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Case No. 2023-0381-MTZ

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

RICHARD FRANK, Plaintiff, v. MICHAEL MULLEN and B. RILEY FINANCIAL, INC., Defendants.	C.A. No. 2023-0381-MTZ **PUBLIC VERSION FILED 4/5/23**

VERIFIED CLASS ACTION COMPLAINT

1. Plaintiff Richard Frank ("Plaintiff"), by and through undersigned counsel, brings this Complaint on behalf of himself and the former holders of the common stock of National Holdings Corporation ("National" or the "Company") against (1) Michael Mullen ("Mullen"), the former Chairman of National's board of directors and its former CEO, and (2) B. Riley Financial, Inc. ("Parent" or "BRF"), National's majority and/or controlling shareholder, in connection with the Company's January 10, 2021 Agreement and Plan of Merger (the "Merger Agreement") with B. Riley Principal Merger Corp. III ("Purchaser") and BRF, pursuant to which BRF acquired National (the "Merger").

SUMMARY OF THE ACTION

2. This is a stockholder class action brought by Plaintiff on behalf of former National stockholders against National's former Chairman and CEO and National's former controlling stockholder for breaches of fiduciary duty arising out of the sale of National to BRF by means of an unfair process, for an inadequate price, and without full disclosure of all material facts.

3. On January 10, 2021, National's board of directors ("Board") approved the Merger Agreement. In connection therewith, on January 27, 2021, Purchaser initiated a tender offer (the "Tender Offer") to purchase all shares of National's outstanding common stock not owned by Parent or its subsidiaries for $3.25/share

in cash (the "Offer Price"). As discussed below, the Offer Price undervalued the Company. On February 25, 2021, the Tender Offer was completed and the Merger closed.

4. [redacted]

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1 Answer at ¶31 (admitting that BRF was a majority shareholder).

[redacted]

5. [redacted]

6. Accordingly, this action seeks damages suffered by Plaintiff and the Class (as defined herein) as a result of Defendants' wrongdoing. The allegations of this Complaint are based on Plaintiff's knowledge as to himself, and on information and belief based upon, among other things, the investigation of counsel, publicly available information, and documents produced pursuant to Section 220 Litigation

filed in this Court, as to all other matters.[2]

PARTIES

I. Plaintiff

7. Plaintiff was, at all relevant times, a continuous stockholder of National.

II. Defendants

8. Michael Mullen was, at all relevant times, the Chairman of the Board and Chief Executive Officer of National.

9. B. Riley Financial, Inc. (previously defined as "Parent" or "BRF"), a Delaware Corporation, was, at all relevant times, National's majority and/or controlling shareholder.

III. Relevant Non-Parties

10. Bryant Riley ("Riley") was, at all relevant times, the Co-Chief Executive Officer of BRF and held Board observer rights pursuant to a November 2018 Standstill Agreement with National. Riley was intricately involved in the unfair and conflict-ridden process that led to the unfair Merger.

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[2] The "Section 220 Litigation" is captioned *Frank v. National Holdings Corporation,* C.A. No. 2021-0160-MTZ.

11. Barbara Creagh ("Creagh") was, at all relevant times, a member of the Board since February 2019.

12. Robert Fagenson ("Fagenson") was, at all relevant times, Vice Chairman of Board since September 2016. Fagenson served as a member of the Board since March 2012, served as Co-CEO from January 3, 2017 to January 31, 2017, as CEO and Chairman of the Board from December 2014 to September 2016, and as Executive Vice-Chairman of the Board from July 2012 to December 2014.

13. Jeff Gary ("Gary") was, at all relevant times, a member of the Board since February 2019.

14. Daniel Hume ("Hume") was, at all relevant times, a member of the Board since September 2016.

15. Nassos Michas ("Michas") was a member of the Board since June 2018; Michas abruptly resigned from the Board on or about August 31, 2020.

16. Michael Singer ("Singer") was, at all relevant times, a member of the Board since May 2017 and served as Executive Vice Chairman of the Board since June 2018.

SUBSTANTIVE ALLEGATIONS

I. RELEVANT CORPORATE BACKGROUND

17. Prior to the Merger, National was a Delaware corporation with its

principal offices located in New York, New York. Its common stock traded on the NASDAQ under the ticker symbol "NHLD." National was a full-service investment banking and asset management firm that, through its affiliates, provided a range of services, including independent and employee-managed retail brokerage and advisory services, investment banking, institutional sales and trading, equity research, financial planning, market making, tax preparation, and insurance to corporations, institutions, high net-worth, and retail investors.

II. EVENTS LEADING TO THE MERGER AGREEMENT

A. BRF Has Long Sought to Acquire National

18. BRF's interest in National began in March 2012, when National executed a securities purchase agreement with National Securities Growth Partners, LLC ("NSGP"), the primary principals of which were Robert Fagenson, Bryant Riley, and Mark Klein.[3] In November 2014, BRF submitted an unsolicited $0.62/share stock and cash acquisition offer, which it restated on May 18, 2015 (with an offer price adjusted to $6.20/share to reflect a reverse stock split). Negotiations and diligence ensued, but were ultimately terminated in July 2015.

[3] In connection therewith, Fagenson and Klein were appointed Co-Executive Chairmen of National, and Riley was appointed to the then-Board. Riley resigned from the board in October 2012.

19. A few months later, on October 30, 2015, BRF again sought to buy National, this time by offering to purchase 1,666,666 new shares for $3.00/share and all of the stock it did not own for $3.00/share in stock and cash. On November 10, 2015, BRF revised its offer to $3.25/share in stock and cash.

20. Around the same time, CB Pharma Acquisition Corp. ("CB Pharma") – whose Co-Chairman was Michael Weiss ("Weiss"), National's former Chairman – submitted an offer to acquire National for $3.25/share in cash or $3.50/share in CB Pharma stock. Despite CB Pharma's facially superior offer, and evincing an early preference for BRF, on November 30, 2015, National and BRF entered into a 30-day exclusivity period, which expired on December 27, 2015, without a higher offer, after which BRF withdrew its proposal, but noted that it "may in the future explore a potential acquisition of the [Company] and engage in discussions with the Board of Directors and management of the [Company] regarding such a transaction." Discussions with CB Pharma likewise went nowhere, but CB Pharma's principals continued to seek to acquire National.

B. <u>National's Failed Merger with Fortress</u>

21. These efforts culminated in an April 27, 2016 agreement (the "Fortress Merger Agreement") between National and Fortress Biotech, Inc. ("Fortress") – of which Weiss was a director and Executive Vice Chairman – pursuant to which

Fortress (and its affiliates) commenced a tender offer for National at $3.25/share. Notably, National's board approved the Fortress Merger Agreement, but made no recommendation to shareholders regarding whether to accept the offer. Fortress' offer expired in September 2016 without enough shares being tendered to satisfy the minimum condition, and Fortress did not consummate the merger.

22. However, pursuant to the Fortress Merger Agreement, the size of National's board was reduced to seven members, eight of the then-current members resigned, and five individuals designated by Fortress were appointed to National's board. Also in connection therewith, National separated the functions of Chairman and CEO and provided for a Vice Chairman, Co-President, and Co-CEO. Following this reshuffling, the board was comprised of Fagenson, Mark Goldwasser, and the five Fortress designees: Michael Eustace, Neil Herskowitz, Daniel Hume, Eli Salig, and Weiss, with Weiss serving as Chairman.

23. Later, in January 2017, Mullen was appointed National's Co-CEO. Less than one month later, Fagenson resigned as Co-CEO, though he remained Vice-Chairman of the board. Finally, in May 2017, Michael Singer ("Singer") was appointed to the board.

C. Riley Acquires a Controlling Block of Stock Away from Weiss After the Fortress-Designated Directors' Wrongdoing Is Revealed

24. On or about June 13, 2018, Weiss retired from his position as National's Chairman, and Mullen was appointed to that role in addition to CEO. Singer was appointed Executive Vice Chairman and Nassos Michas was appointed to the board to fill Weiss' vacancy.

25. Shortly thereafter, on August 2, 2018, Reuters published an exposé on National and Fortress (the "Reuters Article"), revealing that Fortress, "the brainchild of longtime biotech entrepreneurs Dr. Lindsay Rosenwald and Michael Weiss," was using National (and its subsidiary National Securities Corp ("NSC")) as "an in-house underwriter and a private sales force of about 700 brokers – nearly a third of whom had been flagged by regulators – to help it raise money for its stable of nine ventures that are developing new drugs or treatments." The Reuters Article referenced bullish research notes by NSC analysts regarding biotech companies owned by Fortress that failed to disclose that those companies and National were both owned/controlled by Fortress (and Weiss). It also revealed that, "[s]ince coming under Fortress's umbrella, National brokers, with an assist from analysts…, have helped raise at least $240 million from thousands of individual investors across the United States to fund Fortress or its related biotech companies…, [with] deals…in the works to raise as

much as an additional $125 million."[4]

26. The article invited significant scrutiny over Fortress's ownership of National, which BRF used to acquire its stake. Specifically, in November 2018, BRF acquired Fortress's *entire majority stake* in National, giving it 56.1% of National's outstanding stock, for $3.25/share – the same price that Fortress paid in 2016. In connection with the sale, National entered into a standstill agreement with BRF (the "Standstill Agreement"), which granted BRF Board Observer Rights *and waived the applicability of Section 203 to BRF*.

27. [redacted]

[4] Notably, the Reuters article also revealed that, in 2002, Jonathan Aschoff, the primary National analyst at the center of the wrongdoing, was accused by FINRA of falsely claiming to be a medical doctor to obtain inside information about a drug. Aschoff, *working for B. Riley FBR Inc. at the time*, agreed to a $10,000 fine and a two-week suspension.

[redacted].

28. In the interim, in July 2019, Kay Johnson – a former EVP and Chief Compliance Officer of NSC (National's subsidiary at the center of the Reuters Article), and National shareholder – filed a derivative suit against National, the Board, and NSC. (Docket for *Johnson v. NSC*). In her February 2020 Amended Complaint (the "Johnson Complaint"), Johnson alleged "suspicious trading" by Mullen in one of Fortress' subsidiaries, that **Mullen was beholden to Weiss**, that he had shifted National from customer-focused brokerage services to shilling Fortress's investments and securities, and that, when the Board was notified of the alleged wrongdoing, *it did nothing*, *choosing instead to remain loyal to Mullen*. Defendants moved to dismiss the Johnson Complaint on March 18, 2020, and the parties entered settlement discussions.[5]

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[5] On February 8, 2021, *after* the commencement of the BRF Tender Offer, the parties reached an individual (non-Class) settlement for Johnson. Answer at ¶28.

D. <u>Riley Uses His Increased Holdings to Again Attempt to Buy National</u>

29. Meanwhile, and potentially relatedly, in April 2020, BRF "encouraged" National to delist from the Nasdaq and cease to be a public company, noting "that it would be willing to provide other National stockholders with a choice in this matter" by offering to purchase their shares.

30. On April 27, 2020, Riley called Mullen to discuss these matters, including the need for a waiver from the Standstill Agreement to allow BRF to make such a proposal. On the same day, after the call between Riley and Mullen, BRF sent to Mullen and the rest of the Board a letter seeking formal authorization from the Board to submit a proposal.

31. [redacted]

32. Despite knowing that BRF's proposal would likely hurt the Company's

stock, on April 28, 2020, the Board authorized Mullen to negotiate a limited waiver of the Standstill Agreement with BRF.

33. On April 30, 2020, National granted a limited waiver of the Standstill Agreement. Thereafter, BRF sent a letter to the Board suggesting that National "go dark," proposing to purchase all shares not then owned by BRF **or the current management team** for $2.00/share, and **"hop[ing] [the Board] recognize[d] the spirit with which this letter [was] delivered"** (the "April 30 Riley Proposal"). BRF publicly disclosed the standstill waiver and April 30 Riley Proposal.

34. The waiver of the Standstill Agreement was a substantive piece of the negotiations between BRF and National. Indeed, without the waiver, BRF could not proceed with its quest to acquire the shares of National that it did not yet own. Moreover, the BRF standstill waiver was authorized by the full Board, before the Special Committee was formed on May 5, 2020.

35. The Board met on May 5, 2020 to discuss the Proposal, during which it formed the Special Committee, which consisted of Gary, Hume, Creagh, and Michas. During the same meeting, the Board sought to enact *MFW* protections by agreeing that the consummation of any sale would be subject to the non-waivable condition that the sale receive the approval of the Special Committee and a majority of the voting power of National, or the tender of a majority of the shares of National,

not owned or controlled by BRF (the "Minority Stockholders").

36. After the Board meeting, the Special Committee met, during which it noted that BRF was "a large stockholder of National that could potentially be viewed as a controlling stockholder." At the time, BRF held 46.4% of National's stock. Also during this meeting, the Special Committee discussed strategies to ensure that BRF and a consortium of investors **that included members of National management** (the "Management Consortium" or "Consortium"), as competing bidders for National, did not discuss the potential transaction with one another and to ensure that management did not discuss National's financial performance with BRF.

37. [redacted]

38. [redacted]

[redacted]

E. Management Forms a Competing Consortium

39. [redacted] National management formed the competing Management Consortium and, on May 8, 2020, the Special Committee received a letter from the Consortium's counsel ("McGuireWoods") proposing to purchase up to five million National shares for $2.75/share and to provide an unspecified amount of additional funds to finance National's growth (the "May 8 Consortium Proposal"). The letter did not identify the participants in the Consortium, but copied several members of management, *including Mullen*. **Later, in June 2020, the Special Committee would learn that the Consortium was comprised of National's *entire* senior management team.**

40. [redacted]

[redacted]

> [redacted]

[redacted]

41. Finally, the May 8 Consortium Proposal stated that the Management Consortium would finance the proposed transaction with its own funds and third-party financing, *a portion of which would be secured by selling National's equity securities to investors through National's broker-dealer service*. Interestingly, this is exactly what the Reuters Article and Johnson Complaint alleged National had improperly been doing, something the Special Committee had to know. Indeed, on

May 12, 2020, at the Special Committee's direction, its counsel ("Skadden") questioned McGuireWoods regarding how the Consortium planned to address the potential regulatory risks created by its plan to use National's brokerage services to market National's shares.

F. Deprived of Critical Valuation Information from Management and Unable to Control Management's Communications with Other Bidders, the Special Committee Begins a Hopelessly Conflicted and Uninformed Process

42. On May 11, 2020, the Special Committee met to discuss the May 8 Consortium Proposal, noting that it offered a higher per share price than the April 30 Riley Proposal, but also that management now could have an interest in a transaction that was different from that of public stockholders. [redacted]

43. Compounding matters, one day later, on May 12, 2020, the Special Committee was informed that the shares management owned were excluded from the April 30 Riley Proposal offer because *BRF intended that management would remain in their positions following the merger*.

44. On May 14, 2020, the Special Committee met to consider strategies to ensure that BRF and the Consortium, *as competing bidders*, did not discuss their proposed offers with one another and to ensure that management did not discuss National's finances with BRF. [redacted] The Special Committee also agreed upon the retention of Keefe, Bruyette & Woods, Inc. ("KBW") as its financial advisor for purposes of a potential transaction.

45. A few days later, on May 20, 2020, the Special Committee acknowledged that any acquisition by the Management Consortium would likely require BRF's support and discussed the Consortium's recent request to discuss their proposal with Daniel Asher ("Asher"), National's second largest shareholder, who then held 18% of the Company. Notably, although the Special Committee was aware that the Management Consortium would need every other shareholder to support its

bid, the Special Committee instructed the Consortium not to discuss their proposal **with anyone**, and specifically not BRF and Asher. [redacted] At this same meeting, the Special Committee determined that it must obtain a commitment from BRF that any transaction would be conditioned on the approval of the Special Committee and the informed, uncoerced, non-waivable approval of a majority of the Minority Stockholders (the "*MFW* Conditions").

46. [redacted] Six days later, management provided financial information and materials to KBW. KBW had to rely entirely on management to value the Company. **As outlined below, it would later be revealed that management was apparently withholding information from KBW, the Special Committee, and the Board regarding two significant equity events in National's near future worth approximately $0.74/share.**

47. On May 30, 2020, Riley called KBW and expressed his desire for a speedy process.

48. On June 1, 2020, the Consortium revealed to the Special Committee that it consisted of **National's entire senior management team**, including members

not copied in the May 8 Consortium Proposal. [redacted] "specifically directed KBW not to start negotiating with BRF until the Committee received a letter confirming the *MFW* Conditions from BRF." That same day, KBW informed Riley that National had received another proposal (although without identifying from whom), after which Riley stated BRF did not intend to sell its ownership interest in National.[6]

49. One day later, on June 4, 2020, *and according to the Recommendation Statement*, the Special Committee allegedly received a letter with the *MFW* Conditions from Riley. Notably, no such letter was publicly filed with the SEC, and no such letter was produced to Plaintiff in the Section 220 Litigation. On the same day, management provided KBW with certain financial projections of National (the

6 [redacted]

"June 4 Management Projections"), which were prepared by management in the ordinary course of business.

50. [redacted]

51. On June 10, 2020, the Management Consortium informed the Special Committee that their plan was to purchase up to five million shares from Asher and Riley, with the ultimate goal of purchasing all of Asher's shares, and their secondary plan (if they failed to acquire these shares) was to cause National to issue up to five million new shares and to use the proceeds to fund its growth – plainly placing the Consortium at odds with BRF. On the same day, a representative of BRF again expressed Riley's desire for a speedy process and discussed the potential process for National's delisting and ceasing to be a public reporting company.

52. During a meeting on June 11, 2020, the Special Committee

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[7] The Recommendation Statement merely described these materials as Riley's "views of the benefits of the proposed transaction," [redacted]

acknowledged that National had more leverage to negotiate with BRF prior to the expiration of the Standstill and that Riley's statement that BRF did not intend to sell its ownership interest in National could make an alternative transaction impossible. [redacted]

53. On June 16, 2020, the Special Committee unilaterally decided that the June 4 Management Projections provided by management "were too aggressive" and directed KBW to ask management to update them.[8] Later that day, Riley wrote an email to the Special Committee complaining that management had been granted equity compensation that would be highly dilutive in a change in control, and indicated his frustration with the delay of the process. [redacted]

54. On June 18, 2020, Riley called Mullen to inquire about other potential bidders in the process, and **Mullen – in direct contradiction to the Special**

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8 [redacted]

Committee's directions – informed Riley that he was involved in preparing a bid with the Consortium.

55. Also on June 18, 2020, the Special Committee and KBW discussed the June 17 Management Projections, which the Special Committee had just received, and the Special Committee determined that they were still too aggressive and instructed KBW to prepare **its own** illustrative projections. Then, on June 22 and 24, 2020, the Special Committee instructed KBW to further refine the projections that **KBW** had created and to run its analyses based on those projections. In other words, the Special Committee took the creation of National's projections away from the most knowledgeable people – management – and ordered their banker to reduce management's projections.

56. Based on these manipulated projections, on June 29, 2020, the Special Committee directed KBW to deliver to BRF a counteroffer of $2.75/share, which would be made available to **all** stockholders other than BRF (the "First Counteroffer"). In response, Riley stated that, while the tender offer would be extended to all stockholders other than BRF, **in order for the proposed transaction to proceed, BRF required that management agree not to tender their shares and to renegotiate their outstanding equity awards**, which awards would otherwise have accelerated on consummation and been dilutive.

57. One day later, on July 2, 2020, KBW was informed of the possibility that the Management Consortium had discussed the May 8 Consortium Proposal with third parties, **contrary to the Special Committee's instruction**. When KBW called Mullen to inquire about this, **Mullen confirmed that he and the Consortium had disregarded the Special Committee's instructions** and had been interacting with Riley *and* third party investors, but declined to identify the investors.

58. Two days after that, on July 5, 2020, the Consortium delivered an offer to purchase *all* National stock for $3.25/Share (the "July 5 Consortium Proposal"). [redacted]

59. On July 6, 2020, the Special Committee met to discuss the competing [redacted] The Special Committee also discussed the possibility that management had discussed their proposals with BRF and other third parties, again requested that the Consortium describe its interactions with BRF and third parties, and reiterated that the Consortium was prohibited from engaging in unauthorized discussions.

60. This command fell on deaf ears. On July 9, 2020, the Consortium's counsel responded by refusing to answer the Special Committee's questions (the

"July 9 Consortium Letter"). [redacted] The Consortium further requested a meeting with the Special Committee, [redacted]

61. On the same day, the Board's counsel ("WilmerHale") informed the Special Committee that, according to Mullen, Mullen (as a participant in the Consortium) had only communicated with Riley in "Riley's capacity as a stockholder of National" and had not discussed the transaction with Riley, and that certain investors with whom management had historical relationships contacted management on an unsolicited basis after the April 30 Riley Proposal was disclosed and expressed support for a transaction as an alternative to the April 30 Riley Proposal. Mullen's assertion that he had only communicated with Riley "*in Mr. Riley's capacity as a stockholder*" is of course nonsensical; Riley's brain in his "capacity as a stockholder" obviously could not be separated from his brain in his capacity as a bidder, and Riley obviously was more than just a stockholder at the

time – he was actively engaged in attempting to acquire National and competing against the Consortium that Mullen was part of. [redacted]

62. In the interim, on July 8, 2020, BRF requested permission to negotiate with management regarding management's outstanding equity awards. [redacted]

63. On July 12, 2020, the Special Committee determined *not* to engage with a third-party that had reached out regarding a transaction, not to pursue the Consortium's higher-priced offer, and not to even speak with the Consortium (as it had requested), but to instead deliver a counteroffer to BRF of $3.25/share. The Special Committee also noted that, in order for the potential transaction with BRF to proceed, BRF required that BRF and senior members of National management renegotiate management's outstanding equity awards[9] so as to mitigate the dilutive

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[9] While the Proxy describes the issue as "management's outstanding equity awards," [redacted]

effect of such equity awards upon a change-of-control transaction.

64. When KBW transmitted the Special Committee's counteroffer on July 15, 2020, along with a note that National had received two competing proposals, one of which was also for $3.25/share, Riley reiterated that BRF did not intend to sell its interest for any price near that price point.

65. On July 20, 2020, the Special Committee agreed that the Consortium should not be permitted to engage with banking institutions, and that the Special Committee should continue to focus on obtaining an improved offer from BRF.

66. On July 24, 2020, BRF countered at $2.75/share, but noted that BRF might increase the price to $3.25/share *if BRF and management could reach satisfactory agreement on management's outstanding equity awards and "satisfactory compensation arrangements"* (the "July 24 Riley Proposal"). The July 24 Riley Proposal was also conditioned on the *MFW* Conditions.

67. [redacted] two days later, on July 30, 2020, the Special Committee informed Mullen that it had decided to pursue a transaction with BRF and would authorize Riley and management to

discuss management's compensation/equity awards "for the sole purpose of furthering the transaction contemplated by the July 24 Riley Proposal."

68. [redacted]

G. After Direct Negotiations Between Management and Riley End in a Stalemate, Riley and Asher Begin Threatening the Board

69. Between July 31, 2020 and August 21, 2020, Riley and management (mostly Mullen) discussed revisions to management's equity awards. [redacted]

[redacted]

70. But, on August 21, 2020, Riley wrote to KBW and stated that BRF could not come to an agreement with management with respect to management's equity awards and that BRF planned to withdraw the July 24 Riley Proposal. Later that day, Riley stated that BRF might pursue one of two options: it might seek control over 50% of National's voting power by purchasing shares on the open market after the Standstill expired, or (in a complete reversal of its previously stated intent to not sell its shares) it might consider selling its ownership interest for $3.25/share or more, because Mullen had told Riley that he was aware of potential buyers at that price. Notably, Riley stated that he hoped the opportunity of selling for $3.25/share could also be made available to Asher.

71. Just to make sure there were no misunderstandings that led to the impasse between Riley and Mullen, on August 23, 2020, representatives of KBW called Mullen to discuss the status of his negotiations with Riley, during which

Mullen confirmed that Riley had decided to discontinue the negotiations, and, [redacted]

72. Following the Special Committee's determination not to pursue the Consortium's proposal, Mullen began trying to find buyers for the shares only owned by BRF and Asher at a price of $3.25/share, allegedly with the blessing of Riley. But, days later, on August 24, 2020, and despite the fact that Mullen had stated that he believed he could find buyers, the Special Committee concluded that it would not facilitate, support, or approve such a transaction.

73. On August 26, 2020, Riley **formally withdrew** the July 24 Riley Proposal (and thus its agreement to follow *MFW* protections) and expressed his belief that management had been granted equity compensation that, in connection with a change of control, would be highly dilutive. Specifically identifying the issues involving management's compensation and equity awards as the reason for his withdrawal, he stated:

> In our prior correspondence with the Special Committee, we made clear that we needed to negotiate with management satisfactory arrangements to address the dilution that would be triggered under their existing equity awards as a result of a change of control of the Company…. **Given these dynamics, we felt confident that**

> **management would be open to a renegotiation. Unfortunately, it was promptly made clear to us based on our conversations this was not the case.** Our choices are now to sell our shares or wait out our [S]tandstill [A]greement with the Company. We have conveyed to management, and are now conveying to you, that we will consider both but not lock ourselves into one position or another…. [U]nfortunately **in light of the above we are withdrawing our prior proposal to acquire the shares not owned by us.**

BRF publicly disclosed this email.

74. According to the Recommendation Statement, following BRF's withdrawal of the July 24 Riley Proposal, Riley and Mullen did not discuss a potential proposal involving National *until September 16, 2020*. [redacted]

75. On August 31, 2020, Mullen again pleaded with the Special Committee to allow management to acquire National. On September 2, 2020, the Special Committee effectively determined that Mullen – *National's CEO* – was not credible or trustworthy, concluded "that there was no credible third-party interest in acquiring National at $3.25 per Share or more," and decided to conclude the sales process. However, when the Special Committee delivered this conclusion to the Board during a September 4, 2020 meeting, certain (unidentified) members of the Board, who were not on the Special Committee, expressed their belief that Mullen could facilitate a transaction and agreed to invite Mullen to present a proposal at the next

meeting. [redacted] Although the Recommendation Statement discloses the abrupt resignation, it misleadingly represents that it was the result of his (sudden) desire to retire.

76. [redacted]

[redacted]

77. On September 7, 2020, Asher wrote the Board and management a letter in which he expressed dissatisfaction with National's performance; *called for the departure of Mullen, changes to management's compensation, and the addition of new directors*; and stated that he was *prepared to solicit proxies* to change the Board's composition (the "September 7 Asher Letter").

78. [redacted]

[redacted]

79. [redacted]

[redacted]

80. On September 17, 2020, again as if they were acting in concert, Asher filed a Schedule 13D publicly disclosing a 19.55% interest in National and that he had recently sought to engage (and expected to continue to engage) with the Board regarding shareholder representation, the departure of Mullen, cuts to management compensation, and leadership changes....” While BRF owned approximately 49% of National’s stock, with Asher, it controlled at least 65%.

H. <u>The “Mistake”: Riley and Mullen Suddenly Come to Terms</u>

81. [redacted] *Before* Asher’s public filing, but *after* the Board received and discussed the September 7 Asher Letter, on [redacted], 2020, Mullen – [redacted] – and Riley spoke, during which they discussed the September 7 Asher Letter.[10] During the September 16 call with Mullen, *“Riley stated that he realized that he had missed a portion of one of [] Mullen’s emails*, which such missed portion detailed [] Mullen’s proposal for the treatment of senior

10 [redacted]

management's outstanding equity awards in a possible transaction" and that "the proposed treatment outlined in the email was generally acceptable and that *had he reviewed the email in its entirety at the time, it could have resulted in an agreement regarding the outstanding equity awards*." **<u>Critically, during the same phone call</u>** – [redacted] – **<u>Riley and Mullen "outlined a potential path to agreement regarding the treatment of such equity awards."</u>**

82. [redacted]

[redacted]

[redacted]

83. [redacted]

[redacted]

84. [redacted] In other words, Riley and Mullen had for all

intents and purposes hashed out their deal – which was a substantive piece of the contemplated transaction – without *MFW* protections in place, and without any oversight by the Special Committee.

85. Later that day, when the reconstituted Special Committee met to review these events, they questioned the "relationship between BRF and [] Asher," and, two days after that, the Special Committee's counsel (at its direction) specifically questioned BRF's counsel "about the relationship between BRF and [] Asher." **Notably, it was also disclosed that Riley likely knew that the competing bidder was the Consortium.**

86. Also on September 18, 2020, when the Special Committee met, it again noted that the potential transaction with BRF would require Riley and management to reach an agreement on management's compensation, including equity awards ([redacted]), that BRF's support was necessary for the Consortium's proposal to proceed, and that Riley had recently indicated BRF's openness to selling its ownership interest for $3.25/share. Following discussion, the Special Committee decided to again treat BRF and the Consortium as competing bidders and to prohibit them from engaging in unauthorized discussions. This was, of course, too little, too late, as Mullen and Riley had already made a deal on the phone.

87. Consistent with this deal, just days later, on September 22, 2020, BRF clarified that it was no longer considering selling its interest for $3.25/share or any price near that. Meanwhile, the Consortium steered the Special Committee toward the new deal with BRF, *in which they now had an interest*, by putting forth a deal structure that they knew the Special Committee would reject. Indeed, when it met on September 23, 2020, the Special Committee specifically noted that the Consortium was aware that the Special Committee would not support a transaction on the Consortium's current terms (*i.e.*, a transaction that did not include minority shareholders, but which only involved the purchase of BRF's and Asher's shares), but that the Consortium had continued to put forth this deal **because the Consortium preferred finalizing the treatment of their equity awards with BRF over pursuing a separate transaction with National**.

88. **In other words, the Special Committee determined that members of management were interfering in the process for their personal benefit and placing their interests above shareholders – again.** The Special Committee concluded that the Consortium's proposal was not in the best interests of stockholders and that it should not continue to engage with the Consortium. Instead, although it was distinctly aware that it "did not have full insight into BRF's or the Consortium's strategic goals," the Special Committee nonetheless decided to pursue

a deal with BRF. To that end, the Special Committee instructed its advisors to facilitate final negotiations between BRF and management regarding management's compensation **with the Special Committee's representatives present**. This again was too little, too late, as Riley and Mullen had already had substantive discussion and come to a "potential…agreement" regarding the issue.

I. <u>Economic Negotiations Proceed Without *MFW* Protections</u>

89. **Importantly, though, no MFW protections were in place, as the July 24 Riley Proposal that contained them had been formally withdrawn.** Despite this fact, on September 24, 2020, KBW engaged in economic negotiations with BRF, asking Riley to increase the price. Riley declined, stating that, following the clarification of his supposed misunderstanding with management, BRF no longer wished to sell its ownership interest and remained interested in working with management, and that BRF would offer $2.75/share (the same as the July 24 Riley Proposal, but lower than the $3.25/share BRF said it would offer if it could reach agreement on management's equity awards, even though it had since done so) or simply wait until the Standstill expired to acquire over 50% of National's stock. This is exactly the kind of threat that *MFW* protections are designed to prevent.

90. By September 25, 2020, as Riley was putting the finishing touches on his scheme, Mullen had already communicated to Riley that he believed the terms

that they had discussed would be acceptable to the rest of management. Notably, no Special Committee representatives were present for these discussions, and it is unclear exactly what terms they agreed upon and when. It is clear, however, that management had *already* reached a deal in principle with Riley – and between the two (and ignoring Asher), they owned approximately 55% of National. Again, no *MFW* protections were in place at this time.

91. On September 29, 2020, the Special Committee agreed that it was unlikely that BRF would agree to further improve its offer, determined to pursue the transaction with BRF at $2.75/share, and directed its advisors to facilitate the negotiation between Riley and management – which, negotiations, of course, were already done in principle. [redacted]

J. The Parties Belatedly Seek to Cleanse Their Actions Through the Late Re-Implementation of *MFW* Protections

92. Having already reached an agreement with management regarding the treatment of their equity and compensation and with the Special Committee on price for the Minority Stockholders, on November 11, 2020, BRF sent a letter to the

Special Committee *renewing* the July 24 Riley Proposal, which was premised on the *MFW* Conditions, including the price of $2.75/share (the "November 11 Riley Letter"). As noted above, however, the July 24 Riley Proposal – which included the *MFW* Conditions – had been specifically withdrawn. The Special Committee, management, and BRF had thus been conducting negotiations regarding the consideration to be received by shareholders and management's equity awards before the *MFW* Conditions were formally renewed by the November 11 Riley Letter. Thereafter, draft merger agreements began being circulated.

93. [redacted] Also on December 8, 2020, the Special Committee determined that the "Minority Stockholders" contemplated by the newly reenacted *MFW* protections should exclude BRF, BRF's subsidiaries, and directors, executive officers, and members of management who would enter into new employment agreements with BRF – but not Asher.

K. Management Reveals Millions in Hidden Revenue

94. In short, in the less than two weeks after Asher – who Mullen understood to be Riley's "partner" – threatened a proxy contest, Mullen suddenly came to terms with Riley; Riley and the Special Committee came to economic terms for Minority Shareholders; and then the parties tried to cleanse these negotiations by

retroactively subjecting them to *MFW*. Then, with everything buttoned up and his agreement with Riley secure, Mullen finally disclosed the millions coming to National.

95. Specifically, on December 10, 2020, the Board met, with Riley present pursuant to BRF's board observer rights (for the first time since the process started) – as if he knew something important might be discussed. Sure enough, during this meeting, management informed the Board that certain funds managed by National's private shares business invested in privately-held start-up companies Palantir Technologies Inc. ("Palantir") and Airbnb, Inc. ("Airbnb"), which recently went public and whose stock prices had increased significantly. Management further informed the Board that, as a result, **National might receive substantial fees in connection with managing the funds** (the "Palantir Fees" and the "Airbnb Fees"), **which were expected to be significant relative to National's market capitalization**.[11] Management delayed disclosing this significant information to the Board and Special Committee until late in the process, despite the fact that news that Palantir was going public broke in August 2020. What is more, and now on the same

[11] The Board discussed a plan to enter into hedging transactions with third parties *through BRF*. Management further informed the Board that National was also exploring the sale of the funds that held Palantir stock in order to realize near-term liquidity. Neither would actually happen.

team, following the discussion of financials, [redacted]

96. On the same day, after the Board meeting, Mullen and Riley discussed management compensation and Mullen asked Riley to ensure that BRF would approve of National reimbursing $784,000 in legal fees that Mullen had incurred or might incur in connection with an SEC subpoena (the "Indemnification Agreement"), which the Board had not agreed to cause National to pay. Riley agreed. Mullen only later informed directors of this understanding.

97. On December 23, 2020, the Special Committee acknowledged the fact that the Palantir Fees were so significant relative to National's market capitalization that they would likely impact National's value, considered making a counteroffer to BRF as a result, and directed management to halt discussions with BRF regarding compensation (as if that had stopped management before). On January 5, 2021, the Special Committee was told that the Palantir Fees alone might generate as much as **<u>$0.74 per share</u>** in additional value and, in light of this fact, directed KBW to deliver

a \$3.50/share counteroffer to BRF. Riley responded the same day by offering \$3.25/share, which the Special Committee accepted on January 6, 2021. Importantly, it appears that this \$0.74 per share valuation assumed that the Company would enter into hedging transactions *with* BRF; as noted below, those transactions never occurred, and that assumption depressed the value of the Palantir Fees.

98. [redacted] As a result, KBW "updated" the projections once again, which the Special Committee approved on January 7, 2021, resulting in the much lower analyses found in the Recommendation Statement. Notably, to get to this lower valuation, the Special Committee determined that the Palantir Fees were more likely to generate only \$0.52 in additional value based on "various assumptions." Again, though, it appears that this \$0.22 per share even lower valuation again assumed that the Company would enter into hedging transactions with BRF that *never occurred*, such that the value of the Palantir Fees was double discounted without basis.

99. [redacted]

[redacted] the same day that the parties executed the Merger Agreement.

L. Subsequent Events

100. On January 12, 2021, the Special Committee held a meeting to discuss the Indemnification Agreement, which they had not become aware of until *following* the entry into the Merger Agreement, but determined that the fact that BRF and Mullen executed the Indemnification Agreement concurrently with the Merger Agreement would not have impacted their conclusion regarding the Merger.

101. In late January, "upon further consideration," National decided not to enter into the hedging transactions noted above regarding the Palantir Fees.

102. On January 27, 2021, Purchaser commenced the Offer and National filed the Recommendation Statement. On February 25, 2021, the Merger closed, and BRF acquired National for just $3.25/share in cash.

III. THE MERGER WAS THE RESULT OF AN UNREASONABLE AND CONFLICTED PROCESS, DURING WHICH THE SPECIAL COMMITTEE WAS NOT ADEQUATELY INFORMED AND DID NOT FULFILL ITS DUTY OF CARE

103. As outlined above, National's management acted in their own self-interest and engaged in an inappropriate, conflicted agreement with BRF that ultimately obstructed the Special Committee's work and resulted in inadequate merger consideration for shareholders. The following facts support this conclusion:

a. The Company's management (led by Mullen) acted in their own self-interest by attempting, at first, to thwart the Special Committee's negotiations with BRF in an attempt to secure unique benefits and/or consideration for themselves at the expense of minority shareholders, which obstructed the Special Committee's efforts to negotiate a transaction with BRF.

b. But, when it became apparent that BRF – National's majority shareholder, whose approval was necessary for a deal to be consummated – might instead launch a hostile takeover and slash management's compensation, management and BRF suddenly came to an agreement on unique benefits for management.

c. These significant conflicts and the secret communications occurring between management and BRF repeatedly thwarted and obstructed the Special Committee's efforts to negotiate a transaction with BRF that was in minority shareholders' best interests.

d. Indeed, the Special Committee recognized at the outset the competing interests of management and BRF, but was unable to prevent management from having discussions with BRF during the time period that both the Consortium and BRF were engaged in the process.

e. Management repeatedly ignored the Special Committee's explicit directions not to have discussion with BRF or third parties, and, despite the Special Committee's efforts, management's interests permeated the process.

f. Substantive terms of the transaction were discussed and negotiated without *MFW* protections in place, and without sufficient oversight from the Special Committee.

g. The parties tried to cleanse those negotiations after terms were agreed on by tardily re-implementing *MFW* protections.

h. Management withheld critical information regarding National's value until the last minute in an attempt to enrich themselves and BRF.

i. Fagenson, Vice Chairman of the Board, had been affiliated with Riley through NSGP.

j. And Singer, Executive Vice Chairman of the Board and National's Chief Strategy Officer, and Hume, a member of the Special Committee, had connections to Weiss, to whom Mullen was a loyalist.[12]

104. As a result, the Special Committee failed to fulfill its duty of care and instead sought to justify the unfair Merger by creating its own projections that would support the purported fairness of the Offer Price, but which were inconsistent with National's financial condition and prospects, and which ultimately proved to be contrary to reality. In support of this conclusion are the following facts:

a. Throughout the process, the Special Committee repeatedly determined that management's projections were too aggressive and optimistic.

b. Rather than rely on management's expertise – which ultimately proved correct – the Special Committee instead hijacked the valuation process by instructing KBW to prepare forecasts "with various other assumptions" and selected its own scenarios upon which KBW was to perform its financial analyses.

c. Similarly, the Special Committee made its own determinations regarding the impact of the Palantir Fees and Airbnb Fees – which management determined would be significant relative to National's market capitalization – on the value of National and how those fees should be incorporated into KBW's analyses.

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[12] Hume was a Fortress designee to the Board and currently serves on the board of directors of TG Therapeutics, Inc., of which Weiss is the Executive Chairman, President, and CEO. Moreover, Singer and Michas (a member of the Special Committee *who resigned mid-process*), were both appointed to the Board under Weiss' leadership. It is also unclear whether Singer was a member of the Consortium. Notably, Singer is the sole equity owner of Alternative Insight LLC, which is general partner of the Dharma and Wellness Funds, which have various agreements with NSC that are contingent on Mullen's employment in an executive role with National. Hume and Singer were also the sole members of the "Legal Committee."

d. Indeed, [redacted] the Special Committee instead determined that KBW's analysis did not reflect certain events that might have a negative impact on the value of the fees.

e. Then, days later, after agreeing to BRF's $3.25/share offer, the Special Committee determined that the Palantir Fees were more likely to generate only $0.52 of additional value per share.

f. At the direction of the Special Committee, on or about January 6, 2021, management provided updated projections (which were undisclosed in the Recommendation Statement), which the Special Committee again disregarded and instead adopted its own Updated Special Committee Case, which it then directed KBW to use in its fairness opinion.

g. Moreover, the proposed hedging transactions and/or sale of the funds holding the Palantir investment that formed the partial basis for these reductions were abandoned following the Merger Agreement, making their legitimacy doubtful.

h. And, in connection with its fairness opinion, KBW relied upon the Special Committee – rather than the inside expert view of management – as to the reasonableness and achievability of National's financial and operating forecasts and projections.

V. THE MERGER DID NOT PROVIDE ADEQUATE VALUE TO STOCKHOLDERS

105. Pursuant to the terms of the Merger Agreement, National stockholders received $3.25 in cash for each share of National common stock that they owned. This consideration was inadequate and undervalued the Company.

106. [redacted]

[redacted]

107. [redacted]

108. [redacted]

109. The Company's success was also recognized in the stock's growth, which had been on an upward trajectory during most of 2020, moving from a low of $1.33 per share in April to a 52-week high of $3.42 as of December 30, 2020. Yet, the merger consideration was 5% less than the Company's recently achieved 52-week high.

110. Nevertheless, despite the Company's positive 2020 results, [redacted] and the fact that the Company's management was the most knowledgeable regarding the Company's business and future potential, the Special Committee unilaterally and unjustifiably determined that management's future revenue projections for purposes of valuing the Company were overly aggressive and unreliable, instead directing KBW to create different, lower projections that were used to reduce the value of the Company for the purposes of determining appropriate merger consideration.

111. Moreover, in addition to directing KWB to use lower revenue projections in its valuation analysis, the Special Committee, despite KBW assessing that the Palantir Fees could generate as much as $0.74 additional value on a per-share basis, accepted a Merger Consideration that did not reflect this increased value.

112. Had KWB used accurate projections that Company management reasonably believed, the value per share ranges derived from KWB's analysis would

have been higher. Ultimately, instead of relying on Company management, the Special Committee hijacked the valuation process and forced KWB to use unreasonably low projections that were inconsistent with and far lower than the Company's actual future prospects to justify the unfair merger consideration.

VII. THE STOCKHOLDER VOTE WAS NOT FULLY INFORMED

113. Directors and officers of Delaware corporations are under a fiduciary duty to disclose fully and fairly all material information within their control when they seek stockholder action. Mullen breached this duty in his capacity as an officer by causing a materially incomplete and misleading Recommendation Statement to be filed with the SEC. As discussed above, the Recommendation Statement omitted or misstated material information that prevented stockholders from making an informed decision with respect to the Merger.

114. Specifically, the Recommendation Statement failed to disclose:

a. [redacted]

[redacted]

[redacted]

d. [redacted]

[redacted]

[redacted]

* * *

115. In sum, Defendants orchestrated a flawed and conflicted sales process

that failed to satisfy *MFW'*s requirements. Defendants prevented Plaintiff and the Class from being adequately compensated for their shares and deprived the Company's stockholders of the ability to make an adequately informed decision with respect to the Merger. Accordingly, Plaintiff seeks monetary damages.

MULLEN'S FIDUCIARY DUTIES

116. By reason of his former position with the Company as an officer, Mullen was in a fiduciary relationship with Plaintiff and the other public stockholders of National and owed them a duty of care, loyalty, good faith, candor, and independence.

117. By virtue of his former positions as an officer of National, Mullen, at all relevant times, had the power to control and influence National, did control and influence National, and caused National to engage in the practices complained of herein.

118. To diligently comply with his fiduciary duties, Mullen was prohibited from taking any action that: (a) adversely affected the value provided to the Company's stockholders; (b) favored himself or discouraged or inhibited alternative offers to purchase control of the corporation or its assets; (c) adversely affected his duty to search and secure the best value reasonably available under the circumstances for the Company's stockholders; (d) would provide him with

preferential treatment at the expense of, or separate from, the public stockholders; and/or (e) contractually prohibited him from complying with or carrying out his fiduciary duties.

119. In accordance with his duties of loyalty and good faith, Mullen was obligated to refrain from: (a) participating in any transaction where his loyalties were divided; (b) participating in any transaction where he received, or was entitled to receive, a personal financial benefit not equally shared by the public stockholders of the corporation; and/or (c) unjustly enriching himself at the expense or to the detriment of the public stockholders.

120. Plaintiff alleges herein that Mullen, in connection with the Merger, violated his fiduciary duties, including his duties of care, loyalty, good faith, and candor.

BRF'S FIDUCIARY DUTIES

121. As a controlling stockholder of a publicly traded corporation, Defendant BRF was in a fiduciary relationship with Plaintiff and the other public holders of National common stock requiring that it act in the best interest of the Company and its stockholders, owing them the highest obligations of good faith, fair dealing, loyalty, due care, and full and candid disclosure.

122. In addition, because Defendant BRF had interests that were inconsistent

with the interests of the Company's non-controlling, common stockholders, Mullen and BRF had an additional burden and duty to ensure that the Merger was entirely fair to the stockholders by demonstrating both fair dealing and fair price. For the reasons set forth herein, Defendants cannot carry that burden.

CLASS REPRESENTATION ALLEGATIONS

123. Plaintiff brings this action on behalf of himself and as a class action pursuant to Rule 23 of the Rules of the Court of Chancery on behalf of all other former holders of National common stock who were harmed by Defendants' actions described above (the "Class"). Excluded from the Class are Defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated with any of the Defendants.

124. This action is properly maintainable as a class action because:

a. The Class is so numerous that joinder of all members is impracticable. As of February 9, 2021, there were approximately 13,765,304 outstanding shares of National common stock. The actual number of public stockholders of National will be ascertained through discovery.

b. There are questions of law and fact that are common to the Class that predominate over any questions affecting only individual members, including:

i) whether the Defendants breached their fiduciary duties with respect to Plaintiff and the other members of the Class in connection with the Merger; and

ii) whether Plaintiff and other members of the Class are entitled to damages as a result of the Defendants' wrongful conduct.

125. Plaintiff is an adequate representative of the Class, has retained competent counsel experienced in litigation of this nature, and will fairly and adequately protect the interests of the Class.

126. Plaintiff's claims are typical of the claims of the other members of the Class and Plaintiff does not have any interests adverse to the Class.

127. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for the party opposing the Class.

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

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

FIRST CAUSE OF ACTION

(Against Mullen for Breach of Fiduciary Duties in His Capacity as an Officer)

130. Plaintiff repeats and realleges each allegation set forth herein.

131. Mullen violated the fiduciary duties he owed as an officer to the public stockholders of National.

132. As outlined above, throughout the process that resulted in the Merger and the drafting and disseminating of the Recommendation Statement, Mullen acted in his capacity as an officer with full knowledge of the facts averred in the Recommendation Statement.

133. Specifically, as outlined above, Mullen served as the Company's CEO throughout all of the wrongs alleged herein, actively took part in the Merger negotiations, updated the Board as a member of management on those negotiations and the Company's performance and financial outlook, actively advocated for and took actions in furtherance of management's interests, sought and secured personal benefits not shared by shareholders in the Merger, took part in the preparation of the materially omissive and misleading Recommendation Statement, and signed the Recommendation Statement in his capacity as CEO. In his capacity as CEO, Mullen negotiated for management's unique benefits without sufficient oversight from the Special Committee and prior to the finalization of the Merger Consideration,

disregarded the Special Committee's directives, withheld material financial information from the Special Committee until the end of the process, and knew of the Special Committee's improper reductions to the Company's forecasts.

134. Mullen's conduct as officers during the sales process and Recommendation Statement dissemination constituted a breach of his fiduciary duties to National's public stockholders, in that he was intricately involved in a process to sell National that undervalued the Company and capped the price of National stock at a price that did not adequately reflect the Company's true, inherent, standalone value; played a significant role in facilitating National's sale despite the glaring conflicts of interest discussed above; failed to enact protections or take the necessary steps to guard against such conflicts; acquiesced to the sale of National at a price that was grossly insufficient; failed to sufficiently inform the Board and/or Special Committee of National's value, or disregarded the true value of the Company; and failed to obtain for the public stockholders of National the highest value available for National in the marketplace.

135. What is more, as an officer, Mullen owed a duty of candor to stockholders to ensure the Recommendation Statement disclosed all material information. Acting in that capacity, he was intricately involved in the sales process and preparation of the Recommendation Statement, and aware of the material non-

disclosures outlined above. Nevertheless, he allowed the Recommendation Statement to omit the above-referenced material facts and details regarding the conflicts of interest that permeated the sales process and the non-disclosures that resulted in stockholders' casting an uninformed vote. As a result, he was grossly negligent in breaching the duty of candor he owed stockholders as an officer of National, and stockholders were not fully informed when they decided whether to tender their shares.

136. As a result of these actions, Plaintiff and the Class have suffered damages in that they did not receive fair value for their equity interest in National, and they also suffered the injury of an uninformed stockholder decision on the Merger. Plaintiff therefore seeks damages, including by way of quasi-appraisal, on behalf of himself and the Class, in an amount to be determined at trial.

SECOND CAUSE OF ACTION

(Against BRF for Breach of Fiduciary Duties as a Controlling Stockholder)

137. Plaintiff repeats and realleges each allegation set forth herein.

138. BRF violated fiduciary duties it owed as a controlling stockholder to the minority public stockholders of National.

139. By the acts, transactions, and courses of conduct alleged herein, BRF failed to obtain for the public stockholders of National the highest value available

for National in the marketplace or a price that is entirely fair to them.

140. As alleged herein, BRF initiated and took part in a process to acquire the remaining shares of National common stock that it did not own or control, which undervalued the Company and vested BRF with benefits that were not shared equally by National's public stockholders and placed its interests above the interests of non-insider stockholders. In addition, by forcing the Merger, Defendant BRF capped the price of National stock at a price that did not adequately reflect the Company's true value. Moreover, Defendant BRF disregarded the true value of the Company in an effort to benefit itself and other Company insiders. To this end, it engaged in wrongful conduct in connection with the orchestration and approval of the Merger. Furthermore, any alternate acquirer was faced with engaging in discussions with a controlling stockholder that was committed to the Merger and that would veto any other deal, and Defendants BRF prohibited the Company from pursuing other, value maximizing transactions.

141. As a result of the actions of Defendant BRF, Plaintiff and the Class have suffered damages in that they did not receive the highest available value for their equity interest in National and were forced to make a decision on the Merger in an uninformed manner. Plaintiff therefore seeks damages on behalf of himself and the Class, in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands relief in his favor and in favor of the Class and against Defendants, as follows:

A. Declaring that this action is properly maintainable as a Class action and certifying Plaintiff as Class representative and undersigned counsel as Class counsel;

B. Awarding Plaintiff and the Class all damages suffered as a result of Defendants' wrongdoing alleged herein, including pre and post-judgment interest;

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

D. Granting such other and further equitable relief as this Court may deem just and proper.

Dated: March 30, 2023

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