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: November 19, 2024**

DEFENDANT MICHAEL MULLEN'S ANSWER TO THE VERIFIED CLASS ACTION COMPLAINT

Defendant Michael Mullen ("Mullen" or "Defendant"), by and through his undersigned counsel, hereby responds to the Verified Class Action Complaint (the "Complaint") filed by plaintiff Richard Frank ("Plaintiff") as follows:

GENERAL DENIAL

Mullen denies all allegations in Plaintiff's Complaint, including any allegations in headings and footnotes, not expressly admitted herein. By responding to the Complaint, Mullen does not concede that any such allegations are relevant to any claims against him or involve matters that would be admissible at trial.

While Mullen believes he has no obligation to admit or deny the headings or footnotes used in the Complaint, to the extent any response is required, Mullen denies all allegations, including any allegations in headings and footnotes, not expressly admitted herein. Mullen includes headings and sub-headings from the Complaint for ease of reference only and does not construe them as allegations requiring a response. Mullen's use herein of defined terms in the Complaint should not be interpreted as, and is not, an admission that (i) Mullen agrees with Plaintiff's characterization or use of the defined terms, (ii) the defined terms are accurate, or (iii) the documents or items described by the defined terms actually exist. Defendant uses these defined terms solely for purposes of responding to the allegations in the Complaint.

Additionally, Plaintiff's Complaint contains extensive references to, allegations about, and characterizations of public filings, court filings, emails, reports, articles, and other documents that Plaintiff claims to have reviewed. In all such instances, Mullen respectfully refers the Court to those documents for an accurate and complete statement of their contents rather than Plaintiff's characterization thereof and allegations about their significance. By responding to the Complaint, Mullen does not concede that any such materials are accurately characterized or summarized, are relevant to any claims against him or would be admissible at trial.

SPECIFIC RESPONSES TO COMPLAINT ALLEGATIONS

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").

ANSWER: Paragraph 1 consists of legal conclusions to which no response is required. Paragraph 1 further contains prefatory language to which no response is required. To the extent a response is required, Mullen denies the allegations in Paragraph 1 except to admit that Plaintiff has filed the Complaint.

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.

ANSWER: Paragraph 2 consists of legal conclusions to which no response is required. Paragraph 2 further contains prefatory language to which no response is required. To the extent a response is required, Mullen denies the allegations in Paragraph 2 except to admit that Plaintiff has filed the Complaint.

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.

ANSWER: Mullen admits that National Holdings Corporation ("National" or the "Company") entered into an Agreement and Plan of Merger, dated as of January 10, 2021, with B. Riley Financial, Inc. and B. Riley Principal Merger Corp. III ("Merger Agreement"), and that the Board approved the Merger Agreement. Mullen denies all legal conclusions or Plaintiff's characterization of the document or events at issue. To the extent Paragraph 3 purports to characterize the contents of the Merger Agreement, Mullen respectfully refers the Court to that document for a complete and accurate description of its contents and denies any allegations inconsistent with it. To the extent the allegations in Paragraph 3 purport to characterize the Company's Form 8-K dated February 25, 2021, including concerning a tender offer, and/or its January 27, 2021 Schedule 14D-9 (the "Recommendation Statement"), Mullen respectfully refers the Court to such documents for their complete and accurate contents and denies any allegations inconsistent with them. Mullen denies the remaining allegations in Paragraph 3.

4. As detailed below, National's management (led by Mullen) acted in their own self-interest by attempting, at first, to thwart the Special Committee's negotiations with BRF 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. But, when it became apparent that BRF – National's majority shareholder, whose approval was necessary for a deal to be inked[1] – might instead launch a hostile takeover and slash management's compensation, management and BRF suddenly came to an agreement on unique benefits for management. These conflicts and the secret communications that occurred between management and BRF repeatedly thwarted and obstructed the Special Committee's efforts to negotiate a transaction with BRF that was in shareholders' best interests. Indeed, the Special Committee recognized at the outset the competing interests of management and BRF and considered strategies to ensure, in part, that management did not discuss their plans or National's performance with BRF. Nevertheless, 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.

ANSWER: Paragraph 4 consists of legal conclusions to which no response is required. Paragraph 4 further contains prefatory language to which no response is required. To the extent a response is required, Mullen denies the allegations in Paragraph 4 except to admit that Plaintiff has filed the Complaint. No response is required to footnotes. To the extent a response is required to Footnote 1, the allegations in Footnote 1 are not directed to Mullen or his conduct, and Mullen denies them on that basis. To the extent Footnote 1 purports to characterize the contents of an unrelated answer, Mullen respectfully refers the Court to that

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

document for a complete and accurate description of its contents and denies any allegations inconsistent with it.

5. Then, once management and BRF struck their deal, the Special Committee negotiated economic terms with BRF without the benefit of *MFW* protections, and only belatedly tried to cleanse those tainted negotiations by tardily implementing such protections *after* substantive economic terms were discussed and agreed to. Moreover, in furtherance of their deal with BRF, management withheld critical information regarding value from the Board and Special Committee until the last minute in an attempt to enrich themselves and BRF. The Special Committee, once confronted with this reality, 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 not grounded in reality and which ultimately proved to be contrary to reality.

ANSWER: Paragraph 5 consists of legal conclusions to which no response is required. Paragraph 5 further contains prefatory language to which no response is required. To the extent a response is required, Mullen denies the allegations in Paragraph 5.

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]

ANSWER: Paragraph 6 consists of legal conclusions to which no response is required. Paragraph 6 further contains prefatory language to which no

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

response is required. To the extent a response is required, Mullen denies the allegations in Paragraph 6 except to admit that Plaintiff has filed the Complaint. Mullen further avers that Plaintiff has suffered no damages. No response is required to footnotes. To the extent a response is required to Footnote 2, and to the extent that Footnote 2 purports to characterize the Section 220 Litigation, Mullen respectfully refers the Court to that document for a complete and accurate description of its contents and denies any allegations inconsistent with it.

PARTIES

I. PLAINTIFF

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

ANSWER: The allegations in Paragraph 7 are not directed to Mullen or his conduct, and Mullen denies them on that basis.

II. DEFENDANTS

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

ANSWER: Mullen admits that he was a member of National's Board beginning in January 2017 when he was appointed Co-Chief Executive Officer of the Company. Mullen admits that he was Chairman of the Board beginning in June 2018, and otherwise denies the allegations in Paragraph 8 and denies Plaintiff's characterization of the events at issue.

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.

ANSWER: Mullen admits that B. Riley Financial is a Delaware corporation and a National stockholder. Mullen otherwise denies the allegations in Paragraph 9 and denies Plaintiff's characterization.

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.

ANSWER: Mullen admits that Mr. Riley was co-CEO of B. Riley Financial. Mullen otherwise denies the allegations in Paragraph 10 and denies Plaintiff's characterization.

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

ANSWER: Mullen admits the allegations in Paragraph 11.

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.

ANSWER: Mullen admits the allegations in Paragraph 12.

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

ANSWER: Mullen admits the allegations in Paragraph 13.

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

ANSWER: Mullen admits the allegations in Paragraph 14.

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.

ANSWER: Mullen admits the allegations in Paragraph 15.

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.

ANSWER: Mullen admits the allegations in Paragraph 16.

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.

ANSWER: Mullen admits the allegations in Paragraph 17.

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.

ANSWER: The allegations in Paragraph 18 are not directed to Mullen or his conduct, and Mullen denies them on that basis. No response is required to footnotes. To the extent a response is required to Footnote 3, the allegations in Footnote 3 are not directed to Mullen or his conduct, and Mullen denies them on that basis.

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.

ANSWER: The allegations in Paragraph 19 are not directed to Mullen or his conduct, and Mullen denies them on that basis.

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.

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[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.

ANSWER: The allegations in Paragraph 20 are not directed to Mullen or his conduct, and Mullen denies them on that basis.

B. National's Failed Merger with Fortress

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.

ANSWER: The allegations in Paragraph 21 are not directed to Mullen or his conduct, and Mullen denies them on that basis.

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.

ANSWER: The allegations in Paragraph 22 are not directed to Mullen or his conduct, and Mullen denies them on that basis.

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.

ANSWER: Mullen admits the allegations in Paragraph 23.

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.

ANSWER: The allegations in Paragraph 24 are not directed to Mullen or his conduct, and Mullen denies them on that basis, except Mullen admits that he was appointed Chairman of the Board in June 2018.

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]

ANSWER: The allegations in Paragraph 25 are not directed to Mullen or his conduct, and Mullen denies them on that basis. To the extent Paragraph 25

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[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.

purports to characterize the contents of an article published by Reuters, Mullen respectfully refers the Court to that document for a complete and accurate description of its contents and denies any allegations inconsistent with it. Mullen further denies any characterizations in Paragraph 25 and denies that the Reuters article is factually correct. No response is required to footnotes. To the extent a response is required to Footnote 4, the allegations in Footnote 4 are not directed to Mullen or his conduct, and Mullen denies them on that basis. To the extent Footnote 4 purports to characterize the contents of an article published by Reuters, Mullen respectfully refers the Court to that document for a complete and accurate description of its contents and denies any allegations inconsistent with it.

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*.

ANSWER: The allegations in Paragraph 26 are not directed to Mullen or his conduct, and Mullen denies them on that basis. To the extent Paragraph 26 purports to characterize the contents of an article published by Reuters, Mullen respectfully refers the Court to that document for a complete and accurate description of its contents and denies any allegations inconsistent with it. Mullen further denies any characterizations in Paragraph 26 and denies that the Reuters article is factually correct.

27. Immediately after taking its controlling interest, BRF began seeking to reduce management's compensation. For example, on February 16, 2019, BRF provided the Board with a presentation entitled "NHLD Executive Compensation," in which it noted that, "[f][rom 2015 to 2018, NHLD's executive compensation grew at 34% CAGR and board comp at a 76% CAGR while…[r]evenue grew at 9% CAGR" and "Net Income stayed breakeven," and "recommend[ed] changes to both the magnitude and structure of the compensation plan." It concluded: "Both executive and board compensation are materially above appropriate levels," and recommended that "compensation…be reduced" and equity vesting metrics be modified. In November 2019, BRF provided another presentation in which it again targeted management's compensation, and management was thus well aware that their compensation was on the chopping block if BRF ever acquired National.

ANSWER: The allegations in Paragraph 27 are not directed to Mullen or his conduct, and Mullen denies them on that basis, except admits that the Board received presentations from BRF on February 16, 2019 and in November 2019. To the extent Paragraph 27 purports to characterize the contents of a "presentation entitled 'NHLD Executive Compensation'" by BRF and/or "another presentation," Mullen respectfully refers the Court to those documents for a complete and accurate description of their contents and denies any allegations inconsistent with them.

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]

ANSWER: Mullen admits that Kay Johnson is a former executive vice president and chief compliance officer of National Securities Corporation, and otherwise denies the allegations in Paragraph 28, which purport to characterize a complaint and docket in an unrelated matter, which are publicly available. To the extent Paragraph 28 purports to characterize the contents of the unrelated complaint and docket, Mullen respectfully refers the Court to those documents for a complete and accurate description of their contents, and denies any allegations inconsistent with them and any characterization of the events. No response is required to footnotes. To the extent a response is required to Footnote 5, and to the extent Footnote 5 purports to characterize the contents of the complaint and docket, Mullen respectfully refers the Court to those documents for a complete and accurate description of their contents, and denies any allegations inconsistent with them and any characterization of the events.

D. Riley Uses His Increased Holdings to Again Attempt to Buy National

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

[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.

would be willing to provide other National stockholders with a choice in this matter" by offering to purchase their shares.

ANSWER: The allegations in Paragraph 29 are not directed to Mullen or his conduct, and Mullen denies them on that basis. To the extent Paragraph 29 purports to characterize the contents of a document, Mullen respectfully refers the Court to that document for a complete and accurate description of its contents and denies any allegations inconsistent with it.

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.

ANSWER: Mullen admits he discussed a waiver of the Standstill Agreement with Riley on April 27, 2020. To the extent Paragraph 30 purports to characterize the contents of the Recommendation Statement and/or "a letter seeking formal authorization," Mullen respectfully refers the Court to those documents for a complete and accurate description of their contents and denies any allegations inconsistent with them.

31. On April 28, 2020, Mullen reviewed for the Board his discussion with B. Riley regarding B. Riley's request that he be allowed to submit a proposal to the Board regarding a potential strategic transaction. The Board discussed the fact that B. Riley would need to amend his 13D filing as a precondition to delivery of the proposal, the possibility that the proposal would be *financially inadequate*, and the potential negative impact on the ongoing business operations of the Company of receiving such an inadequate public proposal.

ANSWER: Mullen admits he attended a Board meeting on April 28, 2020. To the extent Paragraph 31 purports to characterize the contents of the Recommendation Statement and/or minutes of a meeting of the Board on April 28, 2020, Mullen respectfully refers the Court to those documents for a complete and accurate description of their contents and denies any allegations inconsistent with them.

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.

ANSWER: Paragraph 32 consists of legal conclusions to which no response is required. To the extent the allegations in Paragraph 32 concern Mullen and a response is required, Mullen admits that the Company granted him authorization to negotiate a limited waiver of the Standstill Agreement, but otherwise denies the allegations in Paragraph 32. To the extent Paragraph 32 purports to characterize the contents of the Recommendation Statement, Mullen respectfully refers the Court to that document for a complete and accurate description of its contents and denies any allegations inconsistent with it.

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.

ANSWER: Mullen admits that on April 30, 2020, BRF sent a letter to the Board (the "April 30 Riley Proposal"), and that on April 30, 2020, the Company granted a limited waiver of the Standstill Agreement, and otherwise denies the allegations in Paragraph 33. The allegations in Paragraph 33 purport to characterize and selectively quote from the April 30 Riley Proposal and the Recommendation Statement, which are publicly available. The documents speak for themselves, and no response is required. To the extent a response is required, Mullen refers the Court to the documents for a complete and accurate statement of their contents and denies any allegations inconsistent with them. Mullen denies Plaintiff's characterization of the events in Paragraph 33.

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.

ANSWER: Paragraph 34 consists of legal conclusions to which no response is required. To the extent the allegations in Paragraph 34 concern Mullen and a response is required, Mullen admits that the Company granted a limited waiver of the Standstill Agreement, and otherwise denies the allegations in Paragraph 34.

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").

ANSWER: Mullen admits that the Board met and formed a Special Committee on May 5, 2020, and that it consisted of Gary, Hume, Creagh, and Michas. Mullen admits that the Board agreed to condition the sale on 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. To the extent the allegations in Paragraph 35 purport to characterize the Recommendation Statement, the document speaks for itself, and no response is required. To the extent a response is required, Mullen refers the Court to the document for a complete and accurate statement of its contents and denies any allegations inconsistent with it.

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.

ANSWER: The allegations in Paragraph 36 are not directed to Mullen or his conduct, and Mullen denies them on that basis. To the extent Paragraph 36 purports to characterize the contents of the Recommendation Statement, Mullen respectfully refers the Court to that document for a complete and accurate description of its contents and denies any allegations inconsistent with it.

37. On May 8, 2020, management (specifically, Mullen and Glenn Worman (National's CFO)) provided a presentation to the Board in which they appear to have attempted to warn the Board against pursuing a deal with Riley, favoring a growth strategy instead. Therein, they specifically noted: "We have invested in this company to build for scale and now it is the time to exploit this. . . . [W]e are structuring deals with better payouts and disproportionally building advisory, insurance and tax revenues to ensure that we are less dependent on Banking revenues. . . . We are in a consolidating industry ...many ~$20m revenue Firms are looking for a new home...and we are receiving inbound calls."

ANSWER: Mullen admits he attended a May 7, 2020 Board meeting and made a presentation, and otherwise denies the allegations in Paragraph 37. To the extent Paragraph 37 purports to characterize the contents of the presentation that occurred at the May 7, 2020 Board meeting, Mullen respectfully refers the Court to that document for a complete and accurate description of its contents and denies any allegations inconsistent with it.

38. Riley was present at this meeting pursuant to his observer rights, and he and Mr. Creagh appear to have engaged in a dispute with Mullen and Worman over management's equity, the Company's cash, use of cash, and cash burn. During this exchange, Creagh expressed concern for the rate of cash burn, in response to which Worman represented that the Company had at least seven or eight fiscal quarters of free cash with which to operate. Also during this exchange Riley and Mullen engaged in a back and forth regarding the "amount of payouts" due to management.

ANSWER: Mullen admits he attended the May 7, 2020 Board meeting and made a presentation, but otherwise denies the allegations in Paragraph 38. To the extent Paragraph 38 purports to characterize the contents of the minutes of the May 7, 2020 Board meeting, Mullen respectfully refers the Court to that document for a complete and accurate description of its contents and denies any allegations inconsistent with it.

E. Management Forms a Competing Consortium

39. Well aware that BRF intended to cut their compensation if it took over, and fresh off of a confrontation with Riley, 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.**

ANSWER: Mullen admits the Special Committee received a letter from McGuireWoods on May 8, 2020 and that the Special Committee learned that the Consortium was comprised of the senior management team, but denies Plaintiff's characterizations of the events. Mullen refers the Court to the document for a complete and accurate statement of its contents and denies any allegations inconsistent with it. Mullen denies Plaintiff's characterization of the events in Paragraph 39.

40. In the letter, the Consortium – comprised of National's entire management team – stated plainly that BRF's proposal was not in shareholders' best interests:

> [The] Consortium believes that the **Corporation's value exceeds its market capitalization** and that [BRF's] non-binding proposal undervalues the Common Stock to the detriment of the unaffiliated stockholders. The Consortium disagrees with [BRF] that the best alternative is for the Corporation to remain a part of

> [BRF] and in fact believes that such a combination would deprive the Corporation's unaffiliated stockholders of any recovery in the trading price of its shares, and damage the Corporation by disrupting its business and its network of financial advisers. The Consortium believes, contrary to the statements set forth in [BRF's] Schedule 13D filed on April 30, 2020, that **a better alternative would be for the Corporation to remain independent**.

The letter further noted that management's proposal is "not taking advantage of a financial crisis" – as BRF's was – and was also better because RSUs would not vest and dilute shareholders, and requested approval of the Consortium becoming "interested" under Section 203.

ANSWER: The allegations in Paragraph 40 are not directed to Mullen or his conduct, and Mullen denies them on that basis. To the extent a response is required, Mullen refers the Court to the Consortium Letter for a complete and accurate statement of its contents and denies any allegations inconsistent with it. Mullen denies Plaintiff's characterization of the events in Paragraph 40.

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.

ANSWER: The allegations in Paragraph 41 are not directed to Mullen or his conduct, and Mullen denies them on that basis. To the extent Paragraph 41 purports to characterize the contents of the Recommendation Statement, Mullen respectfully refers the Court to that document for a complete and accurate description of its contents and denies any allegations inconsistent with it. Further, to the extent that Paragraph 41 purports to characterize the contents of an article published by Reuters, Mullen respectfully refers the Court to that document for a complete and accurate description of its contents. Mullen further denies any characterizations in Paragraph 41, and denies that the Reuters article is factually correct.

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. Although undisclosed, the minutes note that the Special Committee was also concerned about the risk that management's conflicts could deter other bidders, and about whether a transaction with management was even permitted under the laws and regulations governing National.

ANSWER: The allegations in Paragraph 42 are not directed to Mullen or his conduct, and Mullen denies them on that basis. To the extent Paragraph 42 purports to characterize the contents of the Recommendation Statement, Mullen respectfully refers the Court to that document for a complete and accurate description of its contents and denies any allegations inconsistent with it.

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*.

ANSWER: The allegations in Paragraph 43 are not directed to Mullen or his conduct, and Mullen denies them on that basis. To the extent Paragraph 43 purports to characterize the contents of the Recommendation Statement, Mullen respectfully refers the Court to that document for a complete and accurate description of its contents and denies any allegations inconsistent with it.

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. The Special Committee also discussed whether the Consortium's plan to engage National's brokers to market its stock was even legal, "[the] need for additional procedures to negotiate w[ith] management…., and [the] risk that management conflicts deter potential bidders." The Special Committee also discussed the adoption of *MFW* protections regarding BRF and the clarification that BRF's April 30 Riley Proposal included shares owned by the independent directors but excluded shares owned by management because BRF wished to retain management through continuing equity in the private company. The Special Committee also agreed upon the retention of Keefe, Bruyette & Woods, Inc. ("KBW") as its financial advisor for purposes of a potential transaction.

ANSWER: The allegations in Paragraph 44 are not directed to Mullen or his conduct, and Mullen denies them on that basis. To the extent Paragraph 44 purports to characterize the contents of the Recommendation Statement, Mullen respectfully refers the Court to that document for a complete and accurate description of its contents and denies any allegations inconsistent with it.

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. **As outlined below, management simply disregarded this express instruction.** 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").

ANSWER: Paragraph 45 consists of legal conclusions to which no response is required. To the extent the allegations in Paragraph 45 concern Mullen and a response is required, the allegations in Paragraph 45 are not directed to Mullen or his conduct, and Mullen denies them on that basis. To the extent Paragraph 45 purports to characterize the contents of the Recommendation Statement, Mullen respectfully refers the Court to that document for a complete and accurate description of its contents and denies any allegations inconsistent with it.

46. On May 22, 2020, the Special Committee discussed with KBW how KBW could possibly obtain due diligence information *from management* sufficient to develop a valuation of National. 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.**

ANSWER: Paragraph 46 consists of legal conclusions to which no response is required. The allegations in Paragraph 46 are not directed to Mullen or his conduct, and Mullen denies them on that basis. To the extent Paragraph 46 purports to characterize the contents of the Recommendation Statement, Mullen respectfully refers the Court to that document for a complete and accurate description of its contents and denies any allegations inconsistent with it.

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

ANSWER: The allegations in Paragraph 47 are not directed to Mullen or his conduct, and Mullen denies them on that basis.

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. On June 3, 2020, the Special Committee concluded that it was unlikely that BRF would support the Management Proposal, and likewise determined not to reach out to any other third parties. The Committee also noted that BRF had "expressed frustration with the timeline and the desire to start substantive negotiation," but – acknowledging BRF's controlling stockholder position – "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]

ANSWER: The allegations in Paragraph 48 are not directed to Mullen or his conduct, and Mullen denies them on that basis, except that Mullen admits that the Special Committee learned that the Consortium was comprised of the senior

[6] Also on June 3, 2020, a KBW representative emailed Riley to tell him that "the lawyers are close to finalizing the MFW agreement" and that "We' re not allowed to have any substantive conversations in advance of the MFW being finalized," thereby acknowledging that both the SC and BRF had to agree to the MFW conditions for them to be effective.

management team, but denies Plaintiff's characterizations of the events. To the extent Paragraph 48 purports to characterize the contents of the Recommendation Statement, Mullen respectfully refers the Court to that document for a complete and accurate description of its contents and denies any allegations inconsistent with it. No response is required to footnotes. To the extent a response is required to Footnote 6, the allegations in Footnote 6 are not directed to Mullen or his conduct, and Mullen denies them on that basis. To the extent Footnote 6 purports to characterize the contents of the Recommendation Statement, Mullen respectfully refers the Court to that document for a complete and accurate description of its contents and denies any allegations inconsistent with it.

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

ANSWER: The allegations in Paragraph 49 are not directed to Mullen or his conduct, and Mullen denies them on that basis. To the extent Paragraph 49 purports to characterize the contents of the Recommendation Statement, Mullen respectfully refers the Court to that document for a complete and accurate description of its contents and denies any allegations inconsistent with it. Mullen further denies any characterizations in Paragraph 49.

50. The next day, June 5, 2020, BRF sent the Special Committee an analysis of the proposed cost savings that BRF would initiate if it acquired National and similar cost savings it had affected at other acquired companies, thereby again clearly placing management on notice that BRF would cut their compensation if it acquired National.[7]

ANSWER: The allegations in Paragraph 50 are not directed to Mullen or his conduct, and Mullen denies them on that basis. No response is required to footnotes. To the extent a response is required to Footnote 7, the allegations in Footnote 7 are not directed to Mullen or his conduct, and Mullen denies them on that basis. To the extent Footnote 7 purports to characterize the contents of the Recommendation Statement, Mullen respectfully refers the Court to that document for a complete and accurate description of its contents and denies any allegations inconsistent with it.

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.

ANSWER: The allegations in Paragraph 51 are not directed to Mullen or his conduct, and Mullen denies them on that basis, except to admit that the

[7] The Recommendation Statement merely described these materials as Riley's "views of the benefits of the proposed transaction," without mentioning the significant compensation cuts management would face in them.

Management Consortium informed the Special Committee of plans to purchase shares from Asher and Riley or to cause National to issue new shares, but denies Plaintiff's characterizations of the events. To the extent Paragraph 51 purports to characterize the contents of the Recommendation Statement, Mullen respectfully refers the Court to that document for a complete and accurate description of its contents and denies any allegations inconsistent with it.

52. During a meeting on June 11, 2020, the Special Committee 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. Privately, the Special Committee was aware of the impending conflict between BRF and management, as BRF intended to make its tender offer to all stockholders, *with the expectation that management would agree to roll-over its shares and continue to operate the Company*.

ANSWER: The allegations in Paragraph 52 are not directed to Mullen or his conduct, and Mullen denies them on that basis.

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. On the same day, the Special Committee directed KBW to engage with Riley "with a view towards addressing his desire for speedy process."

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[8] Notably, the contemporaneous Special Committee minutes do not record the Special Committee's apparent conclusion that the projections were too aggressive.

ANSWER: The allegations in Paragraph 53 are not directed to Mullen or his conduct, and Mullen denies them on that basis. To the extent Paragraph 53 purports to characterize the contents of an email from Bryant Riley, Mullen respectfully refers the Court to that document for a complete and accurate description of its contents and denies any allegations inconsistent with it. No response is required to footnotes. To the extent a response is required to Footnote 8, the allegations in Footnote 8 are not directed to Mullen or his conduct, and Mullen denies them on that basis. To the extent Footnote 8 purports to characterize the contents of the June 16, 2020 Special Committee meeting minutes, Mullen respectfully refers the Court to that document for a complete and accurate description of its contents and denies any allegations inconsistent with it.

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

ANSWER: Mullen denies the allegations in Paragraph 54.

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.

ANSWER: The allegations in Paragraph 55 are not directed to Mullen or his conduct, and Mullen denies them on that basis.

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.

ANSWER: The allegations in Paragraph 56 are not directed to Mullen or his conduct, and Mullen denies them on that basis.

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.

ANSWER: Mullen denies the allegations in Paragraph 57, but Mullen admits that KBW called him about the May 8 Consortium Proposal. To the extent Paragraph 57 purports to characterize the contents of the Recommendation Statement, Mullen respectfully refers the Court to that document for a complete and accurate description of its contents and denies any allegations inconsistent with it.

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"). Therein, the Consortium again requested approval under Section 203, but to no avail.

ANSWER: Paragraph 58 consists of legal conclusions to which no response is required. To the extent the allegations in Paragraph 58 concern Mullen and a response is required, Mullen denies them, except to admit that the Consortium delivered an offer to purchase all National stock for $3.25/Share. To the extent Paragraph 58 purports to characterize the contents of the Recommendation Statement, Mullen respectfully refers the Court to that document for a complete and accurate description of its contents and denies any allegations inconsistent with it.

59. On July 6, 2020, the Special Committee met to discuss the competing proposals, Riley's stated expectation that "management would agree not to tender their shares and to continue to operate the Company," and that any transaction with BRF could not proceed unless Riley and management renegotiated management's equity. 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.

ANSWER: The allegations in Paragraph 59 are not directed to Mullen or his conduct, and Mullen denies them on that basis.

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"). Instead, the Consortium noted its belief that "its current proposal constitute[d] material information and should be publicly disclosed immediately…[and], if the Committee disagrees, the Committee should allow management to purchase shares of Common Stock (as the Committee should be aware *Daniel Asher has been doing*)." The Consortium further requested a meeting with the Special Committee, equal access and communications "in what to date has been an inequitable process that has advantaged [BRF] . . . and disadvantaged the Consortium," and approval under Section 203 (again, to no avail).

ANSWER: Paragraph 60 consists of legal conclusions to which no response is required. To the extent the allegations in Paragraph 60 concern Mullen and a response is required, Mullen denies them, except to admit that the Consortium responded to the Special Committee on July 9, 2020. To the extent Paragraph 60 purports to characterize the contents of the July 9 Consortium Letter and/or the Recommendation Statement, Mullen respectfully refers the Court to those documents for a complete and accurate description of their contents and denies any allegations inconsistent with them.

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. The Special Committee recognized as much, as it noted in its minutes that Mullen agreed that "the Consortium would obey the committee's instructions and would not communicate with Mr. Riley **in any capacity.**".

ANSWER: Paragraph 61 consists of legal conclusions to which no response is required. To the extent the allegations in Paragraph 61 concern Mullen and a response is required, Mullen denies them. To the extent Paragraph 61 purports to characterize the contents of the July 9 Special Committee meeting minutes and/or the Recommendation Statement, Mullen respectfully refers the Court to those documents for a complete and accurate description of their contents and denies any allegations inconsistent with them.

62. In the interim, on July 8, 2020, BRF requested permission to negotiate with management regarding management's outstanding equity awards. The contemporaneous minutes notably reference a desire to negotiate "management retention and compensation," rather than simply equity.

ANSWER: The allegations in Paragraph 62 are not directed to Mullen or his conduct, and Mullen denies them on that basis. To the extent Paragraph 62 purports to characterize the contents of the July 8 Special Committee meeting minutes and/or the Recommendation Statement, Mullen respectfully refers the Court to those documents for a complete and accurate description of their contents and denies any allegations inconsistent with them.

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

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[9] While the Proxy describes the issue as "management's outstanding equity awards," the contemporaneous minutes note that the issue also includes "management's retention and comp."

ANSWER: The allegations in Paragraph 63 are not directed to Mullen or his conduct, and Mullen denies them on that basis. To the extent Paragraph 63 purports to characterize the contents of the Recommendation Statement, Mullen respectfully refers the Court to that document for a complete and accurate description of its contents. No response is required to footnotes. To the extent a response is required to Footnote 9, the allegations in Footnote 9 are not directed to Mullen or his conduct, and Mullen denies them on that basis. To the extent Footnote 9 purports to characterize the contents of the July 12 Special Committee meeting minutes and/or the Recommendation Statement, Mullen respectfully refers the Court to those documents for a complete and accurate description of their contents and denies any allegations inconsistent with them.

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.

ANSWER: The allegations in Paragraph 64 are not directed to Mullen or his conduct, and Mullen denies them on that basis. To the extent Paragraph 64 purports to characterize the contents of the Recommendation Statement, Mullen respectfully refers the Court to that document for a complete and accurate description of its contents and denies any allegations inconsistent with it.

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.

ANSWER: The allegations in Paragraph 65 are not directed to Mullen or his conduct, and Mullen denies them on that basis. To the extent Paragraph 65 purports to characterize the contents of the Recommendation Statement, Mullen respectfully refers the Court to that document for a complete and accurate description of its contents and denies any allegations inconsistent with it.

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.

ANSWER: The allegations in Paragraph 66 are not directed to Mullen or his conduct, and Mullen denies them on that basis. To the extent Paragraph 66 purports to characterize the contents of the Recommendation Statement and/or the "July 24 Riley Proposal," Mullen respectfully refers the Court to those documents for a complete and accurate description of their contents and denies any allegations inconsistent with them.

67. Then, to increase the pressure, on July 28, 2020, Riley "stated that if the proposed transaction did not proceed, **he intended to affect a change-of-control transaction after the standstill agreement expired**." This threat, notably, was not disclosed in the Recommendation Statement. The pressure worked and, 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."

ANSWER: The allegations in Paragraph 67 are not directed to Mullen or his conduct, and Mullen denies them on that basis. To the extent Paragraph 67 purports to characterize the contents of the Recommendation Statement and/or some other July 28, 2020 communication from Riley to the Special Committee, Mullen respectfully refers the Court to those documents for a complete and accurate description of their contents and denies any allegations inconsistent with them.

68. On August 6, 2020, in yet another apparent attempt to dissuade the Board from proceeding with BRF, Mullen told the Board that the Company's operational performance, cash position, revenue recognition and transaction progress had all materially surpassed prior (May) expectations; that the banking and private shares businesses had provided a material boost to performance; and that revenue was up significantly. Mullen and Worman further noted that brokerage revenue continued to surpass expectations, as had investment banking revenue, and Worman addressed the continued steady results seen from the Company's tax planning business.

ANSWER: Paragraph 68 consists of legal conclusions to which no response is required. To the extent the allegations in Paragraph 68 concern Mullen and a response is required, Mullen admits he discussed operational performance, cash position, revenue recognition and transaction progress, that the banking and private shares businesses had provided a material boost to performance, that revenue was up significantly, and brokerage revenue. To the extent that Paragraph 68 purports to characterize the contents of the August 6, 2020 Board minutes, Mullen respectfully refers the Court to that document for a complete and accurate description of its contents and denies any allegations inconsistent with it.

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. On August 19, 2020, Riley emailed Mullen with a list of things he was trying to accomplish in the merger. (8/19/20 email attached hereto as Appendix A). Mullen responded question by question the same day, evincing overall optimism about what the merger could do for the companies. Indeed, apparently only concerned that Riley would gut management (and not with shareholders' best interests), Mullen's largest point was about "social issues": "I have a very concerned MGMT Team that it is very important to me that we bring into this dialogue . . . We need to discuss appropriate contracts going forward for the true value drivers of the business." Simply put, Mullen's response generally agreed with all of Riley's points and sought to protect management's interests.

ANSWER: Paragraph 69 consists of legal conclusions to which no response is required. To the extent the allegations in Paragraph 69 concern Mullen and a response is required, Mullen admits he emailed Mr. Riley various times between July 31, 2020 and August 21, 2020. To the extent that Paragraph 69 purports to characterize the contents of an August 19, 2020 email, Mullen respectfully refers the Court to that document for a complete and accurate description of its contents and denies any allegations inconsistent with it.

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.

ANSWER: The allegations in Paragraph 70 are not directed to Mullen or his conduct, and Mullen denies them on that basis. To the extent Paragraph 70 purports to characterize the contents of the Recommendation Statement, Mullen respectfully refers the Court to that document for a complete and accurate description of its contents and denies any allegations inconsistent with it.

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, after Riley informed the Committee that he could not make a deal with Mullen, "KBW…called each of [] Riley and [] Mullen and confirmed that [] Riley and [] Mullen had indeed failed to reach an agreement.".

ANSWER: Mullen admits that he was called by representatives of KBW on August 23, 2020 and confirmed on that call that Mr. Riley had decided to discontinue the negotiations and that he believed he could find buyers for the Shares owned by Mr. Riley and Mr. Asher for $3.25 per Share, but otherwise denies the allegations in Paragraph 71 and denies Plaintiff's characterization of the events at issue. To the extent Paragraph 71 purports to characterize the contents of the Recommendation Statement and some other document, Mullen respectfully refers the Court to those documents for a complete and accurate description of their contents and denies any allegations inconsistent with them.

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.

ANSWER: Mullen denies the allegations in Paragraph 72. To the extent Paragraph 72 purports to characterize the contents of the Recommendation Statement, Mullen respectfully refers the Court to that document for a complete and accurate description of its contents and denies any allegations inconsistent with it.

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.

ANSWER: Mullen admits that on August 26, 2020, BRF confirmed its withdrawal of the July 24 Riley Proposal. The remaining allegations in Paragraph

73 purport to characterize and selectively quote from an August 26, 2020 email. The document speaks for itself, and no response is required. To the extent a response is required, Mullen respectfully refers the Court to that document for a complete and accurate statement of its contents and denies any allegations inconsistent with it.

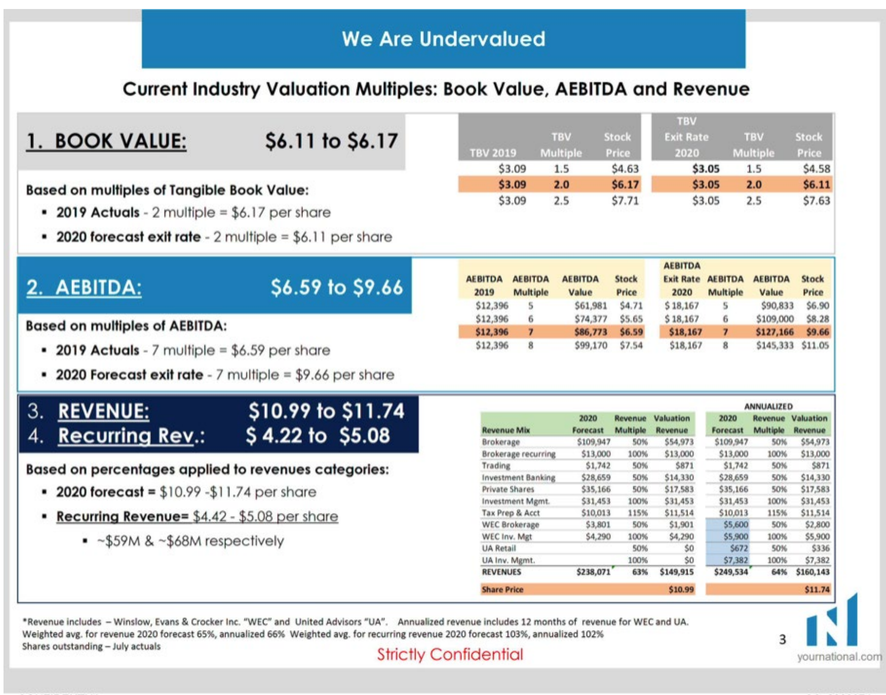
74. According to the Recommendation Statement, following BRF's withdrawal of the July 24 Riley Proposal, Riley and Mullen did not discuss a potential proposal involving National *until September 16, 2020*. As outlined below, that was not true.

ANSWER: Paragraph 74 consists of legal conclusions to which no response is required. To the extent that Paragraph 74 purports to characterize the contents of the Recommendation Statement, Mullen respectfully refers the Court to that document for a complete and accurate description of its contents and denies any allegations inconsistent with it.

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. During this meeting, but undisclosed to shareholders "[s]ome [Board members] (**<u>Mr. Michas in particular</u>**) noted concern[s] with potential lawsuit exposure," after which Michas abruptly resigned. Although the Recommendation Statement discloses the abrupt resignation, it misleadingly represents that it was the result of his (sudden) desire to retire.

ANSWER: Paragraph 75 consists of legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 75 are not directed to Mullen or his conduct, and Mullen denies them on that basis, except Mullen admits that he discussed potential buyers for shares held by BRF and Mr. Asher with the Special Committee on August 31, 2020.

76. In the Consortium's apparent (albeit undated) presentation to the Board, the Consortium noted the issue of being **controlled** by majority shareholders (*i.e.*, Riley and Asher): "we cannot exaggerate the stress that concerns over ownership and RILY have caused….**the standstill has not provided stability we had sought**. RILY has still aired his concerns publicly and **his partnership with Asher** has confirmed the suspicions of our network." The Consortium further stated that National was undervalued by *several dollars per share*, but the fact that controlling ownership had changed hands 5 times in the past 10 years and that Asher and Riley collectively own 65% kept the price down.



We Are Undervalued

Current Industry Valuation Multiples: Book Value, AEBITDA and Revenue

1. **BOOK VALUE:** $6.11 to $6.17

Based on multiples of Tangible Book Value:

- **2019 Actuals** - 2 multiple = $6.17 per share
- **2020 forecast exit rate** - 2 multiple = $6.11 per share

TBV 2019	TBV Multiple	Stock Price	TBV Exit Rate 2020	TBV Multiple	Stock Price
$3.09	1.5	$4.63	$3.05	1.5	$4.58
$3.09	2.0	$6.17	$3.05	2.0	$6.11
$3.09	2.5	$7.71	$3.05	2.5	$7.63

2. **AEBITDA:** $6.59 to $9.66

Based on multiples of AEBITDA:

- **2019 Actuals** - 7 multiple = $6.59 per share
- **2020 Forecast exit rate** - 7 multiple = $9.66 per share

AEBITDA 2019	AEBITDA Multiple	AEBITDA Value	Stock Price	AEBITDA Exit Rate 2020	AEBITDA Multiple	AEBITDA Value	Stock Price
$12,396	5	$61,981	$4.71	$ 18,167	5	$90,833	$6.90
$12,396	6	$74,377	$5.65	$ 18,167	6	$109,000	$8.28
$12,396	7	$86,773	$6.59	$18,167	7	$127,166	$9.66
$12,396	8	$99,170	$7.54	$18,167	8	$145,333	$11.05

3. **REVENUE:** $10.99 to $11.74
4. **Recurring Rev.:** $ 4.22 to $5.08

Based on percentages applied to revenues categories:

- **2020 forecast =** $10.99 -$11.74 per share
- **Recurring Revenue=** $4.42 - $5.08 per share
  - ~$59M & ~$68M respectively

				ANNUALIZED		
Revenue Mix	2020 Forecast	Revenue Multiple	Valuation Revenue	2020 Forecast	Revenue Multiple	Valuation Revenue
Brokerage	$109,947	50%	$54,973	$109,947	50%	$54,973
Brokerage recurring	$13,000	100%	$13,000	$13,000	100%	$13,000
Trading	$1,742	50%	$871	$1,742	50%	$871
Investment Banking	$28,659	50%	$14,330	$28,659	50%	$14,330
Private Shares	$35,166	50%	$17,583	$35,166	50%	$17,583
Investment Mgmt.	$31,453	100%	$31,453	$31,453	100%	$31,453
Tax Prep & Acct	$10,013	115%	$11,514	$10,013	115%	$11,514
WEC Brokerage	$3,801	50%	$1,901	$5,600	50%	$2,800
WEC Inv. Mgt	$4,290	100%	$4,290	$5,900	100%	$5,900
UA Retail		50%	$0	$672	50%	$336
UA Inv. Mgmt.		100%	$0	$7,382	100%	$7,382
REVENUES	$238,071	63%	$149,915	$249,534	64%	$160,143
Share Price			$10.99			$11.74

*Revenue includes – Winslow, Evans & Crocker Inc. "WEC" and United Advisors "UA". Annualized revenue includes 12 months of revenue for WEC and UA.
Weighted avg. for revenue 2020 forecast 65%, annualized 66% Weighted avg. for recurring revenue 2020 forecast 103%, annualized 102%
Shares outstanding – July actuals

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ANSWER: Paragraph 76 consists of legal conclusions to which no response is required. To the extent the allegations in Paragraph 76 concern Mullen and a response is required, Mullen admits that a presentation was made by the Management Consortium to the Board that contained financial projections and valuations. To the extent that Paragraph 76 purports to characterize the contents of the presentation, Mullen respectfully refers the Court to that document for a complete and accurate description of its contents and denies any allegations inconsistent with it.

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").

ANSWER: The allegations in Paragraph 77 are not directed to Mullen or his conduct, and Mullen denies them on that basis. To the extent Paragraph 77 purports to characterize the contents of the "September 7 Asher Letter," Mullen respectfully refers the Court to that document for a complete and accurate description of its contents and denies any allegations inconsistent with it.

78. Around the same time, on September 11, 2020 – and as if they were acting in concert – Riley fired off a threatening email to the Board's counsel. In it, he acknowledged that, while he had been advised "that I would be better served staying quiet and not 'threatening' the board[, National] is by far the worst performing financial services company that I track fraught with conflicts and corporate governance issues," and griped that "management . . . will own MORE

stock in a change of control than [BRF] insiders who founded the company. . . . " He concluded: "I wont stop holding you, management and the Board accountable."

ANSWER: The allegations in Paragraph 78 are not directed to Mullen or his conduct, and Mullen denies them on that basis. To the extent Paragraph 78 purports to characterize the contents of a September 11, 2020 email from Riley, Mullen respectfully refers the Court to that document for a complete and accurate description of its contents and denies any allegations inconsistent with it.

79. On September 15, 2020, the Board met to discuss the September 7 Asher Letter, during which Mullen recounted his various calls and meetings with Asher (including a meeting at Dan Asher's home) in which Asher had seemed to commit to work collaboratively with National; expressed surprise and shock at the nature and tone of Asher's letter; and addressed "recently [sic] discussions" with Riley concerning renewed interest by BRF. During this meeting, Singer commented that it was "time to address Riley's issues," and Creagh then asked Mullen to "recount his background with National and *how his compensation arrangement (including his ability to draw salary as National CEO while still receiving payments from his own branch) were arrived at*, which Mullen addressed in detail." Hume then suggested that the Special Committee would be reconstituted to deal with Riley and "that it may be appropriate for outside advisors to participate in remaining discussions concerning open points (including compensation-related points)." The other Board members concurred.

ANSWER: Mullen admits the allegations in Paragraph 79. To the extent Paragraph 79 purports to characterize the contents of a September 15, 2020 Board minutes, Mullen respectfully refers the Court to that document for a complete and accurate description of its contents and denies any allegations inconsistent with it.

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%.

ANSWER: Paragraph 80 consists of legal conclusions to which no response is required. To the extent a response is required, Mullen denies the allegations. To the extent Paragraph 80 purports to characterize the contents of a September 17, 2020 Schedule 13D filed by Asher, Mullen respectfully refers the Court to that document for a complete and accurate description of its contents and denies any allegations inconsistent with it.

H. The "Mistake": Riley and Mullen Suddenly Come to Terms

81. With maximum leverage now applied to the Board, Riley brought it home. *Before* Asher's public filing, but *after* the Board received and discussed the September 7 Asher Letter, on September 15 and 16, 2020, Mullen – who was now aware that the Board may be looking twice at his compensation as a result of Riley's ongoing agitation – 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 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*." **Critically, during the same phone call** – but unrecorded by any materials produced to Plaintiff – **Riley and Mullen "outlined a potential path to agreement regarding the treatment of such equity awards."**

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[10] The Board minutes suggest that Riley and Mullen may have been communicating even before September 15, 2020, noting "recently [sic] discussions with Bryant Riley."

ANSWER: Paragraph 81 consists of legal conclusions to which no response is required. To the extent the allegations in Paragraph 81 concern Mullen and a response is required, Mullen admits he spoke to Mr. Riley in September 2020, but denies all other characterizations in Paragraph 81. To the extent Paragraph 81 purports to characterize the contents of the Recommendation Statement, Mullen respectfully refers the Court to that document for a complete and accurate description of its contents. No response is required to footnotes. Footnote 10 further consists of legal conclusions to which no response is required. To the extent a response is required to Footnote 10, Mullen admits there was a Board meeting on September 10, but denies any characterizations in Footnote 10. To the extent Footnote 10 purports to characterize the contents of Board minutes, Mullen respectfully refers the Court to that document for a complete and accurate description of its contents and denies any allegations inconsistent with it.

82. Minutes later, at 12:59 P.M. on September 16, 2020, Riley emailed National's counsel, alleging that he had made a "bad mistake" and "missed a large portion of [Mullen's] email when we were negotiating our deal." Minutes after that, Riley wrote the full Board:

> In my discussion and email traffic with [Mullen] regarding our tender I made a huge mistake. In the initial give and take I had an email from [Mullen] that had a whole section that I missed. This section was rationale and thoughtful and would have gone a long way in making this transaction work. THIS WAS 100% my mistake. In our subsequent conversation my frustration with the first half of the email resulted in a quick determination that

> we were not going to be able to get there on a deal. Again, 100% my fault.
>
> **<u>I *just* spoke to [Mullen] and I think our issues can be resolved.</u>**

ANSWER: Paragraph 82 consists of legal conclusions to which no response is required. To the extent the allegations in Paragraph 82 concern Mullen and a response is required, Mullen admits he spoke to Mr. Riley in September 2020, but denies all other characterizations in Paragraph 82. To the extent Paragraph 82 purports to characterize the contents of the Recommendation Statement and/or emails from Riley, Mullen respectfully refers the Court to those documents for a complete and accurate description of their contents and denies any allegations inconsistent with them.

83. National, through its counsel, has since confirmed that Riley was referencing the August 19, 2020 email exchange outlined above. However, as is apparent from a review of that two-page correspondence, there was nothing in the "first half of the email" that could have been frustrating; in it, Mullen essentially agreed with Riley and seems to have seen the value of a deal. Riley's explanation for how he – the founder of a multi-billion-dollar investment bank with decades of experience in complex deals – could possibly have "misunderstood" a two page email so badly that it derailed a deal that he had been pursuing for nearly half a decade was pretextual. Despite the purported business acumen and sophistication of Riley and Mullen and their advisors, and several weeks of discussions and negotiations between them, Defendants deceived shareholders into believing that Riley and Mullen's prior inability to reach an agreement was *simply because of a purported miscommunication*. This explanation – especially in the face of the actual text of the two-page email – simply strains credulity. It is even more hard to believe considering the fact (noted above) that, after Riley informed the Special Committee that he could not make a deal with Mullen, "KBW . . . called each of each of [] Riley and [] Mullen and confirmed that [] Riley and [] Mullen had indeed failed to reach an agreement."

ANSWER: Paragraph 83 consists of legal conclusions to which no response is required. To the extent the allegations in Paragraph 83 concern Mullen and a response is required, Mullen denies the allegations in Paragraph 83. To the extent Paragraph 83 purports to characterize the contents of emails from Riley, Mullen respectfully refers the Court to those documents for a complete and accurate description of their contents and denies any allegations inconsistent with them.

84. Later on September 16, 2020, the Board's counsel spoke with Riley, who communicated that he believed he could work quickly towards a deal with Mullen and was "now calling Asher." 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.

ANSWER: Paragraph 84 consists of legal conclusions to which no response is required. To the extent the allegations in Paragraph 84 concern Mullen and a response is required, Mullen denies them. To the extent Paragraph 84 purports to characterize the contents of communications with Riley, Mullen respectfully refers the Court to those documents for a complete and accurate description of their contents and denies any allegations inconsistent with them.

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.**

ANSWER: Paragraph 85 consists of legal conclusions to which no response is required. The allegations in Paragraph 85 are not directed to Mullen or his conduct, and Mullen denies them on that basis. To the extent Paragraph 85 purports to characterize the contents of the Recommendation Statement, Mullen respectfully refers the Court to that document for a complete and accurate description of its contents and denies any allegations inconsistent with it.

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 (which had effectively already happened by that point), 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.

ANSWER: Paragraph 86 consists of legal conclusions to which no response is required. To the extent the allegations in Paragraph 86 concern Mullen and a response is required, Mullen denies them. To the extent Paragraph 86 purports to characterize the contents of the Recommendation Statement, Mullen respectfully refers the Court to that document for a complete and accurate description of its contents and denies any allegations inconsistent with it.

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**.

ANSWER: Paragraph 87 consists of legal conclusions to which no response is required. To the extent the allegations in Paragraph 87 concern Mullen and a response is required, Mullen denies them. To the extent Paragraph 87 purports to characterize the contents of the Recommendation Statement, Mullen respectfully refers the Court to that document for a complete and accurate description of its contents and denies any allegations inconsistent with it.

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.

ANSWER: Paragraph 88 consists of legal conclusions to which no response is required. To the extent the allegations in Paragraph 88 concern Mullen and a response is required, Mullen denies them. To the extent Paragraph 88 purports to characterize the contents of the Recommendation Statement, Mullen respectfully refers the Court to that document for a complete and accurate description of its contents and denies any allegations inconsistent with it.

I. Economic Negotiations Proceed Without *MFW* Protections

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.

ANSWER: Paragraph 89 consists of legal conclusions to which no response is required. To the extent the allegations in Paragraph 89 concern Mullen and a response is required, Mullen them. To the extent Paragraph 89 purports to characterize the contents of the Recommendation Statement, Mullen respectfully refers the Court to that document for a complete and accurate description of its contents and denies any allegations inconsistent with it.

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.

ANSWER: Paragraph 90 consists of legal conclusions to which no response is required. To the extent Paragraph 90 purports to characterize the contents of the Recommendation Statement, Mullen respectfully refers the Court to that document for a complete and accurate description of its contents and denies any allegations inconsistent with it.

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. Indeed, the Special Committee's own September 29, 2020 minutes record that "Riley also stated that in the [September 16, 2020] convo with Mullen where the misunderstanding was cleared, they had outlined a new comp plan that Riley believed would be acceptable to management."

ANSWER: Paragraph 91 consists of legal conclusions to which no response is required. To the extent the allegations in Paragraph 91 concern Mullen and a response is required, Mullen denies them. To the extent Paragraph 91 purports to characterize the contents of the Recommendation Statement and/or minutes of a September 29, 2020 meeting of the Special Committee, Mullen respectfully refers the Court to those documents for a complete and accurate description of their contents and denies any allegations inconsistent with it.

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.

ANSWER: Paragraph 92 consists of legal conclusions to which no response is required. To the extent the allegations in Paragraph 92 concern Mullen and a response is required, denies them. To the extent Paragraph 92 purports to characterize the contents of the "November 11 Riley Letter," Mullen respectfully refers the Court to that document for a complete and accurate description of its contents and denies any allegations inconsistent with it.

93. On December 8, 2020 – and as if he knew a deal was imminent – Asher reported that he had increased his interest in National to 22.14%. 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.

ANSWER: Paragraph 93 consists of legal conclusions to which no response is required. To the extent the allegations in Paragraph 93 concern Mullen and a response is required, Mullen denies them. To the extent Paragraph 93 purports to characterize the contents of the Recommendation Statement, Mullen respectfully refers the Court to that document for a complete and accurate description of its contents and denies any allegations inconsistent with it.

K. <u>Management Reveals Millions in Hidden Revenue</u>

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.

ANSWER: Paragraph 94 consists of legal conclusions to which no response is required. To the extent the allegations in Paragraph 94 concern Mullen and a response is required, Mullen denies them.

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 team, following the discussion of financials, "Mullen and Riley both then noted the incremental revenue opportunities available through combining their respective businesses, and the cooperation and collaboration both have seen with their teams towards the other and the other's outside advisors," after which Riley told the Board

[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.

that their assistance was no longer needed, as "the deal terms were now almost resolved."

ANSWER: Paragraph 95 consists of legal conclusions to which no response is required. To the extent the allegations in Paragraph 95 concern Mullen and a response is required, Mullen denies the allegations in Paragraph 95, except to admit that the Board met on December 10, 2020 and discussed National's financial performance and potential hedging transactions. To the extent Paragraph 95 purports to characterize the contents of the Recommendation Statement and/or minutes of the December 10, 2020 meeting of the Board, Mullen respectfully refers the Court to those documents for a complete and accurate description of their contents and denies any allegations inconsistent with them. No response is required to footnotes. Footnote 11 further consists of legal conclusions to which no response is required. To the extent a response is required to Footnote 11, Mullen admits the Board discussed potential hedging transactions, but denies any characterizations in Footnote 11. To the extent Footnote 11 purports to characterize the contents of Board minutes, Mullen respectfully refers the Court to that document for a complete and accurate description of its contents and denies any allegations inconsistent with it.

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.

ANSWER: Mullen denies the allegations in Paragraph 96. To the extent Paragraph 96 purports to characterize the contents of the Recommendation Statement, Mullen respectfully refers the Court to that document for a complete and accurate description of its contents and denies any allegations inconsistent with it.

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.

ANSWER: The allegations in Paragraph 97 are not directed to Mullen or his conduct, and Mullen denies them on that basis.

98. Also on January 5, 2021, the Special Committee received a financial presentation from KBW that included Selected Public Companies and Transactions analyses that clearly demonstrated that the merger consideration was far below most of the multiples observed. 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.

ANSWER: The allegations in Paragraph 98 are not directed to Mullen or his conduct, and Mullen denies them on that basis.

99. On January 8, 2021, Mullen's employment agreement was amended to add the Indemnification Agreement side deal that he had previously worked out with Riley. The Agreement was signed by January 10, 2021, the same day that the parties executed the Merger Agreement.

ANSWER: Mullen admits his employment agreement was amended to add an Indemnification Agreement, and that the Agreement was signed on January 10, 2021, but denies all other characterizations in Paragraph 99.

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.

ANSWER: The allegations in Paragraph 100 are not directed to Mullen or his conduct, and Mullen denies them on that basis.

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

ANSWER: The allegations in Paragraph 101 are not directed to Mullen or his conduct, and Mullen denies them on that basis.

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.

ANSWER: Mullen admits that National entered into a Merger Agreement, and that the Board approved the Merger Agreement. The Merger Agreement is publicly available and speaks for itself. To the extent the allegations in Paragraph 102 purport to characterize the Company's Form 8-K dated February 25, 2021, including concerning a tender offer, and/or the Recommendation Statement, the documents speak for themselves, and thus no response is required. To the extent a response is required, Mullen refers the Court to such documents for their complete and accurate contents and denies any allegations inconsistent with them.

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]

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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

ANSWER: Paragraph 103 consists of legal conclusions to which no response is required. To the extent the allegations in Paragraph 103 concern Mullen and a response is required, Mullen denies them. No response is required to footnotes. To the extent a response is required to Footnote 12, Mullen denies them the allegations in Footnote 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.

d. Indeed, while KBW determined that the Palantir Fee could generate as much as $0.74/share in additional value, which KBW determined could result in an illustrative value of **$3.49/share**, 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.

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role with National. Hume and Singer were also the sole members of the "Legal Committee."

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.

ANSWER: Paragraph 104 consists of legal conclusions to which no response is required. The allegations in Paragraph 104 are not directed to Mullen or his conduct, and Mullen denies them on that basis.

V. <u>THE MERGER DID NOT PROVIDE ADEQUATE VALUE TO STOCKHOLDERS</u>

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.

ANSWER: Paragraph 105 consists of legal conclusions to which no response is required. To the extent the allegations in Paragraph 105 concern Mullen and a response is required, Mullen denies them, except to admit that National entered into a Merger Agreement, and that the Board approved the Merger Agreement. The Merger Agreement is publicly available and speaks for itself. To the extent the allegations in Paragraph 105 purport to characterize the Company's Form 8-K dated February 25, 2021, including concerning a tender offer, and/or the Recommendation Statement, the documents speak for themselves, and thus no response is required. To the extent a response is required, Mullen refers to such documents for their complete and accurate contents and denies any allegations inconsistent with them.

106. Management's internal Company valuations do not support the Merger Consideration. In a presentation prepared by the Consortium (*i.e.*, Company management) in late August/September 2020, the Consortium reported that the Company's stock was significantly undervalued, based upon current industry multiples for four different valuation methodologies: the Company's book value, AEBITDA, revenue and recurring revenue, all of which assessed the value of the stock at between $4.42 and $11.74 per share.

ANSWER: Paragraph 106 consists of legal conclusions to which no response is required. To the extent the allegations in Paragraph 106 concern Mullen and a response is required, Mullen admits that a presentation was made by the Management Consortium to the Board. To the extent that Paragraph 106 purports to characterize the contents of the presentation, Mullen respectfully refers the Court to that document for a complete and accurate description of its contents and denies any allegations inconsistent with them.

107. Moreover, the Company was thriving and far exceeding revenue projections in the year leading up to the Merger. According to a September 10, 2020 presentation by management, the Company beat its revenue forecast for the third quarter of 2020 by $14.7 million ($61.7 million compared to a forecasted revenue of $47 million), and, as a result of its success, management revised its Q4 projections upward by $20 million.

ANSWER: Paragraph 107 consists of legal conclusions to which no response is required. To the extent the allegations in Paragraph 107 concern Mullen and a response is required, Mullen admits that a presentation was made by the Management Consortium to the Board. To the extent that Paragraph 107 purports to characterize the contents of the presentation, Mullen respectfully refers the Court to that document for a complete and accurate description of its contents and denies any allegations inconsistent with them.

108. What is more, at a December 10, 2020 meeting, management reported fourth quarter 2020 revenue results that exceeded its original fourth quarter projections of $50.4 million by $14.6 million, and which were up $7 million as compared to 4Q2019, which management noted was a "very significant" increase. For the full fiscal year 2020, reported revenue increased $19 million to $232 million, from $213 million in 2019. And, for the 2021 fiscal budget, Management projected total revenue to increase to $272 million, up approximately $40 million or 17% from the fiscal year 2020.

ANSWER: Paragraph 108 consists of legal conclusions to which no response is required. To the extent the allegations in Paragraph 108 concern Mullen and a response is required, Mullen admits that a presentation was made by the Management Consortium to the Board. To the extent that Paragraph 108 purports to characterize the contents of the presentation, Mullen respectfully refers the Court to that document for a complete and accurate description of its contents and denies any allegations inconsistent with them.

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.

ANSWER: Paragraph 109 consists of legal conclusions to which no response is required. The allegations in Paragraph 109 are not directed to Mullen or his conduct, and Mullen denies them on that basis. To the extent that Paragraph 109 purports to characterize the contents of certain documents, Mullen respectfully refers the Court to those documents for a complete and accurate description of their contents and denies any allegations inconsistent with them.

110. Nevertheless, despite the Company's positive 2020 results, internal optimism regarding future growth, 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.

ANSWER: Paragraph 110 consists of legal conclusions to which no response is required. The allegations in Paragraph 110 are not directed to Mullen or his conduct, and Mullen denies them on that basis. To the extent that Paragraph 110 purports to characterize the contents of certain documents, Mullen respectfully refers the Court to those documents for a complete and accurate description of their contents and denies any allegations inconsistent with them.

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.

ANSWER: Paragraph 111 consists of legal conclusions to which no response is required. The allegations in Paragraph 111 are not directed to Mullen or his conduct, and Mullen denies them on that basis. To the extent that Paragraph 111 purports to characterize the contents of certain documents, Mullen respectfully refers the Court to those documents for a complete and accurate description of their contents and denies any allegations inconsistent with them.

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.

ANSWER: Paragraph 112 consists of legal conclusions to which no response is required. To the extent the allegations in Paragraph 112 concern Mullen and a response is required, Mullen denies them.

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.

ANSWER: Paragraph 113 consists of legal conclusions to which no response is required. Mullen denies he breached any duties. To the extent the allegations in Paragraph 113 purport to characterize the Recommendation Statement, Mullen respectfully refers the Court to that document for its complete and accurate contents and denies any allegations inconsistent with it.

114. Specifically, the Recommendation Statement failed to disclose:

a. That BRF repeatedly sought to reduce management's compensation, thus giving management a motive to eschew BRF's merger proposals and to interfere with the Special Committee's negotiations with BRF. Indeed, not only did the Recommendation Statement not disclose these threats, but it affirmatively misrepresented these presentations as Riley's "views of the benefits of the proposed transaction," without mentioning the significant compensation cuts management would face in them.

b. That management informed the Special Committee that BRF's proposal was not in minority shareholders' best interests, but instead an opportunistic attempt to "tak[e] advantage of a financial crisis."

c. That management repeatedly disregarded direct instructions from the Special Committee not to have discussions with BRF, Ashton, or potential third parties.

d. That BRF "stated that if the proposed transaction did not proceed, **he intended to affect a change-of-control transaction after the standstill agreement expired**."

e. That the alleged "misunderstanding" between Mullen and Riley actually had to do with management's unique interests in a Merger and its compensation under Riley.

f. And that management identified the issue of being **<u>controlled</u>** by majority shareholders (*i.e.*, Riley and Asher) as a significant burden on the Company and that Riley and Asher were working together.

* * *

ANSWER: Paragraph 114 consists of legal conclusions to which no response is required. To the extent the allegations in Paragraph 114 concern Mullen and a response is required, Mullen denies them.

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.

ANSWER: Paragraph 115 consists of legal conclusions to which no response is required. To the extent the allegations in Paragraph 115 concern Mullen and a response is required, Mullen denies them.

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.

ANSWER: Paragraph 116 consists of legal conclusions to which no response is required. To the extent the allegations in Paragraph 116 concern Mullen and a response is required, Mullen denies them.

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.

ANSWER: Paragraph 117 consists of legal conclusions to which no response is required. To the extent the allegations in Paragraph 117 concern Mullen and a response is required, Mullen denies them.

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.

ANSWER: Paragraph 118 consists of legal conclusions to which no response is required. To the extent the allegations in Paragraph 118 concern Mullen and a response is required, Mullen denies them.

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.

ANSWER: Paragraph 119 consists of legal conclusions to which no response is required. To the extent the allegations in Paragraph 119 concern Mullen and a response is required, Mullen denies them.

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.

ANSWER: Paragraph 120 consists of legal conclusions to which no response is required. To the extent the allegations in Paragraph 120 concern Mullen and a response is required, Mullen denies them.

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.

ANSWER: Paragraph 121 consists of legal conclusions to which no response is required. To the extent the allegations in Paragraph 121 concern Mullen and a response is required, Mullen denies them.

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.

ANSWER: Paragraph 122 consists of legal conclusions to which no response is required. To the extent the allegations in Paragraph 122 concern Mullen and a response is required, Mullen denies them.

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.

ANSWER: Paragraph 123 consists of legal conclusions to which no response is required. To the extent the allegations in Paragraph 123 concern Mullen and a response is required, Mullen denies them.

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.

ANSWER: Paragraph 124 consists of legal conclusions to which no response is required. To the extent the allegations in Paragraph 124 concern Mullen and a response is required, Mullen denies them.

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.

ANSWER: Paragraph 125 consists of legal conclusions to which no response is required. To the extent the allegations in Paragraph 125 concern Mullen and a response is required, Mullen denies them.

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.

ANSWER: Paragraph 126 consists of legal conclusions to which no response is required. To the extent the allegations in Paragraph 126 concern Mullen and a response is required, Mullen denies them.

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.

ANSWER: Paragraph 127 consists of legal conclusions to which no response is required. To the extent the allegations in Paragraph 127 concern Mullen and a response is required, Mullen denies them.

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.

ANSWER: Paragraph 128 consists of legal conclusions to which no response is required. To the extent the allegations in Paragraph 128 concern Mullen and a response is required, Mullen denies them.

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

ANSWER: Paragraph 129 consists of legal conclusions to which no response is required. To the extent the allegations in Paragraph 129 concern Mullen and a response is required, Mullen denies them.

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.

ANSWER: Mullen incorporates by reference his answers to all prior paragraphs as if fully set forth here.

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

ANSWER: Paragraph 131 consists of legal conclusions to which no response is required. To the extent the allegations in Paragraph 131 concern Mullen and a response is required, Mullen denies them.

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.

ANSWER: Paragraph 132 consists of legal conclusions to which no response is required. To the extent the allegations in Paragraph 132 concern Mullen and a response is required, Mullen denies them.

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.

ANSWER: Paragraph 133 consists of legal conclusions to which no response is required. To the extent the allegations in Paragraph 133 concern Mullen and a response is required, Mullen denies them.

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.

ANSWER: Paragraph 134 consists of legal conclusions to which no response is required. To the extent the allegations in Paragraph 134 concern Mullen and a response is required, Mullen denies them.

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.

ANSWER: Paragraph 135 consists of legal conclusions to which no response is required. To the extent the allegations in Paragraph 135 concern Mullen and a response is required, Mullen denies them.

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.

ANSWER: Paragraph 136 consists of legal conclusions to which no response is required. To the extent the allegations in Paragraph 136 concern Mullen and a response is required, Mullen denies them.

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.

ANSWER: Mullen incorporates by reference his answers to all prior paragraphs as if fully set forth here.

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

ANSWER: Paragraph 138 consists of legal conclusions to which no response is required. To the extent the allegations in Paragraph 138 concern Mullen and a response is required, Mullen denies them.

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.

ANSWER: Paragraph 139 consists of legal conclusions to which no response is required. To the extent the allegations in Paragraph 139 concern Mullen and a response is required, Mullen denies 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.

ANSWER: Paragraph 140 consists of legal conclusions to which no response is required. To the extent the allegations in Paragraph 140 concern Mullen and a response is required, Mullen denies them.

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.

ANSWER: Paragraph 141 consists of legal conclusions to which no response is required. To the extent the allegations in Paragraph 141 concern Mullen and a response is required, Mullen denies them.

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.

ANSWER: Mullen states that no response to the Complaint's Prayer for relief is required or appropriate. To the extent a response is required, Mullen denies that Plaintiff is entitled to any relief and requests that the action be dismissed with prejudice.

DEFENSES

Mullen states the following defenses, and reserves his rights to assert other and additional defenses of which he may become aware through discovery or other investigation as may be appropriate at a later time. In asserting these defenses, Mullen does not assume any burden of proof, persuasion, or production with respect to any issue where the applicable law places the burden upon Plaintiff.

FIRST DEFENSE

The Complaint, in whole or in part, fails to state a claim upon which relief may be granted.

SECOND DEFENSE

Plaintiff's claim against Mullen is barred, in whole or in part, because Plaintiff cannot satisfy his burden of proof.

THIRD DEFENSE

To the extent Plaintiff did not own shares of National at any of the relevant times alleged in the Complaint, Plaintiff lacks standing to pursue Plaintiff's claims.

FOURTH DEFENSE

All claims against Mullen are barred because Plaintiff has not suffered any actual injury, harm, or damages as a result of any action, inaction, or conduct by Mullen.

FIFTH DEFENSE

To the extent the Complaint purports to state a claim against Mullen for breach of fiduciary duty, Mullen is exculpated from monetary liability pursuant to provisions in National and B. Riley's certificates of incorporation adopted pursuant to 8 *Del. C.* § 102(b)(7).

SIXTH DEFENSE

The alleged conduct of the Special Committee in connection with the Transaction was reasonable, in good faith, and based upon independent, legitimate business and economic justifications.

SEVENTH DEFENSE

All claims against Mullen are barred because the Merger is subject to the business judgment rule.

EIGHTH DEFENSE

All claims against Mullen are barred because, to the extent the entire fairness standard of review may apply to the Merger, which Mullen disputes, and without conceding any argument that the correct standard of review is entire fairness, the transaction was entirely fair, as to both process and price.

NINTH DEFENSE

Plaintiff's claims are barred because his injury, if any, resulted from acts of other parties over whom Mullen had neither control nor the right to control.

TENTH DEFENSE

Plaintiff's action is not properly maintainable as a class action.

ELEVENTH DEFENSE

The holders of a majority of disinterested shares of National stock voted to approve the Merger in an uncoerced and fully informed vote, thereby extinguishing all of Plaintiff's alleged claims.

TWELFTH DEFENSE

Plaintiff and the putative Class have not suffered any damages, or their damages are speculative and impossible to ascertain, and/or Mullen is not liable for any damages allegedly suffered by Plaintiff or the putative Class because any such damages were not legally or proximately caused by any acts or omissions of Mullen.

THIRTEENTH DEFENSE

All claims against Mullen are barred by the equitable defenses of untimeliness, waiver, laches, ratification, acquiescence, quasi-estoppel and/or estoppel.

FOURTEENTH DEFENSE

Plaintiff's demand for pre- and post-judgment interests, costs, attorneys' fees, and expert fees is barred because Plaintiff has failed to state a claim.

At this time, the Complaint does not describe the claims made against Mullen with sufficient particularity to allow Mullen to determine all of his defenses, and Mullen therefore lacks sufficient knowledge to form a belief as to the existence and availability of additional defenses. Mullen reserves his rights to assert additional defenses, cross-claims, and third-party claims as he discovers them through discovery or other investigation, or that may later be asserted by any other party in this Action. Mullen hereby gives notice that he intends to rely upon such other and further defenses. In all instances, Mullen reserves the right to amend and/or supplement any and all defenses set forth herein.

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