenter*, case no. 2:17-cv-336. The suits named as defendants Avista and the Avista Directors (*Sharpenter* also named Hydro One, Olympus Holding Corp., and Olympus Corp. as defendants) and sought to enjoin the merger. *See id.*

4. In Fink’s Superior Court suit, plaintiffs subsequently filed two amended complaints. (Attached hereto as **Exhibits B and C** are true and correct copies of the Amended and Second Amended Class Action Complaint Based Upon Breach of Fiduciary Duty in *Fink v. Morris, et al.*, case no. 17203616-6, in the Superior Court for the State of Washington in and for Spokane County.) The first, filed on October 10, 2017, included new allegations attacking the sales process undertaken by the Avista Board and sought damages. (Exh. B.) It also added

defendant Bank of America Merrill Lynch and another plaintiffs' law firm—Robbins Geller Rudman & Dowd LLP. (*Id.*) The second amended complaint, filed on October 26, 2017, added a second plaintiff. (Exh. C.)

5. Despite seven plaintiffs' law firms filing four separate actions seeking to enjoin the merger, not one actually filed a motion or sought a hearing seeking an injunction to stop Avista's shareholder vote. On November 21, Avista's shareholders voted their shares overwhelmingly to approve the transaction—with the holders of 98% of the shares voting supporting the merger (reflecting the support of holders of 78% of all the outstanding shares). *See* Avista Corporation News Releases, *Avista Shareholders Approve Acquisition by Hydro One* (Nov. 21, 2017), http://avistacorp.mwnewsroom.com/press-releases/avista-shareholders-approve-acquisition-by-hydro-o-nyse-ava-gnw_1949431_001. *See also* Spokane Public Radio, An NPR Member Station, *Avista Shareholders Approve Acquisition by Hydro One* (Nov. 21, 2017, <http://spokanepublicradio.org/post/avista-shareholders-approve-acquisition-hydro-one> (“[T]he vote was nearly unanimous, with shareholders representing nearly 80% of Avista’s outstanding stock casting ballots.”)).

6. In light of the overwhelming support for the transaction by the Avista shareholders, the plaintiffs in *Jenß*, *Samuel*, and *Sharpenter* decided not to proceed with their lawsuits. Although Shareholders Fink and Weston had no prior involvement with any of these three cases, on December 13, 2017, they sought to insert themselves in the actions by filing a Motion for Consolidation, Appointment as Lead Plaintiff, and Approval of Lead Plaintiff's Section of Lead Counsel. *See, e.g.*, D.E. 15, *Jenß*, case no. 2:17-cv-333. The plaintiffs in *Jenß*, *Samuel*, and *Sharpenter*, on the other hand, filed stipulations of voluntary dismissal in each

action. See D.E. 18, *Jenß*, case no. 2:17-cv-333; D.E. 7, *Samuel*, case no. 2:17-cv-334; D.E. 6, *Sharpenter*, case no. 2:17-cv-336. On December 20, the Court entered all three stipulations, dismissing the *Jenß*, *Samuel*, and *Sharpenter* actions, including dismissing as moot the motion filed by Shareholders Fink and Weston. See D.E. 19, *Jenß*, case no. 2:17-cv-333; D.E. 8, *Samuel*, case no. 2:17-cv-334; D.E. 7, *Sharpenter*, case no. 2:17-cv-336.

7. Shareholders Fink and Weston nevertheless continue to pursue post-closing damages claims relating to the merger, having stated their intent to file yet another amended complaint after the close of the transaction. In light of the anticipated timing of the closing of the transaction, which is not expected until the latter half of 2018, on January 5, 2018, Shareholders Fink and Weston, and the other parties to their superior court suit, filed a stipulation with the court seeking to stay all proceedings: “all proceedings in [the] case should be stayed until after Plaintiffs’ claims are framed in their operative complaint.” (Attached here to marked as **Exhibit D** is a true and correct copy of the Stipulation and Order Regarding Case Schedule, dated January 5, 2018, in *Fink v. Morris, et al.*, case no. 17203616-6, in the Superior Court for the State of Washington in and for Spokane County.) The superior court entered the stipulation that same day. (*Id.*) The stipulation calls for Shareholders Fink and Weston to file a third amended complaint no later than 30 days after Avista or Hydro One publicly announces that the transaction has closed or the suit will be dismissed with prejudice. (*Id.*)

8. Fink and Weston have not suggested their interests differ from those of other shareholders and, while they purport to represent a class of shareholders, class certification has not been sought by Fink and Weston in the Superior Court and the Superior Court has not certified a class.

9. Shareholders Fink and Weston stated in their Second Amended Class Action Complaint that the Superior Court “has jurisdiction over” all of their claims. (Exh. C at 6.)

10. Shareholder Fink filed her first Class Action Complaint Based Upon Breach of Fiduciary Duty on September 15, 2017. (Exh. A at 22.) In her complaint, Shareholder Fink claimed she would be “irreparably injured” if the merger closed and demanded “injunctive relief” including “[e]njoining the Defendants . . . from consummating the Proposed Transaction, unless and until [Avista] adopts and implements a procedure reasonably designed to provide the best possible value for stockholders....” (*Id.* at 21.) On October 10, 2017, Shareholder Fink amended her complaint and made the same demands for injunctive relief and to halt the merger. (Exh. B at 35.) On October 25, 2017, Shareholder Weston joined Shareholder Fink in a Second Amended Class Action Complaint Based Upon Breach of Fiduciary Duty, in which they made the same demands for injunctive relief and to halt the merger. (Exh. C at 35-36.) Notwithstanding their three separate demands to enjoin the merger, Shareholders Fink and Weston never sought to actually halt the merger by moving for a temporary injunction, seeking a hearing, or for any other relief prior to the Avista shareholder vote on November 21, 2017. Likewise, following the Avista shareholder vote on November 21, 2017, Shareholders Fink and Weston have not sought an injunction; rather, they moved the Superior Court to stay “all proceedings in” the case until *after* the transaction closes. (Exh. D at 1.)

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

DATED this 17th day of January, 2018.

By: 
David J. Meyer, WSBA No. 8717
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Governmental Affairs
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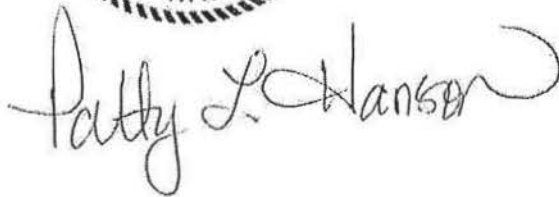


EXHIBIT A

ORIGINAL

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FILED
SEP 15 2017
Timothy W. Fitzgerald
SPOKANE COUNTY CLERK

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR SPOKANE COUNTY

LAUREN FINK, on Behalf of Herself and All
Others Similarly Situated,

Plaintiff,

v.

SCOTT L. MORRIS, KRISTIANNE
BLAKE, R. JOHN TAYLOR, ERIK J.
ANDERSON, HEIDI B. STANLEY, MARC
F. RACICOT, REBECCA A. KLEIN,
DONALD C. BURKE, JANET D.
WIDMANN, SCOTT H. MAW, HYDRO
ONE LIMITED, OLYMPUS HOLDING
CORP., and OLYMPUS CORP.,

Defendants.

Case No. 17203616-6
CLASS ACTION COMPLAINT BASED
UPON BREACH OF FIDUCIARY DUTY

Plaintiff Lauren Fink ("Plaintiff"), on behalf of herself and all others similarly situated, by and through her undersigned counsel, alleges the following upon information and belief, including the investigation of counsel and review of publicly available information, except as to those allegations pertaining to Plaintiff, which are alleged upon personal knowledge.

SUMMARY OF THE ACTION

1. This is a stockholder class action brought by Plaintiff on behalf of holders of Avista Corporation ("Avista" or the "Company") common stock against Avista's Board of Directors (the "Board" or the "Individual Defendants"), Hydro One Limited ("Hydro One"),

1 Olympus Holding Corp. ("Olympus"), and Olympus Corp. ("Merger Sub"). This action seeks to
2 enjoin defendants from further breaching their fiduciary duties in their pursuit of a sale of the
3 Company at an inadequate price through an unfair and self-serving process to Hydro One (the
4 "Proposed Acquisition"). Defendants announced on July 19, 2017, that the Board had agreed to
5 sell Avista to Hydro One in exchange for \$53 in cash for each share of Avista common stock (the
6 "Proposed Consideration"). The deal is valued at approximately \$5.3 billion when the
7 assumption of \$1.9 billion of debt is included.

8 2. Avista operates as an electric and natural gas utility company. It operates in two
9 segments, Avista Utilities and Alaska Electric Light and Power Company. The Avista Utilities
10 segment generates, transmits, and distributes electricity, as well as distributes natural gas in
11 eastern Washington, northern Idaho, northeastern and southwestern Oregon, and Montana.

12 3. When seeking a sale of the Company, the members of the Board are required
13 under Washington law to act solely in the best interests of the Company's stockholders, rather
14 than their own. Unfortunately, in agreeing to the Proposed Acquisition, this is not what the
15 Board did. Instead, it placed its own interests of continued employment ahead of stockholders.
16 By agreeing to be bought by Hydro One, a foreign company, the Board ensured all of
17 management and many of its members would continue on at the go-forward company.

18 4. In particular, in announcing the Proposed Acquisition, Avista revealed that it
19 expects there to be no layoffs, management to remain at the go-forward company, the
20 headquarters will remain in the same place, and Avista will even continue to operate with its own
21 board of directors. Defendant Scott L. Morris ("Morris"), the Company's Chief Executive
22 Officer ("CEO") and Chairman, explained that the only change for employees would be that
23 Avista is going from having many stockholders to just one, Hydro One. Thus, in a frothy
24 acquisition market, the Individual Defendants looked for a suitor that would allow them to
25 continue in their positions.

26 5. The Proposed Acquisition could not have come at a worse time for the Company's
27

1 stockholders. After stagnating for most of the year, Avista's stock price has finally started
2 moving higher after reporting strong results. In particular, on May 3, 2017, the Company
3 announced its financial results for the first quarter of 2017. For the quarter, Avista reported:
4 (i) net income attributable to stockholders of \$62.1 million, a 7.8% increase over the same period
5 of the prior year; (ii) total earnings per diluted share attributable to stockholders of \$0.96, a 4.3%
6 increase over the same period of the prior year; (iii) operating revenues of \$436.5 million, a 4.4%
7 increase over the same period of the prior year; and (iv) dividends declared per common share of
8 \$0.96, a 4.4% increase over the same period of the prior year.

9 6. The Board further breached its fiduciary duties by agreeing to preclusive deal
10 protection devices in connection with the Agreement and Plan of Merger the dated July 19, 2017
11 (the "Merger Agreement"), which all but ensure that the inadequate Proposed Acquisition will be
12 consummated. These provisions, which further undermine stockholder value by precluding any
13 competing offers for the Company from emerging, include: (i) a no-solicitation provision
14 prohibiting the Company from properly shopping itself; (ii) a four-business-day matching rights
15 period during which Hydro One has the option to match any superior proposal received by the
16 Company; and (iii) a \$103 million termination fee payable by Avista to Hydro One if it
17 terminates the Merger Agreement in favor of a superior offer.

18 7. While the Board is intent on cashing out Avista stockholders at an unfair price,
19 the Individual Defendants and members of the Company's senior management team will receive
20 immediate benefits from the closing of the Proposed Acquisition. In addition to the key
21 positions described above, the Company's officers and directors will receive accelerated vesting
22 of their equity awards, worth over \$8 million. In total, the Company's officers and directors will
23 receive over \$25 million pursuant to the Proposed Acquisition.

24 8. Simply put, in pursuing the unlawful plan to sell the Company via an unfair
25 process and at an inadequate price, each of the defendants have violated applicable law by
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1 directly breaching and/or aiding and abetting the other defendants' breaches of their fiduciary
2 duties of loyalty and due care, among others.

3 9. This action seeks equitable relief only; specifically, to enjoin the Individual
4 Defendants from further breaching their duties in connection with the Proposed Acquisition. To
5 remedy the defendants' legal violations as set forth herein, Plaintiff seeks, inter alia: (i)
6 injunctive relief preventing consummation of the Proposed Acquisition unless and until the
7 Company adopts and implements a procedure or process designed to obtain a transaction that
8 provides the best possible terms for stockholders; (ii) a directive to the Individual Defendants to
9 exercise their fiduciary duties to obtain a transaction that is in the best interests of Avista's
10 stockholders; and (iii) rescission of, to the extent already implemented, the Merger Agreement or
11 any of the terms thereof.

12 JURISDICTION

13 10. This Court has jurisdiction over all causes of action asserted herein pursuant to
14 Revised Code of Washington section 2.08.010.

15 11. This Court has jurisdiction over all defendants as each is either a corporation that
16 conducts business in and maintains operations in this County, or is an individual who has
17 sufficient minimum contacts with the state of Washington so as to render the exercise of
18 jurisdiction by the Washington courts permissible under traditional notions of fair play and
19 substantial justice.

20 12. Venue is proper in this Court because one or more of the defendants either resides
21 in or maintains executive offices in this County, a substantial portion of the transactions and
22 wrongs complained of herein, including the defendants' primary participation in the wrongful
23 acts detailed herein and aiding and abetting and conspiracy in violation of fiduciary duties owed
24 to Avista stockholders occurred in this County, and defendants have received substantial
25 compensation in this County by doing business here and engaging in numerous activities that had
26 an effect in this County.

1 **PARTIES**

2 **Plaintiff**

3 13. Plaintiff was a stockholder of Avista at the time of the wrongdoing complained of,
4 has continuously been a stockholder since that time, and is a current Avista stockholder.

5 **Non-Defendant**

6 14. Non-defendant Avista is a Washington corporation with principal executive
7 offices located at 1411 East Mission Avenue, Spokane, Washington. Avista is an energy
8 company involved in the production, transmission, and distribution of energy as well as other
9 energy-related businesses. As of December 31, 2016, Avista employed 1,742 people in Avista
10 Utilities and 240 people in the Company's subsidiary businesses. Upon completion of the
11 Proposed Acquisition, Avista will become an indirect, wholly owned subsidiary of Defendant
12 Hydro One.

13 **Defendants**

14 15. Defendant Morris is Avista's CEO and Chairman of the Board and has been since
15 January 2008, President and has been since May 2006, and a director and has been since
16 February 2007. Defendant Morris was also Avista's Chief Operating Officer from May 2006 to
17 December 2007; Senior Vice President from February 2002 to May 2006; Vice President from
18 November 2000 to February 2002; President, Avista Utilities from August 2000 to December
19 2008; General Manager, Avista Utilities for the Oregon and California operations from October
20 1991 to August 2000; and held various other management and staff positions with the Avista
21 beginning in 1981.

22 16. Defendant Kristianne Blake is Avista's Lead Director and has been since May
23 2017, and a director and has been since July 2000.

24 17. Defendant R. John Taylor is an Avista director and has been since May 1985.

25 18. Defendant Erik J. Anderson is an Avista director and has been since November
26 2000.

1 19. Defendant Heidi B. Stanley is an Avista director and has been since May 2006.

2 20. Defendant Marc F. Racicot is an Avista director and has been since August 2009.

3 21. Defendant Rebecca A. Klein is an Avista director and has been since May 2010.

4 22. Defendant Donald C. Burke is an Avista director and has been since August 2011.

5 23. Defendant Janet D. Widmann is an Avista director and has been since August
6 2014.

7 24. Defendant Scott H. Maw is an Avista director and has been since August 2016.

8 25. Defendant Hydro One is an Ontario corporation, which through its subsidiaries,
9 operates as an electrical transmission and distribution utility in the Ontario province of Canada.

10 26. Defendant Olympus is a Delaware corporation and the sole stockholder of
11 defendant Merger Sub.

12 27. Defendant Merger Sub is a Washington corporation and a wholly owned
13 subsidiary of defendant Olympus. Upon completion of the Proposed Acquisition, defendant
14 Merger Sub will merge with and into Avista and cease its separate corporate existence.

15 **INDIVIDUAL DEFENDANTS' FIDUCIARY DUTIES**

16 28. Under Washington law, in any situation where the directors of a publicly traded
17 corporation undertake a transaction that will result in a sale or change in corporate control, they
18 have an affirmative fiduciary obligation to obtain the highest value reasonably available for the
19 corporation's stockholders, including a significant control premium. To diligently comply with
20 these duties, neither the officers nor the directors may take any action that:

21 (a) adversely affects the value provided to the corporation's stockholders;

22 (b) will discourage, inhibit, or deter alternative offers to purchase control of
23 the corporation or its assets;

24 (c) contractually prohibits themselves from complying with their fiduciary
25 duties;

1 (d) will otherwise adversely affect their duty to secure the best value
2 reasonably available under the circumstances for the corporation's stockholders; and/or

3 (e) will provide the directors and/or officers with preferential treatment at the
4 expense of, or separate from, the public stockholders.

5 29. In accordance with their duties of loyalty and good faith, the Individual
6 Defendants, as directors, officers, and/or majority stockholders of Avista are obligated under
7 Washington law to refrain from:

8 (a) participating in any transaction where the directors' or officers' loyalties
9 are divided;

10 (b) participating in any transaction where the directors or officers receive, or
11 are entitled to receive, a personal financial benefit not equally shared by the public stockholders
12 of the corporation; and/or

13 (c) unjustly enriching themselves at the expense or to the detriment of the
14 public stockholders.

15 30. The Individual Defendants, separately and together, in connection with the
16 Proposed Acquisition, are knowingly or recklessly violating their fiduciary duties and aiding and
17 abetting such breaches, including their duties of loyalty, good faith, and independence owed to
18 Plaintiff and other public stockholders of Avista. Certain Defendants are obtaining for
19 themselves personal benefits, including lucrative and prestigious positions with the go-forward
20 company and personal financial benefits not shared equally by Plaintiff or the Class.
21 Accordingly, the Proposed Acquisition will benefit the Individual Defendants in significant ways
22 not shared with the Class members. As a result of the Individual Defendants' self-dealing and
23 divided loyalties, neither Plaintiff nor the Class will receive adequate or fair value for their
24 Avista common stock in the Proposed Acquisition.

25 31. Because the Individual Defendants are knowingly or recklessly breaching their
26 fiduciary duties of loyalty, good faith, and independence in connection with the Proposed
27

1 Acquisition, the burden of proving the inherent or entire fairness of the Proposed Acquisition,
2 including all aspects of its negotiation, structure, price, and terms, is placed upon defendants as a
3 matter of law.

4 THE PROPOSED ACQUISITION

5 32. On July 19, 2017, Avista issued a news release announcing the Proposed
6 Acquisition through which Hydro One will acquire Avista for the inadequate Proposed
7 Consideration of \$53 per share. The news release stated:

8 Hydro One to Acquire Avista to Create Growing North American Utility Leader
9 with C\$31.2 Billion in Enterprise Value

10 Hydro One and Avista combined create a top 20 North American utility focused
11 on regulated transmission as well as electricity and natural gas local distribution

12 TORONTO, ONTARIO and SPOKANE, WASHINGTON -- (Marketwired) --
13 07/19/17

14 Highlights:

- 15 • Establishes one of North America's largest regulated utilities with over
16 C\$32.2 billion (US\$25.4 billion) in assets and a leader in electricity
17 transmission and distribution as well as natural gas local distribution
18 businesses
- 19 • Expands into complementary and diversified regulated assets, inclusive of
20 natural gas local distribution
- 21 • The transaction will be accretive to earnings per share in the mid-single
22 digits in the first full year of operation
- 23 • Provides Hydro One with a significant and stable increase to earnings and
24 cash flow underpinned by fully regulated utility operations jurisdictions
25 with constructive regulatory mechanisms
- 26 • A long-term intention of continuing Hydro One's dividend payout of 70-
27 80 per cent of earnings
- 28 • Avista stockholders receive US\$53 in cash per common share, a 24%
premium as of market close on July 18, 2017
- Both Hydro One and Avista to maintain healthy balance sheets as well as
strong investment-grade credit ratings

- 1 • Hydro One's acquisition financing strategy involves the issuance of C\$1.4 billion of Hydro One common equity and US\$2.6 billion of Hydro One debt
- 2
- 3 • Hydro One has concurrently executed a bought deal of C\$1.4 billion of contingent convertible debentures represented by instalment receipts to satisfy the equity component of the acquisition financing strategy
- 4
- 5 • Hydro One and Avista customer rates will not be impacted by any of the costs associated with the transaction
- 6
- 7 • Efficiencies through enhanced scale, innovation, shared IT systems and increased purchasing power provides cost savings for customers and better customer service, complementing both organization's commitment to excellence
- 8
- 9 • Avista preserves corporate identity including its headquarters; customers, employees, communities and shareholders all benefit from new partnership
- 10
- 11 • No workforce reductions are anticipated as a result of this transaction for either Hydro One or Avista
- 12

13 Hydro One Limited ("Hydro One") (TSX:H) and Avista Corporation ("Avista") (NYSE:AVA) today jointly announced a definitive merger agreement ("Agreement") under which Hydro One will acquire Avista for C\$67 (US\$53) per share in a C\$6.7 billion (US\$5.3 billion) all-cash transaction. Together, Hydro One and Avista will create a North American leader in regulated electricity and natural gas business with over C\$32.2 billion (US\$25.4 billion) in combined assets. The transaction brings together two industry-leading regulated utilities with over 230 years of collective operational experience as well as shared corporate cultures and values. The combined entity will safely and reliably serve more than two million retail and industrial customers and hold assets throughout North America including Ontario, Washington, Oregon, Idaho, Montana and Alaska.

21 "This marks a proud moment for Canadian champions as we grow our business into a North American leader," said Mayo Schmidt, President and CEO, Hydro One Limited. "This transaction demonstrates the power and value of the transition into an investor-owned utility, by allowing for healthy expansion into new lines of regulated utility business and new jurisdictions, such as the U.S. Pacific Northwest which is experiencing customer and economic growth."

25 "With a focus on operational excellence and building our earnings streams, we are positioned for long-term, sustainable growth," said Schmidt. "We are further accomplishing this goal by bringing together two companies with shared cultures and industry expertise to create a North American regulated utility leader. This combination means greater scale, diversity and financial flexibility."

1 Hydro One has a uniquely strong track record consolidating electricity utilities.
2 Since the IPO, Hydro One has also delivered on cost savings and efficiencies for
3 shareholders and customers. Through the company's energy conservation
4 programs, Hydro One has helped customers and municipalities save 700 GWh
5 year-to-date.

6 "Since our initial public offering, we have significantly enhanced our current
7 operations while exploring opportunities that extend and diversify our regulated
8 assets," said Schmidt. "We constantly seek to deliver exceptional value to
9 shareholders, customers, and the communities we serve through stable, increasing
10 regulated returns, exceptional service, and community engagement."

11 This strategic combination demonstrates the value of consolidation by bringing
12 together two highly complementary platforms to create one of North America's
13 largest regulated utilities, meaningfully enhancing both shareholder and customer
14 value. In addition, over time, non-headcount efficiencies will be realized through
15 collaboration and sharing of best practices on IT, innovation and supply chain
16 purchasing, all of which will further enhance cost savings. No workforce
17 reductions are anticipated as a result of this transaction for either Avista or Hydro
18 One.

19 Avista Corporation Chairman, President and CEO Scott Morris said, "For Avista,
20 the decision to team up with Hydro One at a time of strength and growth
21 represents a win for our customers, employees, shareholders and the communities
22 we serve. Through this agreement, we have a unique opportunity to secure a
23 partnership that allows us to continue to define and control, to a significant
24 degree, future operations and opportunities in a consolidating industry landscape
25 for the benefit of our customers. In Hydro One, we believe we've found a partner
26 that allows us to preserve our identity and our proud legacy, while also preparing
27 us for the future. We look forward to joining forces with Hydro One and its
28 dynamic team."

Following completion of the transaction, Avista will maintain its existing
corporate headquarters in Spokane and will continue to operate as a standalone
utility in Washington, Oregon, Idaho, Montana and Alaska. Its management team
and employees will remain in place and it will operate with its own Board of
Directors representing the interests of the Pacific Northwest and the communities
it serves. The combined company's headquarters will be based in Toronto.

Avista employees and retirees will see a continuation of the company essentially
as it is today. Customers of both companies will continue to be provided with
safe, reliable and high quality energy. Hydro One and Avista customer rates will
not be impacted by any of the costs associated with the transaction. The
communities Avista serves will continue to benefit from the important
philanthropy and economic development that Avista provides.

1 "In fact," Morris said, "Hydro One is committed to doing even more - nearly
2 doubling Avista's current levels of community support."

3 "This is the coming together of two highly respected and reputable companies
4 steeped in history and shared commitment to the communities they serve. Both
5 teams also share a common vision and a dedication to serving customers safely
6 and reliably every day," said Schmidt.

7 "The strength of the combined company enables the accelerated deployment of
8 innovation programs and infrastructure upgrades for the benefit of customers
9 while continuing to deliver on shareholder expectations for consistent, healthy,
10 financial performance. Together, we will deliver even more possibilities for the
11 shareholders, customers, employees, and communities we have the privilege of
12 serving," said Schmidt.

13 The transaction was unanimously approved by the Boards of Directors of both
14 companies and is expected to close in the second half of 2018, subject to Avista
15 common shareholder approval and certain regulatory and government approvals
16 and clearances, including approval by the Washington Utilities and Transportation
17 Commission, the Public Utility Commission of Oregon, the Idaho Public Utilities
18 Commission, the Regulatory Commission of Alaska, the Public Service
19 Commission of the State of Montana, the U.S. Federal Energy Regulatory
20 Commission, clearance by the Committee on Foreign Investment in the United
21 States and compliance with applicable requirements under the U.S. Hart-Scott-
22 Rodino Antitrust Improvements Act of 1976, as amended, and the satisfaction of
23 customary closing conditions.

24 33. On July 19, 2017, the Company filed a Current Report on Form 8-K with the U.S.
25 Securities and Exchange Commission ("SEC") wherein it disclosed the Merger Agreement.
26 Collectively, the announcement of the Proposed Acquisition and the filing of the Merger
27 Agreement reveal that the Proposed Acquisition is the product of a flawed sale process that is
28 designed to ensure the acquisition of Avista by Hydro One on terms preferential to Defendants,
but detrimental to Plaintiff and the other public stockholders of Avista.

34. Under the Merger Agreement, Avista is subject to a no-solicitation clause that
prohibits the Company from seeking a superior offer for its stockholders. Specifically, section
5.3(a) of the Merger Agreement states:

The Company agrees that it shall, and shall cause its Subsidiaries and its and its
Subsidiaries respective directors, officers and employees to, and shall use its
reasonable best efforts to cause its other Representatives to, immediately cease all
existing discussions or negotiations with any Person conducted heretofore with

1 respect to any Takeover Proposal. Except as otherwise provided in this
2 Agreement, from the date of this Agreement until the earlier of the Effective Time
3 or the date, if any, on which this Agreement is terminated pursuant to Section 7.1,
4 the Company shall not, and shall cause its Subsidiaries and its and its Subsidiaries
5 respective directors, officers and employees not to, and shall use its reasonable
6 best efforts to cause its other Representatives not to, directly or indirectly, (i)
7 solicit, initiate, knowingly encourage or knowingly facilitate any Takeover
8 Proposal or the making or consummation thereof or (ii) enter into, or otherwise
9 participate in any discussions (except to notify such Person of the existence of the
10 provisions of this Section 5.3) or negotiations regarding, or furnish to any Person
11 any material non-public information in connection with, any Takeover Proposal.

12 35. Though the Merger Agreement ostensibly has a "fiduciary out" provision that
13 allows the Company to negotiate with other bidders, this provision would require a potential
14 acquirer to first make an unsolicited offer. Without access to nonpublic information, which the
15 Company is prevented from sharing under the Merger Agreement prior to the receipt of an offer
16 that the Company reasonably expects to lead to a superior deal, no other bidders will emerge to
17 make a superior proposal.

18 36. Furthermore, under section 5.3(d) of the Merger Agreement, should it receive an
19 unsolicited bid, the Company must notify Hydro One of the bidder's offer. Thereafter, should
20 the Board determine that the unsolicited offer is superior, Hydro One is granted four business
21 days to amend the terms of the Merger Agreement to make a counter offer that only needs to be
22 as favorable to the Company's stockholders as the unsolicited offer. Hydro One will be able to
23 match the unsolicited offer because it is granted unfettered access to the unsolicited offer, in its
24 entirety, eliminating any leverage the Company has in receiving the unsolicited offer.

25 37. Also, pursuant to section 7.3 of the Merger Agreement, Avista must pay Hydro
26 One a \$103 million termination fee if it accepts a superior proposal. The termination fee equates
27 to approximately \$1.60 per Avista share that will be paid directly to Hydro One rather than
28 Avista stockholders, thereby making it even more difficult for any competing bidder to acquire
the Company.

38. These onerous and preclusive deal protection devices, which will operate to
unreasonably deter and discourage superior offers from other interested parties, were agreed to

1 by the Individual Defendants to help secure the personal benefits and unfair profits afforded to
2 them. By negotiating for such personal benefits in connection with the consummation of the
3 Proposed Acquisition, the Individual Defendants placed their own personal interests before those
4 of the Company's stockholders, thus resulting in the Proposed Acquisition being presented to
5 Avista stockholders at an untenable and inadequate offer price.

6 **THE PROPOSED ACQUISITION UNDERVALUES AVISTA**

7 39. The Proposed Acquisition significantly undervalues the Company and its future
8 prospects. Avista has demonstrated that it is well-positioned for future growth. In the
9 Company's most recent quarter, Defendant Morris highlighted that Avista has had lower than
10 expected operating expenses and its Alaska Electric Light and Power Company segment beat
11 management's own internal expectations. Most importantly, the Company has continued to
12 make the case to regulators for a rate increase, which would provide additional profit to Avista
13 and the stockholders in the form of increasing dividends. In addition, Idaho, the Company
14 announced that it plans to file a rate case this quarter.

15 40. Further, on May 3, 2017, the Company announced strong financial results for the
16 first quarter of 2017. In particular, Avista reported: (i) net income attributable to stockholders of
17 \$62.1 million, a 7.8% increase over the same period of the prior year; (ii) total earnings per
18 diluted share attributable to stockholders of \$0.96, a 4.3% increase over the same period of the
19 prior year; (iii) operating revenues of \$436.5 million, a 4.4% increase over the same period of the
20 prior year; and (iv) dividends of \$0.96 per share, a 4.4% increase over the same period of the
21 prior year. These stellar results would only continue to increase as the Company received the
22 expected rate increase approvals.

23 41. Further, the Proposed Acquisition will be accretive to Hydro One's earnings per
24 share in the mid-single digits in the first full year of operation. That the transaction will be
25 accretive so quickly to Hydro One shows that Avista's value is not properly reflected in the
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27

1 Proposed Acquisition, especially since this accretion will occur without any reduction in
2 headcount.

3 INSIDER BENEFITS

4 42. By reason of their positions with Avista, the Individual Defendants have access to
5 nonpublic information concerning the financial condition and prospects of Avista. Thus, there
6 exists an imbalance and disparity of knowledge and economic power between the Individual
7 Defendants and the public stockholders of Avista. It is inherently unfair for the Individual
8 Defendants to execute and pursue any Proposed Acquisition agreement under which they will
9 reap disproportionate benefits to the exclusion of obtaining the best value for stockholders.

10 43. While the Board is intent on cashing out Avista stockholders at an unfair price,
11 the Individual Defendants and members of the Company's senior management team will receive
12 immediate benefits from the closing of the Proposed Acquisition. Indeed, Defendant Morris
13 discussed with employees on July 20, 2017, that basically nothing will change at the Company
14 from their point of view. In particular, Defendant Morris stated "We'll continue to operate our
15 business much as we do today; with the exception that we will have one shareholder instead of
16 thousands." Defendant Morris highlighted that the Company will remain in Spokane, it will
17 retain its name, and that "there will be no workforce reductions as a result of this transaction."

18 44. Importantly, Defendant Morris also explained that the Company will continue to
19 have a board of directors, with four of its members chosen by Avista. One of those members
20 must be Defendant Morris himself. In addition, three of the five members of the board of
21 directors chosen by Hydro One will have to reside in the Pacific Northwest, drastically
22 increasing the chances that Hydro One will pick Avista's current directors to remain on the Board
23 post-closing.

24 45. In addition, the Board and other members of senior management will receive the
25 acceleration of stock-based compensation and will be cashed out of all their equity holdings in
26

1 the Proposed Acquisition, *in addition to* retaining their positions. In particular, management and
2 the Individual Defendants will receive the following compensation:

Defendants	Common Share Consideration	Accelerated Consideration	Total Merger Consideration
Scott L. Morris	\$ 9,746,276.00	\$ 7,775,206.00	\$ 17,521,482.00
Kristianne Blake	\$ 1,146,708.00	\$ 133,507.00	\$ 1,280,215.00
Erik J. Anderson	\$ 1,077,808.00	\$ -	\$ 1,077,808.00
Donald C. Burke	\$ 770,620.00	\$ -	\$ 770,620.00
Rebecca A. Klein	\$ 1,018,925.00	\$ -	\$ 1,018,925.00
Scott H. Maw	\$ 221,752.00	\$ -	\$ 221,752.00
Marc F. Racicot	\$ 884,782.00	\$ -	\$ 884,782.00
Heidi B. Stanley ¹	\$ 1,358,337.00	\$ -	\$ 1,358,337.00
R. John Taylor	\$ 568,319.00	\$ 291,288.00	\$ 859,607.00
Janet D. Widmann	\$ 303,478.00	\$ -	\$ 303,478.00
Total	\$ 17,097,005.00	\$ 8,200,001.00	\$ 25,297,006.00

1) Approximately \$543,144 of Stanley's Common Share Consideration is held by Stanley's spouse, in a profit-sharing plan not administered by Avista Corporation.

13 46. In short, the Proposed Acquisition is wrongful, unfair, and harmful to Avista's
14 public stockholders, and represents an effort by the Individual Defendants to aggrandize their
15 own financial position and interests at the expense of and to the detriment of the Class.
16 Specifically, Defendants are attempting to deny Plaintiff and the Class their stockholder rights
17 through the sale of Avista via an unfair process. Accordingly, the Proposed Acquisition will
18 benefit the Individual Defendants at the expense of Avista stockholders.

19 47. In order to meet their fiduciary duties, the Individual Defendants are obligated to
20 explore transactions that will maximize stockholder value, and not structure a preferential deal
21 for themselves. Due to the Individual Defendants' eagerness to enter into a transaction with
22 Hydro One, they failed to implement a process to obtain the maximum price for Avista
23 stockholders.

24 **THE UNFAIR AND INADEQUATE PROCESS**

25 48. In order to meet their fiduciary duties, the Individual Defendants are obligated to
26 explore transactions that will maximize stockholder value, and not structure a preferential deal
27

1 for themselves. Due to the Individual Defendants' eagerness to enter into a transaction with
2 Hydro One, they failed to implement a process to obtain the maximum price for Avista
3 stockholders.

4 49. As a result of Defendants' conduct, Avista's public stockholders have been and
5 will continue to be denied the fair process and arm's-length negotiated terms to which they are
6 entitled in a sale of their company. The consideration reflected in the Merger Agreement does
7 not reflect the true inherent value of the Company that only the Individual Defendants, as
8 directors and officers of Avista, and Hydro One had access to at the time the Proposed
9 Acquisition was announced.

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

12 (a) withdraw their consent to the merger of Avista with Hydro One and allow the
13 shares to trade freely—without impediments including the no-solicitation provision, matching
14 rights clause, and termination fee;

15 (b) act independently so that the interests of Avista's public stockholders will be
16 protected;

17 (c) adequately ensure that no conflicts of interest exist between Defendants' own
18 interests and their fiduciary obligation to maximize stockholder value or, if such conflicts exist,
19 to ensure that all conflicts be resolved in the best interests of Avista public stockholders; and

20 (d) solicit competing bids to Hydro One's offer to ensure that the Company's
21 stockholders are receiving the maximum value for their shares.

22 **CLASS REPRESENTATION ALLEGATIONS**

23 51. Plaintiff brings this action individually and as a class action on behalf of all
24 holders of Avista common stock who are being harmed by Defendants' actions as described
25 above (the "Class"). Excluded from the Class are the Defendants and any individual or entity
26 related to, or affiliated with, any Defendant.

1 52. The Class is so numerous that joinder of all members is impracticable. According
2 to the Merger Agreement, there were more than 64.4 million shares of common stock
3 outstanding as of July 18, 2017.

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

7 (a) whether the Proposed Acquisition is the result of an entirely fair process
8 and at an entirely fair price to the Company's stockholders;

9 (b) whether the Individual Defendants have breached their fiduciary duties of
10 undivided loyalty, good faith, diligence, fair dealing, independence, and/or due care with respect
11 to Plaintiff and the other members of the Class in connection with the Proposed Acquisition;

12 (c) whether the Individual Defendants are conflicted or otherwise engaging in
13 self-dealing in connection with the Proposed Acquisition;

14 (d) whether the Individual Defendants have breached any of their other
15 fiduciary duties owed to Plaintiff and the other members of the Class in connection with the
16 Proposed Acquisition;

17 (e) whether the Individual Defendants are unjustly enriching themselves
18 and/or the other insiders/affiliates of Avista in connection with the Proposed Acquisition;

19 (f) whether the Individual Defendants, in bad faith and for improper motives,
20 impeded or erected barriers designed to discourage other potentially interested parties from
21 making an offer to acquire the Company or its assets;

22 (g) whether Avista aided and abetted any of the Individual Defendants'
23 breaches of fiduciary duty owed to Plaintiff and the other members of the Class in connection
24 with the Proposed Acquisition;

1 (h) whether defendants Hydro One, Olympus, and Merger Sub aided and
2 abetted any of the Individual Defendants' breaches of fiduciary duty owed to Plaintiff and the
3 other members of the Class in connection with the Proposed Acquisition; and

4 (i) whether plaintiff and the other members of the Class would suffer
5 irreparable injury were the Proposed Acquisition consummated.

6 54. The prosecution of separate actions by individual members of the Class would: (i)
7 create a risk of inconsistent or varying adjudications with respect to individual members of the
8 Class; (ii) establish incompatible standards of conduct for Defendants; and/or (iii) result in
9 adjudications with respect to individual members of the Class that would, as a practical matter,
10 be dispositive of the interests of the other members not party to those adjudications thereby
11 substantially impairing (or entirely impeding) their ability to protect their own personal interests.

12 55. Plaintiff, whose claims are typical of the other Class members, is committed to
13 prosecuting this action and has retained competent counsel who will draw on their extensive
14 experience litigating actions of this nature in order to fairly and adequately represent and protect
15 the interests of Plaintiff and the Class.

16 56. Plaintiff does not have any interests adverse to the Class. Accordingly, there will
17 be no difficulty in the management of this litigation as a class action. Indeed, a class action is
18 superior to other available methods for the fair and efficient adjudication of this controversy.

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

22 **FIRST CAUSE OF ACTION**

23 **Claim for Breach of Fiduciary Duties Against the Individual Defendants**

24 58. Plaintiff incorporates by reference and realleges each and every allegation
25 contained above, as though fully set forth herein.

1 59. The Individual Defendants have violated the fiduciary duties of care, loyalty,
2 good faith, and independence owed to the public stockholders of Avista and have acted to put
3 their personal interests ahead of the interests of Avista's stockholders.

4 60. By the acts, transactions, and course of conduct alleged herein, the Individual
5 Defendants, individually and acting as a part of a common plan, are attempting to unfairly
6 deprive Plaintiff and other members of the Class of the true value inherent in and arising from
7 Avista.

8 61. The Individual Defendants have violated their fiduciary duties by entering Avista
9 into the Proposed Acquisition without regard to the effect of the proposed transaction on Avista
10 stockholders.

11 62. As demonstrated by the allegations above, the Individual Defendants failed to
12 exercise the care required, and breached their duties of loyalty and care owed to the stockholders
13 of Avista by entering into the Proposed Acquisition through the unfair process exemplified by
14 the Merger Agreement.

15 63. Because Individual Defendants dominate and control the business and corporate
16 affairs of Avista, and have access to private, corporate information concerning Avista's assets,
17 business, and future prospects, there exists an imbalance and disparity of knowledge and
18 economic power between them and the public stockholders of Avista which makes it inherently
19 unfair for them to pursue and recommend any proposed acquisition wherein they will reap
20 disproportionate benefits to the exclusion of maximizing stockholder value.

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

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

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

8 67. Plaintiff and the members of the Class have no adequate remedy at law. Only
9 through the exercise of this Court's equitable powers can Plaintiff and the Class be fully
10 protected from the immediate and irreparable injury which Defendants' actions threaten to inflict.

11 **SECOND CAUSE OF ACTION**

12 **Claim for Aiding and Abetting Breaches of Fiduciary Duty Against**
13 **Defendant Hydro One, Olympus, and Merger Sub**

14 68. Plaintiff incorporates by reference and realleges each and every allegation
15 contained above, as though fully set forth herein.

16 69. Defendants Hydro One, Olympus, and Merger Sub aided and abetted the
17 Individual Defendants in breaching their fiduciary duties owed to the public stockholders of the
18 Company, including Plaintiff and the members of the Class.

19 70. The Individual Defendants owed to Plaintiff and the members of the Class certain
20 fiduciary duties as fully set out herein.

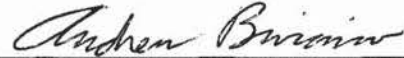
21 71. By committing the acts alleged herein, the Individual Defendants breached their
22 fiduciary duties owed to Plaintiff and the members of the Class.

23 72. Defendants Hydro One, Olympus, and Merger Sub colluded in or aided and
24 abetted the Individual Defendants' breaches of fiduciary duties, and were active and knowing
25 participants in the Individual Defendants' breaches of fiduciary duties owed to Plaintiff and the
26 members of the Class.

1 G. Granting such other and further equitable relief as deemed just and proper.

2 DATED this 15th day of September, 2017.

3 PAUKERT & TROPPEMAN PLLC
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5 

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23 Attorneys for Plaintiff

24 1196693

EXHIBIT B

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IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR SPOKANE COUNTY

LAUREN FINK, on Behalf of Herself and All
Others Similarly Situated,

Plaintiff,

v.

SCOTT L. MORRIS, KRISTIANNE
BLAKE, R. JOHN TAYLOR, ERIK J.
ANDERSON, HEIDI B. STANLEY, MARC
F. RACICOT, REBECCA A. KLEIN,
DONALD C. BURKE, JANET D.
WIDMANN, SCOTT H. MAW, HYDRO
ONE LIMITED, OLYMPUS HOLDING
CORP., OLYMPUS CORP., and BANK OF
AMERICA MERRILL LYNCH,

Defendants.

) Case No. 2017-02-03616-6

) AMENDED CLASS ACTION
) COMPLAINT BASED UPON BREACH
) OF FIDUCIARY DUTY

Plaintiff Lauren Fink ("Plaintiff"), on behalf of herself and all others similarly situated,
by and through her undersigned counsel, alleges the following upon information and belief,
including the investigation of counsel and review of publicly available information, except as to
those allegations pertaining to Plaintiff, which are alleged upon personal knowledge.

SUMMARY OF THE ACTION

1. This is a stockholder class action brought by Plaintiff on behalf of holders of
Avista Corporation ("Avista" or the "Company") common stock against Avista's Board of
Directors (the "Board" or the "Individual Defendants"), Hydro One Limited ("Hydro One"),

1 Olympus Holding Corp. ("Olympus"), Olympus Corp. ("Merger Sub"), and Bank of America
2 Merrill Lynch ("Merrill Lynch"). This action seeks to enjoin defendants from further breaching
3 their fiduciary duties and/or seeks damages resulting from their pursuit of a sale of the Company
4 at an inadequate price through an unfair and self-serving process to Hydro One (the "Proposed
5 Acquisition"). Defendants announced on July 19, 2017, that the Board had agreed to sell Avista
6 to Hydro One in exchange for \$53 in cash for each share of Avista common stock (the "Proposed
7 Consideration"). The deal is valued at approximately \$5.3 billion when the assumption of \$1.9
8 billion of debt is included.

9 2. Avista operates as an electric and natural gas utility company, in two segments,
10 Avista Utilities and Alaska Electric Light and Power Company. The Avista Utilities segment
11 generates, transmits, and distributes electricity, as well as distributes natural gas in eastern
12 Washington, northern Idaho, northeastern and southwestern Oregon, and Montana.

13 3. Washington law makes clear that corporate board members are required to act
14 solely in the best interests of stockholders and to maximize stockholder value when considering a
15 potential acquisition of a company. Unfortunately, in agreeing to the Proposed Acquisition, the
16 Company's Board abdicated their duties and undertook and/or agreed to a deeply flawed sale
17 process designed to benefit insiders at the expense of Avista's public stockholders.

18 4. In or around the fall/winter 2016, Avista's Chief Executive Officer, defendant
19 Scott L. Morris ("Morris"), and his executive team decided that they were open to selling the
20 Company only if the acquiror would retain the Company's executive management team. In the
21 months leading up to the Proposed Acquisition, numerous parties repeatedly contacted Morris,
22 Avista's management, and Merrill Lynch (a financial advisor handpicked by the Company's
23 management) to express interest in a strategic transaction with Avista. As Becky Kramer of *The
24 Spokesman-Review* observed, "[e]arlier this year, Avista Corp. had nearly as many dates as
25 Rachel Lindsay on ABC's 'Bachelorette.'"

26 5. Instead of creating a competitive process and a fair playing field structured to
27 evoke the highest bid for the Company's stockholders, defendant Morris and his team – without

1 the Board's knowledge, authorization, or involvement – pursued a sales process which placed
2 their selfish interests above all others. Defendant Morris and his team repeatedly blocked and
3 discouraged potential bidders who proposed a merger of equals (which posed the risk that Morris
4 and his team would be replaced post-merger) and pursued a deal with Hydro One, a foreign
5 company that was known to have no existing operations in the United States (which ensured that
6 Morris and his team would continue to be employed at the go-forward company).

7 6. The Board failed to protect the sales process from management's self-interest and
8 failed to pursue maximum value on behalf of the Company's stockholders. The Board, *inter alia*:

- 9 • never set up a special committee of independent directors;
- 10 • let Morris and his team control all negotiations;
- 11 • agreed to hire conflicted Merrill Lynch as the Company's financial advisor;
- 12 • failed to conduct a pre-signing auction or market check; and
- 13 • agreed with management to engage exclusively with Hydro One without ensuring

14 that Hydro One's price proposal was the result of a fair competitive process (it was not) and/or
15 Hydro One's price proposal was the best offer possible on the table (it was not).

16 7. Unsurprisingly, the Proposed Consideration offered by Hydro One undervalues
17 the Company. The Proposed Acquisition could not have come at a worse time for the
18 Company's stockholders. After stagnating for nearly a year, shares of Avista have recently
19 traded higher as a result of the Company's strong earnings and increased future prospects, as
20 evidenced dramatically by the Company's recent financial results. On May 3, 2017, the
21 Company reported: (i) net income attributable to stockholders of \$62.1 million, a 7.8% increase
22 over the same period of the prior year; (ii) total earnings per diluted share attributable to
23 stockholders of \$0.96, a 4.3% increase over the same period of the prior year; (iii) operating
24 revenues of \$436.5 million, a 4.4% increase over the same period of the prior year; and
25 (iv) dividends declared per common share of \$0.96, a 4.4% increase over the same period of the
26 prior year.

1 8. Significantly, the Company's strong financial performance caused Avista's stock
2 price to increase during the sale process. Indeed, Avista's stock price rose by *more than \$4.50*
3 *per share after* Hydro One communicated its price proposal to the Company's management.
4 Despite the significant appreciation in the market price of Avista's stock, the Board never
5 requested—much less demanded—that Hydro One increase the value of the Proposed
6 Consideration.

7 9. In comparison, the Company's management and the Individual Defendants stand
8 to receive material benefits in connection with the Proposed Acquisition. As was announced on
9 July 19, 2017, Avista's *entire executive management team*, whose members played a direct role
10 in negotiating the Proposed Consideration, will receive lucrative continued employment upon the
11 close of the Proposed Acquisition. Further, Avista will continue to have its own board of
12 directors following the close of the Proposed Acquisition, which is likely to be comprised of
13 members of the current Board. Indeed, as defendant Morris summed up to employees in
14 connection with the announcement of the Proposed Acquisition, "[w]e'll continue to operate our
15 *business much as we do today; with the exception that we will have one shareholder instead of*
16 *thousands.*"

17 10. In addition to continued employment, the Individual Defendants, along with
18 executive management at the Company, are also poised to receive *tens of millions of dollars* in
19 special payments for their previously locked-up shares through the immediate and full vesting of
20 equity awards and other change in control benefits. As detailed further herein, the Board and
21 Company insiders have negotiated for themselves millions in insider benefits that will not be
22 shared with Avista's public stockholders, and that would not be available were Avista to remain a
23 standalone entity or execute a stock-for-stock transaction.

24 11. The Board exacerbated their breaches of fiduciary duty by agreeing to preclusive
25 deal protection devices in connection with the Agreement and Plan of Merger dated July 19,
26 2017 (the "Merger Agreement"), which all but ensure that the inadequate Proposed Acquisition
27 will be consummated. These provisions, which further undermine stockholder value by

1 discouraging any competing offers for the Company from emerging, include: (i) a no-solicitation
2 provision prohibiting the Company from properly shopping itself; (ii) a four business day
3 matching rights period during which Hydro One has the option to match any superior proposal
4 received by the Company; and (iii) a \$103 million termination fee payable by Avista to Hydro
5 One if it terminates the Merger Agreement in favor of a superior offer. Given that the Board
6 failed to conduct a pre-sign market check or structure a competitive bidding process, and given
7 that numerous interested parties were denied participation in the sale process, these deal
8 protection devices are unreasonable and compound defendants' wrongdoing by placing
9 unreasonable impediments to superior offers materializing from those and other parties.

10 12. On October 2, 2017, Avista filed a Definitive Proxy Statement on Schedule 14A
11 (the "Proxy") with the U.S. Securities and Exchange Commission ("SEC"), and distributed it to
12 Avista stockholders with the recommendation that they vote in favor of the Proposed
13 Acquisition. The Proxy, which sets the stockholder vote on the Proposed Acquisition for
14 November 21, 2017, is materially deficient and misleading in that it fails to provide stockholders
15 with material information concerning: (i) management's best estimates as to the future financial
16 performance and value of the Company; (ii) the financial analysis performed by Merrill Lynch in
17 support of its so-called "fairness opinion"; and (iii) the conflicts of interest which tainted the
18 fairness of the sales process, the likelihood of a superior offer, and the unreasonableness of the
19 deal protection devices implemented by defendants. Without disclosure of this information,
20 Avista's public stockholders will be unable to make an informed decision whether to vote in
21 favor of the Proposed Acquisition.

22 13. In short, in pursuing the unlawful plan to sell the Company via an unfair process
23 and at an inadequate price, each of the defendants have violated applicable law by directly
24 breaching and/or aiding and abetting the other defendants' breaches of their fiduciary duties of
25 loyalty and due care, among others.

26 14. This action seeks damages and equitable relief to enjoin the Individual
27 Defendants from further breaching their duties in connection with the Proposed Acquisition and

1 damages. To remedy the defendants' legal violations as set forth herein, plaintiff seeks, inter
2 alia: (i) injunctive relief preventing consummation of the Proposed Acquisition unless and until
3 the Company adopts and implements a procedure or process designed to obtain a transaction that
4 provides the best possible terms for stockholders; (ii) a directive to the Individual Defendants to
5 exercise their fiduciary duties to obtain a transaction that is in the best interests of Avista's
6 stockholders; and (iii) rescission of, to the extent already implemented, the Merger Agreement or
7 any of the terms thereof.

8 JURISDICTION

9 15. This Court has jurisdiction over all causes of action asserted herein pursuant to
10 Revised Code of Washington section 2.08.010.

11 16. This Court has jurisdiction over all defendants as each is either a corporation that
12 conducts business in and maintains operations in this County, or is an individual who has
13 sufficient minimum contacts with the state of Washington so as to render the exercise of
14 jurisdiction by the Washington courts permissible under traditional notions of fair play and
15 substantial justice.

16 17. Venue is proper in this Court because one or more of the defendants either resides
17 in or maintains executive offices in this County, a substantial portion of the transactions and
18 wrongs complained of herein, including the defendants' primary participation in the wrongful
19 acts detailed herein and aiding and abetting and conspiracy in violation of fiduciary duties owed
20 to Avista stockholders occurred in this County, and defendants have received substantial
21 compensation in this County by doing business here and engaging in numerous activities that had
22 an effect in this County.

23 PARTIES

24 **Plaintiff**

25 18. Plaintiff was a stockholder of Avista at the time of the wrongdoing complained of,
26 has continuously been a stockholder since that time, and is a current Avista stockholder.

1 **Nondefendant**

2 19. Nondefendant Avista is a Washington corporation with principal executive offices
3 located at 1411 East Mission Avenue, Spokane, Washington. Avista is an energy company
4 involved in the production, transmission, and distribution of energy as well as other energy-
5 related businesses. As of December 31, 2016, Avista employed 1,742 people in Avista Utilities
6 and 240 people in the Company's subsidiary businesses. Upon completion of the Proposed
7 Acquisition, Avista will become an indirect, wholly owned subsidiary of defendant Hydro One.

8 **Defendants**

9 20. Defendant Morris is Avista's CEO and Chairman of the Board and has been since
10 January 2008, President and has been since May 2006, and a director and has been since
11 February 2007. Defendant Morris was also Avista's Chief Operating Officer from May 2006 to
12 December 2007; Senior Vice President from February 2002 to May 2006; Vice President from
13 November 2000 to February 2002; President, Avista Utilities from August 2000 to December
14 2008; General Manager, Avista Utilities for the Oregon and California operations from October
15 1991 to August 2000; and held various other management and staff positions with Avista
16 beginning in 1981.

17 21. Defendant Kristianne Blake ("Blake") is Avista's Lead Director and has been
18 since May 2017, and a director and has been since July 2000.

19 22. Defendant R. John Taylor is an Avista director and has been since May 1985.

20 23. Defendant Erik J. Anderson is an Avista director and has been since November
21 2000.

22 24. Defendant Heidi B. Stanley is an Avista director and has been since May 2006.

23 25. Defendant Marc F. Racicot is an Avista director and has been since August 2009.

24 26. Defendant Rebecca A. Klein is an Avista director and has been since May 2010.

25 27. Defendant Donald C. Burke is an Avista director and has been since August 2011.

26 28. Defendant Janet D. Widmann is an Avista director and has been since August
27 2014.

1 29. Defendant Scott H. Maw is an Avista director and has been since August 2016.

2 30. Defendant Hydro One is an Ontario corporation, which through its subsidiaries,
3 operates as an electrical transmission and distribution utility in the Ontario province of Canada.

4 31. Defendant Olympus is a Delaware corporation and the sole stockholder of
5 defendant Merger Sub.

6 32. Defendant Merger Sub is a Washington corporation and a wholly owned
7 subsidiary of defendant Olympus. Upon completion of the Proposed Acquisition, defendant
8 Merger Sub will merge with and into Avista and cease its separate corporate existence.

9 33. Defendant Merrill Lynch is a Delaware corporation with principal executive
10 offices located at One Bryant Part, New York, New York. Defendant Merrill Lynch served as an
11 exclusive financial advisor to Avista in connection with the Proposed Acquisition. In addition,
12 defendant Merrill Lynch provides advisory services and financing to defendant Hydro One and
13 certain of its affiliates, receiving approximately \$12 million for its services in the last two years
14 alone. Defendant Merrill Lynch intends to provide additional services and receive additional
15 compensation from defendant Hydro One and its affiliates following the close of the Proposed
16 Acquisition.

17 **INDIVIDUAL DEFENDANTS' FIDUCIARY DUTIES**

18 34. Under Washington law, in any situation where the directors of a publicly traded
19 corporation undertake a transaction that will result in a sale or change in corporate control, they
20 have an affirmative fiduciary obligation to obtain the highest value reasonably available for the
21 corporation's stockholders, including a significant control premium. To diligently comply with
22 these duties, neither the officers nor the directors may take any action that:

- 23 (a) adversely affects the value provided to the corporation's stockholders;
24 (b) will discourage, inhibit, or deter alternative offers to purchase control of
25 the corporation or its assets;
26 (c) contractually prohibits themselves from complying with their fiduciary
27 duties;

1 (d) will otherwise adversely affect their duty to secure the best value
2 reasonably available under the circumstances for the corporation's stockholders; and/or

3 (e) will provide the directors and/or officers with preferential treatment at the
4 expense of, or separate from, the public stockholders.

5 35. In accordance with their duties of loyalty and good faith, the Individual
6 Defendants, as directors, officers, and/or majority stockholders of Avista are obligated under
7 Washington law to refrain from:

8 (a) participating in any transaction where the directors' or officers' loyalties
9 are divided;

10 (b) participating in any transaction where the directors or officers receive, or
11 are entitled to receive, a personal financial benefit not equally shared by the public stockholders
12 of the corporation; and/or

13 (c) unjustly enriching themselves at the expense or to the detriment of the
14 public stockholders.

15 36. The Individual Defendants, separately and together, in connection with the
16 Proposed Acquisition, are knowingly or recklessly violating their fiduciary duties and aiding and
17 abetting such breaches, including their duties of loyalty, good faith, and independence owed to
18 Plaintiff and other public stockholders of Avista. Certain of the defendants are obtaining for
19 themselves personal benefits, including lucrative and prestigious positions with the go-forward
20 company and personal financial benefits not shared equally by Plaintiff or the Class (as defined
21 herein). Accordingly, the Proposed Acquisition will benefit the Individual Defendants in
22 significant ways not shared with the Class members. As a result of the Individual Defendants'
23 self-dealing and divided loyalties, neither Plaintiff nor the Class will receive adequate or fair
24 value for their Avista common stock in the Proposed Acquisition.

25 37. Because the Individual Defendants are knowingly or recklessly breaching their
26 fiduciary duties of loyalty, good faith, and independence in connection with the Proposed
27 Acquisition, the burden of proving the inherent or entire fairness of the Proposed Acquisition,

1 including all aspects of its negotiation, structure, price, and terms, is placed upon defendants as a
2 matter of law.

3 CLASS REPRESENTATION ALLEGATIONS

4 38. Plaintiff brings this action individually and as a class action on behalf of all
5 holders of Avista common stock who are being harmed by defendants' actions as described
6 above (the "Class"). Excluded from the Class are the defendants and any individual or entity
7 related to, or affiliated with, any defendant.

8 39. The Class is so numerous that joinder of all members is impracticable. According
9 to the Merger Agreement, there were more than 64.4 million shares of common stock
10 outstanding as of July 18, 2017.

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

14 (a) whether the Proposed Acquisition is the result of an entirely fair process
15 and at an entirely fair price to the Company's stockholders;

16 (b) whether the Individual Defendants have breached their fiduciary duties of
17 undivided loyalty, good faith, diligence, fair dealing, independence, and/or due care with respect
18 to Plaintiff and the other members of the Class in connection with the Proposed Acquisition;

19 (c) whether the Individual Defendants are conflicted or otherwise engaging in
20 self-dealing in connection with the Proposed Acquisition;

21 (d) whether the Individual Defendants have breached any of their other
22 fiduciary duties owed to Plaintiff and the other members of the Class in connection with the
23 Proposed Acquisition;

24 (e) whether the Individual Defendants are unjustly enriching themselves
25 and/or the other insiders/affiliates of Avista in connection with the Proposed Acquisition;

1 (f) whether the Individual Defendants, in bad faith and for improper motives,
2 impeded or erected barriers designed to discourage other potentially interested parties from
3 making an offer to acquire the Company or its assets;

4 (g) whether Avista aided and abetted any of the Individual Defendants'
5 breaches of fiduciary duty owed to Plaintiff and the other members of the Class in connection
6 with the Proposed Acquisition;

7 (h) whether defendants Hydro One, Olympus, and Merger Sub aided and
8 abetted any of the Individual Defendants' breaches of fiduciary duty owed to Plaintiff and the
9 other members of the Class in connection with the Proposed Acquisition;

10 (i) whether defendant Merrill Lunch aided and abetted any of the Individual
11 Defendants' breaches of fiduciary duty owed to Plaintiff and the other members of the Class in
12 connection with the Proposed Acquisition;

13 (j) whether Plaintiff and the other members of the Class would suffer
14 irreparable injury were the Proposed Acquisition consummated; and

15 (k) Whether Plaintiff and the other member of the Class are entitled to recover
16 damages.

17 41. The prosecution of separate actions by individual members of the Class would:
18 (i) create a risk of inconsistent or varying adjudications with respect to individual members of
19 the Class; (ii) establish incompatible standards of conduct for defendants; and/or (iii) result in
20 adjudications with respect to individual members of the Class that would, as a practical matter,
21 be dispositive of the interests of the other members not party to those adjudications thereby
22 substantially impairing (or entirely impeding) their ability to protect their own personal interests.

23 42. Plaintiff, whose claims are typical of the other Class members, is committed to
24 prosecuting this action and has retained competent counsel who will draw on their extensive
25 experience litigating actions of this nature in order to fairly and adequately represent and protect
26 the interests of Plaintiff and the Class.

1 43. Plaintiff does not have any interests adverse to the Class. Accordingly, there will
2 be no difficulty in the management of this litigation as a class action. Indeed, a class action is
3 superior to other available methods for the fair and efficient adjudication of this controversy.

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

7 **THE FLAWED SALE PROCESS**

8 45. From inception, the sale process was fundamentally flawed. Although Avista was
9 well-positioned and well on its way toward achieving sustained standalone success, the
10 Company's leadership decided to plot a different course for the Company—one involving a
11 buyout that would allow the Company's executive management to liquidate their large (and
12 previously illiquid holdings) while still retaining their lucrative positions following the close of
13 the Proposed Acquisition.

14 46. In mid-October 2016, "Party A," as referred to in the Proxy, contacted Merrill
15 Lynch and requested a meeting to discuss Party A's interest in Avista. Merrill Lynch informed
16 the Company's executive management of the conversation with Party A.

17 47. During November 2-4, 2016, the Board held a meeting. There is no indication in
18 the Proxy that defendant Morris or any other member of the Company's executive management
19 informed the Board of Party A's interest at this meeting. Instead, the Company's executive
20 management seized control of the sales process.

21 48. On November 11, 2016, at the direction of Avista's executive management,
22 Merrill Lynch met in person with representatives from Party A to discuss a possible transaction.

23 49. On December 1, 2016, Avista's executive management hired Merrill Lynch to
24 serve as their financial advisor.

25 50. On December 6, 2016, representatives of another company—referred to as "Party
26 B" in the Proxy—contacted Mark T. Thies ("Thies"), Avista's Chief Financial Officer and Senior
27 Vice President, to indicate Party B's interest in Avista. Without first seeking the Board's advice

1 or authority, Thies informed Party B that Avista was not interested in a sale. At the same time,
2 Avista's executive management continued to actively shop the Company to Party A.

3 51. On December 21, 2016, representatives of another company—referred to as
4 "Party C" in the Proxy—contacted defendant Morris to indicate Party C's interest in Avista.
5 Without first seeking the Board's advice or authority, Morris informed Party C that Avista was
6 not interested in a sale. At the same time, Avista's executive management continued to actively
7 shop the Company to Party A.

8 52. On January 6, 2017, defendant Morris, Thies, and Merrill Lynch met in person
9 with representatives of Party A to discuss a transaction.

10 53. At some point during this time, specifically in anticipation of a merger with Party
11 A, the Company's management developed a set of five-year financial projections ("January 2017
12 Projections").

13 54. On January 9, 2017, Party C's CEO again contacted defendant Morris to reiterate
14 Party C's interest in a potential transaction, informing him that Party C's board of directors had
15 indicated its support for a transaction with Avista, including a possible merger of equals.
16 Defendant Morris told Party C's CEO that Avista was not interested in a sale. At the same time,
17 Avista's executive management continued to pursue an acquisition with Party A.

18 55. On January 25, 2017, representatives of another company—referred to as "Party
19 D" in the Proxy—contacted Merrill Lynch to indicate Party D's interest in Avista. Without first
20 seeking the Board's advice or authority, Merrill Lynch informed Party D that Avista was not
21 interested in a sale. At the same time, Avista's executive management continued to pursue an
22 acquisition with Party A.

23 56. On January 27, 2017, Thies, Merrill Lynch, and other members of management
24 met in New York with representatives from Party A to discuss a transaction.

25 57. On January 30, 2017, Party B's CEO again told defendant Morris that Party B
26 remained interested in a potential transaction, including a possible merger of equals. Defendant
27

1 Morris told Party B's CEO that Avista was not interested in a sale. At the same time, Avista's
2 executive management continued to pursue an acquisition with Party A.

3 58. On February 2 and 3, 2017, the Board held a meeting. At this meeting, defendant
4 Morris and the Company's executive management for the first time informed the Board of the
5 discussions with Party A, Party B, Party C, and Party D. The Board also discussed a potential
6 transaction with Hydro One.¹ The Board received Merrill Lynch's financial analysis of the
7 Company on a stand-alone basis, prepared by Merrill Lynch based on the January 2017
8 Projections (which the Company's management prepared in anticipation of a merger with Party
9 A, as discussed above).

10 59. Despite the fact that the Company's management and Merrill Lynch pursued a
11 transaction with a bidder favored by management for almost four months without the supervision
12 and authority of the Board, the Board failed to take control back from the Company's
13 management and did not ensure that the sales process going forward would be structured in a
14 way to maximize stockholder value and to protect the Company's stockholders' best interests.
15 The Board simply agreed to let the Company's management continue making all the decisions.
16 The Board agreed that management should continue negotiations with Party A and ignore Party
17 B, Party C, and Party D.

18 60. On February 7, 2017, Party A signed a nondisclosure agreement that included a
19 standstill.

20 61. On February 10, 2017, the Company executed an engagement letter with Merrill
21 Lynch.

22 62. During this period: (i) the Company's management and Merrill Lynch continued
23 to negotiate and hold meetings with Party A without any Board involvement (including a social
24

25 ¹ The Proxy does not explain why the Board discussed Hydro One as a prospective buyer given
26 that Hydro One—unlike Party A, Party B, Party C, or Party D—had not yet expressed an interest
27 in Avista.

1 dinner on February 15, 2017); and (ii) the other companies continued to express their interest in
2 Avista.

3 63. On February 16, 2017, Party A proposed an all cash acquisition of Avista at price
4 range of \$52 to \$55 per share, a 31.6% to 39.2% premium based on Avista's then-current trading
5 price.

6 64. During this period, Party A informed defendant Morris that it was evaluating the
7 possibility of bringing in another investor to provide equity funding in the merger.

8 65. On February 23, 2017, representatives of Hydro One contacted Merrill Lynch and
9 informed them that Hydro One's CEO was interested in discussing with defendant Morris a
10 possible transaction involving Avista.

11 66. On March 2, 2017, Mayo Schmidt ("Schmidt"), Hydro One's CEO, e-mailed
12 defendant Morris directly and proposed a telephone call to discuss a potential transaction with
13 Avista. Defendant Morris responded the next day and indicated "*the possibility of a meeting at*
14 *a later date.*" Significantly, in his response, defendant Morris *did not* inform Schmidt that
15 Avista was not interested, as was told to Party B, Party C, and Party D. Notably, Hydro One is a
16 Canadian company, and therefore, unlike a merger of equals, was likely to preserve Avista's
17 corporate identity *including its senior management.*

18 67. On or around March 7, 2017, Party A told the Company's executive management
19 that it would need to slow down merger discussions as it was reevaluating the price proposal and
20 needed to secure equity financing.

21 68. On March 9, 2017, with a new favored bidder in the picture, the Company's
22 executive management terminated discussions with Party A and focused on Hydro One.

23 69. On March 9, 2017, the Board held a meeting. The Company's management
24 informed the Board that negotiations with Party A were terminated and defendant Morris was
25 now going to pursue a potential transaction with Hydro One. The Board agreed that defendant
26 Morris should meet with Hydro One.

1 70. On March 16, 2017, Merrill Lynch met with Hydro One's financial advisor
2 Moelis & Company LLC ("Moelis"). At this meeting, Merrill Lynch and Moelis discussed that
3 recent market premiums were in the range of 30% for comparable transactions, effectively
4 providing Moelis a signal (and a cap) for what price Hydro One should offer for the Company.

5 71. During this period, Party D continued to express an interest in Avista, and
6 defendant Morris continued to tell Party D that Avista was not interested in a sale.

7 72. On March 30, 2017, Hydro One's CEO expressed Hydro One's interest in an all
8 cash acquisition of Avista between \$52 to \$53 per share, representing a 33.6% to 36.2%
9 premium based on Avista's then current trading price of \$38.91 per share.

10 73. Subsequently, defendant Morris and Hydro One's CEO had numerous
11 conversations.

12 74. On May 11, 2017, the Board held a meeting. *More than forty days* after Hydro
13 One provided its price proposal, the Company's management disclosed the price proposal to the
14 full Board. The Board at this meeting also received Merrill Lynch's financial analysis of the
15 Company on a stand-alone basis, prepared by Merrill Lynch based on the "then-current five-year
16 financial forecast" (which was presumably an update to the January 2017 Projections, prepared
17 by the Company's management during the period they began negotiations with Hydro One).
18 Without ensuring that Hydro One's price proposal was the result of a fair competitive process (it
19 was not) and/or Hydro One's price proposal was the best offer possible on the table (it was not),
20 the Board agreed with management to *engage exclusively with Hydro One*.

21 75. On May 24, 2017, members of Avista's executive management traveled to
22 Toronto, Canada, for "a social dinner" with senior management at Hydro One. The following
23 week, senior management from Hydro One, along with representatives from Moelis, traveled to
24 Spokane for another "social dinner" with Avista's executive management and Merrill Lynch.

25 76. On June 23, 2017, defendant Morris and Thies traveled to Great Falls, Montana,
26 to meet with Schmidt to further discuss terms of the transaction. At the meeting, Schmidt
27 reaffirmed Hydro One's indicative price range of \$52 to \$53 per share *even though Avista's*

1 *stock price had appreciated by more than \$4.50 per share, or more than 11%*, since Hydro One
2 first communicated the price range on March 30, 2017.

3 77. The Board held a special meeting on June 29, 2017, to discuss the status of the
4 proposed transaction. Defendant Morris reported that Hydro One continued to affirm its price
5 range of \$52 to \$53 per share. Although Avista stock price had appreciated by more \$4.50 per
6 share, *the Board did not direct management or Merrill Lynch to request—much less*
7 *demand—that Hydro One increase its offer* to provide the 33.6% to 36.2% acquisition premium
8 that Hydro One previously communicated. Additionally, the Board did not direct management
9 or Merrill Lynch to determine whether any other potential buyers would be willing to acquire
10 Avista at superior price.

11 78. On July 5, 2017, Schmidt traveled to Spokane to personally deliver some big
12 news to Avista's executive management team. That day, Schmidt met individually with
13 members of Avista's management to inform them that Hydro One had agreed to retain Avista's
14 entire executive management team following the close of the transaction. The Proxy fails to
15 disclose when Hydro One first informed the members of management charged with negotiating
16 the transaction, including defendant Morris, that Hydro One planned to retain Avista's
17 management team. Further, the Board continued to permit defendant Morris and other members
18 of management to negotiate directly with Hydro One even after it became clear Hydro One
19 planned to retain the Company's executive management team on favorable economic terms.

20 79. On July 10, 2017, defendant Morris and certain undisclosed members of the
21 Board traveled to Toronto, Canada, where they attended a dinner meeting with Schmidt and
22 certain members of Hydro One's Board.

23 80. According to the Proxy, on July 15, 2017, Merrill Lynch delivered a memo to the
24 Board "*disclosing certain relationships between [Merrill Lynch] and its affiliates, on the one*
25 *hand, and the Company, Hydro One and certain of their respective affiliates, on the other*
26 *hand.*" The Proxy fails to disclose why Merrill Lynch waited until five days before the
27 Proposed Acquisition was announced to disclose its relationships with Hydro One (and its

1 affiliates), or several months *after* Merrill Lynch began working on the sale of the Company to
2 Hydro One.

3 81. On July 17, 2017, the Board held a special meeting to consider Hydro One's offer
4 to acquire Avista for \$53 per share, which had been finalized the day before. At this meeting,
5 the Board was reminded by their legal advisor of their fiduciary duties, including their duty to
6 maximize stockholder value in a potential sale of the Company. At the meeting, the Board again
7 failed to instruct management or Merrill Lynch to determine whether Hydro One would increase
8 its offer in light of the significant appreciation in Avista's stock price. Additionally, the Board
9 did not direct management or Merrill Lynch to assess whether any of the other parties who had
10 expressed interest in Avista—including Party A, Party B, Party C, or Party D—were prepared to
11 make a superior offer for the Company.

12 82. The Board held another special meeting on July 19, 2017. At this meeting,
13 Merrill Lynch provided its fairness analysis and opinion to the Board. The Board then voted
14 unanimously to approve the Proposed Acquisition.

15 83. The same day, Avista issued a news release announcing the Proposed Acquisition
16 through which Hydro One will acquire all outstanding shares of Avista for the inadequate
17 Proposed Consideration of \$53 per share. The news release stated:

18 Hydro One to Acquire Avista to Create Growing North American Utility Leader
19 with C\$31.2 Billion in Enterprise Value

20 Hydro One and Avista combined create a top 20 North American utility focused
21 on regulated transmission as well as electricity and natural gas local distribution

22 TORONTO, ONTARIO and SPOKANE, WASHINGTON -- (Marketwired) --
07/19/17

23 Highlights:

- 24 • Establishes one of North America's largest regulated utilities with over
25 C\$32.2 billion (US\$25.4 billion) in assets and a leader in electricity
26 transmission and distribution as well as natural gas local distribution
businesses
- 27 • Expands into complementary and diversified regulated assets, inclusive of
28 natural gas local distribution

- 1 • The transaction will be accretive to earnings per share in the mid-single
2 digits in the first full year of operation
- 3 • Provides Hydro One with a significant and stable increase to earnings and
4 cash flow underpinned by fully regulated utility operations jurisdictions
5 with constructive regulatory mechanisms
- 6 • A long-term intention of continuing Hydro One's dividend payout of 70-
7 80 per cent of earnings
- 8 • Avista stockholders receive US\$53 in cash per common share, a 24%
9 premium as of market close on July 18, 2017
- 10 • Both Hydro One and Avista to maintain healthy balance sheets as well as
11 strong investment-grade credit ratings
- 12 • Hydro One's acquisition financing strategy involves the issuance of C\$1.4
13 billion of Hydro One common equity and US\$2.6 billion of Hydro One
14 debt
- 15 • Hydro One has concurrently executed a bought deal of C\$1.4 billion of
16 contingent convertible debentures represented by instalment receipts to
17 satisfy the equity component of the acquisition financing strategy
- 18 • Hydro One and Avista customer rates will not be impacted by any of the
19 costs associated with the transaction
- 20 • Efficiencies through enhanced scale, innovation, shared IT systems and
21 increased purchasing power provides cost savings for customers and better
22 customer service, complementing both organization's commitment to
23 excellence
- 24 • Avista preserves corporate identity including its headquarters; customers,
25 employees, communities and shareholders all benefit from new
26 partnership
- 27 • No workforce reductions are anticipated as a result of this transaction for
28 either Hydro One or Avista

Hydro One Limited ("Hydro One") (TSX:H) and Avista Corporation ("Avista") (NYSE:AVA) today jointly announced a definitive merger agreement ("Agreement") under which Hydro One will acquire Avista for C\$67 (US\$53) per share in a C\$6.7 billion (US\$5.3 billion) all-cash transaction. Together, Hydro One and Avista will create a North American leader in regulated electricity and natural gas business with over C\$32.2 billion (US\$25.4 billion) in combined assets. The transaction brings together two industry-leading regulated utilities with over 230 years of collective operational experience as well as shared corporate cultures and values. The combined entity will safely and reliably serve more than two million retail and industrial customers and hold assets throughout

1 North America including Ontario, Washington, Oregon, Idaho, Montana and
2 Alaska.

3 "This marks a proud moment for Canadian champions as we grow our business
4 into a North American leader," said Mayo Schmidt, President and CEO, Hydro
5 One Limited. "This transaction demonstrates the power and value of the transition
6 into an investor-owned utility, by allowing for healthy expansion into new lines of
7 regulated utility business and new jurisdictions, such as the U.S. Pacific
8 Northwest which is experiencing customer and economic growth."

9 "With a focus on operational excellence and building our earnings streams, we are
10 positioned for long-term, sustainable growth," said Schmidt. "We are further
11 accomplishing this goal by bringing together two companies with shared cultures
12 and industry expertise to create a North American regulated utility leader. This
13 combination means greater scale, diversity and financial flexibility."

14 Hydro One has a uniquely strong track record consolidating electricity utilities.
15 Since the IPO, Hydro One has also delivered on cost savings and efficiencies for
16 shareholders and customers. Through the company's energy conservation
17 programs, Hydro One has helped customers and municipalities save 700 GWh
18 year-to-date.

19 "Since our initial public offering, we have significantly enhanced our current
20 operations while exploring opportunities that extend and diversify our regulated
21 assets," said Schmidt. "We constantly seek to deliver exceptional value to
22 shareholders, customers, and the communities we serve through stable, increasing
23 regulated returns, exceptional service, and community engagement."

24 This strategic combination demonstrates the value of consolidation by bringing
25 together two highly complementary platforms to create one of North America's
26 largest regulated utilities, meaningfully enhancing both shareholder and customer
27 value. In addition, over time, non-headcount efficiencies will be realized through
28 collaboration and sharing of best practices on IT, innovation and supply chain
purchasing, all of which will further enhance cost savings. No workforce
reductions are anticipated as a result of this transaction for either Avista or Hydro
One.

Avista Corporation Chairman, President and CEO Scott Morris said, "For Avista,
the decision to team up with Hydro One at a time of strength and growth
represents a win for our customers, employees, shareholders and the communities
we serve. Through this agreement, we have a unique opportunity to secure a
partnership that allows us to continue to define and control, to a significant
degree, future operations and opportunities in a consolidating industry landscape
for the benefit of our customers. In Hydro One, we believe we've found a partner
that allows us to preserve our identity and our proud legacy, while also preparing
us for the future. We look forward to joining forces with Hydro One and its
dynamic team."

1 Following completion of the transaction, Avista will maintain its existing
2 corporate headquarters in Spokane and will continue to operate as a standalone
3 utility in Washington, Oregon, Idaho, Montana and Alaska. Its management team
4 and employees will remain in place and it will operate with its own Board of
5 Directors representing the interests of the Pacific Northwest and the communities
6 it serves. The combined company's headquarters will be based in Toronto.

7 Avista employees and retirees will see a continuation of the company essentially
8 as it is today. Customers of both companies will continue to be provided with
9 safe, reliable and high quality energy. Hydro One and Avista customer rates will
10 not be impacted by any of the costs associated with the transaction. The
11 communities Avista serves will continue to benefit from the important
12 philanthropy and economic development that Avista provides.

13 "In fact," Morris said, "Hydro One is committed to doing even more - nearly
14 doubling Avista's current levels of community support."

15 "This is the coming together of two highly respected and reputable companies
16 steeped in history and shared commitment to the communities they serve. Both
17 teams also share a common vision and a dedication to serving customers safely
18 and reliably every day," said Schmidt.

19 "The strength of the combined company enables the accelerated deployment of
20 innovation programs and infrastructure upgrades for the benefit of customers
21 while continuing to deliver on shareholder expectations for consistent, healthy,
22 financial performance. Together, we will deliver even more possibilities for the
23 shareholders, customers, employees, and communities we have the privilege of
24 serving," said Schmidt.

25 The transaction was unanimously approved by the Boards of Directors of both
26 companies and is expected to close in the second half of 2018, subject to Avista
27 common shareholder approval and certain regulatory and government approvals
28 and clearances, including approval by the Washington Utilities and Transportation
Commission, the Public Utility Commission of Oregon, the Idaho Public Utilities
Commission, the Regulatory Commission of Alaska, the Public Service
Commission of the State of Montana, the U.S. Federal Energy Regulatory
Commission, clearance by the Committee on Foreign Investment in the United
States and compliance with applicable requirements under the U.S. Hart-Scott-
Rodino Antitrust Improvements Act of 1976, as amended, and the satisfaction of
customary closing conditions.

THE BOARD AGREED TO UNREASONABLE DEAL PROTECTION PROVISIONS

84. In connection with the Proposed Acquisition, the Board agreed to certain onerous
and preclusive deal protection devices that operate conjunctively to make the Proposed
Acquisition a *fait accompli* and ensure that no successful competing offers will emerge for the

1 Company. These deal protection devices are unreasonable here where: (i) the Proposed
2 Consideration undervalues the Company; (ii) numerous parties expressed serious interest in a
3 transaction with Avista (including Party A, Party B, Party C, and Party D) but were denied
4 participation in the sales process; and (iii) the Company's Board failed to conduct a pre-sign
5 market check or structure a competitive bidding process.

6 85. On July 19, 2017, the Company filed a Current Report on Form 8-K with the SEC
7 wherein it disclosed the Merger Agreement. Under the Merger Agreement, Avista is subject to a
8 no-solicitation clause that prohibits the Company from seeking a superior offer for its
9 stockholders. Specifically, section 5.3(a) of the Merger Agreement states:

10 The Company agrees that it shall, and shall cause its Subsidiaries and its and its
11 Subsidiaries respective directors, officers and employees to, and shall use its
12 reasonable best efforts to cause its other Representatives to, immediately cease all
13 existing discussions or negotiations with any Person conducted heretofore with
14 respect to any Takeover Proposal. Except as otherwise provided in this
15 Agreement, from the date of this Agreement until the earlier of the Effective Time
16 or the date, if any, on which this Agreement is terminated pursuant to Section 7.1,
17 the Company shall not, and shall cause its Subsidiaries and its and its Subsidiaries
18 respective directors, officers and employees not to, and shall use its reasonable
19 best efforts to cause its other Representatives not to, directly or indirectly, (i)
20 solicit, initiate, knowingly encourage or knowingly facilitate any Takeover
21 Proposal or the making or consummation thereof or (ii) enter into, or otherwise
22 participate in any discussions (except to notify such Person of the existence of the
23 provisions of this Section 5.3) or negotiations regarding, or furnish to any Person
24 any material non-public information in connection with, any Takeover Proposal.

25 86. Though the Merger Agreement ostensibly has a "fiduciary out" provision that
26 allows the Company to negotiate with other bidders, this provision would require a potential
27 acquirer to first make an unsolicited offer. Without access to nonpublic information, which the
28 Company is prevented from sharing under the Merger Agreement prior to the receipt of an offer
that the Company reasonably expects to lead to a superior deal, no other bidders will emerge to
make a superior proposal. Moreover, it so extremely unlikely that Party B, Party C, or Party D
will make additional unsolicited offers given that their previous indications of interest were
repeatedly rebuffed by defendant Morris and other members of Avista's management. Moreover,

1 Party A – who had previously indicated interest at a higher-priced range – is subject to a
2 standstill which Avista cannot waive under section 5.3(b) of the Merger Agreement.

3 87. Furthermore, under section 5.3(d) of the Merger Agreement, should it receive an
4 unsolicited bid, the Company must notify Hydro One of the bidder's offer. Thereafter, should
5 the Board determine that the unsolicited offer is superior, Hydro One is granted four business
6 days to amend the terms of the Merger Agreement to make a counter offer that only needs to be
7 as favorable to the Company's stockholders as the unsolicited offer. Hydro One will be able to
8 match the unsolicited offer because it is granted unfettered access to the unsolicited offer, in its
9 entirety, eliminating any leverage the Company has in receiving the unsolicited offer.

10 88. Also, pursuant to section 7.3 of the Merger Agreement, Avista must pay Hydro
11 One a \$103 million termination fee if it accepts a superior proposal. The termination fee equates
12 to approximately \$1.60 per Avista share that will be paid directly to Hydro One rather than
13 Avista stockholders, thereby making it even more difficult for any competing bidder to acquire
14 the Company.

15 89. These onerous and preclusive deal protection devices, which will operate to
16 unreasonably deter and discourage superior offers from other interested parties, including those
17 parties that previously expressed interest in acquiring Avista but were denied access to the sales
18 process and were agreed to by the Individual Defendants in order to further secure the personal
19 benefits and unfair profits afforded to them under the Proposed Acquisition. By negotiating for
20 such personal benefits in connection with the consummation of the Proposed Acquisition, the
21 Individual Defendants placed their own personal interests before those of the Company's
22 stockholders thus resulting in the Proposed Acquisition being presented to Avista stockholders at
23 an untenable and inadequate offer price.

24 **THE PROPOSED ACQUISITION UNDERVALUES AVISTA**

25 90. As noted above, the Company's public stockholders will receive \$53 in cash for
26 each share of Avista common stock that they own. The Proposed Consideration significantly
27 undervalues the Company and its future prospects. Avista has demonstrated that it is well-

1 positioned for future growth. In the Company's most recent quarter, defendant Morris
2 highlighted that Avista has had lower than expected operating expenses and its Alaska Electric
3 Light and Power Company segment beat management's own internal expectations. Most
4 importantly, the Company has continued to make the case to regulators for a rate increase, which
5 would provide additional profit to Avista and the stockholders in the form of increasing
6 dividends. In addition, in Idaho, the Company announced that it plans to file a rate case this
7 quarter.

8 91. Further, on May 3, 2017, the Company announced strong financial results for the
9 first quarter of 2017. In particular, Avista reported: (i) net income attributable to stockholders of
10 \$62.1 million, a 7.8% increase over the same period of the prior year; (ii) total earnings per
11 diluted share attributable to stockholders of \$0.96, a 4.3% increase over the same period of the
12 prior year; (iii) operating revenues of \$436.5 million, a 4.4% increase over the same period of the
13 prior year; and (iv) dividends of \$0.96 per share, a 4.4% increase over the same period of the
14 prior year. These stellar results would only continue to increase as the Company received the
15 expected rate increase approvals.

16 92. Additionally, the Proposed Acquisition will be accretive to Hydro One's earnings
17 per share in the mid-single digits in the first full year of operation. That the transaction will be
18 accretive so quickly to Hydro One shows that Avista's value is not properly reflected in the
19 Proposed Acquisition, especially since this accretion will occur without any reduction in
20 headcount.

21 **THE SELF-DEALING OF THE INDIVIDUAL DEFENDANTS**
22 **AND OTHER CONFLICTS OF INTEREST**

23 93. The insufficient Proposed Consideration should come as no surprise in light of the
24 flawed and conflicted process that led to the consummation of the Proposed Acquisition. Indeed,
25 the sales process was controlled by the Company's executive management who unfairly tilted the
26 process in favor of Hydro One in order to secure executive positions in a company transformed
27 "from having many shareholders to having one shareholder – Hydro One," *and* the material

1 change in control financial benefits associated with such a transaction. For their part in
2 submitting to the Company's management and approving the Merger Agreement, the non-
3 management members of the Board also secured for themselves lucrative personal benefits not
4 shared with Avista's public stockholders.

5 94. Following the close of the Proposed Acquisition, all of Avista's executive
6 management team—including defendant Morris and other insiders who negotiated the Proposed
7 Consideration—will join the surviving company on favorable employment terms. Indeed, as
8 defendant Morris discussed with employees on July 20, 2017, "[w]e'll continue to operate our
9 business much as we do today; with the exception that we will have one shareholder instead of
10 thousands."

11 95. Importantly, defendant Morris also explained that the surviving company will
12 continue to have its own board of directors, with four of its members chosen by Avista. One of
13 those members must be defendant Morris himself. In addition, three of the five members of the
14 board of directors that will be chosen by Hydro One must reside in the Pacific Northwest,
15 drastically increasing the chances that Hydro One will pick Avista's current directors to remain
16 on the Board post-closing.

17 96. Further, as part of the sale process, defendant Morris and other named executives
18 at the Company negotiated for themselves lucrative changes to their employment contracts. In
19 particular, defendant Morris and Avista's other named executives secured amendments to their
20 Change of Control Agreements that allow them to voluntarily terminate their employment
21 without good cause and still receive all severance payments and other benefits provided for
22 under the agreements, so long as proper notice is given. Under the Change of Control
23 Agreements, defendant Morris and other executive officers are also entitled to, among other
24 things:

25 [A] position (including status, offices, titles and reporting requirements),
26 authority, duties and responsibilities at least commensurate in all material respects
27 with the most significant of those held, exercised and assigned at any time during
the 120-day period immediately preceding the change of control, with the

1 executive officer's services to be performed at a location within 50 miles of his or
2 her existing location.

3 97. Further, in connection with the Proposed Acquisition, Hydro One has agreed to
4 pay executive retention bonuses to members of Avista's executive management. Upon the close
5 of the Proposed Acquisition, Hydro One will pay members of the Company's executive
6 management team *a retention bonus equal to 150% of his or her base salary*, so long as the
7 executive does not terminate his or her employment prior to the effective date. Significantly, the
8 retention bonuses will be paid *in addition to* any compensation members of executive
9 management may be entitled to under the applicable Change of Control Agreements.

10 98. The tens of millions of dollars of potential Change of Control Payments that may
11 be available to Avista's executive officers are detailed below:

Named Executive Officer	Severance (1)	Value of Accelerated Equity (2)	Health Benefits (3)	Outplacement (4)	Section 280G Gross-Up (5)	Total (6)
Scott L. Morris, Chairman, President & CEO	\$ 6,392,751	\$ 5,851,960	\$ 32,949	\$ 25,000	\$ 4,692,976	\$ 16,995,636
Mark T. Thies, Senior Vice President, CFO & Treasurer	\$ 2,478,889	\$ 1,860,008	\$ 43,760	\$ 25,000	\$ 1,558,549	\$ 5,966,206
Dennis P. Vermillion, Senior Vice President & ECO	\$ 1,502,909	\$ 1,894,636	\$ 43,760	\$ 25,000	\$ 0	\$ 3,466,305
Marian M. Durkin, Senior Vice President, General Counsel, CCO & Corporate Secretary	\$ 2,143,597	\$ 1,453,399	\$ 32,520	\$ 25,000	\$ 1,280,965	\$ 4,935,481
Karen S. Feltes, Senior Vice President & CHRO	\$ 2,020,932	\$ 1,453,399	\$ 32,520	\$ 25,000	\$ 1,239,266	\$ 4,771,117
Other Executive Officers	Severance (1)	Value of Accelerated Equity (2)	Health Benefits (3)	Outplacement (4)	Section 280G Gross-Up (5)	Total
Aggregate for Eight Other Executive Officers	\$ 7,445,351	\$ 5,505,892	\$ 324,554	\$ 200,000	\$ 905,204	\$ 14,381,001

19
20 99. *In addition to future employment*, the Individual Defendants and Company
21 insiders also stand to reap an immediate financial windfall in connection with the Proposed
22 Acquisition. Indeed, the Company's Board and executive management were highly motivated to
23 sell Avista to Hydro One because the Proposed Acquisition would allow them to cash out their
24 previously illiquid, locked-up holdings in Avista through the immediate and full vesting of
25 performance equity awards and certain Restricted Stock Units granted under the Company's
26
27

1 stock plan.² The accelerated vesting of these holdings into cash would not have occurred had
 2 Avista remained a standalone company or elected for a stock-for-stock transaction. The
 3 following table summarizes the tens of millions of dollars in cash proceeds that the Company's
 4 Board and defendant Morris will receive if the Proposed Acquisition is allowed to close:

Defendants	Common Share Consideration	Accelerated Consideration	Total Merger Consideration
Scott L. Morris	\$ 9,746,382.00	\$ 5,851,960.00	\$ 15,598,342.00
Kristianne Blake	\$ 1,148,404.00	\$ 133,507.00	\$ 1,281,911.00
Erik J. Anderson	\$ 1,079,504.00	\$ -	\$ 1,079,504.00
Donald C. Burke	\$ 772,316.00	\$ -	\$ 772,316.00
Rebecca A. Klein	\$ 1,020,621.00	\$ -	\$ 1,020,621.00
Scott H. Maw	\$ 223,448.00	\$ -	\$ 223,448.00
Marc F. Racicot	\$ 886,478.00	\$ -	\$ 886,478.00
Heidi B. Stanley ²	\$ 1,360,033.00	\$ -	\$ 1,360,033.00
R. John Taylor	\$ 570,545.00	\$ 291,288.00	\$ 861,833.00
Janet D. Widmann	\$ 305,174.00	\$ -	\$ 305,174.00
Total	\$ 17,112,905.00	\$ 6,276,755.00	\$ 23,389,660.00

1) Approximately \$543,144 of Stanley's Common Share Consideration is held by Stanley's spouse, in a profit-sharing plan not administered by Avista Corporation.

14 100. Other conflicts of interest also pervaded the sale process. Merrill Lynch's
 15 longstanding and lucrative ties to Hydro One and its affiliates compromised its ability to provide
 16 unbiased advice to its purported client, Avista. Indeed, David F. Denison, the Chairman of
 17 Hydro One's board of directors, and Marianne Harris, a Hydro One director, both were
 18 previously employed by affiliates of Merrill Lynch. In fact, prior to her directorship, Ms. Harris
 19 served as the Managing Director of Bank of America Merrill Lynch and the President of
 20 Corporate and Investment Banking for Merrill Lynch Canada. Further, Merrill Lynch has
 21 provided advisory services and financing to Hydro One and its affiliates, receiving
 22 approximately \$12 million for its services in the last two years alone, and plans to provide
 23 additional services to Hydro One following the close of the Proposed Acquisition. Rather than

25 ² Additionally, in connection with the Proposed Acquisition, outstanding Restricted Stock Units
 26 held by defendant Morris and other members of Avista's executive management will be
 27 converted into the right receive to Converted Restricted Stock Units that will be settled in shares
 of Hydro One common stock.

1 diligently reviewing other value-maximizing alternatives or broadening the sale process to
2 include other potential bidders, Merrill Lynch's ties to Hydro One caused it to steer Avista
3 toward the sub-optimal deal with Hydro One.

4 101. Significantly, it appears that Merrill Lynch did not disclose to the Board its
5 pervasive relationships with Hydro One (and its affiliates) until July 15, 2017, or *less than five*
6 *days* before the Board voted on the Proposed Acquisition. At that point, however, Merrill Lynch
7 had already spent *months* serving as Avista's financial advisor (including months serving on
8 behalf of the Company's management before it was formally hired by the Board) and actively
9 negotiating the terms of the Proposed Acquisition with Hydro One. In fact, Hydro One first
10 contacted Merrill Lynch, not management at the Company, to express its interest in acquiring
11 Avista. What's more, the Board failed to take any steps to ensure Merrill Lynch's conflicts did
12 not infect the sale process, even after it learned—albeit belatedly—of Merrill Lynch's
13 relationship with Hydro One.

14 102. If Merrill Lynch did not have enough incentive to secure a deal with Hydro One,
15 the Board agreed to pay its sole financial advisor a staggering \$28 million fee, of which \$24.2
16 million is contingent on the consummation of the Proposed Acquisition. Merrill Lynch was
17 motivated to advance its relationship with Hydro One and secure a massive contingency fee from
18 Avista that failed to properly survey the market and delivered a skewed fairness opinion, which
19 was based on incorrect and deficient valuations, as discussed below.

20 **THE BOARD HAS NOT DISCLOSED ALL MATERIAL INFORMATION**
21 **CONCERNING THE PROPOSED ACQUISITION**

22 103. Finally, it is critical that stockholders receive complete and accurate information
23 prior to the vote on the Proposed Acquisition, which is currently scheduled for November 21,
24 2017. To date, however, the Individual Defendants have failed to provide Avista's public
25 stockholders with information to allow them to make an informed decision about how to vote on
26 the Proposed Acquisition. The Proxy, which recommends that Avista stockholders vote in favor
27 of the Proposed Acquisition, omits material information concerning: (i) Avista's financial

1 projections; (ii) the financial analysis performed by Merrill Lynch in support of its so-called
2 "fairness opinion"; (iii) the unfair sales process under the Proposed Acquisition; and (iv) Merrill
3 Lynch's debilitating conflicts of interest.

4 **Avista's Financial Projections**

5 104. The Proxy fails to disclose important information relating to the financial
6 projections provided by Avista's management in connection with the Proposed Acquisition. In
7 particular, the Proxy fails to disclose Avista's standalone, unlevered after-tax free cash flows for
8 2017 to 2021, which are the single most important metric for stockholders evaluating what they
9 are being asked to give up in exchange for receiving the Proposed Consideration.

10 105. The Proxy also fails to disclose the 2017-2021 financial projections provided by
11 Avista's management and relied upon by Merrill Lynch for purposes of its financial analysis for
12 numerous other items, including:

- 13 (a) rate base;
- 14 (b) utility revenues;
- 15 (c) nonutility revenues;
- 16 (d) utility operating expenses;
- 17 (e) nonutility operating expenses;
- 18 (f) interest expense;
- 19 (g) earnings before interest, taxes, depreciation, and amortization
20 ("EBITDA");
- 21 (h) depreciation and amortization;
- 22 (i) capital expenditures;
- 23 (j) changes in net working capital;
- 24 (k) stock-based compensation expense; and
- 25 (l) any other adjustments to unlevered free cash flow.

26 106. Without the above information, stockholders are uninformed of management's
27 best estimates as to the future financial performance and value of the Company. Without the

1 information identified above, the Company's stockholders cannot assess the value they are being
2 asked to give up for the offer that is being recommended by defendants.

3 **Merrill Lynch's Financial Analysis**

4 107. The Proxy includes the so-called "fairness opinion" rendered by Merrill Lynch,
5 but fails to disclose material information underlying Merrill Lynch's financial analysis,
6 including:

7 (a) with respect to the *Selected Publicly Traded Companies Analysis*: (i) the
8 multiples observed by Merrill Lynch for the selected companies, including price/2018 estimated
9 ("E") earnings per share ("EPS"), P/2019E EPS, enterprise value ("EV")/2018E EBITDA, and
10 EV/2019E EBITDA; as well as (ii) whether Merrill Lynch performed any type of benchmarking
11 analysis for Avista in relation to the selected public companies.

12 (b) with respect to the *Discounted Cash Flow Analysis*: (i) the definition of
13 "unlevered free cash flow" utilized by Merrill Lynch in its analysis; (ii) the individual inputs and
14 assumptions utilized by Merrill Lynch to derive the discount rate range of 5.1% to 5.8%; and (iii)
15 the implied perpetuity growth rate range resulting from this analysis.

16 (c) with respect to the *Selected Precedent Transactions Analysis*: (i) the
17 multiples observed by Merrill Lynch for the selected transactions, including 1-Year Forward
18 EPS, 2-Year Forward EPS, 1-Year Forward EBITDA, 2-Year Forward EBITDA; as well as
19 (ii) whether Merrill Lynch performed any type of benchmarking analysis for Avista in relation to
20 the selected target companies.

21 108. Without the above information, stockholders are uninformed of the key subjective
22 inputs in Merrill Lynch's analysis. Notably, Merrill Lynch performed its analysis while under
23 several conflicts of interest, motivating Merrill Lynch to provide a fairness opinion in favor of
24 the Proposed Acquisition (as discussed above). Without the information identified above, the
25 Company's stockholders lack adequate information to reject Merrill Lynch's fairness opinion.

1 **The Unfair Process Resulting in the Proposed Acquisition**

2 109. The Proxy fails to fully and fairly disclose certain material information bearing on
3 the process leading up to the announcement of the Proposed Acquisition and the extent of
4 interactions with certain potentially interested parties, including:

5 (a) the terms of the standstill agreements Avista entered into, including with
6 Party A, and including any "don't ask, don't waive" provisions;

7 (b) the terms of the numerous expressions of interest Avista received from
8 Party B, Party C, and Party D, and whether these parties were strategic or financial buyers;

9 (c) the fact that current members of Hydro One's board of directors previously
10 held senior positions at Merrill Lynch (or its affiliates); and

11 (d) the timing and content of all employment and post-merger structure
12 discussions between Hydro One and the Company's management (or Merrill Lynch) and the
13 timing and discussion by the Board of same.

14 110. These omissions are material because, without this information, Avista's public
15 stockholders are misled about the conflicts of interest which tainted the fairness of the sales
16 process, the likelihood of a superior offer, and the unreasonableness of the deal protection
17 devices.

18 111. Defendants' failure to provide Avista's public stockholders with the material
19 information outlined above constitutes a violation of their fiduciary duty of candor and full-
20 disclosure. The Individual Defendants were aware of their duty to disclose this information, and
21 acted with at least negligence in failing to include it in the Proxy. Absent disclosure of this
22 material information prior to the November 21, 2017 vote on the Proposed Acquisition, Avista's
23 public stockholders will be unable to make an informed decision about whether to vote in favor
24 of the Proposed Acquisition and are thus threatened with irreparable harm.

25 112. In short, the Proposed Acquisition is wrongful, unfair, and harmful to Avista's
26 public stockholders, and represents an effort by the Individual Defendants to aggrandize their
27 own financial position and interests at the expense of and to the detriment of the Class.

1 Specifically, defendants are attempting to deny Plaintiff and the Class their stockholder rights
2 through the sale of Avista via an unfair process. Accordingly, the Proposed Acquisition will
3 benefit the Individual Defendants at the expense of Avista stockholders.

4 113. In order to meet their fiduciary duties, the Individual Defendants are obligated to
5 explore transactions that will maximize stockholder value, and not structure a preferential deal
6 for themselves. Due to the Individual Defendants' eagerness to enter into a transaction with
7 Hydro One, they failed to implement a process to obtain the maximum price for Avista
8 stockholders.

9 114. Accordingly, Plaintiff seeks injunctive and other equitable relief to prevent the
10 irreparable injury that Avista stockholders will continue to suffer absent judicial intervention and
11 damages.

12 FIRST CAUSE OF ACTION

13 **Claim for Breach of Fiduciary Duties Against the Individual Defendants**

14 115. Plaintiff incorporates by reference and realleges each and every allegation
15 contained above, as though fully set forth herein.

16 116. The Individual Defendants have violated the fiduciary duties of care, loyalty,
17 good faith, and independence owed to the public stockholders of Avista and have acted to put
18 their personal interests ahead of the interests of Avista's stockholders.

19 117. By the acts, transactions, and course of conduct alleged herein, the Individual
20 Defendants, individually and acting as a part of a common plan, are attempting to unfairly
21 deprive Plaintiff and other members of the Class of the true value inherent in and arising from
22 Avista.

23 118. The Individual Defendants have violated their fiduciary duties by entering Avista
24 into the Proposed Acquisition without regard to the effect of the proposed transaction on Avista
25 stockholders.

26 119. As demonstrated by the allegations above, the Individual Defendants failed to
27 exercise the care required, and breached their duties of loyalty and care owed to the stockholders

1 of Avista by entering into the Proposed Acquisition through the unfair process exemplified by
2 the Merger Agreement.

3 120. Because Individual Defendants dominate and control the business and corporate
4 affairs of Avista, and have access to private, corporate information concerning Avista's assets,
5 business, and future prospects, there exists an imbalance and disparity of knowledge and
6 economic power between them and the public stockholders of Avista which makes it inherently
7 unfair for them to pursue and recommend any proposed acquisition wherein they will reap
8 disproportionate benefits to the exclusion of maximizing stockholder value.

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

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

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

22 124. Plaintiff and the members of the Class have no adequate remedy at law. Only
23 through the exercise of this Court's equitable powers can Plaintiff and the Class be fully
24 protected from the immediate and irreparable injury which defendants' actions threaten to inflict.

1 SECOND CAUSE OF ACTION

2 **Claim for Aiding and Abetting Breaches of Fiduciary Duty Against**
3 **Defendant Hydro One, Olympus, Merger Sub, and Merrill Lynch**

4 125. Plaintiff incorporates by reference and realleges each and every allegation
5 contained above, as though fully set forth herein.

6 126. Defendants Hydro One, Olympus, Merger Sub, and Merrill Lynch aided and
7 abetted the Individual Defendants in breaching their fiduciary duties owed to the public
8 stockholders of the Company, including Plaintiff and the members of the Class.

9 127. The Individual Defendants owed to Plaintiff and the members of the Class certain
10 fiduciary duties as fully set out herein.

11 128. By committing the acts alleged herein, the Individual Defendants breached their
12 fiduciary duties owed to Plaintiff and the members of the Class.

13 129. Defendants Hydro One, Olympus, Merger Sub, and Merrill Lynch colluded in or
14 aided and abetted the Individual Defendants' breaches of fiduciary duties, and were active and
15 knowing participants in the Individual Defendants' breaches of fiduciary duties owed to Plaintiff
16 and the members of the Class. Defendant Merrill Lynch worked with the Company's
17 management when the Company's management pursued their favored bidders without the
18 authority and involvement of the Board. Defendants Hydro One, Olympus, and Merger Sub
19 exploited the Company's management's selfish interests, and offered the Company's management
20 benefits such as continued employment in order to secure deal protection devices and purchase
21 the Company at an unfair price.

22 130. Defendants Hydro One, Olympus, Merger Sub, and Merrill Lynch participated in
23 the breach of the fiduciary duties by the Individual Defendants for the purpose of advancing their
24 own interests. Defendants Hydro One, Olympus, Merger Sub, and Merrill Lynch obtained and
25 will obtain both direct and indirect benefits from colluding in or aiding and abetting the
26 Individual Defendants' breaches. Defendants Hydro One, Olympus, Merger Sub, and Merrill
27

1 Lynch will benefit, inter alia, from the acquisition of the Company at an inadequate and unfair
2 price if the Proposed Acquisition is consummated.

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

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff demands injunctive relief and prays for judgment in her favor,
7 and in favor of the Class, and against defendants as follows:

8 A. Declaring that this action is properly maintainable as a class action;

9 B. Declaring and decreeing that the Merger Agreement was negotiated and/or
10 executed in breach of the fiduciary duties of the Individual Defendants and is therefore unlawful
11 and unenforceable;

12 C. Rescinding, to the extent already implemented, the Merger Agreement;

13 D. Enjoining defendants, their agents, counsel, employees, and all persons acting in
14 concert with them from consummating the Proposed Acquisition, unless and until the Company
15 adopts and implements a procedure reasonably designed to provide the best possible value for
16 stockholders;

17 E. Directing the Individual Defendants to exercise their fiduciary duties to
18 commence a sale process that is reasonably designed to secure the best possible consideration for
19 Avista and obtain a transaction which is in the best interests of Avista's stockholders;

20 F. Awarding damages to Plaintiff and the Class;

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

23 H. Granting such other and further relief as deemed just and proper.

24 DATED: October 10, 2017

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CERTIFICATE OF SERVICE

I hereby certify that on this date, I caused to be served a true and correct copy of the preceding document to the following attorney(s) of record by method specified below:

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DATED October 11, 2017.

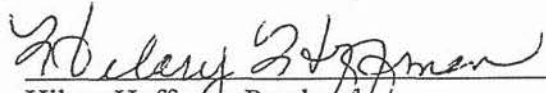

Hilary Hoffman, Paralegal

EXHIBIT C

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IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR SPOKANE COUNTY

LAUREN FINK and CHADWICK L. WESTON, on Behalf of Themselves and All Others Similarly Situated,

Plaintiffs,

v.

SCOTT L. MORRIS, KRISTIANNE BLAKE, R. JOHN TAYLOR, ERIK J. ANDERSON, HEIDI B. STANLEY, MARC F. RACICOT, REBECCA A. KLEIN, DONALD C. BURKE, JANET D. WIDMANN, SCOTT H. MAW, HYDRO ONE LIMITED, OLYMPUS HOLDING CORP., OLYMPUS CORP., and BANK OF AMERICA MERRILL LYNCH,

Defendants.

) Case No. 2017-02-03616-6
)
) SECOND AMENDED CLASS ACTION
) COMPLAINT BASED UPON BREACH
) OF FIDUCIARY DUTY

Plaintiffs Lauren Fink and Chadwick L. Weston ("Plaintiffs"), on behalf of themselves and all others similarly situated, by and through their undersigned counsel, allege the following upon information and belief, including the investigation of counsel and review of publicly available information, except as to those allegations pertaining to Plaintiffs, which are alleged upon personal knowledge.

SUMMARY OF THE ACTION

1. This is a stockholder class action brought by Plaintiffs on behalf of holders of Avista Corporation ("Avista" or the "Company") common stock against Avista's Board of

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1 Directors (the "Board" or the "Individual Defendants"), Hydro One Limited ("Hydro One"),
2 Olympus Holding Corp. ("Olympus"), Olympus Corp. ("Merger Sub"), and Bank of America
3 Merrill Lynch ("Merrill Lynch"). This action seeks to enjoin defendants from further breaching
4 their fiduciary duties and/or seeks damages resulting from their pursuit of a sale of the Company
5 at an inadequate price through an unfair and self-serving process to Hydro One (the "Proposed
6 Acquisition"). Defendants announced on July 19, 2017, that the Board had agreed to sell Avista
7 to Hydro One in exchange for \$53 in cash for each share of Avista common stock (the "Proposed
8 Consideration"). The deal is valued at approximately \$5.3 billion when the assumption of \$1.9
9 billion of debt is included.

10 2. Avista operates as an electric and natural gas utility company, in two segments,
11 Avista Utilities and Alaska Electric Light and Power Company. The Avista Utilities segment
12 generates, transmits, and distributes electricity, as well as distributes natural gas in eastern
13 Washington, northern Idaho, northeastern and southwestern Oregon, and Montana.

14 3. Washington law makes clear that corporate board members are required to act
15 solely in the best interests of stockholders and to maximize stockholder value when considering a
16 potential acquisition of a company. Unfortunately, in agreeing to the Proposed Acquisition, the
17 Company's Board abdicated their duties and undertook and/or agreed to a deeply flawed sale
18 process designed to benefit insiders at the expense of Avista's public stockholders.

19 4. In or around the fall/winter 2016, Avista's Chief Executive Officer, defendant
20 Scott L. Morris ("Morris"), and his executive team decided that they were open to selling the
21 Company only if the acquiror would retain the Company's executive management team. In the
22 months leading up to the Proposed Acquisition, numerous parties repeatedly contacted Morris,
23 Avista's management, and Merrill Lynch (a financial advisor handpicked by the Company's
24 management) to express interest in a strategic transaction with Avista. As Becky Kramer of *The*
25 *Spokesman-Review* observed, "[e]arlier this year, Avista Corp. had nearly as many dates as
26 Rachel Lindsay on ABC's 'Bachelorette.'"
27

1 5. Instead of creating a competitive process and a fair playing field structured to
2 evoke the highest bid for the Company's stockholders, defendant Morris and his team – without
3 the Board's knowledge, authorization, or involvement – pursued a sales process which placed
4 their selfish interests above all others. Defendant Morris and his team repeatedly blocked and
5 discouraged potential bidders who proposed a merger of equals (which posed the risk that Morris
6 and his team would be replaced post-merger) and pursued a deal with Hydro One, a foreign
7 company that was known to have no existing operations in the United States (which ensured that
8 Morris and his team would continue to be employed at the go-forward company).

9 6. The Board failed to protect the sales process from management's self-interest and
10 failed to pursue maximum value on behalf of the Company's stockholders. The Board, *inter alia*:

- 11 • never set up a special committee of independent directors;
- 12 • let Morris and his team control all negotiations;
- 13 • agreed to hire conflicted Merrill Lynch as the Company's financial advisor;
- 14 • failed to conduct a pre-signing auction or market check; and
- 15 • agreed with management to engage exclusively with Hydro One without ensuring

16 that Hydro One's price proposal was the result of a fair competitive process (it was not) and/or
17 Hydro One's price proposal was the best offer possible on the table (it was not).

18 7. Unsurprisingly, the Proposed Consideration offered by Hydro One undervalues
19 the Company. The Proposed Acquisition could not have come at a worse time for the
20 Company's stockholders. After stagnating for nearly a year, shares of Avista have recently
21 traded higher as a result of the Company's strong earnings and increased future prospects, as
22 evidenced dramatically by the Company's recent financial results. On May 3, 2017, the
23 Company reported: (i) net income attributable to stockholders of \$62.1 million, a 7.8% increase
24 over the same period of the prior year; (ii) total earnings per diluted share attributable to
25 stockholders of \$0.96, a 4.3% increase over the same period of the prior year; (iii) operating
26 revenues of \$436.5 million, a 4.4% increase over the same period of the prior year; and
27

1 (iv) dividends declared per common share of \$0.96, a 4.4% increase over the same period of the
2 prior year.

3 8. Significantly, the Company's strong financial performance caused Avista's stock
4 price to increase during the sale process. Indeed, Avista's stock price rose by *more than \$4.50*
5 *per share after* Hydro One communicated its price proposal to the Company's management.
6 Despite the significant appreciation in the market price of Avista's stock, the Board never
7 requested—much less demanded—that Hydro One increase the value of the Proposed
8 Consideration.

9 9. In comparison, the Company's management and the Individual Defendants stand
10 to receive material benefits in connection with the Proposed Acquisition. As was announced on
11 July 19, 2017, Avista's *entire executive management team*, whose members played a direct role
12 in negotiating the Proposed Consideration, will receive lucrative continued employment upon the
13 close of the Proposed Acquisition. Further, Avista will continue to have its own board of
14 directors following the close of the Proposed Acquisition, which is likely to be comprised of
15 members of the current Board. Indeed, as defendant Morris summed up to employees in
16 connection with the announcement of the Proposed Acquisition, "*[w]e'll continue to operate our*
17 *business much as we do today; with the exception that we will have one shareholder instead of*
18 *thousands.*"

19 10. In addition to continued employment, the Individual Defendants, along with
20 executive management at the Company, are also poised to receive *tens of millions of dollars* in
21 special payments for their previously locked-up shares through the immediate and full vesting of
22 equity awards and other change in control benefits. As detailed further herein, the Board and
23 Company insiders have negotiated for themselves millions in insider benefits that will not be
24 shared with Avista's public stockholders, and that would not be available were Avista to remain a
25 standalone entity or execute a stock-for-stock transaction.

26 11. The Board exacerbated their breaches of fiduciary duty by agreeing to preclusive
27 deal protection devices in connection with the Agreement and Plan of Merger dated July 19,

1 2017 (the "Merger Agreement"), which all but ensure that the inadequate Proposed Acquisition
2 will be consummated. These provisions, which further undermine stockholder value by
3 discouraging any competing offers for the Company from emerging, include: (i) a no-solicitation
4 provision prohibiting the Company from properly shopping itself; (ii) a four business day
5 matching rights period during which Hydro One has the option to match any superior proposal
6 received by the Company; and (iii) a \$103 million termination fee payable by Avista to Hydro
7 One if it terminates the Merger Agreement in favor of a superior offer. Given that the Board
8 failed to conduct a pre-sign market check or structure a competitive bidding process, and given
9 that numerous interested parties were denied participation in the sale process, these deal
10 protection devices are unreasonable and compound defendants' wrongdoing by placing
11 unreasonable impediments to superior offers materializing from those and other parties.

12 12. On October 2, 2017, Avista filed a Definitive Proxy Statement on Schedule 14A
13 (the "Proxy") with the U.S. Securities and Exchange Commission ("SEC"), and distributed it to
14 Avista stockholders with the recommendation that they vote in favor of the Proposed
15 Acquisition. The Proxy, which sets the stockholder vote on the Proposed Acquisition for
16 November 21, 2017, is materially deficient and misleading in that it fails to provide stockholders
17 with material information concerning: (i) management's best estimates as to the future financial
18 performance and value of the Company; (ii) the financial analysis performed by Merrill Lynch in
19 support of its so-called "fairness opinion"; and (iii) the conflicts of interest which tainted the
20 fairness of the sales process, the likelihood of a superior offer, and the unreasonableness of the
21 deal protection devices implemented by defendants. Without disclosure of this information,
22 Avista's public stockholders will be unable to make an informed decision whether to vote in
23 favor of the Proposed Acquisition.

24 13. In short, in pursuing the unlawful plan to sell the Company via an unfair process
25 and at an inadequate price, each of the defendants have violated applicable law by directly
26 breaching and/or aiding and abetting the other defendants' breaches of their fiduciary duties of
27 loyalty and due care, among others.

1 14. This action seeks damages and equitable relief to enjoin the Individual
2 Defendants from further breaching their duties in connection with the Proposed Acquisition and
3 damages. To remedy the defendants' legal violations as set forth herein, Plaintiffs seek, inter
4 alia: (i) injunctive relief preventing consummation of the Proposed Acquisition unless and until
5 the Company adopts and implements a procedure or process designed to obtain a transaction that
6 provides the best possible terms for stockholders; (ii) a directive to the Individual Defendants to
7 exercise their fiduciary duties to obtain a transaction that is in the best interests of Avista's
8 stockholders; and (iii) rescission of, to the extent already implemented, the Merger Agreement or
9 any of the terms thereof.

10 **JURISDICTION**

11 15. This Court has jurisdiction over all causes of action asserted herein pursuant to
12 Revised Code of Washington section 2.08.010.

13 16. This Court has jurisdiction over all defendants as each is either a corporation that
14 conducts business in and maintains operations in this County, or is an individual who has
15 sufficient minimum contacts with the state of Washington so as to render the exercise of
16 jurisdiction by the Washington courts permissible under traditional notions of fair play and
17 substantial justice.

18 17. Venue is proper in this Court because one or more of the defendants either resides
19 in or maintains executive offices in this County, a substantial portion of the transactions and
20 wrongs complained of herein, including the defendants' primary participation in the wrongful
21 acts detailed herein and aiding and abetting and conspiracy in violation of fiduciary duties owed
22 to Avista stockholders occurred in this County, and defendants have received substantial
23 compensation in this County by doing business here and engaging in numerous activities that had
24 an effect in this County.

1 **PARTIES**

2 **Plaintiffs**

3 18. Plaintiff Lauren Fink was a stockholder of Avista at the time of the wrongdoing
4 complained of, has continuously been a stockholder since that time, and is a current Avista
5 stockholder.

6 19. Plaintiff Chadwick L. Weston was a stockholder of Avista at the time of the
7 wrongdoing complained of, has continuously been a stockholder since that time, and is a current
8 Avista stockholder.

9 **Nondefendant**

10 20. Nondefendant Avista is a Washington corporation with principal executive offices
11 located at 1411 East Mission Avenue, Spokane, Washington. Avista is an energy company
12 involved in the production, transmission, and distribution of energy as well as other energy-
13 related businesses. As of December 31, 2016, Avista employed 1,742 people in Avista Utilities
14 and 240 people in the Company's subsidiary businesses. Upon completion of the Proposed
15 Acquisition, Avista will become an indirect, wholly owned subsidiary of defendant Hydro One.

16 **Defendants**

17 21. Defendant Morris is Avista's CEO and Chairman of the Board and has been since
18 January 2008, President and has been since May 2006, and a director and has been since
19 February 2007. Defendant Morris was also Avista's Chief Operating Officer from May 2006 to
20 December 2007; Senior Vice President from February 2002 to May 2006; Vice President from
21 November 2000 to February 2002; President, Avista Utilities from August 2000 to December
22 2008; General Manager, Avista Utilities for the Oregon and California operations from October
23 1991 to August 2000; and held various other management and staff positions with Avista
24 beginning in 1981.

25 22. Defendant Kristianne Blake ("Blake") is Avista's Lead Director and has been
26 since May 2017, and a director and has been since July 2000.

27 23. Defendant R. John Taylor is an Avista director and has been since May 1985.

1 24. Defendant Erik J. Anderson is an Avista director and has been since November
2 2000.

3 25. Defendant Heidi B. Stanley is an Avista director and has been since May 2006.

4 26. Defendant Marc F. Racicot is an Avista director and has been since August 2009.

5 27. Defendant Rebecca A. Klein is an Avista director and has been since May 2010.

6 28. Defendant Donald C. Burke is an Avista director and has been since August 2011.

7 29. Defendant Janet D. Widmann is an Avista director and has been since August
8 2014.

9 30. Defendant Scott H. Maw is an Avista director and has been since August 2016.

10 31. Defendant Hydro One is an Ontario corporation, which through its subsidiaries,
11 operates as an electrical transmission and distribution utility in the Ontario province of Canada.

12 32. Defendant Olympus is a Delaware corporation and the sole stockholder of
13 defendant Merger Sub.

14 33. Defendant Merger Sub is a Washington corporation and a wholly owned
15 subsidiary of defendant Olympus. Upon completion of the Proposed Acquisition, defendant
16 Merger Sub will merge with and into Avista and cease its separate corporate existence.

17 34. Defendant Merrill Lynch is a Delaware corporation with principal executive
18 offices located at One Bryant Part, New York, New York. Defendant Merrill Lynch served as an
19 exclusive financial advisor to Avista in connection with the Proposed Acquisition. In addition,
20 defendant Merrill Lynch provides advisory services and financing to defendant Hydro One and
21 certain of its affiliates, receiving approximately \$12 million for its services in the last two years
22 alone. Defendant Merrill Lynch intends to provide additional services and receive additional
23 compensation from defendant Hydro One and its affiliates following the close of the Proposed
24 Acquisition.

25 **INDIVIDUAL DEFENDANTS' FIDUCIARY DUTIES**

26 35. Under Washington law, in any situation where the directors of a publicly traded
27 corporation undertake a transaction that will result in a sale or change in corporate control, they

1 have an affirmative fiduciary obligation to obtain the highest value reasonably available for the
2 corporation's stockholders, including a significant control premium. To diligently comply with
3 these duties, neither the officers nor the directors may take any action that:

4 (a) adversely affects the value provided to the corporation's stockholders;

5 (b) will discourage, inhibit, or deter alternative offers to purchase control of
6 the corporation or its assets;

7 (c) contractually prohibits themselves from complying with their fiduciary
8 duties;

9 (d) will otherwise adversely affect their duty to secure the best value
10 reasonably available under the circumstances for the corporation's stockholders; and/or

11 (e) will provide the directors and/or officers with preferential treatment at the
12 expense of, or separate from, the public stockholders.

13 36. In accordance with their duties of loyalty and good faith, the Individual
14 Defendants, as directors, officers, and/or majority stockholders of Avista are obligated under
15 Washington law to refrain from:

16 (a) participating in any transaction where the directors' or officers' loyalties
17 are divided;

18 (b) participating in any transaction where the directors or officers receive, or
19 are entitled to receive, a personal financial benefit not equally shared by the public stockholders
20 of the corporation; and/or

21 (c) unjustly enriching themselves at the expense or to the detriment of the
22 public stockholders.

23 37. The Individual Defendants, separately and together, in connection with the
24 Proposed Acquisition, are knowingly or recklessly violating their fiduciary duties and aiding and
25 abetting such breaches, including their duties of loyalty, good faith, and independence owed to
26 Plaintiffs and other public stockholders of Avista. Certain of the defendants are obtaining for
27 themselves personal benefits, including lucrative and prestigious positions with the go-forward

1 company and personal financial benefits not shared equally by Plaintiffs or the Class (as defined
2 herein). Accordingly, the Proposed Acquisition will benefit the Individual Defendants in
3 significant ways not shared with the Class members. As a result of the Individual Defendants'
4 self-dealing and divided loyalties, neither Plaintiffs nor the Class will receive adequate or fair
5 value for their Avista common stock in the Proposed Acquisition.

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

11 CLASS REPRESENTATION ALLEGATIONS

12 39. Plaintiffs bring this action individually and as a class action on behalf of all
13 holders of Avista common stock who are being harmed by defendants' actions as described
14 above (the "Class"). Excluded from the Class are the defendants and any individual or entity
15 related to, or affiliated with, any defendant.

16 40. The Class is so numerous that joinder of all members is impracticable. According
17 to the Merger Agreement, there were more than 64.4 million shares of common stock
18 outstanding as of July 18, 2017.

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

22 (a) whether the Proposed Acquisition is the result of an entirely fair process
23 and at an entirely fair price to the Company's stockholders;

24 (b) whether the Individual Defendants have breached their fiduciary duties of
25 undivided loyalty, good faith, diligence, fair dealing, independence, and/or due care with respect
26 to Plaintiffs and the other members of the Class in connection with the Proposed Acquisition;

1 (c) whether the Individual Defendants are conflicted or otherwise engaging in
2 self-dealing in connection with the Proposed Acquisition;

3 (d) whether the Individual Defendants have breached any of their other
4 fiduciary duties owed to Plaintiffs and the other members of the Class in connection with the
5 Proposed Acquisition;

6 (e) whether the Individual Defendants are unjustly enriching themselves
7 and/or the other insiders/affiliates of Avista in connection with the Proposed Acquisition;

8 (f) whether the Individual Defendants, in bad faith and for improper motives,
9 impeded or erected barriers designed to discourage other potentially interested parties from
10 making an offer to acquire the Company or its assets;

11 (g) whether Avista aided and abetted any of the Individual Defendants'
12 breaches of fiduciary duty owed to Plaintiffs and the other members of the Class in connection
13 with the Proposed Acquisition;

14 (h) whether defendants Hydro One, Olympus, and Merger Sub aided and
15 abetted any of the Individual Defendants' breaches of fiduciary duty owed to Plaintiffs and the
16 other members of the Class in connection with the Proposed Acquisition;

17 (i) whether defendant Merrill Lynch aided and abetted any of the Individual
18 Defendants' breaches of fiduciary duty owed to Plaintiffs and the other members of the Class in
19 connection with the Proposed Acquisition;

20 (j) whether Plaintiffs and the other members of the Class would suffer
21 irreparable injury were the Proposed Acquisition consummated; and

22 (k) Whether Plaintiffs and the other member of the Class are entitled to
23 recover damages.

24 42. The prosecution of separate actions by individual members of the Class would:
25 (i) create a risk of inconsistent or varying adjudications with respect to individual members of
26 the Class; (ii) establish incompatible standards of conduct for defendants; and/or (iii) result in
27 adjudications with respect to individual members of the Class that would, as a practical matter,

1 be dispositive of the interests of the other members not party to those adjudications thereby
2 substantially impairing (or entirely impeding) their ability to protect their own personal interests.

3 43. Plaintiffs, whose claims are typical of the other Class members, are committed to
4 prosecuting this action and has retained competent counsel who will draw on their extensive
5 experience litigating actions of this nature in order to fairly and adequately represent and protect
6 the interests of Plaintiffs and the Class.

7 44. Plaintiffs do not have any interests adverse to the Class. Accordingly, there will
8 be no difficulty in the management of this litigation as a class action. Indeed, a class action is
9 superior to other available methods for the fair and efficient adjudication of this controversy.

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

13 THE FLAWED SALE PROCESS

14 46. From inception, the sale process was fundamentally flawed. Although Avista was
15 well-positioned and well on its way toward achieving sustained standalone success, the
16 Company's leadership decided to plot a different course for the Company—one involving a
17 buyout that would allow the Company's executive management to liquidate their large (and
18 previously illiquid holdings) while still retaining their lucrative positions following the close of
19 the Proposed Acquisition.

20 47. In mid-October 2016, "Party A," as referred to in the Proxy, contacted Merrill
21 Lynch and requested a meeting to discuss Party A's interest in Avista. Merrill Lynch informed
22 the Company's executive management of the conversation with Party A.

23 48. During November 2-4, 2016, the Board held a meeting. There is no indication in
24 the Proxy that defendant Morris or any other member of the Company's executive management
25 informed the Board of Party A's interest at this meeting. Instead, the Company's executive
26 management seized control of the sales process.

1 49. On November 11, 2016, at the direction of Avista's executive management,
2 Merrill Lynch met in person with representatives from Party A to discuss a possible transaction.

3 50. On December 1, 2016, Avista's executive management hired Merrill Lynch to
4 serve as their financial advisor.

5 51. On December 6, 2016, representatives of another company—referred to as "Party
6 B" in the Proxy—contacted Mark T. Thies ("Thies"), Avista's Chief Financial Officer and Senior
7 Vice President, to indicate Party B's interest in Avista. Without first seeking the Board's advice
8 or authority, Thies informed Party B that Avista was not interested in a sale. At the same time,
9 Avista's executive management continued to actively shop the Company to Party A.

10 52. On December 21, 2016, representatives of another company—referred to as
11 "Party C" in the Proxy—contacted defendant Morris to indicate Party C's interest in Avista.
12 Without first seeking the Board's advice or authority, Morris informed Party C that Avista was
13 not interested in a sale. At the same time, Avista's executive management continued to actively
14 shop the Company to Party A.

15 53. On January 6, 2017, defendant Morris, Thies, and Merrill Lynch met in person
16 with representatives of Party A to discuss a transaction.

17 54. At some point during this time, specifically in anticipation of a merger with Party
18 A, the Company's management developed a set of five-year financial projections ("January 2017
19 Projections").

20 55. On January 9, 2017, Party C's CEO again contacted defendant Morris to reiterate
21 Party C's interest in a potential transaction, informing him that Party C's board of directors had
22 indicated its support for a transaction with Avista, including a possible merger of equals.
23 Defendant Morris told Party C's CEO that Avista was not interested in a sale. At the same time,
24 Avista's executive management continued to pursue an acquisition with Party A.

25 56. On January 25, 2017, representatives of another company—referred to as "Party
26 D" in the Proxy—contacted Merrill Lynch to indicate Party D's interest in Avista. Without first
27 seeking the Board's advice or authority, Merrill Lynch informed Party D that Avista was not

1 interested in a sale. At the same time, Avista's executive management continued to pursue an
2 acquisition with Party A.

3 57. On January 27, 2017, Thies, Merrill Lynch, and other members of management
4 met in New York with representatives from Party A to discuss a transaction.

5 58. On January 30, 2017, Party B's CEO again told defendant Morris that Party B
6 remained interested in a potential transaction, including a possible merger of equals. Defendant
7 Morris told Party B's CEO that Avista was not interested in a sale. At the same time, Avista's
8 executive management continued to pursue an acquisition with Party A.

9 59. On February 2 and 3, 2017, the Board held a meeting. At this meeting, defendant
10 Morris and the Company's executive management for the first time informed the Board of the
11 discussions with Party A, Party B, Party C, and Party D. The Board also discussed a potential
12 transaction with Hydro One.¹ The Board received Merrill Lynch's financial analysis of the
13 Company on a stand-alone basis, prepared by Merrill Lynch based on the January 2017
14 Projections (which the Company's management prepared in anticipation of a merger with Party
15 A, as discussed above).

16 60. Despite the fact that the Company's management and Merrill Lynch pursued a
17 transaction with a bidder favored by management for almost four months without the supervision
18 and authority of the Board, the Board failed to take control back from the Company's
19 management and did not ensure that the sales process going forward would be structured in a
20 way to maximize stockholder value and to protect the Company's stockholders' best interests.
21 The Board simply agreed to let the Company's management continue making all the decisions.
22 The Board agreed that management should continue negotiations with Party A and ignore Party
23 B, Party C, and Party D.

24
25 _____
26 ¹ The Proxy does not explain why the Board discussed Hydro One as a prospective buyer given
27 that Hydro One—unlike Party A, Party B, Party C, or Party D—had not yet expressed an interest
in Avista.

1 61. On February 7, 2017, Party A signed a nondisclosure agreement that included a
2 standstill.

3 62. On February 10, 2017, the Company executed an engagement letter with Merrill
4 Lynch.

5 63. During this period: (i) the Company's management and Merrill Lynch continued
6 to negotiate and hold meetings with Party A without any Board involvement (including a social
7 dinner on February 15, 2017); and (ii) the other companies continued to express their interest in
8 Avista.

9 64. On February 16, 2017, Party A proposed an all cash acquisition of Avista at price
10 range of \$52 to \$55 per share, a 31.6% to 39.2% premium based on Avista's then-current trading
11 price.

12 65. During this period, Party A informed defendant Morris that it was evaluating the
13 possibility of bringing in another investor to provide equity funding in the merger.

14 66. On February 23, 2017, representatives of Hydro One contacted Merrill Lynch and
15 informed them that Hydro One's CEO was interested in discussing with defendant Morris a
16 possible transaction involving Avista.

17 67. On March 2, 2017, Mayo Schmidt ("Schmidt"), Hydro One's CEO, e-mailed
18 defendant Morris directly and proposed a telephone call to discuss a potential transaction with
19 Avista. Defendant Morris responded the next day and indicated "*the possibility of a meeting at*
20 *a later date.*" Significantly, in his response, defendant Morris *did not* inform Schmidt that
21 Avista was not interested, as was told to Party B, Party C, and Party D. Notably, Hydro One is a
22 Canadian company, and therefore, unlike a merger of equals, was likely to preserve Avista's
23 corporate identity *including its senior management.*

24 68. On or around March 7, 2017, Party A told the Company's executive management
25 that it would need to slow down merger discussions as it was reevaluating the price proposal and
26 needed to secure equity financing.

1 69. On March 9, 2017, with a new favored bidder in the picture, the Company's
2 executive management terminated discussions with Party A and focused on Hydro One.

3 70. On March 9, 2017, the Board held a meeting. The Company's management
4 informed the Board that negotiations with Party A were terminated and defendant Morris was
5 now going to pursue a potential transaction with Hydro One. The Board agreed that defendant
6 Morris should meet with Hydro One.

7 71. On March 16, 2017, Merrill Lynch met with Hydro One's financial advisor
8 Moelis & Company LLC ("Moelis"). At this meeting, Merrill Lynch and Moelis discussed that
9 recent market premiums were in the range of 30% for comparable transactions, effectively
10 providing Moelis a signal (and a cap) for what price Hydro One should offer for the Company.

11 72. During this period, Party D continued to express an interest in Avista, and
12 defendant Morris continued to tell Party D that Avista was not interested in a sale.

13 73. On March 30, 2017, Hydro One's CEO expressed Hydro One's interest in an all
14 cash acquisition of Avista between \$52 to \$53 per share, representing a 33.6% to 36.2%
15 premium based on Avista's then current trading price of \$38.91 per share.

16 74. Subsequently, defendant Morris and Hydro One's CEO had numerous
17 conversations.

18 75. On May 11, 2017, the Board held a meeting. *More than forty days* after Hydro
19 One provided its price proposal, the Company's management disclosed the price proposal to the
20 full Board. The Board at this meeting also received Merrill Lynch's financial analysis of the
21 Company on a stand-alone basis, prepared by Merrill Lynch based on the "then-current five-year
22 financial forecast" (which was presumably an update to the January 2017 Projections, prepared
23 by the Company's management during the period they began negotiations with Hydro One).
24 Without ensuring that Hydro One's price proposal was the result of a fair competitive process (it
25 was not) and/or Hydro One's price proposal was the best offer possible on the table (it was not),
26 the Board agreed with management to *engage exclusively with Hydro One*.

1 76. On May 24, 2017, members of Avista's executive management traveled to
2 Toronto, Canada, for "a social dinner" with senior management at Hydro One. The following
3 week, senior management from Hydro One, along with representatives from Moelis, traveled to
4 Spokane for another "social dinner" with Avista's executive management and Merrill Lynch.

5 77. On June 23, 2017, defendant Morris and Thies traveled to Great Falls, Montana,
6 to meet with Schmidt to further discuss terms of the transaction. At the meeting, Schmidt
7 reaffirmed Hydro One's indicative price range of \$52 to \$53 per share *even though Avista's*
8 *stock price had appreciated by more than \$4.50 per share, or more than 11%*, since Hydro One
9 first communicated the price range on March 30, 2017.

10 78. The Board held a special meeting on June 29, 2017, to discuss the status of the
11 proposed transaction. Defendant Morris reported that Hydro One continued to affirm its price
12 range of \$52 to \$53 per share. Although Avista stock price had appreciated by more \$4.50 per
13 share, *the Board did not direct management or Merrill Lynch to request—much less*
14 *demand—that Hydro One increase its offer* to provide the 33.6% to 36.2% acquisition premium
15 that Hydro One previously communicated. Additionally, the Board did not direct management
16 or Merrill Lynch to determine whether any other potential buyers would be willing to acquire
17 Avista at superior price.

18 79. On July 5, 2017, Schmidt traveled to Spokane to personally deliver some big
19 news to Avista's executive management team. That day, Schmidt met individually with
20 members of Avista's management to inform them that Hydro One had agreed to retain Avista's
21 entire executive management team following the close of the transaction. The Proxy fails to
22 disclose when Hydro One first informed the members of management charged with negotiating
23 the transaction, including defendant Morris, that Hydro One planned to retain Avista's
24 management team. Further, the Board continued to permit defendant Morris and other members
25 of management to negotiate directly with Hydro One even after it became clear Hydro One
26 planned to retain the Company's executive management team on favorable economic terms.

1 80. On July 10, 2017, defendant Morris and certain undisclosed members of the
2 Board traveled to Toronto, Canada, where they attended a dinner meeting with Schmidt and
3 certain members of Hydro One's Board.

4 81. According to the Proxy, on July 15, 2017, Merrill Lynch delivered a memo to the
5 Board "*disclosing certain relationships between [Merrill Lynch] and its affiliates, on the one*
6 *hand, and the Company, Hydro One and certain of their respective affiliates, on the other*
7 *hand."* The Proxy fails to disclose why Merrill Lynch waited until five days before the
8 Proposed Acquisition was announced to disclose its relationships with Hydro One (and its
9 affiliates), or several months *after* Merrill Lynch began working on the sale of the Company to
10 Hydro One.

11 82. On July 17, 2017, the Board held a special meeting to consider Hydro One's offer
12 to acquire Avista for \$53 per share, which had been finalized the day before. At this meeting,
13 the Board was reminded by their legal advisor of their fiduciary duties, including their duty to
14 maximize stockholder value in a potential sale of the Company. At the meeting, the Board again
15 failed to instruct management or Merrill Lynch to determine whether Hydro One would increase
16 its offer in light of the significant appreciation in Avista's stock price. Additionally, the Board
17 did not direct management or Merrill Lynch to assess whether any of the other parties who had
18 expressed interest in Avista—including Party A, Party B, Party C, or Party D—were prepared to
19 make a superior offer for the Company.

20 83. The Board held another special meeting on July 19, 2017. At this meeting,
21 Merrill Lynch provided its fairness analysis and opinion to the Board. The Board then voted
22 unanimously to approve the Proposed Acquisition.

23 84. The same day, Avista issued a news release announcing the Proposed Acquisition
24 through which Hydro One will acquire all outstanding shares of Avista for the inadequate
25 Proposed Consideration of \$53 per share. The news release stated:

26 Hydro One to Acquire Avista to Create Growing North American Utility Leader
27 with C\$31.2 Billion in Enterprise Value

1 Hydro One and Avista combined create a top 20 North American utility focused
2 on regulated transmission as well as electricity and natural gas local distribution

3 TORONTO, ONTARIO and SPOKANE, WASHINGTON -- (Marketwired) --
4 07/19/17

5 Highlights:

- 6 • Establishes one of North America's largest regulated utilities with over
7 C\$32.2 billion (US\$25.4 billion) in assets and a leader in electricity
8 transmission and distribution as well as natural gas local distribution
9 businesses
- 10 • Expands into complementary and diversified regulated assets, inclusive of
11 natural gas local distribution
- 12 • The transaction will be accretive to earnings per share in the mid-single
13 digits in the first full year of operation
- 14 • Provides Hydro One with a significant and stable increase to earnings and
15 cash flow underpinned by fully regulated utility operations jurisdictions
16 with constructive regulatory mechanisms
- 17 • A long-term intention of continuing Hydro One's dividend payout of 70-
18 80 per cent of earnings
- 19 • Avista stockholders receive US\$53 in cash per common share, a 24%
20 premium as of market close on July 18, 2017
- 21 • Both Hydro One and Avista to maintain healthy balance sheets as well as
22 strong investment-grade credit ratings
- 23 • Hydro One's acquisition financing strategy involves the issuance of C\$1.4
24 billion of Hydro One common equity and US\$2.6 billion of Hydro One
25 debt
- 26 • Hydro One has concurrently executed a bought deal of C\$1.4 billion of
27 contingent convertible debentures represented by instalment receipts to
28 satisfy the equity component of the acquisition financing strategy
- Hydro One and Avista customer rates will not be impacted by any of the
costs associated with the transaction
- Efficiencies through enhanced scale, innovation, shared IT systems and
increased purchasing power provides cost savings for customers and better
customer service, complementing both organization's commitment to
excellence

- 1 • Avista preserves corporate identity including its headquarters; customers,
2 employees, communities and shareholders all benefit from new
3 partnership
- 4 • No workforce reductions are anticipated as a result of this transaction for
5 either Hydro One or Avista

6 Hydro One Limited ("Hydro One") (TSX:H) and Avista Corporation ("Avista")
7 (NYSE:AVA) today jointly announced a definitive merger agreement
8 ("Agreement") under which Hydro One will acquire Avista for C\$67 (US\$53) per
9 share in a C\$6.7 billion (US\$5.3 billion) all-cash transaction. Together, Hydro
10 One and Avista will create a North American leader in regulated electricity and
11 natural gas business with over C\$32.2 billion (US\$25.4 billion) in combined
12 assets. The transaction brings together two industry-leading regulated utilities
13 with over 230 years of collective operational experience as well as shared
14 corporate cultures and values. The combined entity will safely and reliably serve
15 more than two million retail and industrial customers and hold assets throughout
16 North America including Ontario, Washington, Oregon, Idaho, Montana and
17 Alaska.

18 "This marks a proud moment for Canadian champions as we grow our business
19 into a North American leader," said Mayo Schmidt, President and CEO, Hydro
20 One Limited. "This transaction demonstrates the power and value of the transition
21 into an investor-owned utility, by allowing for healthy expansion into new lines of
22 regulated utility business and new jurisdictions, such as the U.S. Pacific
23 Northwest which is experiencing customer and economic growth."

24 "With a focus on operational excellence and building our earnings streams, we are
25 positioned for long-term, sustainable growth," said Schmidt. "We are further
26 accomplishing this goal by bringing together two companies with shared cultures
27 and industry expertise to create a North American regulated utility leader. This
28 combination means greater scale, diversity and financial flexibility."

Hydro One has a uniquely strong track record consolidating electricity utilities.
Since the IPO, Hydro One has also delivered on cost savings and efficiencies for
shareholders and customers. Through the company's energy conservation
programs, Hydro One has helped customers and municipalities save 700 GWh
year-to-date.

"Since our initial public offering, we have significantly enhanced our current
operations while exploring opportunities that extend and diversify our regulated
assets," said Schmidt. "We constantly seek to deliver exceptional value to
shareholders, customers, and the communities we serve through stable, increasing
regulated returns, exceptional service, and community engagement."

This strategic combination demonstrates the value of consolidation by bringing
together two highly complementary platforms to create one of North America's
largest regulated utilities, meaningfully enhancing both shareholder and customer

1 value. In addition, over time, non-headcount efficiencies will be realized through
2 collaboration and sharing of best practices on IT, innovation and supply chain
3 purchasing, all of which will further enhance cost savings. No workforce
4 reductions are anticipated as a result of this transaction for either Avista or Hydro
5 One.

6 Avista Corporation Chairman, President and CEO Scott Morris said, "For Avista,
7 the decision to team up with Hydro One at a time of strength and growth
8 represents a win for our customers, employees, shareholders and the communities
9 we serve. Through this agreement, we have a unique opportunity to secure a
10 partnership that allows us to continue to define and control, to a significant
11 degree, future operations and opportunities in a consolidating industry landscape
12 for the benefit of our customers. In Hydro One, we believe we've found a partner
13 that allows us to preserve our identity and our proud legacy, while also preparing
14 us for the future. We look forward to joining forces with Hydro One and its
15 dynamic team."

16 Following completion of the transaction, Avista will maintain its existing
17 corporate headquarters in Spokane and will continue to operate as a standalone
18 utility in Washington, Oregon, Idaho, Montana and Alaska. Its management team
19 and employees will remain in place and it will operate with its own Board of
20 Directors representing the interests of the Pacific Northwest and the communities
21 it serves. The combined company's headquarters will be based in Toronto.

22 Avista employees and retirees will see a continuation of the company essentially
23 as it is today. Customers of both companies will continue to be provided with
24 safe, reliable and high quality energy. Hydro One and Avista customer rates will
25 not be impacted by any of the costs associated with the transaction. The
26 communities Avista serves will continue to benefit from the important
27 philanthropy and economic development that Avista provides.

28 "In fact," Morris said, "Hydro One is committed to doing even more - nearly
doubling Avista's current levels of community support."

"This is the coming together of two highly respected and reputable companies
steeped in history and shared commitment to the communities they serve. Both
teams also share a common vision and a dedication to serving customers safely
and reliably every day," said Schmidt.

"The strength of the combined company enables the accelerated deployment of
innovation programs and infrastructure upgrades for the benefit of customers
while continuing to deliver on shareholder expectations for consistent, healthy,
financial performance. Together, we will deliver even more possibilities for the
shareholders, customers, employees, and communities we have the privilege of
serving," said Schmidt.

The transaction was unanimously approved by the Boards of Directors of both
companies and is expected to close in the second half of 2018, subject to Avista

1 common shareholder approval and certain regulatory and government approvals
2 and clearances, including approval by the Washington Utilities and Transportation
3 Commission, the Public Utility Commission of Oregon, the Idaho Public Utilities
4 Commission, the Regulatory Commission of Alaska, the Public Service
5 Commission of the State of Montana, the U.S. Federal Energy Regulatory
6 Commission, clearance by the Committee on Foreign Investment in the United
7 States and compliance with applicable requirements under the U.S. Hart-Scott-
8 Rodino Antitrust Improvements Act of 1976, as amended, and the satisfaction of
9 customary closing conditions.

10 **THE BOARD AGREED TO UNREASONABLE DEAL PROTECTION PROVISIONS**

11 85. In connection with the Proposed Acquisition, the Board agreed to certain onerous
12 and preclusive deal protection devices that operate conjunctively to make the Proposed
13 Acquisition *a fait accompli* and ensure that no successful competing offers will emerge for the
14 Company. These deal protection devices are unreasonable here where: (i) the Proposed
15 Consideration undervalues the Company; (ii) numerous parties expressed serious interest in a
16 transaction with Avista (including Party A, Party B, Party C, and Party D) but were denied
17 participation in the sales process; and (iii) the Company's Board failed to conduct a pre-sign
18 market check or structure a competitive bidding process.

19 86. On July 19, 2017, the Company filed a Current Report on Form 8-K with the SEC
20 wherein it disclosed the Merger Agreement. Under the Merger Agreement, Avista is subject to a
21 no-solicitation clause that prohibits the Company from seeking a superior offer for its
22 stockholders. Specifically, section 5.3(a) of the Merger Agreement states:

23 The Company agrees that it shall, and shall cause its Subsidiaries and its and its
24 Subsidiaries respective directors, officers and employees to, and shall use its
25 reasonable best efforts to cause its other Representatives to, immediately cease all
26 existing discussions or negotiations with any Person conducted heretofore with
27 respect to any Takeover Proposal. Except as otherwise provided in this
28 Agreement, from the date of this Agreement until the earlier of the Effective Time
or the date, if any, on which this Agreement is terminated pursuant to Section 7.1,
the Company shall not, and shall cause its Subsidiaries and its and its Subsidiaries
respective directors, officers and employees not to, and shall use its reasonable
best efforts to cause its other Representatives not to, directly or indirectly, (i)
solicit, initiate, knowingly encourage or knowingly facilitate any Takeover
Proposal or the making or consummation thereof or (ii) enter into, or otherwise
participate in any discussions (except to notify such Person of the existence of the
provisions of this Section 5.3) or negotiations regarding, or furnish to any Person
any material non-public information in connection with, any Takeover Proposal.

1 87. Though the Merger Agreement ostensibly has a "fiduciary out" provision that
2 allows the Company to negotiate with other bidders, this provision would require a potential
3 acquirer to first make an unsolicited offer. Without access to nonpublic information, which the
4 Company is prevented from sharing under the Merger Agreement prior to the receipt of an offer
5 that the Company reasonably expects to lead to a superior deal, no other bidders will emerge to
6 make a superior proposal. Moreover, it is so extremely unlikely that Party B, Party C, or Party D
7 will make additional unsolicited offers given that their previous indications of interest were
8 repeatedly rebuffed by defendant Morris and other members of Avista's management. Moreover,
9 Party A – who had previously indicated interest at a higher-priced range – is subject to a
10 standstill which Avista cannot waive under section 5.3(b) of the Merger Agreement.

11 88. Furthermore, under section 5.3(d) of the Merger Agreement, should it receive an
12 unsolicited bid, the Company must notify Hydro One of the bidder's offer. Thereafter, should
13 the Board determine that the unsolicited offer is superior, Hydro One is granted four business
14 days to amend the terms of the Merger Agreement to make a counter offer that only needs to be
15 as favorable to the Company's stockholders as the unsolicited offer. Hydro One will be able to
16 match the unsolicited offer because it is granted unfettered access to the unsolicited offer, in its
17 entirety, eliminating any leverage the Company has in receiving the unsolicited offer.

18 89. Also, pursuant to section 7.3 of the Merger Agreement, Avista must pay Hydro
19 One a \$103 million termination fee if it accepts a superior proposal. The termination fee equates
20 to approximately \$1.60 per Avista share that will be paid directly to Hydro One rather than
21 Avista stockholders, thereby making it even more difficult for any competing bidder to acquire
22 the Company.

23 90. These onerous and preclusive deal protection devices, which will operate to
24 unreasonably deter and discourage superior offers from other interested parties, including those
25 parties that previously expressed interest in acquiring Avista but were denied access to the sales
26 process and were agreed to by the Individual Defendants in order to further secure the personal
27 benefits and unfair profits afforded to them under the Proposed Acquisition. By negotiating for

1 such personal benefits in connection with the consummation of the Proposed Acquisition, the
2 Individual Defendants placed their own personal interests before those of the Company's
3 stockholders thus resulting in the Proposed Acquisition being presented to Avista stockholders at
4 an untenable and inadequate offer price.

5 **THE PROPOSED ACQUISITION UNDERVALUES AVISTA**

6 91. As noted above, the Company's public stockholders will receive \$53 in cash for
7 each share of Avista common stock that they own. The Proposed Consideration significantly
8 undervalues the Company and its future prospects. Avista has demonstrated that it is well-
9 positioned for future growth. In the Company's most recent quarter, defendant Morris
10 highlighted that Avista has had lower than expected operating expenses and its Alaska Electric
11 Light and Power Company segment beat management's own internal expectations. Most
12 importantly, the Company has continued to make the case to regulators for a rate increase, which
13 would provide additional profit to Avista and the stockholders in the form of increasing
14 dividends. In addition, in Idaho, the Company announced that it plans to file a rate case this
15 quarter.

16 92. Further, on May 3, 2017, the Company announced strong financial results for the
17 first quarter of 2017. In particular, Avista reported: (i) net income attributable to stockholders of
18 \$62.1 million, a 7.8% increase over the same period of the prior year; (ii) total earnings per
19 diluted share attributable to stockholders of \$0.96, a 4.3% increase over the same period of the
20 prior year; (iii) operating revenues of \$436.5 million, a 4.4% increase over the same period of the
21 prior year; and (iv) dividends of \$0.96 per share, a 4.4% increase over the same period of the
22 prior year. These stellar results would only continue to increase as the Company received the
23 expected rate increase approvals.

24 93. Additionally, the Proposed Acquisition will be accretive to Hydro One's earnings
25 per share in the mid-single digits in the first full year of operation. That the transaction will be
26 accretive so quickly to Hydro One shows that Avista's value is not properly reflected in the
27

1 Proposed Acquisition, especially since this accretion will occur without any reduction in
2 headcount.

3 **THE SELF-DEALING OF THE INDIVIDUAL DEFENDANTS**
4 **AND OTHER CONFLICTS OF INTEREST**

5 94. The insufficient Proposed Consideration should come as no surprise in light of the
6 flawed and conflicted process that led to the consummation of the Proposed Acquisition. Indeed,
7 the sales process was controlled by the Company's executive management who unfairly tilted the
8 process in favor of Hydro One in order to secure executive positions in a company transformed
9 "from having many shareholders to having one shareholder – Hydro One," *and* the material
10 change in control financial benefits associated with such a transaction. For their part in
11 submitting to the Company's management and approving the Merger Agreement, the non-
12 management members of the Board also secured for themselves lucrative personal benefits not
13 shared with Avista's public stockholders.

14 95. Following the close of the Proposed Acquisition, all of Avista's executive
15 management team—including defendant Morris and other insiders who negotiated the Proposed
16 Consideration—will join the surviving company on favorable employment terms. Indeed, as
17 defendant Morris discussed with employees on July 20, 2017, "[w]e'll continue to operate our
18 business much as we do today; with the exception that we will have one shareholder instead of
19 thousands."

20 96. Importantly, defendant Morris also explained that the surviving company will
21 continue to have its own board of directors, with four of its members chosen by Avista. One of
22 those members must be defendant Morris himself. In addition, three of the five members of the
23 board of directors that will be chosen by Hydro One must reside in the Pacific Northwest,
24 drastically increasing the chances that Hydro One will pick Avista's current directors to remain
25 on the Board post-closing.

26 97. Further, as part of the sale process, defendant Morris and other named executives
27 at the Company negotiated for themselves lucrative changes to their employment contracts. In

1 particular, defendant Morris and Avista's other named executives secured amendments to their
2 Change of Control Agreements that allow them to voluntarily terminate their employment
3 without good cause and still receive all severance payments and other benefits provided for
4 under the agreements, so long as proper notice is given. Under the Change of Control
5 Agreements, defendant Morris and other executive officers are also entitled to, among other
6 things:

7 [A] position (including status, offices, titles and reporting requirements),
8 authority, duties and responsibilities at least commensurate in all material respects
9 with the most significant of those held, exercised and assigned at any time during
10 the 120-day period immediately preceding the change of control, with the
11 executive officer's services to be performed at a location within 50 miles of his or
12 her existing location.

13 98. Further, in connection with the Proposed Acquisition, Hydro One has agreed to
14 pay executive retention bonuses to members of Avista's executive management. Upon the close
15 of the Proposed Acquisition, Hydro One will pay members of the Company's executive
16 management team *a retention bonus equal to 150% of his or her base salary*, so long as the
17 executive does not terminate his or her employment prior to the effective date. Significantly, the
18 retention bonuses will be paid *in addition to* any compensation members of executive
19 management may be entitled to under the applicable Change of Control Agreements.

20 99. The tens of millions of dollars of potential Change of Control Payments that may
21 be available to Avista's executive officers are detailed below:
22
23
24
25
26
27

Named Executive Officer	Severance (1)	Value of Accelerated Equity (2)	Health Benefits (3)	Outplacement (4)	Section 280G Gross-Up (5)	Total (6)
Scott L. Morris, <i>Chairman, President & CEO</i>	\$ 6,392,751	\$ 5,851,960	\$ 32,949	\$ 25,000	\$ 4,692,976	\$ 16,995,636
Mark T. Thies, <i>Senior Vice President, CFO & Treasurer</i>	\$ 2,478,889	\$ 1,860,008	\$ 43,760	\$ 25,000	\$ 1,558,549	\$ 5,966,206
Dennis P. Vermillion, <i>Senior Vice President & ECO</i>	\$ 1,502,909	\$ 1,894,636	\$ 43,760	\$ 25,000	\$ 0	\$ 3,466,305
Marian M. Durkin, <i>Senior Vice President, General Counsel, CCO & Corporate Secretary</i>	\$ 2,143,597	\$ 1,453,399	\$ 32,520	\$ 25,000	\$ 1,280,965	\$ 4,935,481
Karen S. Feltes, <i>Senior Vice President & CHRO</i>	\$ 2,020,932	\$ 1,453,399	\$ 32,520	\$ 25,000	\$ 1,239,266	\$ 4,771,117
Other Executive Officers						
Aggregate for Eight Other Executive Officers	\$ 7,445,351	\$ 5,505,892	\$ 324,554	\$ 200,000	\$ 905,204	\$ 14,381,001

100. *In addition to future employment*, the Individual Defendants and Company insiders also stand to reap an immediate financial windfall in connection with the Proposed Acquisition. Indeed, the Company's Board and executive management were highly motivated to sell Avista to Hydro One because the Proposed Acquisition would allow them to cash out their previously illiquid, locked-up holdings in Avista through the immediate and full vesting of performance equity awards and certain Restricted Stock Units granted under the Company's stock plan.² The accelerated vesting of these holdings into cash would not have occurred had Avista remained a standalone company or elected for a stock-for-stock transaction. The following table summarizes the tens of millions of dollars in cash proceeds that the Company's Board and defendant Morris will receive if the Proposed Acquisition is allowed to close:

² Additionally, in connection with the Proposed Acquisition, outstanding Restricted Stock Units held by defendant Morris and other members of Avista's executive management will be converted into the right receive to Converted Restricted Stock Units that will be settled in shares of Hydro One common stock.

Defendants	Common Share Consideration	Accelerated Consideration	Total Merger Consideration
Scott L. Morris	\$ 9,746,382.00	\$ 5,851,960.00	\$ 15,598,342.00
Kristianne Blake	\$ 1,148,404.00	\$ 133,507.00	\$ 1,281,911.00
Erik J. Anderson	\$ 1,079,504.00	\$ -	\$ 1,079,504.00
Donald C. Burke	\$ 772,316.00	\$ -	\$ 772,316.00
Rebecca A. Klein	\$ 1,020,621.00	\$ -	\$ 1,020,621.00
Scott H. Maw	\$ 223,448.00	\$ -	\$ 223,448.00
Marc F. Racicot	\$ 886,478.00	\$ -	\$ 886,478.00
Heidi B. Stanley ¹	\$ 1,360,033.00	\$ -	\$ 1,360,033.00
R. John Taylor	\$ 570,545.00	\$ 291,288.00	\$ 861,833.00
Janet D. Widmann	\$ 305,174.00	\$ -	\$ 305,174.00
Total	\$ 17,112,905.00	\$ 6,276,755.00	\$ 23,389,660.00

1) Approximately \$543,144 of Stanley's Common Share Consideration is held by Stanley's spouse, in a profit-sharing plan not administered by Avista Corporation.

101. Other conflicts of interest also pervaded the sale process. Merrill Lynch's longstanding and lucrative ties to Hydro One and its affiliates compromised its ability to provide unbiased advice to its purported client, Avista. Indeed, David F. Denison, the Chairman of Hydro One's board of directors, and Marianne Harris, a Hydro One director, both were previously employed by affiliates of Merrill Lynch. In fact, prior to her directorship, Ms. Harris served as the Managing Director of Bank of America Merrill Lynch and the President of Corporate and Investment Banking for Merrill Lynch Canada. Further, Merrill Lynch has provided advisory services and financing to Hydro One and its affiliates, receiving approximately \$12 million for its services in the last two years alone, and plans to provide additional services to Hydro One following the close of the Proposed Acquisition. Rather than diligently reviewing other value-maximizing alternatives or broadening the sale process to include other potential bidders, Merrill Lynch's ties to Hydro One caused it to steer Avista toward the sub-optimal deal with Hydro One.

102. Significantly, it appears that Merrill Lynch did not disclose to the Board its pervasive relationships with Hydro One (and its affiliates) until July 15, 2017, or *less than five days* before the Board voted on the Proposed Acquisition. At that point, however, Merrill Lynch had already spent *months* serving as Avista's financial advisor (including months serving on behalf of the Company's management before it was formally hired by the Board) and actively negotiating the terms of the Proposed Acquisition with Hydro One. In fact, Hydro One first

1 contacted Merrill Lynch, not management at the Company, to express its interested in acquiring
2 Avista. What's more, the Board failed to take any steps to ensure Merrill Lynch's conflicts did
3 not infect the sale process, even after it learned—albeit belatedly—of Merrill Lynch's
4 relationship with Hydro One.

5 103. If Merrill Lynch did not have enough incentive to secure a deal with Hydro One,
6 the Board agreed to pay its sole financial advisor a staggering \$28 million fee, of which \$24.2
7 million is contingent on the consummation of the Proposed Acquisition. Merrill Lynch was
8 motivated to advance its relationship with Hydro One and secure a massive contingency fee from
9 Avista that failed to properly survey the market and delivered a skewed fairness opinion, which
10 was based on incorrect and deficient valuations, as discussed below.

11 **THE BOARD HAS NOT DISCLOSED ALL MATERIAL INFORMATION**
12 **CONCERNING THE PROPOSED ACQUISITION**

13 104. Finally, it is critical that stockholders receive complete and accurate information
14 prior to the vote on the Proposed Acquisition, which is currently scheduled for November 21,
15 2017. To date, however, the Individual Defendants have failed to provide Avista's public
16 stockholders with information to allow them to make an informed decision about how to vote on
17 the Proposed Acquisition. The Proxy, which recommends that Avista stockholders vote in favor
18 of the Proposed Acquisition, omits material information concerning: (i) Avista's financial
19 projections; (ii) the financial analysis performed by Merrill Lynch in support of its so-called
20 "fairness opinion"; (iii) the unfair sales process under the Proposed Acquisition; and (iv) Merrill
21 Lynch's debilitating conflicts of interest.

22 **Avista's Financial Projections**

23 105. The Proxy fails to disclose important information relating to the financial
24 projections provided by Avista's management in connection with the Proposed Acquisition. In
25 particular, the Proxy fails to disclose Avista's standalone, unlevered after-tax free cash flows for
26 2017 to 2021, which are the single most important metric for stockholders evaluating what they
27 are being asked to give up in exchange for receiving the Proposed Consideration.

1 106. The Proxy also fails to disclose the 2017-2021 financial projections provided by
2 Avista's management and relied upon by Merrill Lynch for purposes of its financial analysis for
3 numerous other items, including:

- 4 (a) rate base;
- 5 (b) utility revenues;
- 6 (c) nonutility revenues;
- 7 (d) utility operating expenses;
- 8 (e) nonutility operating expenses;
- 9 (f) interest expense;
- 10 (g) earnings before interest, taxes, depreciation, and amortization
11 ("EBITDA");
- 12 (h) depreciation and amortization;
- 13 (i) capital expenditures;
- 14 (j) changes in net working capital;
- 15 (k) stock-based compensation expense; and
- 16 (l) any other adjustments to unlevered free cash flow.

17 107. Without the above information, stockholders are uninformed of management's
18 best estimates as to the future financial performance and value of the Company. Without the
19 information identified above, the Company's stockholders cannot assess the value they are being
20 asked to give up for the offer that is being recommended by defendants.

21 **Merrill Lynch's Financial Analysis**

22 108. The Proxy includes the so-called "fairness opinion" rendered by Merrill Lynch,
23 but fails to disclose material information underlying Merrill Lynch's financial analysis,
24 including:

- 25 (a) with respect to the *Selected Publicly Traded Companies Analysis*: (i) the
26 multiples observed by Merrill Lynch for the selected companies, including price/2018 estimated
27 ("E") earnings per share ("EPS"), P/2019E EPS, enterprise value ("EV")/2018E EBITDA, and

1 EV/2019E EBITDA; as well as (ii) whether Merrill Lynch performed any type of benchmarking
2 analysis for Avista in relation to the selected public companies.

3 (b) with respect to the *Discounted Cash Flow Analysis*: (i) the definition of
4 "unlevered free cash flow" utilized by Merrill Lynch in its analysis; (ii) the individual inputs and
5 assumptions utilized by Merrill Lynch to derive the discount rate range of 5.1% to 5.8%; and (iii)
6 the implied perpetuity growth rate range resulting from this analysis.

7 (c) with respect to the *Selected Precedent Transactions Analysis*: (i) the
8 multiples observed by Merrill Lynch for the selected transactions, including 1-Year Forward
9 EPS, 2-Year Forward EPS, 1-Year Forward EBITDA, 2-Year Forward EBITDA; as well as
10 (ii) whether Merrill Lynch performed any type of benchmarking analysis for Avista in relation to
11 the selected target companies.

12 109. Without the above information, stockholders are uninformed of the key subjective
13 inputs in Merrill Lynch's analysis. Notably, Merrill Lynch performed its analysis while under
14 several conflicts of interest, motivating Merrill Lynch to provide a fairness opinion in favor of
15 the Proposed Acquisition (as discussed above). Without the information identified above, the
16 Company's stockholders lack adequate information to reject Merrill Lynch's fairness opinion.

17 **The Unfair Process Resulting in the Proposed Acquisition**

18 110. The Proxy fails to fully and fairly disclose certain material information bearing on
19 the process leading up to the announcement of the Proposed Acquisition and the extent of
20 interactions with certain potentially interested parties, including:

21 (a) the terms of the standstill agreements Avista entered into, including with
22 Party A, and including any "don't ask, don't waive" provisions;

23 (b) the terms of the numerous expressions of interest Avista received from
24 Party B, Party C, and Party D, and whether these parties were strategic or financial buyers;

25 (c) the fact that current members of Hydro One's board of directors previously
26 held senior positions at Merrill Lynch (or its affiliates); and

1 (d) the timing and content of all employment and post-merger structure
2 discussions between Hydro One and the Company's management (or Merrill Lynch) and the
3 timing and discussion by the Board of same.

4 111. These omissions are material because, without this information, Avista's public
5 stockholders are misled about the conflicts of interest which tainted the fairness of the sales
6 process, the likelihood of a superior offer, and the unreasonableness of the deal protection
7 devices.

8 112. Defendants' failure to provide Avista's public stockholders with the material
9 information outlined above constitutes a violation of their fiduciary duty of candor and full-
10 disclosure. The Individual Defendants were aware of their duty to disclose this information, and
11 acted with at least negligence in failing to include it in the Proxy. Absent disclosure of this
12 material information prior to the November 21, 2017 vote on the Proposed Acquisition, Avista's
13 public stockholders will be unable to make an informed decision about whether to vote in favor
14 of the Proposed Acquisition and are thus threatened with irreparable harm.

15 113. In short, the Proposed Acquisition is wrongful, unfair, and harmful to Avista's
16 public stockholders, and represents an effort by the Individual Defendants to aggrandize their
17 own financial position and interests at the expense of and to the detriment of the Class.
18 Specifically, defendants are attempting to deny Plaintiffs and the Class their stockholder rights
19 through the sale of Avista via an unfair process. Accordingly, the Proposed Acquisition will
20 benefit the Individual Defendants at the expense of Avista stockholders.

21 114. In order to meet their fiduciary duties, the Individual Defendants are obligated to
22 explore transactions that will maximize stockholder value, and not structure a preferential deal
23 for themselves. Due to the Individual Defendants' eagerness to enter into a transaction with
24 Hydro One, they failed to implement a process to obtain the maximum price for Avista
25 stockholders.

1 115. Accordingly, Plaintiffs seek injunctive and other equitable relief to prevent the
2 irreparable injury that Avista stockholders will continue to suffer absent judicial intervention and
3 damages.

4 **FIRST CAUSE OF ACTION**

5 **Claim for Breach of Fiduciary Duties Against the Individual Defendants**

6 116. Plaintiffs incorporate by reference and realleges each and every allegation
7 contained above, as though fully set forth herein.

8 117. The Individual Defendants have violated the fiduciary duties of care, loyalty,
9 good faith, and independence owed to the public stockholders of Avista and have acted to put
10 their personal interests ahead of the interests of Avista's stockholders.

11 118. By the acts, transactions, and course of conduct alleged herein, the Individual
12 Defendants, individually and acting as a part of a common plan, are attempting to unfairly
13 deprive Plaintiffs and other members of the Class of the true value inherent in and arising from
14 Avista.

15 119. The Individual Defendants have violated their fiduciary duties by entering Avista
16 into the Proposed Acquisition without regard to the effect of the proposed transaction on Avista
17 stockholders.

18 120. As demonstrated by the allegations above, the Individual Defendants failed to
19 exercise the care required, and breached their duties of loyalty and care owed to the stockholders
20 of Avista by entering into the Proposed Acquisition through the unfair process exemplified by
21 the Merger Agreement.

22 121. Because Individual Defendants dominate and control the business and corporate
23 affairs of Avista, and have access to private, corporate information concerning Avista's assets,
24 business, and future prospects, there exists an imbalance and disparity of knowledge and
25 economic power between them and the public stockholders of Avista which makes it inherently
26 unfair for them to pursue and recommend any proposed acquisition wherein they will reap
27 disproportionate benefits to the exclusion of maximizing stockholder value.

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

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

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

14 125. Plaintiffs and the members of the Class have no adequate remedy at law. Only
15 through the exercise of this Court's equitable powers can Plaintiffs and the Class be fully
16 protected from the immediate and irreparable injury which defendants' actions threaten to inflict.

17 **SECOND CAUSE OF ACTION**

18 **Claim for Aiding and Abetting Breaches of Fiduciary Duty Against**
19 **Defendant Hydro One, Olympus, Merger Sub, and Merrill Lynch**

20 126. Plaintiffs incorporate by reference and realleges each and every allegation
21 contained above, as though fully set forth herein.

22 127. Defendants Hydro One, Olympus, Merger Sub, and Merrill Lynch aided and
23 abetted the Individual Defendants in breaching their fiduciary duties owed to the public
24 stockholders of the Company, including Plaintiffs and the members of the Class.

25 128. The Individual Defendants owed to Plaintiffs and the members of the Class
26 certain fiduciary duties as fully set out herein.

1 129. By committing the acts alleged herein, the Individual Defendants breached their
2 fiduciary duties owed to Plaintiffs and the members of the Class.

3 130. Defendants Hydro One, Olympus, Merger Sub, and Merrill Lynch colluded in or
4 aided and abetted the Individual Defendants' breaches of fiduciary duties, and were active and
5 knowing participants in the Individual Defendants' breaches of fiduciary duties owed to Plaintiffs
6 and the members of the Class. Defendant Merrill Lynch worked with the Company's
7 management when the Company's management pursued their favored bidders without the
8 authority and involvement of the Board. Defendants Hydro One, Olympus, and Merger Sub
9 exploited the Company's management's selfish interests, and offered the Company's management
10 benefits such as continued employment in order to secure deal protection devices and purchase
11 the Company at an unfair price.

12 131. Defendants Hydro One, Olympus, Merger Sub, and Merrill Lynch participated in
13 the breach of the fiduciary duties by the Individual Defendants for the purpose of advancing their
14 own interests. Defendants Hydro One, Olympus, Merger Sub, and Merrill Lynch obtained and
15 will obtain both direct and indirect benefits from colluding in or aiding and abetting the
16 Individual Defendants' breaches. Defendants Hydro One, Olympus, Merger Sub, and Merrill
17 Lynch will benefit, inter alia, from the acquisition of the Company at an inadequate and unfair
18 price if the Proposed Acquisition is consummated.

19 132. Plaintiffs and the members of the Class shall be irreparably injured as a direct and
20 proximate result of the aforementioned acts.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiffs demand injunctive relief and prays for judgment in their favor,
23 and in favor of the Class, and against defendants as follows:

24 A. Declaring that this action is properly maintainable as a class action;

25 B. Declaring and decreeing that the Merger Agreement was negotiated and/or
26 executed in breach of the fiduciary duties of the Individual Defendants and is therefore unlawful
27 and unenforceable;

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Attorneys for Plaintiffs

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1 C. Rescinding, to the extent already implemented, the Merger Agreement;

2 D. Enjoining defendants, their agents, counsel, employees, and all persons acting in
3 concert with them from consummating the Proposed Acquisition, unless and until the Company
4 adopts and implements a procedure reasonably designed to provide the best possible value for
5 stockholders;

6 E. Directing the Individual Defendants to exercise their fiduciary duties to
7 commence a sale process that is reasonably designed to secure the best possible consideration for
8 Avista and obtain a transaction which is in the best interests of Avista's stockholders;

9 F. Awarding damages to Plaintiffs and the Class;

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

12 H. Granting such other and further relief as deemed just and proper.

13 DATED: October 25, 2017

PAUKERT & TROPPEMANN PLLC
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CERTIFICATE OF SERVICE

I hereby certify that on this date, I caused to be served a true and correct copy of the preceding document to the following attorney(s) of record by method specified below:

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DATED October 26, 2017.

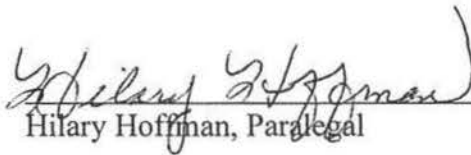

Hilary Hoffman, Paralegal

EXHIBIT D

The Honorable Timothy B. Fennessy

CN: 201702036166

SN: 28

PC: 6

FILED

JAN -5 2018

Timothy W. Fitzgerald
SPOKANE COUNTY CLERK

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR SPOKANE COUNTY

LAUREN FINK and CHADWICK L.
WESTON, on Behalf of Themselves and All
Others Similarly Situated,

Plaintiffs,

v.

SCOTT L. MORRIS, KRISTIANNE BLAKE,
R. JOHN TAYLOR, ERIK J. ANDERSON,
HEIDI B. STANLEY, MARC F. RACICOT,
REBECCA A. KLEIN, DONALD C. BURKE,
JANET D. WIDMANN, SCOTT H. MAW,
HYDRO ONE LIMITED, OLYMPUS
HOLDING CORP., OLYMPUS CORP. and
BANK OF AMERICA MERRILL LYNCH,

Defendants.

No. 2017-02-03616-6

STIPULATION AND
~~PROPOSED~~ ORDER
REGARDING CASE SCHEDULE

The parties stipulate as follows:

1. This lawsuit concerns a merger transaction between Avista Corporation ("Avista") and Hydro One Limited ("Hydro One") and related entities (the "Transaction"). The Transaction is not expected to close until the latter half of 2018.

2. Plaintiffs have indicated their intent to amend the Second Amended Complaint after the Transaction closes.

3. For clarity and efficiency, the Parties agree that all proceedings in this case should be stayed until after Plaintiffs' claims are framed in their operative complaint.

STIPULATION & [PROPOSED] ORDER
REGARDING CASE SCHEDULE (2017-02-03616-6) - 1
4813-3708-7322v.1 0088333-000180

Davis Wright Tremaine LLP
LAW OFFICES
1201 Third Avenue, Suite 2200
Seattle, WA 98101-3045
206.622.3150 main • 206.757.7700 fax

1 4. Plaintiffs shall file an amended complaint no later than 30 days after Avista or
2 Hydro One publicly announces that the Transaction has closed. In the event Plaintiffs do not
3 file an amended complaint no later than 30 days after Avista or Hydro One publicly announces
4 that the Transaction has closed, this action shall be dismissed with prejudice.

5 5. In the event Plaintiffs file an amended complaint no later than 30 days after
6 Avista or Hydro One publicly announces that the Transaction has closed, the Parties agree to
7 the following schedule:

- 8 a) Defendants shall answer or otherwise respond within 60 days;
9 b) If Defendants file an answer, the Parties shall meet and confer
10 concerning a case schedule;
11 c) If Defendants file a motion to dismiss, Plaintiffs shall file their
12 opposition, if any, within 60 days, with Defendants to file their reply
13 papers, if any, within 30 days of any opposition, and with the Parties to
14 meet and confer concerning a case schedule, following the Court's ruling
15 on Defendants' motion to dismiss.
16 d) Plaintiffs reserve their rights to seek discovery regardless of whether
17 Defendants file a motion to dismiss; Defendants reserve their right to
18 oppose any discovery until after this Court's ruling on the motion to
19 dismiss.

20 STIPULATED AND AGREED TO THIS 5th day of January, 2018.

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 By: s/Brendan T. Mangan

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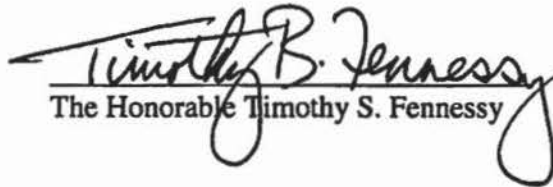
ORDER

1 All proceedings in this matter are stayed pending Plaintiffs filing of an amended
2 complaint no later than 30 days after Avista or Hydro One publicly announces that the
3 Transaction has closed, absent which this action is dismissed without further action by this
4 Court.

5 If Plaintiffs timely file an amended complaint as set forth in the preceding paragraph,
6 Defendants shall answer or otherwise respond to that complaint no later than 60 days after it is
7 filed, with Plaintiffs to file their opposition, if any, within 60 days, and Defendants to file their
8 reply papers, if any, within 30 days of any opposition.

9 The Parties shall meet and confer concerning a case schedule following Defendants'
10 answer or this Court's ruling on any motion to dismiss.

11
12 DATED this 5th day of January, 2018.

13
14 
15 The Honorable Timothy S. Fennessy
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CERTIFICATE OF SERVICE

I hereby certify that I caused the document to which this certificate is attached to be delivered to the following as indicated:

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8 ***Attorneys for Bank of America Merrill Lynch***

9 I declare under penalty of perjury under the laws of the State of Washington that the
10 foregoing is true and accurate.

11 Executed at Seattle, Washington this 5th day of January, 2018.

12
13 s/Brendan T. Mangan

14 Brendan T. Mangan
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