

# **EXHIBIT 1**

AVI DORFMAN AND RENTJOLT, INC.

Index No. 652269/2014

Plaintiffs,

-against-

ROBERT REFFKIN AND URBAN  
COMPASS

Defendants.

**EXPERT REPORT OF P. GARTH GARTRELL**

**June 26, 2017**

## I. SUMMARY

1. I was hired to opine upon the amount of damages that Plaintiff Avi Dorfman (“Dorfman”) is entitled to receive from Urban Compass (“Compass” or the “Company”) in light of his contributions in helping to found the Company.

2. For the reasons explained below, it is my expert opinion that Dorfman would have been entitled to between 10.67% and 12.36% of Compass equity at the time of the Company’s Seed financing. In reaching this conclusion, I have taken into consideration his role and contributions to the Company, the amount of stock that likely would have been awarded had he not been excluded, a minimum percentage that likely should have vested given the fact that he was excluded, and market survey data of comparable technology companies. A final determination of the amount of equity that Dorfman should receive must also account for the actual dilution of Compass’s stock *as of the time of the award*. As of the date of this report, the dilution of Compass’s equity would reduce the amount that Dorfman would have received to a range of 5.96% to 6.91%. Further dilution could lower the top and bottom end of that range. These findings are summarized in Table 1.<sup>1</sup>

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<sup>1</sup> I calculated a range for the amount of Compass equity Dorfman is entitled to by, first, setting a maximum recovery based on an Equal Allocation of Compass equity to the 3 key founders—Dorfman, Reffkin, and Allon (12.36% after vesting). Then, I set a floor by making a Hierarchical Allocation of shares amongst the three key founders based upon their seniority (10.67% after vesting). This range is set forth in the first row of Table 1. The second row displays this range after those shares are diluted by 44.0939%, consistent with Compass’s actual dilution following the Series D round of financing.

**Table 1**

	<b>Hierarchical Allocation After Vesting (69.17%)</b>	<b>Equal Allocation After Vesting (69.17%)</b>
Shares awarded to Dorfman	10.67%	12.36%
Shares awarded to Dorfman Diluted Post-Series D (44%)	5.96%	6.91%

3. In reaching these conclusions, I *first* address whether or not Dorfman is a founder, and conclude in the affirmative. *Second*, I calculate how much Compass equity Dorfman would have received at the Company's inception based upon an Equal Allocation of equity among Compass's three key founders—Robert Reffkin, Ori Allon, and Dorfman—and a Hierarchical Allocation of equity among the three founders based upon seniority (with Allon and Reffkin having equal seniority, and Dorfman being less senior). *Third*, I make a determination as to how much of this equity should vest to Dorfman given that he was forced out of the company, and I conclude that at least 69.17% of his shares should vest. (I assume that, had he remained with the company, 100% would have vested). *Fourth*, I calculate how much equity Dorfman would have been entitled to as of the Company's last round of funding on a fully-diluted basis. *Finally*, I compare these allocations to public survey data to show that the public data yields similar results.

## II. QUALIFICATIONS

4. I have been retained as a compensation expert by the attorneys for Plaintiffs Avi Dorfman and RentJolt, Inc. I am aware that this suit involves, among other things, claims by Dorfman that he was not compensated for contributions and services he provided to Compass under theories of unjust enrichment and *quantum meruit*.

5. I was retained to determine the amount of compensation that would have been payable to Dorfman but for his exclusion from the Company.

6. My determination is based on my review of deposition transcripts and exhibits, survey information prepared by PricewaterhouseCoopers/Advanced-HR Inc., the parties' pleadings, documents produced in this litigation, and my own experience.

7. I have relied on my 41 years of experience as a CPA, compensation lawyer, and compensation consultant, including my experience representing executives and employers with respect to executive compensation in general.

8. My conclusions are based on information reviewed and considered as of the date of this report and are rendered to what I believe is a reasonable degree of certainty. I understand I may modify or supplement this expert report in connection with my review of any additional documents or discovery.

9. I have given deposition testimony several times in the last ten years. I have also testified at trial three times.<sup>2</sup> The list of cases that I have worked on is included in my resume. *See* Exhibit B. I have also written several books on executive compensation.<sup>3</sup>

### III. COMPENSATION

10. I am being compensated at \$600 per hour, plus reimbursement for my reasonable

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<sup>2</sup> **Deposition Testimony:** In the Matter of an Arbitration Between B.V. Jagadeesh, Rick Bolander, Netscaler, Inc., NCAR, LLC and Gabriel Venture Partners L.P. against Michel K. Susai, (2008); Tabor v. Washington Metro. Area Transit Auth., 1:08-cv-01991 (D.D.C.); Levinson v. Levinson, RID209413 (Cal. Super. Ct.); Banks v. General Atomics, 37-2009-00084081-CU-BC-CTL (Cal. Super.); Ditomaso v. Ditomaso, D355825 (Cal. Super.). **Deposition and Trial Testimony:** Rael & Letson v. Clark, CIV523065 (Cal. Super.); Calligeros v. Siegel, BC512982 (Cal. Super.).

<sup>3</sup> P. Garth Gartrell & Steven B. Lapidus, Executive Compensation for Emerging Growth Companies § 2:82 (3d Ed. 2011) (cited by the Delaware Court of Chancery in Freedman v. Adams, C.A. No. 4199-VCN, 2012 WL 1345638, n. 161 (Del. Ch. Mar. 30, 2012)); P. Garth Gartrell, The 409A Administration Handbook (West 2013).

expenses. My compensation is in no way contingent on the outcome of this case and is not conditioned on any conclusions I render in this case.

#### IV. DETAILED OPINION

##### A. DORFMAN QUALIFIES AS A FOUNDER OF URBAN COMPASS.

11. As an initial matter, I address whether or not Dorfman is a “founder” of Compass. This determination has repercussions for his equity stake in the Company as well as the manner in which such a stake would vest. “Founder” is a term used frequently in the start-up world and is a title bestowed upon individuals who are: (1) present at the company’s creation, and (2) play a key role in forming the company.<sup>4</sup>

12. Based upon my review, I conclude that Dorfman was “present at creation” of Compass. Though Dorfman’s contributions pre-dated the incorporation of the Company, Dorfman was present between July 2012 and September 2012, when the founding team for the burgeoning start-up made crucial executive hires, developed the Company’s business strategy as a tech-optimized real-estate brokerage, pitched early investors, such as Goldman Sachs, and named the Company.

13. In addition, during these early stages, Dorfman’s contributions played a key role in the formation of Compass. Early on, Dorfman provided substantive knowledge of the market, as acknowledged by founder Reffkin.<sup>5</sup> Dorfman also provided a critical refocus to the strategy envisioned by the other founders.<sup>6</sup> Reffkin had little relative experience in this market and little more than a suspicion that technology could “disrupt” the industry as it had others.<sup>7</sup> By contrast,

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<sup>4</sup> James Linfield, Who is a “Founder”, <https://www.cooleygo.com/who-is-a-founder/>.

<sup>5</sup> DORFMAN\_0002107; Reffkin Dep. Tr. 166:12-167:7; GS-REFFKIN\_003698.

<sup>6</sup> Reffkin Dep. Tr. 184:4-185:10; Dorfman Dep. Tr. 194:2-7.

<sup>7</sup> Reffkin Dep. Tr. 24:12-19.

Dorfman had invested significant time in studying the ways in which technology could advance the rental real estate market.<sup>8</sup> Reffkin, himself, cited Dorfman's "passion" for the real estate space as one of the reasons why he wanted to partner with Dorfman.<sup>9</sup> It is axiomatic that successful start-ups are built around the passions of its founders. Dorfman's previous efforts (both successes and failures), his passion for real estate, and his knowledge of this area are the types of contributions that can give a company a head start at its inception and drive success.

14. Relatedly, Dorfman also educated Reffkin on Redfin, a major technology-based real estate company that, rather than replace brokers, served as a "[t]raditional brokerage that is tech-optimized at each step in the process, with savings from reduced cost structure passed on to transacting parties".<sup>10</sup> Dorfman's Redfin analysis was used almost verbatim in Reffkin's financing discussions with Goldman Sachs,<sup>11</sup> and the technology-enabled brokerage model, touted by Dorfman, became part of Compass's financing deck to investors.<sup>12</sup> Indeed, Reffkin acknowledged the importance of Dorfman's briefings on Redfin to the overall direction of the business.<sup>13</sup>

15. In addition, Dorfman, as one of the early founders, helped recruit Compass's key personnel—high level hires such as Ori Allon, who now serves as a Founder & Executive

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<sup>8</sup> DORFMAN\_0002107.

<sup>9</sup> Reffkin Dep. Tr. 166:12-167:7.

<sup>10</sup> GS-REFFKIN\_003167. Thus, in a July 30, 2012 email, Dorfman urged Reffkin to turn the focus of the start-up from a technology disruptor, as Reffkin envisioned, to a more traditional brokerage with enhanced technology capability: "The majority of those who enter this space from a tech perspective do so with the view that brokers do not add any value. . . . This is not the case." And, "[t]his is not a business that can be won by tech alone." Amended Complaint, Exhibit 9.

<sup>11</sup> Amended Complaint, Exhibit 9.

<sup>12</sup> Dorfman Dep. Tr. 193:19-194:7; Exhibit 14.

<sup>13</sup> Reffkin Dep. Tr. 184:4-185:10.

Chairman, and Paul Groudas, who was hired as a Founding Engineer.<sup>14</sup> Dorfman prepared strategy documents, including a 120 Day business roadmap, and an analysis of lessons learned from competitor companies such as Redfin.<sup>15</sup> Dorfman took steps to help design the website by providing a website wireframe as well as the business plan from Dorfman's prior company, iRent.<sup>16</sup> Dorfman crafted a compensation structure for brokers.<sup>17</sup> And, Dorfman participated in efforts to name the Company.

16. Finally, although not definitive, Dorfman's status as a founder is bolstered by documentary evidence that Dorfman was viewed as such by Reffkin. For example, in an August 13, 2012 email from Reffkin attaching a proposed compensation package for Dorfman, Reffkin writes "2.5% (expectation is founders equity but need to confirm implications)."<sup>18</sup> Reffkin goes on to note that Dorfman would be a "[f]ounding team member but not co-founder" because there would be no formal titles except for CEO and lead technology hire.<sup>19</sup>

17. In my opinion, due to Dorfman's early contributions to the Company, Dorfman played the type of role in Compass's formation that qualifies him as a "founder" as that term is used in the industry.

**B. ALLOCATION OF URBAN COMPASS SHARES TO DORFMAN—EQUAL ALLOCATION AND HIERARCHICAL ALLOCATION.**

18. Having determined that Dorfman is a Compass "founder", I next explore what amount of equity he should have received at the Company's inception. It is worth noting that, when joining a young startup firm, it is not uncommon for employees to be paid substantially in equity.

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<sup>14</sup> See GS-REFFKIN\_005442; DORFMAN\_0001920; GS-REFFKIN\_003241.

<sup>15</sup> DORFMAN\_0001920; GS-REFFKIN\_003242.

<sup>16</sup> See GS-REFFKIN\_004710; GS-REFFKIN\_003186.

<sup>17</sup> GS-REFFKIN\_003241; GS-REFFKIN\_003242; Dorfman Dep. Tr. 231:14-232:1.

<sup>18</sup> GS-REFFKIN\_004705-6.

<sup>19</sup> Id.



Startups are known for being relatively cash-strapped, and offer equity out of a need to preserve cash and recycle whatever funds they generate back into their business operations. In return for giving a below-market salary, start-up firms frequently give employees a stake in the company in the form of equity compensation.

19. To calculate what equity Dorfman was entitled to receive as part of the initial “Seed” round of financing, prior to the Series A round, I calculated equity distributions to Dorfman using two methods: (1) an Equal Allocation of shares amongst the key founders—Dorfman, Ori Allon and Robert Reffkin, and (2) a Hierarchical Allocation based on seniority. The results under both approaches were similar.

20. Prior to the Series A round, Compass’s shares were held as follows:<sup>20</sup>

**Table 2**

	Reffkin	Allon	Dorfman	Weiss	Petcherski	Groudas	DiGirolamo	Non-statutory Options	Total Founders	Advisors	Warrants	Employee	Series A	Total
Pre-Dorfman Damages														
Pre-Series A	3,290,000	3,290,000		360,000	170,000	170,000	560,000	30,000	7,870,000	30,000	170,000	1,930,000	2,981,195	12,981,195
Percent	25.34%	25.34%		2.77%	1.31%	1.31%	4.31%	0.23%	60.63%	0.23%	1.31%	14.87%	22.97%	100.00%

21. First, I made an Equal Allocation of shares among Dorfman, Allon, and Reffkin in recognition that these founders contributed to a substantially similar degree to the Company in its early stages—although their contributions may have occurred at different times in the founding process. Rather than parse the exact extent of each individual’s contributions, based on my experience, I assumed that they would be compensated as equals.

22. In providing a fair allocation of shares to Dorfman, I considered that Seed/ Series A

<sup>20</sup> The Seed financing was raised by Reffkin, Allon and Dorfman as they were founding the company. While the Seed investors held convertible notes that did not convert into stock until the Series A round financing, Table 2 shows the number of shares to which they were entitled and which ultimately converted.

investors (22.97%) would have likely refused to permit further dilution of their stake to accommodate more founders. Further, the employee pool (here, 14.87%) tends to be negotiated and required by Seed and/or Series A round investors—thus, in accordance with general practice, they are likely not subject to further dilution. Accordingly, in calculating Dorfman’s equity in such a way that he, Reffkin, and Allon would have had an equal stake, I concluded that it was more prudent to just dilute the shares of Reffkin and Allon, as well as the shares held by the others identified as “founders.”

23. Based on an Equal Allocation, Dorfman should have received 17.87% of the Compass stock at its inception—an amount which equalizes the awards among Reffkin, Allon and Dorfman but which keeps total founder holdings at 60.63% (see Table 2). This is determined by reallocating all 7,870,000 “founder shares” so that (1) Dorfman has the same number of shares as Allon and Reffkin, and (2) the shares of each founder are reduced by the same percentage to accommodate Dorfman on the Cap Table. Mathematically, this results in each prior founder receiving a 29.48% reduction of their prior holdings, as follows:

**Table 3**

	Reffkin	Allon	Dorfman	Weiss	Petcherski	Groudas	DiGirolamo	Non-statutory Options	Total Founders	Advisors	Warrants	Employee	Series A	Total
Pre-Dorfman Damages														
Pre-Series A	3,290,000	3,290,000		360,000	170,000	170,000	560,000	30,000	7,870,000	30,000	170,000	1,930,000	2,981,195	12,981,195
Percent	25.34%	25.34%		2.77%	1.31%	1.31%	4.31%	0.23%	60.63%	0.23%	1.31%	14.87%	22.97%	100.00%
Post-Dorfman Damages														
Pre-Series A	2,320,100	2,320,100	2,320,100	253,871	119,883	119,883	394,907	21,156	7,870,000	30,000	170,000	1,930,000	2,981,195	12,981,195
Percent	17.87%	17.87%	17.87%	1.96%	0.92%	0.92%	3.04%	0.16%	60.63%	0.23%	1.31%	14.87%	22.97%	100.00%

24. I recognize one could argue that Reffkin and Allon, as CEO and Executive Chairman, respectively, should receive more than Dorfman. Thus, a Hierarchical Allocation might be appropriately conservative, and could be used to establish a floor for Dorfman’s award. Under a Hierarchical Allocation for founders, it would be reasonable for a founder/CEO to receive about 45% more stock than the next level of executives in a company. I presume for purposes of this

floor, only, that Dorfman would hold a C-level title below CEO. Moreover, since Compass compensated Reffkin and Allon with an equal amount of equity, I allocated an equal number of shares to them.

25. Thus, it is my opinion that of the total number of shares allocated to the key founders at Compass's inception (see Table 3), the distribution among them should have been: Reffkin, 35.5% (2,452,918 shares), Allon, 35.5% (2,452,918 shares), and Dorfman, 28.99% (2,002,382 shares).<sup>21</sup> The 2,002,382 shares allocated to Dorfman under the Hierarchical method is approximately 15.43% of Compass's total equity as of the date of Compass's Seed round of financing (which as explained above was raised by Reffkin, Allon, and Dorfman and formally funded close to the time of incorporation).

26. Thus, having established a floor for Dorfman's award, I conclude that, at inception, Dorfman should have received between **15.43% and 17.87%** of Compass Equity.

**C. THE PERCENTAGE OF DORFMAN'S SHARES THAT SHOULD HAVE VESTED.**

27. I turn, next, to the question of how many of Dorfman's shares should have vested. Vesting in this sense refers to shares owned and earned in return for service. While awards often vest for the achievement of pre-established performance goals, in most cases, and particularly in the case of start-up founder shares, vesting occurs over time based on actual employment service. Typical schedules call for four-year vesting, often on a monthly basis. If an employee quits or is terminated for cause before all shares have vested, the unvested portion typically is forfeited. In the case of stock options, this typically means unvested options can no longer be exercised. For restricted shares, the company usually exercises a right to buy unvested shares back at a nominal

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<sup>21</sup> To reach this result, and include Dorfman in the cap table, every founder takes a 25.44% reduction to their holdings.

value.

28. In the case of Compass, Reffkin and Allon were awarded restricted shares, 7.5% of which vested immediately, while the remainder vested monthly over a three-year period.<sup>22</sup> There is no way to know what vesting would have accrued to Dorfman had he been treated as a founder and allowed to participate in discussions concerning the appropriate allocation and form of the founders' stock awards. He likely would have vested 100%, as Reffkin has, or even been topped up with further equity, as often happens in companies.

29. It is my opinion that an award to Dorfman should at least have the same 7.5% full vesting Reffkin and Allon had. It is worth noting that the termination of a founder is frequently addressed in stock award agreements up front. Typically, in such agreements, the vesting acceleration is twelve to twenty-four months, and in rare cases the acceleration can be 100%.

30. Another common way to address the termination of a founder is through a buy-out—a very common after-the-fact occurrence. In fact, after working seventeen months, Michael Weiss—who played a lesser role in the creation of Compass relative to Dorfman and was later terminated—was offered a buy-out with acceleration of one year of vesting.<sup>23</sup> Dorfman, therefore, should have warranted significantly more—to the top of the twelve to twenty-four-month range.

31. Thus, I conclude that, of the shares allocated to Dorfman, he should be entitled to at least twenty-four months of accelerated vesting in addition to the 7.5% which would have vested at

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<sup>22</sup> Reffkin and Allon also gave themselves certain protections. For example, they controlled the board of directors and, therefore in practice, could not be terminated from the company. See Allon Dep. Tr. 63:14-64:25. In addition, they also had a double-trigger change of control provision which fully vested all unvested shares in the event that the founder was terminated following a change in control. See UC-00037105 (Allon's "Founder Restricted Stock Agreement"); UC-00037090 (Reffkin's "Founder Restricted Stock Agreement").

<sup>23</sup> UC-00015057 (M. Weiss Separation Agreement).

the outset, or approximately 69.17% of his total market based award.<sup>24</sup> Thus, Dorfman should have received between 10.67% and 12.36% of Compass's equity (subject to adjustment for dilution) (see Table 4).

**Table 4**

	<b>Hierarchical Allocation Among Founders</b>	<b>Equal Allocation Among Founders</b>	<b>Hierarchical Allocation After Vesting (69.17%)</b>	<b>Equal Allocation After Vesting (69.17%)</b>
Shares awarded to Dorfman	15.43%	17.87%	10.67%	12.36%

**D. URBAN COMPASS'S DILUTION**

32. Finally, in order to determine the amount of equity owing to Dorfman today, one must account for the extent to which Compass's stock has been diluted up to the time of an award.

33. In a typical case, ownership percentages are reduced (i.e., "diluted") following each round of investment (Seed Round, Series A, Series B, etc.). This is because, when bringing in new investors, companies frequently issue additional shares to those investors, thereby reducing the percentage of the company owned by prior shareholders (diluting their equity).

34. To determine the appropriate amount of dilution for Dorfman's stake, we need to assess the number of shares and corresponding amount of dilution since the Seed financing. Since the Seed investment, an additional 10,238,447 shares have been issued for a total of 23,219,642 Compass shares outstanding, and resulting in a 44%<sup>25</sup> dilution of Compass's shares. Thus, as

<sup>24</sup> Had Dorfman not been forced-out, I assume that he would have received 7.5% of his shares up front and the remaining 92.5% of his shares would have vested over three years. In the event of his termination, assuming twenty-four months (2 years) of accelerated vesting, he would have received 2/3 of his remaining shares or 61.66% of his shares. 61.66% (accelerated vesting) + 7.5% (up front) = 69.17% of Dorfman's shares would vest.

<sup>25</sup> More precisely, the amount of dilution is  $1 - 0.559061$ , or 44.0939%.

displayed in Table 5 below, an individual who owned 1% of the company on the date that Compass was incorporated (taking into account the conversion of the pre-Series A “Seed” notes) would own .56%<sup>26</sup> of the Company following the Series D round of investment.<sup>27</sup> The following table sets forth the amount of dilution of Compass’s stock following the latest, Series D, round of funding.

**Table 5**

Compass Dilution (including pre-Series A “Seed” noteholders)					
Inception	Series A	Series B	Series C	Series D	Total Dilution
12,981,195	15,481,193	19,150,291	20,509,326	23,219,642	
129,812	129,812	129,812	129,812	129,812	
1.00%	0.84%	0.68%	0.63%	0.56%	<b>44%</b>

35. The following table shows the percentage of Compass shares owing to Dorfman at the Company’s inception, as well as the amount to which he would be entitled following the Series D round of investment, taking into account the dilution of Compass’s shares and vesting.

**Table 6**

	Hierarchical Allocation Among Founders	Equal Allocation Among Founders	Hierarchical Allocation After Vesting (69.17%)	Equal Allocation After Vesting (69.17%)
Shares awarded to Dorfman	15.43%	17.87%	10.67%	12.36%
Shares awarded to Dorfman Diluted Post-Series D (44%)	8.62%	9.99%	5.96%	6.91%

<sup>26</sup> More precisely, 55.9061%.

<sup>27</sup> Some of the Compass dilution occurred in the Seed financing in the form of convertible notes which converted into preferred stock during the Series A round and were allocable to equity holders. I account for these Seed notes in my analysis by including them in the number of Compass shares at its inception.

In sum, it is my opinion that because Dorfman was wrongfully forced out of the Company, between **10.67% and 12.36%** of his Compass equity should have vested—or, between **5.96% and 6.91%** on account of the dilution of Compass’s equity following the Series D round.

**E. SURVEY DATA SUPPORTS THIS ALLOCATION.**

36. The reasonableness of the conclusions above is borne out by relevant external survey data. What follows is a “bottom-up” analysis of equity owing to Dorfman as a point of comparison. Using public survey data from 2012 to 2013 related to technology start-ups, I allocate to Dorfman an equity stake in Compass on a fully-diluted basis, based on (1) the significance and timing of Dorfman’s role in the Company, and (2) his potential title. These results, serve as a point of comparison with the Hierarchical and Equal Allocations set forth above.

**(1) Fully Diluted Allocation by Significance of Role**

37. In order to allocate compensation according to the significance of Dorfman’s role in Compass, I considered his contributions in light of the compensation offered to executives who performed similar tasks, as set forth in the “2013 Venture Capital Executive Compensation Survey Technology Sector Trend Report” (“VCECS”).<sup>28</sup> The 2013 survey compiles data from 2012 to 2013 on 797 venture-funded technology companies.<sup>29</sup>

38. As is apparent from the discussion above, Dorfman played an early and important role in

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<sup>28</sup>Advanced-HR, Inc., “2013 Venture Capital Executive Compensation Survey: Technology Sector Trend Report” [https://www.advanced-hr.com/2013\\_VCECS\\_Technology\\_Sector\\_Trend\\_Report.pdf](https://www.advanced-hr.com/2013_VCECS_Technology_Sector_Trend_Report.pdf) (2013) (prepared by Advanced-HR, Inc. in conjunction with PricewaterhouseCoopers.).

<sup>29</sup> *Id.* The 2012 timeframe is most relevant for our purposes since all of Dorfman’s services in the creation of Compass were completed prior to September 5, 2012—the cutoff date for the VCECS study.

the creation of Compass and worked on tasks that typically might be handled by a Chief Executive Officer (CEO), a Chief Revenue Officer (CRO), or a Chief Technology Officer (CTO). For example, as previously noted, Dorfman helped name the Company, helped determine the business and revenue strategy of forming a tech-optimized brokerage service, and helped to create the website.

39. As is typical in start-ups, Dorfman's responsibilities exceeded the parameters of most of the formal job titles in the study. During the early stages of a start-up, it is not uncommon for an individual's responsibilities to extend beyond traditional roles or job descriptions. This appears to have been the case here, where Compass specifically eschewed titles.

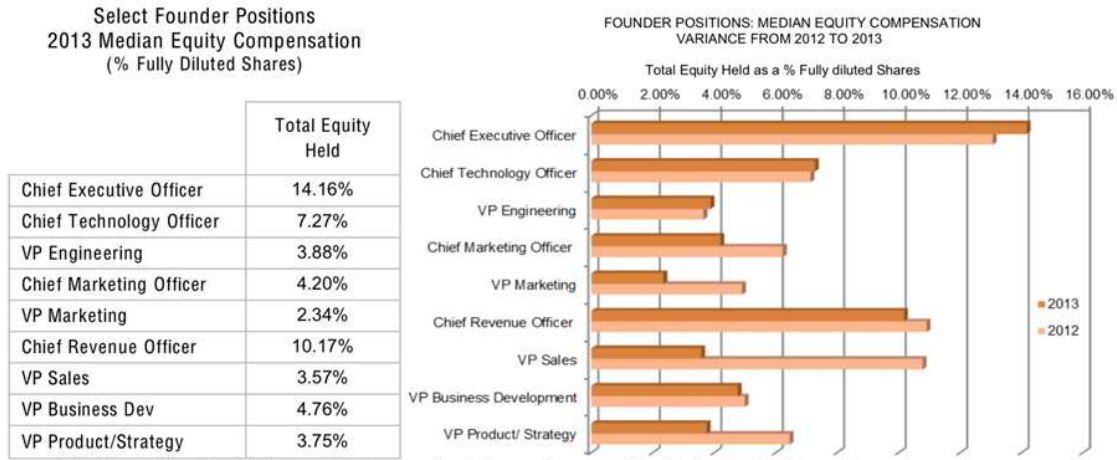
40. The following chart from the VCECS 2013 study shows the 2012 and 2013 equity held by most of the prominent founder level positions.<sup>30</sup>

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<sup>30</sup> Id. at 7. While it is difficult to determine the pre-dilution shares of the VCECS study (note: the study contemplates companies beyond Series A stage but with varying levels of dilution) it is notable that CEO (14.16%) and VP Engineering (3.88%) compensation are within reasonable ranges of Reffkin (13.47%) and Principal Engineer Ugo Di Girolamo (2.32%), respectively. Thus it is my opinion that this study provides an appropriate market "comparable".



**Table 7**



The aggregate founding CEO median (50<sup>th</sup> percentile) for total equity compensation in 2013 showed an increase of +8.4% (about +1.10% of fully diluted shares) compared to 2012 data. A detailed analysis of 2013 equity compensation broken out by select stages of company development is represented in the chart below and the adjacent graph shows comparative data between 2013 and 2012.

41. To allocate compensation among Compass’s three key founders—Dorfman, Reffkin, and Allon, whose actual roles frequently overlapped—I average the compensation of the three most highly-paid positions that could apply to them: CEO, CTO, and CRO.<sup>31</sup>

42. The average equity percentage held by the CEO, CTO, and CRO positions is approximately 10.2% on a fully-diluted basis (without consideration of vesting).

**(2) Fully Diluted Allocation by Title**

43. The more traditional way to determine market compensation, however, is to fit an employee’s duties and responsibilities into one of the job classifications considered by the external surveys. Based upon the nature of Dorfman’s contributions, it is my opinion that, *of the positions identified in the VCECS Study*, the title of CRO would be the most appropriate to describe his actual role.

<sup>31</sup> I ignore the VP Sales position due to, what appears to be, an anomalous 2012 result.

44. A Chief Revenue Officer is responsible for all revenue-generating processes at a company. To effectuate this goal, a CRO typically develops and manages the company's sales, marketing, and customer engagement strategies.

45. Dorfman's responsibilities and contributions were largely consistent with the role of Chief Revenue Officer. As described above, one of Dorfman's key contributions was to realign Compass's business and customer engagement strategies by re-routing the focus of the Company from a technology disruptor, as Reffkin had envisioned, to a more traditional brokerage firm with enhanced technological capabilities.

46. According to the Table 7 above, in 2012, a CRO who is a founder would receive approximately 10.7% equity, on a fully diluted basis (without consideration of vesting).

47. Another title that could fit Dorfman's role is that of Chief Product and Strategy Officer. This title would arguably be suitable in light of Dorfman's direct assistance to Reffkin (the CEO) in developing the Company's strategic initiatives and communicating them to potential investors, such as Goldman Sachs, and to potential executive hires. Indeed, "Product and Strategy" was the description offered up by Reffkin in at least one of his compensation negotiations with Dorfman.<sup>32</sup> Reffkin envisioned that Dorfman's responsibilities would include "Product Development: *product conception, translating business to technology, wire framing, product testing.*"<sup>33</sup> These responsibilities fit firmly within the purview of the Chief Product and Strategy Officer role.<sup>34</sup>

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<sup>32</sup> UC-00030493. Reffkin does not indicate the "level" should be Vice President as opposed to the more significant title of Chief Product and Strategy Officer. However, the level of Vice President would understate Dorfman's role.

<sup>33</sup> See UC-00030500.

<sup>34</sup> Unfortunately, while Advanced HR collects data for such a position, it is not reported in the 2013 VCECS study, which offers only a limited glimpse of the underlying Advanced HR data.

48. In my experience, the Chief Product and Strategy Officer receives equity of about 150% of the equity received by a VP Product/Strategy. The 2013 VCECS study for the equity of a VP Product/Strategy was approximately 6.2% in 2012.<sup>35</sup> Thus, if the VP receives 6.2%, it would be reasonable for the Chief to receive about 9.3% on a fully diluted basis and without adjustment for vesting.

49. However, where there is doubt as to the appropriateness of a title, a weighted allocation is often done by averaging compensation for two possible positions. Here, if I were to blend the two results—10.7% (CRO) and 9.3% (Chief Product and Strategy Officer), the result is **10%** which I submit as the fully diluted allocation of equity that Dorfman should have received based upon an Allocation by Title.

**(3) Allocation of Equity to Dorfman Using Survey Data.**

50. The “Allocation by Significance of Role” and the “Allocation by Title” yield similar results —10.2% and 10.0%, respectively. For the purposes of my analysis, I split the difference and calculate **10.1%** as my assessment of the reasonable amount of fully-diluted equity owing to Dorfman based on external survey data—6.99% taking into account vesting.<sup>36</sup> This allocation of

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Rather, the VCECS study, in Table 7, above, provides data for a similar role, but at a lower level—VP, Product/Strategy.

<sup>35</sup> I note that equity allocated for this role dropped to 3.75% in 2013. See Table 7, *supra*. But I also note it rose to 6.99% in 2014. *Id.* Thus, I suspect 2013 is anomalous for VP, Product/Strategy.

<sup>36</sup> The 6.99% is a conservative number intended to demonstrate the reasonableness of the 5.96% to 6.91% range determined above for allocation among the three founders. However, I do not believe the 6.99% is the appropriate number to substitute for damages if the 5.96% to 6.91% range should fail for some reason. In my years of working with the Advanced HR data that form the basis of the VCECS study, I am reasonably certain the VCECS numbers reflect an amount of dilution that is greater than the 44% experienced by Compass. If only the VCECS study is relied on for the determination of damages, it would be necessary to convert the VCECS numbers to a seed round level—which is comparable to the Compass formation numbers—and then apply

Compass stock is very close to the fully diluted range calculated using the Hierarchical and Equal Allocation methods, respectively. See Table 8 below.

**Table 8**

	<b>Hierarchical Allocation Among Founders</b>	<b>Equal Allocation Among Founders</b>	<b>Survey Data Allocation</b>	<b>Hierarchical Allocation After Vesting (69.17%)</b>	<b>Equal Allocation After Vesting (69.17%)</b>	<b>Survey Data Allocation After Vesting</b>
Shares awarded to Dorfman	15.43%	17.87%	-	10.67%	12.36%	-
Shares awarded to Dorfman Diluted	8.62%	9.99%	<b>10.1%</b>	5.96%	6.91%	<b>6.99%</b>

51. Because the survey analysis does not call into question the reasonableness of the Hierarchical or Equal Allocations set forth above, taking a conservative approach, I conclude that Dorfman should have received between 10.67% and 12.36% of Compass equity at its inception. A final award should take into account the amount of Compass dilution as of the date of the award. However, as of the date of this report, the dilution of Compass shares would reduce an award to Dorfman to between 5.96% and 6.91% of Compass shares.

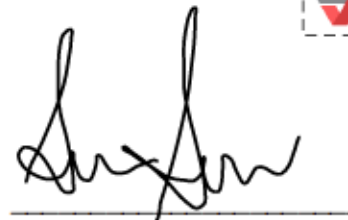
52. I reserve the right to express additional opinions, to supplement or amend the opinions in this Report, and to provide additional reasons for these opinions, as new facts and opinions are introduced during this case. In addition to the documents cited herein, I may use other exhibits as

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Compass's actual dilution percent. My experience is that the VCECS survey numbers—the median for the particular job—translate to seed round founder holdings of about 2.3 times the median. Thus, the 10.1% I determine from the VCECS study would be approximately equal to 23.23% seed level founder holdings. Applying 44% dilution and 69.17% vesting rates would yield 9.00%. This is the amount I conclude would be the damages to be awarded to Dorfman if the 5.96%-6.91% range is not accepted.

a summary or to support my opinions in this case. I further reserve the right to rely on any exhibits introduced in connection with the testimony of any other expert or witness, or any other documents produced in this case.

Date: June 26, 2017



P. Garth Gartrell

**EXHIBIT A: DOCUMENTS CONSIDERED**

Documents Produced in Litigation (Beginning Bates Stamp)

DORFMAN\_0001053  
DORFMAN\_0001071  
DORFMAN\_0001159  
DORFMAN\_0001452  
DORFMAN\_0001644  
DORFMAN\_0001726  
DORFMAN\_0001918  
DORFMAN\_0001920  
DORFMAN\_0002107  
GS-REFFKIN\_000084  
GS-REFFKIN\_000815  
GS-REFFKIN\_002114  
GS-REFFKIN\_002827  
GS-REFFKIN\_002871  
GS-REFFKIN\_003014  
GS-REFFKIN\_003167  
GS-REFFKIN\_003177  
GS-REFFKIN\_003183  
GS-REFFKIN\_003186  
GS-REFFKIN\_003241  
GS-REFFKIN\_003242  
GS-REFFKIN\_003474  
GS-REFFKIN\_003557  
GS-REFFKIN\_003698  
GS-REFFKIN\_004026  
GS-REFFKIN\_004027  
GS-REFFKIN\_004043  
GS-REFFKIN\_004705  
GS-REFFKIN\_004706  
GS-REFFKIN\_004710  
GS-REFFKIN\_005379  
GS-REFFKIN\_005442  
GS-REFFKIN\_005692  
GS-REFFKIN\_006628

GS-REFFKIN\_007866

GS-REFFKIN\_007897

UC-00012569

UC-00015056

UC-00015057

UC-00015068

UC-00022181

UC-00030403

UC-00030493

UC-00030499

UC-00030500

UC-00030569

UC-00031120

UC-00037090

UC-00037105

UC-00037144

UC-00037145

UC-00037146

UC-00037149

UC-00037165

Pleadings

Amended Complaint (and exhibits)

Repeal Brief Response (and exhibits)

First Department Order, September 22, 2016

Deposition Transcripts

Deposition of Ori Allon, December 13, 2016

Deposition of Robert Reffkin, January 10, 2017

Deposition of Avi Dorfman (Rule 11-f), February 23, 2017

Deposition of Avi Dorfman, April 21, 2017

Publicly Available Sources

Advanced-HR, Inc., “2013 Venture Capital Executive Compensation Survey: Technology Sector Trend Report” [https://www.advanced-hr.com/2013\\_VCECS\\_Technology\\_Sector\\_Trend\\_Report.pdf](https://www.advanced-hr.com/2013_VCECS_Technology_Sector_Trend_Report.pdf) (2013).

Advanced-HR, Inc., “2014 Venture Capital Executive Compensation Survey: Technology Sector Trend Report” <https://www.advanced-hr.com/wp-content/uploads/2016/02/2014-VCECS-Technology-Sector-Trend-Report.pdf>. (2014).

Advance-HR, Inc., “2015 Executive Compensation Trend Report”, <https://www.advanced-hr.com/wp-content/uploads/2015/10/2015-VC-Executive-Compensation-Trend-Report.pdf> (2015).

Advanced-HR, Inc., “2016 Executive Compensation Trends” <https://www.advanced-hr.com/wp-content/uploads/2016/10/2016%20VC%20Executive%20Compensation%20Trend%20Report.pdf> (2016).

James Linfield, Who is a “Founder”, <https://www.cooleygo.com/who-is-a-founder/>



**EXHIBIT B**  
**Resume of P. Garth Gartrell**  
**P. Garth Gartrell**  
**2636 Pirineos Way**  
**Carlsbad, CA 92009**  
[garth@streeterwyatt.com](mailto:garth@streeterwyatt.com)  
**(650) 862-1664**

**Skills Description**

Skilled in all areas of equity and executive compensation, including tax, securities, corporate, accounting and labor aspects of equity compensation plans, SEC reporting and disclosure, insider transactions and reporting, 10b5-1 plans, compensation governance practices, nonqualified deferred compensation, blue sky reporting, international plan coordination, valuation and valuation practices, etc. Market research and position compensation evaluation. Extensive executive compensation work for numerous private equity clients and portfolio companies and venture capital firms and portfolio companies. Stock grant practices and market analytics. Represent private and public companies and senior executives in employment contracts, both hiring and firing. Substantial merger and acquisition experience. Extensive qualified retirement plan, labor and employment, tax, estate planning, financial planning and financial reporting experience. Often represent compensation committees, individual board members, executives and company founders.

**Employment**

StreeterWyatt Governance LLC, Kentfield, CA. 2010 to present. Founder.

The Croner Company, Kentfield, CA. 2010 to present. Senior Consultant.

DolmatConnell & Partners, Inc., Menlo Park, CA. 2009 to 2010. Compensation Consultant.  
Managing Director and West Coast Practice Leader.

Greenberg Traurig LLP, East Palo, CA. 2007-2009. Shareholder, equity compensation group.

Heller Ehrman LLP / Venture Law Group, Menlo Park, CA. 2002-2007. Shareholder, Chair,  
Executive Compensation Group.

Fenwick & West LLP, Palo Alto, CA. 2000-2002. Partner, Employee Benefits Group.

Pillsbury, Madison & Sutro LLP, Palo Alto and San Diego, CA. 1992-2000. Partner, Chair,  
Employee Benefits Group, Co-managing Partner, San Diego Office.

Luce, Forward, Hamilton & Scripps LLP, San Diego, CA. 1987-92. Partner and associate, tax  
practice.

Pepper, Hamilton & Scheetz LLP, Philadelphia, PA. 1987. Associate, tax practice.

Wyatt Company, San Diego, CA. 1984-87. Compensation consultant.

Vorys, Sater, Seymour & Pease LLP, Columbus, Ohio. 1982-84. Associate, tax practice.

Porter, Wright, Morris & Arthur LLP, Columbus, Ohio. 1981-82. Associate, tax practice.

Price Waterhouse & Co., Columbus, Ohio. 1976-78, certified public accountant.

### **Education**

Harvard Law School, LLM, (1992)

The Ohio State University, JD, *cum laude*, Order of the COIF (1981)

Capital University, BA, *magna cum laude*, accounting (1976)

### **Teaching**

Adjunct professor, University of San Diego School of Law, 1986-1990.

Visiting professor and Director, Graduate Tax Program, University of San Diego School of Law, 1990-92.

### **Professional Activities**

Certified Public Accountant, Ohio, 1978.

Founding editor, "California Tax Lawyer," California Bar Association.

Chair, California Bar Association Section of Taxation, 1991-92.

Chair, Western Pension and Benefits Conference, San Diego, 1992-94.

President, National Association of Stock Plan Professionals, San Diego, 1993-2000.

Numerous articles and speeches on variety of legal, valuation and business issues.

Executive Committee, California Bar Association Section of Taxation, 1988-93.

Numerous speech speeches and articles.

## **Awards & Professional Recognition**

Best Lawyers in America, 1992.

Best Lawyers in Northern California (San Francisco Magazine), 2004-2009.

## **Notable Publications**

P. Garth Gartrell & Steven B. Lapidus, Executive Compensation for Emerging Growth Companies (3d Ed., West 2011)

P. Garth Gartrell, The 409A Administration Handbook (West 2013) (and annual updates).

P. Garth Gartrell, The Acquisition and Sale of Emerging Growth Companies (West 2008).

P. Garth Gartrell, Executive Compensation: A New Era of Regulatory Reform (West 2011).

## **Relevant Expert Witness Experience**

In the Matter of an Arbitration Between B.V. Jagadeesh, Rick Bolander, Netscaler, Inc., NCAR, LLC and Gabriel Venture Partners L.P. against Michel K. Susai, (2008). Arbitration. Fees paid by defendant individuals, company and venture firms. Case involved suit by former CEO and founder alleging fraud in the structure of termination of employment settlement. Deposed by plaintiff, case settled prior to trial. 2008. Counsel: Covington & Burling LLP; LeBoeuf, Lamb, Greene & MacRae LLP.

Tabor v. Washington Metro. Area Transit Auth., 1:08-cv-01991 (D.D.C.). Fees paid by defendant transit authority. Deposed by plaintiff, prepared extensive expert report. Case settled prior to trial. 2010. Counsel: Hollingsworth LLP

Ross v. Atmel Corporation, California Superior Court, Santa Clara. Fees paid by defendant Atmel. Case involved stock option grant practices. Settled prior to trial, no testimony given. Counsel: Morrison & Foerster LLP.

Levinson v. Levinson, RID209413 (Cal. Super. Ct.), Superior Court of California, Alameda. Fees paid by petitioner. Case involved the division of high potential value stock options and bonuses in divorce. Deposed by respondent, testified at trial. Judicial opinion rendered September 6, 2011: in written opinion judge specifically cited testimony given, upon which he relied almost exclusively. Counsel: Stonehouse & Silva.

Banks v. General Atomics, 37-2009-00084081-CU-BC-CTL (Cal. Super.). Fees paid by defendant General Atomics. Case involves claim for damages associated with the start-up of a

division by certain employees and misappropriation of trade secrets and technology. Deposed in September, 2011. Did not testify due to plaintiff decision not to present their expert. Counsel: Cadwalader, Wickersham & Taft LLP; Paul, Plevin, Sullivan & Connaughton LLP.

McGraw et al. v. McGraw et al., CIV492464 (Cal Super.). Fees paid by defendant director Ann Morrical. Case involved suit by minority shareholder protesting board implementation of phantom stock plan. Case settled in 2012 before deposition.

S.E.C. v. Mercury Interactive, No. 3:07-cv-02822-WHA (JSC) (N.D. Cal.). United States District Court, Northern District of California, San Francisco Division, Civil Action No. C-07-02822 JWA. Consulting expert, formulated the key defense strategy that led directly to favorable settlement for defense. Counsel: Orrick, Herrington & Sutcliffe LLP; Sherman & Sterling LLP.

Cheshire v. Diwanji, FL152217 (Cal. Super.). Fees paid by employee spouse involve allocation of Google stock in divorces. Case settled in 2012 before deposition.

Marriage of Kellett, FL1004290 (Cal. Super.). Compensation expert to value income of CEO of investment management firm. Marin County Superior Court. Case settled, Oct., 2015.

Radley v. The Walt Disney Co. Selected as expert for Walt Disney in suit by former Lucas Film CEO. Case settled. Counsel: O'Melveny & Myers LLP.

Rael & Letson v. Clark, CIV523065 (Cal. Super.). Breach of fiduciary duty and fraud lawsuit by current ESOP shareholders against former owner. Fees paid by Defendant, former CEO. Deposition taken Dec. 11, 2014, trial testimony, Dec., 2015. Counsel: Barulich Dugoni Law Group, Inc.

Calligeros v. Siegel, BC512982 (Cal. Super.). Breach of fiduciary duty suit by minority shareholder. Fees paid by Defendant, current CEO. Deposition taken Mar., 2016, trial testimony, May 17, 2016. Counsel: Waxler Carner Brodsky LLP.

Newell, et al. v. Yapstone Inc., et al, C13-00081 (Cal. Super.). Breach of fiduciary duty suit by minority shareholders. Fees paid by defendant. Case settled on terms favorable to defendant. Counsel: Cooley Godward Kronish LLP.

Bernstein v. VOCUS, Inc. et al., No. 14-01561-THE (N.D. Cal.) Case settled after submission of expert report. Counsel: Greenberg Traurig LLP.

In re Marriage of Wu, San Mateo County. Represented husband in reasonable compensation in connection with medical practice. Case settled before deposition. Counsel Ashley Rodet, Esq.

In re Marriage of Mitchell/Miks, County of San Francisco. Represented wife in reasonable compensation of husband. Case settled before deposition. Counsel Ashley Rodet, Esq.

In re Marriage of Kataoka/Bove, Alameda County. Hired by both parties to assess husband's reasonable compensation. Report delivered April, 2016.

Freedman v. Adams, C.A. No. 4199-VCN, 2012 WL 1345638, n. 161 (Del. Ch. Mar. 30, 2012). My book “Executive Compensation for Emerging Growth Companies” was cited as authority for decision of Delaware Chancery Court.

**Billing Rate**

\$600 per hour. Analyst assistance billed at \$225 per hour.