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Case No. 2023-0367-SG



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ROBERT GARFIELD and DELENA MAGNESS,

Plaintiffs,

v.

AXAR CAPITAL MANAGEMENT L.P.,
ANDREW AXELROD, SPENCER
GOLDENBERG, DAVID MILLER, KEVIN
PATRICK, STEPHEN NEGROTTI, and
PATRICIA WELLENBACH, and JOSEPH
REDLING,

Defendants.

C.A. No. 2023-0367-SG

PUBLIC VERSION

Filed: March 30, 2023

VERIFIED CLASS ACTION COMPLAINT

Plaintiffs Robert Garfield and Delena Magness¹ bring this Verified Class Action Complaint on behalf of a class of similarly situated stockholders against Defendants Axar Capital Management L.P., Andrew Axelrod, Spencer Goldenberg, David Miller, Kevin Patrick, Stephen Negrotti, Patricia Wellenbach, and Joseph Redling for breaches of fiduciary duty.

NATURE OF THE ACTION

1. Plaintiffs, former public stockholders of StoneMor Inc. (“StoneMor” or the “Company”) bring suit to challenge a conflicted take-private transaction in which StoneMor’s majority stockholder, Axar Capital Management L.P. (“Axar”), acquired the remaining shares of StoneMor that it did not already own for \$3.50 per share in cash (the “Merger”).

2. Defendants failed to follow the *MFW* roadmap for a conflicted controller transaction. The *MFW* conditions were not imposed *ab initio* and they were not imposed irrevocably. The Special Committee formed to represent the interests of Plaintiff and other minority stockholders was not fully empowered and acted with a controlled mindset. And the stockholder vote was not fully informed because, among other reasons, Defendants failed to disclose a higher, topping bid substantially above the price that Axar ultimately paid.

¹ Garfield and Magness are, together, “Plaintiffs.”

3. Because the Merger did not comply with *MFW*, Defendants will bear the burden of proving entire fairness and they will be unable to do so. The process was unfair because of Defendants' disclosure violations, the Special Committee's restricted mandate, and its controlled mindset. The price was unfair because, among other reasons, it was less than a third-party bidder was willing to pay.

THE PARTIES

4. Plaintiff Robert Garfield was, at all relevant times, a beneficial owner of shares of StoneMor common stock. Garfield received \$3.50 per share in cash for his StoneMor shares when the Merger closed.

5. Plaintiff Delena Magness was, at all relevant times, a beneficial owner of shares of StoneMor common stock. Magness received \$3.50 per share in cash for her StoneMor shares when the Merger closed.

6. Defendant Axar is an employee-owned asset management firm. It is a Delaware limited partnership, headquartered in New York, New York.

7. Defendant Andrew Axelrod ("Axelrod") is the founder and managing partner of Axar. He served as chairman of StoneMor's Board from June 2019 until the Merger closed in November 2022.

8. Defendant Spencer Goldenberg ("Goldenberg") served on the Board from the time Axar nominated him in June 2019 until the Merger closed in

November 2022. [REDACTED]

9. Defendant David Miller (“Miller”) served on the Board from the time Axar nominated him in June 2019 until the Merger closed in November 2022. [REDACTED]

10. Defendant Kevin Patrick (“Patrick”) served on the Board from September 2020 until the Merger closed in November 2022. He was a member of the Conflicts Committee that negotiated and recommended the Merger.

11. Defendant Stephen Negrotti (“Negrotti”) served on the Board from

March 2018 until the Merger closed in November 2022. He was a member of the Conflicts Committee that negotiated and recommended the Merger.

12. Defendant Patricia Wellenbach (“Wellenbach”) served on the Board from March 2018 until the Merger closed in November 2022. She was a member of the Conflicts Committee that negotiated and recommended the Merger. Wellenbach also serves as the President and CEO of the Please Touch Museum, for which she received \$242,404 in compensation according to the museum’s latest publicly available tax filing (2020). Wellenbach’s compensation as a director for StoneMor—including but not limited to the \$100,000 annual fee paid to all directors and the \$75,000 fee for serving as a member of the Conflicts Committee that negotiated the Merger—was therefore material to her and undermined her ability to exert independence from Axar.

13. Defendant Joseph Redling (“Redling”) served as President and Chief Executive Officer of the Company, as well as a member of the Board, from June 2018 until the Merger closed in November 2022.

RELEVANT NON-PARTIES

14. StoneMor was² a Delaware corporation headquartered in Bensalem, Pennsylvania. StoneMor owned and operated cemeteries and funeral homes in the United States. StoneMor traded on the NYSE under the ticker symbol STON.

FACTUAL BACKGROUND

A. The Board Facilitated Axar’s Yearslong Campaign To Control the Company

15. StoneMor owned and operated cemeteries and funeral homes in the United States, with 304 cemeteries and 73 funeral homes in 24 states and Puerto Rico.

16. The Company’s predecessor, StoneMor Partners LP, was formed as a public Delaware limited partnership in 2004. Axar began acquiring equity in StoneMor Partners LP in the second quarter of 2017. On September 27, 2018, in response to pressure by Axar (which, at the time, owned approximately 17.5 % of StoneMor), StoneMor Partners LP agreed to transition from a partnership to a corporation. Through a series of transactions, further outlined below, Axar steadily increased its control over Axar, obtaining 74.9% of Axar’s common stock as of the

² This complaint refers to StoneMor in the past tense because the Merger has now closed. The entity continues to exist as a wholly owned asset of Axar.

time immediately preceding the Merger.

17. As disclosed in the final Form 10-K filed by the Company before the Merger closed, StoneMor was a controlled company within the meaning of the NYSE listing standards. At all relevant times, Axar controlled a majority of StoneMor's voting power, holding approximately 75% of StoneMor's outstanding common stock as of June 30, 2022.

18. The transactions through which Axar acquired its controlling StoneMor stake frequently required Board approval. The Board—including the directors who would later make up the Conflicts Committee that negotiated the Merger—acquiesced to Axar by repeatedly approving these transactions.

19. At the time of the Merger, the Board consisted of seven directors: Axelrod, Goldenberg, Miller, Negrotti, Patrick, Redling, and Wellenbach.

20. Negrotti and Wellenbach in particular both have years-long histories of approving transactions that have benefited Axar to the detriment of the Company and its public stockholders. Since 2018, Negrotti and Wellenbach have served as repeat players on various special committees that have evaluated, negotiated, and in almost all cases approved, transactions and other deals with Axar, that have resulted in Axar (1) holding a majority of the Company's outstanding common stock and (2) having the ability to designate three of the seven members of the Board. These

transactions include but are not limited to:

- a) **The 2018 Conversion Merger Agreement:** After beginning to acquire equity interests in StoneMor Partners LP in the second quarter of 2017, Axar filed a Schedule 13D on March 9, 2018 in which it reported ownership of 17.5% of the outstanding common units representing limited partnership interests. This Schedule 13D statement also reported that Axar intended to pursue discussions with StoneMor Partners LP's general partner about converting the Partnership to a corporation for U.S. Federal income tax purposes. StoneMor Partners LP gave into this pressure by Axar and agreed to transition to a corporate form, which became effective on December 31, 2019. This reorganization was approved by a special committee of the Board consisting of Negrotti and Wellenbach. StoneMor Partners LP and Axar concurrently entered into a Voting and Support Agreement, as well as a Nomination and Director Voting Agreement ("DVA"), agreements which gave Axar the right to appoint a director to the Board.
- b) **The amendment to the 2024 Indenture and the 2020 Rights Offering:** In April 2020, based on a recommendation from a special committee of the Board comprised of Wellenbach, Negrotti, and Goldenberg, the Company and its creditors amended some of its debt obligations with the result that Axar further increased its control over the Company to 61.8% of the Company's common stock.
- c) **The December 2020 Waiver:** In December 2020, a special committee of the Board consisting of Negrotti, Patrick, and Wellenbach approved an amendment of the standstill provisions of the DVA requested by Axar. This amendment allowed Axar to acquire the 7.5 million shares of common stock owned by American Cemeteries Infrastructure Investor, LLC ("ACII"), and to set a new standstill limit that reflected that purchase. In December 2020, following an inability to reach terms on the proposed purchase with ACII, Axar withdrew its waiver request. Axar resubmitted it in March 2021, however, and it was approved again by the same directors, as discussed below ("Axar's Acquisition of ACII Shares").

d) **The Axar Subadvisor Agreement:** As discussed more fully in Section C, in early 2021

[REDACTED]

e) **Axar’s Acquisition of ACII Shares:** In April 2021, Negrotti, Patrick, and Wellenbach approved the resubmitted waiver of the standstill provisions of the DVA (the aforementioned “December 2020 Waiver”) to allow Axar to acquire the shares held by ACII. On April 28, 2021, Axar purchased 5,522,732 shares from ACII for a price of \$2.20 per share. Following this purchase, Axar disclosed that it owned approximately 75.1% of the Company’s outstanding stock.

B. Negrotti and Wellenbach Blessed Axar’s Subadvisor Agreement With a Company Subsidiary

21.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] As described below, that turned out to be a lie.

22. Notably, the size of the trusts maintained by StoneMor were projected to grow from a little more than \$800 million at the end of 2020 to over \$2.5 billion by 2036. Axar would not only receive the advisory fee and directorships on

companies controlled by the trust; the trust would also be a potential source of investment capital for Axar funds, reducing reliance on third-party fundraising.

23. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

24. Two weeks later, the Board executed the Subadvisor Agreement, which provided that:

Any recommendation made by Sub-Advisor involving Investment Assets that, if implemented, would constitute a transaction described in Item 404(a) of Regulation S-K under the Securities Exchange Act of 1934, as amended, or any successor provision thereto (without regard to the dollar thresholds in such Item 404(a)) **shall be disclosed to the Trust Committee** as required due diligence for the Trust Committee's review before final approval of such pending transaction or recommendation by the Trust Committee, in addition to any other approval required by StoneMor's governance policies.

25. Related party transactions are described in Item 404(a) of Regulation S-K of the Securities Exchange Act of 1934 and are therefore subject to this provision. Nonetheless, as described more fully below, Axar repeatedly ignored this provision over the next year by failing to disclose at least eight related party transactions.

C. Axar Proposed a Sale of the Company

26. On September 22, 2021, Axar [REDACTED]

[REDACTED]

27. On September 26, 2021, the Board authorized the Conflicts Committee (the “Conflicts Committee” or “Committee”)—which consisted of Negrotti, Patrick, and Wellenbach—to engage in the discussions contemplated by the Axar Letter. The Conflicts Committee had been established by the Board on March 2, 2021 as a standing committee to deal with, among other things, any transactions between the Company and Axar. [REDACTED]

[REDACTED]

[REDACTED]

28. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

29. On November 9, 2021, the Conflicts Committee selected Duff & Phelps
as its financial advisor. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

30. The Conflicts Committee determined that Negrotti would take the lead on behalf of the Conflicts Committee in any direct discussions with Axar and Axelrod.

D. The Conflicts Committee Twice Failed To Meaningfully Engage With An Interested Third Party, Even After It Indicated A Price Superior to Axar's

31. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

32. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

33. According to Board minutes, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

34. On November 23, 2021, in anticipation of the meeting with [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

35. On November 27, 2021, [REDACTED] responded that it was not comfortable proceeding with discussions on the basis outlined in the presentation and canceled the meeting.

³ [REDACTED] is a Canadian company with headquarters in Toronto, Ontario. It is publicly listed on the Toronto Stock Exchange (TSX).

36. By early January 2022, Axelrod had told Negrotti that “he believed that it was time for the Conflicts Committee to focus on discussions for a going private transaction with Axar.” According to the Proxy, in that same conversation, Axelrod told Negrotti that a majority-of-the-minority vote and a “go-shop” process “would *likely* be a part of any transaction” with Axar. (In other words, Axelrod did not consider the *MFW* conditions to be irrevocable).⁴ Axelrod also stated that, while he was not making an offer, it was his opinion that a price around \$3.00 per share was appropriate.

37. A few days later, the Conflicts Committee discussed potential strategic alternatives, including: the payment of an extraordinary dividend, the implementation of an accelerated acquisition program, the reevaluation of asset dispositions, an equity offering, and the acquisition of the Company by Axar. The Conflicts Committee, however, knew that Axar preferred a sale.

38. On January 30, 2022, Axar formally offered \$3.00 per share, which was

⁴ As further evidence that the *MFW* conditions were not considered irrevocable and the parties were evaluating whether to impose them, the minutes of the Committee’s January 14, 2022 meeting state that the Committee “discussed the likelihood that, in a potential transaction with Axar, ... approval could be obtained [from] a majority of minority stockholders” with Negrotti “not[ing] that he would seek information on share ownership[.]”

only 55% of the valuation that Axelrod had communicated to [REDACTED] two months ago. On February 1, 2022, the Conflicts Committee counter-offered at \$3.86 per share. Axar countered with \$3.20 per share.

39. On February 8, 2022, Axelrod proposed that Axar and the Conflicts Committee pause their negotiations regarding price but agree on a potential range of \$3.30 per share to \$3.50 per share. On February 9, 2022, Negrotti told Axelrod that the Conflicts Committee believed the price per share range should be between \$3.40 and \$3.60 per share.

40. On February 18, 2022, Negrotti told the Conflicts Committee that Redling had learned [REDACTED] might be prepared to enter into negotiations at a price in the range of \$4.25 per share. The Conflicts Committee agreed that Negrotti would direct Duff & Phelps to contact [REDACTED] on behalf of the Committee to “discuss potential future negotiations and that he would report back to the Committee on the results of such discussion.” There is nothing in the record, however, confirming that Duff & Phelps did reach out to [REDACTED] before the Committee voted to recommend the Merger with Axar.

41. Importantly, [REDACTED] indication of interest was significantly higher than Axar’s concurrent offers and the Conflicts Committee’s counteroffers. The Proxy did not disclose the \$4.25 price suggested by [REDACTED]

42. Nothing in the existing record explains the Committee’s baffling failure to engage with [REDACTED] superior offer. According to the minutes of its meetings on January 20 and January 31, 2022, the Conflicts Committee [REDACTED]
[REDACTED]
[REDACTED] The Conflicts Committee did not discuss [REDACTED] again until after the Board had approved the Merger—by which point it was too late.

43. Additionally, throughout this period of substantive economic negotiations the Conflicts Committee continued to debate [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

44. Meanwhile, Axelrod pressured the Conflicts Committee to finalize the

Merger with Axar. According to the minutes of the Conflicts Committee meeting on March 11, 2022, [REDACTED]

E. During Negotiations, The Board Learned of At Least Eight Related Party Transactions that Axar Failed to Disclose

45. While preparing the end-of-year financial statements in late February 2022, management identified two related party transactions⁵ that had not previously been disclosed as such: the Nevada Company Transaction and the Hotel Fund Transaction (described below). At the time of these transactions, Axar falsely represented that it did not have any affiliations or conflicts as defined in the Subadvisor Agreement.

- a) **The Nevada Company Transaction:** On March 9, 2021, the Company's trusts purchased approximately 27% of the outstanding shares of a Nevada company (the "Nevada Company") for an aggregate cash purchase price of \$18.0 million. The Company made the purchase based on a recommendation from Axar to Cornerstone. On February 4, 2021, Axar and the Company's trusts entered into an Assignment and

⁵ The Annual Report and Conflicts Committee minutes are inconsistent in their explanations of how exactly the transactions were discovered. The Annual Report states that management discovered two transactions, and then Axar revealed a third, while the March 8, 2022 minutes state that management discovered one, and then Axar revealed another two. The precise sequence of the discoveries, however, does not affect Plaintiff's claims.

Assumption Agreement, pursuant to which Axar agreed to assign its rights under the Nevada Company Purchase Agreement to the Company's trusts and the trusts agreed to assume Axar's obligations thereunder. As explained in the Company's Annual Report dated March 31, 2022: "However, although Axar as a subadvisor to Cornerstone was obligated to disclose any conflicts of interest with respect to its recommendations," Axar did not disclose that "funds and accounts affiliated with Axar owned approximately 13.8% of Nevada Company's outstanding common stock, and that Andrew Axelrod was elected to the board of directors of the Nevada Company on December 31, 2020."

- b) **The Hotel Fund Transaction:** As explained in the same Annual Report, "[o]n May 17, 2021, [the Company's] trusts entered into a Loan Agreement with a hotel investor and developer and certain of its subsidiaries (collectively, the "Hotel Fund") . . . Pursuant to the Hotel Fund Loan Agreement, our trusts provided a \$33.2 million mezzanine loan to the Hotel Fund on May 19, 2021 as part of a \$162.2 million loan facility originated by an unaffiliated loan fund. The participation by our trusts was based on the recommendation of Axar under the Subadvisor Agreement. As part of the same transaction, funds and other accounts affiliated with or managed by Axar loaned \$10.0 million to the Hotel Fund on the same terms as the trusts' loans, representing the balance of the \$43.2 million mezzanine loan, and our trusts and the Axar funds and accounts each received an origination fee equal to 4% of their respective loan amounts." Axar also decided to participate in the loan facility on the same terms and conditions as the Company's trusts but, according to the Annual Report, Axar purportedly "did not recognize that such participation represented a related party transaction."

46. Because Axar failed to identify these transactions as related party transactions, according to the Annual Report, "neither the Board's Trust and Compliance Committee, as required by the Company's investment policy, nor the Board's Conflicts Committee, as required by its charter, had the opportunity to

review and to approve or disapprove the consummation by our trusts of the transactions.”

47. The Annual Report further explains that following management’s discoveries, Axar advised the Company of its “involvement” in the Holdco Transaction, described as follows: “On September 27, 2021, [the Company’s trusts] entered into an Assignment and Acceptance Agreement (the “Holdco Loan Assignment”) with an insurance holding company (“Holdco”) and Holdco’s then current lender (the “Initial Lender”) pursuant to which the Initial Lender agreed to assign to our trusts all of its rights, duties and obligations under a Loan Agreement dated as of July 9, 2019 between the Initial Lender and Holdco (the “Holdco Loan Agreement”). The Initial Lender had previously declared Holdco in default under the terms of the Holdco Loan Agreement. At the closing of the transactions contemplated by the Holdco Loan Assignment on October 6, 2021, our trusts paid the Initial Lender \$28.7 million in cash.” The Holdco Loan Assignment was later amended, and through March 1, 2022, the trusts received cash interest in the aggregate amount of \$0.8 million on the Holdco Loan and additional interest in the form of an increase in the principal balance of the Holdco Loan in the amount of \$1.2 million.

48. On the same day the trusts entered into the Holdco Loan Assignment,

Axar entered into an agreement with Holdco for the right to acquire Holdco Subsidiary from Holdco, but it represented to Cornerstone that it was not an affiliate of Holdco or the Initial Lender. As explained in the Annual Report, “[a]lthough Axar as a subadvisor to Cornerstone was obligated to disclose any conflicts of interest with respect to its recommendations, it did not provide a copy or disclose the terms or provisions of the Transaction Letter Agreement or Expense Fee Letter Agreement to Cornerstone at the time it recommended that our trusts enter into the Holdco Loan Assignment. As a result, at the time the Holdco Loan Assignment and the Amended Holdco Loan Agreement were executed, neither Cornerstone nor our trusts was aware of Axar’s right to acquire Holdco Subsidiary from Holdco. Consequently, neither the Board’s Trust and Compliance Committee, as required by the Company’s investment policy, nor the Board’s Conflicts Committee, as required by its charter, had the opportunity to review and to approve or disapprove the consummation by our trusts of the transactions contemplated by the Holdco Loan Assignment and the Amended Holdco Loan Agreement.”

49. In addition to the Nevada Company, Hotel Fund, and Holdco Transactions, the Annual Report disclosed that the Conflicts Committee also reviewed the “Real Estate Loan Participation” and “certain other transactions” in 2022 as part of its “independent review of all Axar’s investment recommendations

to Cornerstone.” The Real Estate Loan Participation involved a \$26 million investment by StoneMor’s trusts upon Axar’s recommendation and a similarly undisclosed affiliation by Axar.

50. The revelations about the related party transactions derailed the Merger negotiations. During March and April 2022, the Conflicts Committee halted all substantive negotiations with Axar about the Merger but held six meetings about the previously undisclosed related party transactions.

51. On [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

52. The Annual Report is inconsistent with the Company’s internal documents, so it is unclear precisely how many additional related party transactions the Company discovered, but it appears there were at least eight. The Annual Report lists the Nevada Company, Hotel Fund, Holdco, Real Estate Loan Participation, and

“certain other” transactions, while the Conflict Committee minutes (described in greater detail below) [REDACTED]

[REDACTED] It is also possible, but not clear from the record, that the Holdco Transaction described in the Annual Report is the same as the [REDACTED] described in the minutes.

53. According to minutes of a meeting of the Conflict Committee on March 8, 2022, [REDACTED]

[REDACTED]

[REDACTED] According to the minutes:

a) In the [REDACTED]

[REDACTED]

b) In the [REDACTED]

[REDACTED]

c) In the [REDACTED]

[REDACTED]

[REDACTED]

54. At the Conflicts Committee meeting on March 24, 2022, the Committee discussed another two transactions that, according to the minutes, [REDACTED]

[REDACTED]

a) In the [REDACTED]
[REDACTED]

b) In the [REDACTED]
[REDACTED]

55. Axar had not previously disclosed its involvement with these companies. In total, there were likely well in excess of \$100 million of trust funds invested in undisclosed related party transactions.

56. Given the ballooning number of undisclosed related party transactions, on March 24, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

57. The Company listed “[i]dentification and disclosure of Related Party transactions” as a material weakness in its March 31, 2022 Annual Report and in each subsequent quarterly report through the time that the Merger closed.

F. A Group of the Company’s Noteholders Alleged that the Recently Disclosed Related Party Transactions with Axar Constituted A Breach Of Their Indenture Agreement

58. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

59. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

G. The Board Then Resumed Negotiations with Axar Despite Its Repeated Failures to Make Required Disclosures

60. Notwithstanding the Conflict Committee’s investigation into Axar’s failure to disclose related party transactions, as well as the ongoing resulting dispute with the Noteholders, [REDACTED]

[REDACTED] Two days later, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

61. [REDACTED]

⁶ The Company’s records are inconsistent about whether this conversation occurred on May 1 or 2, but they are consistent in describing the content of the conversation. The Proxy says, “[o]n May 2, 2022, Mr. Axelrod, in a telephone call with Mr. Negrotti, requested that the Conflicts Committee re-engage in substantive negotiations regarding the ‘take-private’ transaction.” According to the Conflicts Committee’s May 2, 2022 meeting minutes, however, [REDACTED]

[REDACTED]

[REDACTED]

62. On May 9, 2022, Axelrod met with the Conflicts Committee [REDACTED]

[REDACTED]

[REDACTED] The Conflicts Committee neither accepted nor rejected this proposal.

63. Over the next fifteen days, the Conflicts Committee and Axar

[REDACTED]

[REDACTED] This condition was incorporated into the proposed Merger Agreement.

64. On May 17, 2022, the full Board debated the merits of different approaches to resolve the conflict with the Noteholders, including the possibility of

[REDACTED]

65. In light of this concern, the Board agreed to pursue a transaction where the Company would offer to buy \$50.0 million of the Company notes held by the Noteholders for a purchase price equal to 100% of face value. On May 18, 2022, the Company communicated this offer to the Noteholders. On May 20, 2022, the Noteholders responded that they preferred that the Company buy 100% of the Company notes held by the Noteholders, to which Redling responded that the Company did not have the liquidity to complete a full buy-out without third-party financing.

66. On May 21, 2022, the Conflicts Committee unanimously recommended the Merger for the Board’s approval. On May 24, 2022, the Board voted to approve the Merger. Axelrod was the only director who abstained.

67. The Company then went through the motions of a go-shop process, which ran for the sixty days between May 24, 2022 and July 23, 2022. During the go-shop period, Duff & Phelps contacted five potential strategic buyers and 32 potential financial buyers. None of the parties it contacted entered into a confidentiality agreement with the Company.

68. The failure of the go-shop process to produce any alternatives to the Merger should not have been surprising to the Conflicts Committee, which had warned in February that [REDACTED]

[REDACTED]

[REDACTED]

H. The Board Voted 4-3 to Buy Out The Noteholders to Avoid Litigation

69. The dispute with the Noteholders continued to escalate as the directors finalized the Merger Agreement and began the go-shop process. The May 26, 2022 meeting minutes recount a conversation [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

70. The directors then discussed [REDACTED]

[REDACTED]

[REDACTED] Determined to forge ahead and mollify the Noteholders, the Board unanimously agreed to make this offer to the Noteholders.

71. As the Company continued the motions of the go-shop and continued finalizing its purchase agreement with the Noteholders, [REDACTED]

[REDACTED]

72. In light of these developments and the growing number of Noteholders, in its June 30, 2022 meeting the Board [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

73. On July 18, 2022, the Board [REDACTED] and agreed to purchase \$100 million of Company notes from the Noteholders, with Noteholders receiving an 11% premium over the bonds' then-current trading price. Unlike the Noteholders' initial proposals to the Company, the Note Purchase Agreement did not mandate any changes to the Indenture.

I. The Stockholder Vote Was Not Fully Informed And the *MFW* Conditions Were Not Imposed Irrevocably or *Ab Initio*

74. On September 20, 2022, StoneMor issued the definitive Proxy seeking stockholder approval for the Merger. That vote was neither fully informed nor imposed irrevocably or *ab initio* as required to cleanse the Merger under *MFW*.

75. As discussed above, the Merger was not conditioned *ab initio* upon the approval of the majority of the Company's minority stockholders. Instead, Axar and the Special Committee conducted months of substantive negotiations before they

[REDACTED]

agreed to condition the Merger on such a vote. Axar sent the Axar Letter in September 2021, but the parties continued to negotiate over the majority of the minority vote—including who would be eligible to vote—for at least the next six months. Moreover, as late as January 2022, Axar was still only saying that it was “likely” that the Merger would be subject to a majority-of-the-minority vote—suggesting that the conditions were not irrevocable.

76. The Proxy also failed to disclose at least four material facts.

77. *First*, the Proxy failed to disclose that [REDACTED] was prepared to enter into negotiations to purchase the Company at a price significantly higher than Axar was willing to pay. The Proxy disclosed that, on February 18, 2022, “[t]he [Conflicts] Committee also discussed the information that Mr. Redling had provided to Mr. Negrotti regarding Party A. After the Conflicts Committee discussed the advantages and disadvantages of engaging with Party A, the Conflicts Committee asked Mr. Negrotti to direct Duff & Phelps to contact Party A on behalf of the Conflicts Committee to discuss potential future negotiations.” But the Proxy did not disclose that Redling had specifically told Negrotti that [REDACTED]

[REDACTED]

[REDACTED]

A reasonable stockholder would consider such a superior offer important when

assessing the adequacy of the sale process and the price it generated.

78. The Proxy also failed to disclose that the Conflicts Committee did not actively negotiate with [REDACTED]. The Proxy stated that, in November 2021, the Committee was unsure of its authority to negotiate with third parties, and “determined to ask the Board of Directors to clarify the scope of the Conflicts Committee’s mandate relating to Party A and what role, if any, the Conflicts Committee should play in those discussions.” The Proxy did *not* disclose, however, that the result of that clarifying discussion (according to the November 22 Committee meeting minutes) was to have [REDACTED]

[REDACTED] This was a materially misleading omission because it would have led a reasonable stockholder to believe that the Conflicts Committee participated in negotiations and/or performed its purported cleansing function in pursuing an alternative transaction at a superior price.

79. *Second*, the Proxy failed to disclose any of the substance of [REDACTED]. In particular, a reasonable stockholder would have found it material that [REDACTED]

8 [REDACTED]

[REDACTED]

[REDACTED]

80. *Third*, the Proxy failed to describe the full story behind Axar’s failure to disclose multiple related party transactions as required under the Subadvisor Agreement. The Proxy did explain that after those breaches came to light, the Company paused Merger negotiations with Axar and that the Conflicts and Trust Committees met repeatedly to review the related party transactions. The Proxy also disclosed that the Company terminated the Subadvisor Agreement at the request of the Trust Committee on April 19, 2022. But the Proxy failed to disclose that, on April 21, 2022—approximately one month before the Board voted in favor of the Merger—

[REDACTED]

[REDACTED]

[REDACTED]

81. The Company [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

82. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

83. That information would have been highly material to a reasonable stockholder. Among other reasons, Axelrod and other members of the Board would have known that they faced a serious risk of stockholder derivative lawsuits if the Company remained public and all of these facts were revealed. By taking the Company private, they avoided that outcome.

⁹ One version of the minutes stated: [REDACTED]

84. *Fourth*, the Proxy omitted critical information about inputs to Duff & Phelps’s discounted cash flow analysis (“DCF”), which the Proxy identified as the “primary valuation methodology” for the Merger. Specifically, the Proxy failed to disclose the inputs from management that Duff & Phelps used to calculate free cash flow and the discount rate(s) that Duff & Phelps applied in the terminal period.

85. The Proxy explains that “for purposes of its discounted cash flow analysis, Duff & Phelps utilized and relied upon the Management Projections, which provided a financial forecast for the fiscal years ending December 31, 2022 through December 31, 2036.” But management’s projections of free cash flows differ from Duff & Phelps’s by tens of millions of dollars each year, as seen below (all figures in ‘000s):¹⁰

	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>
EBIT (as calculated by D&P)	\$34,304	\$43,532	\$49,348	\$56,595
EBIT (“Operating Income (loss)”) (as calculated by management)	\$33,587	\$41,547	\$46,174	\$52,305
FCFs (as calculated by D&P)	\$29,880	\$36,299	\$40,494	\$30,231
“Unlevered Free Cash Flow” (as calculated by management)	\$41,769	\$50,525	\$56,175	\$47,158

86. These discrepancies may be due (at least in part) to the fact that—

¹⁰ Proxy at 39 and Appendix C-8.

according to the Proxy—unlike management, Duff & Phelps “calculated the Company’s projected unlevered free cash flows by ... adding back tax depreciation and amortization of cemetery property” after subtracting taxes from projected earnings. The Proxy also states that Duff & Phelps also calculated Earnings Before Interest and Taxes using “tax depreciation and amortization in lieu of GAAP.”

87. None of the three inputs listed above (tax depreciation, amortization of cemetery property, and EBIT)—out of just seven total inputs to Duff & Phelps’s calculations—are disclosed in the Proxy past 2026. Although the Proxy discloses management’s projections through 2036 in Appendix C, those projections do not include entries for “tax depreciation” or “amortization of cemetery property.” That means that management must have provided important supplemental projections to Duff & Phelps that were not available to the public. Additionally, the Proxy only discloses Duff & Phelps’s free cash flow calculations through 2026, so there is no way to reconstruct Duff & Phelps’s model for the additional ten years.

88. Notably, in its final fairness presentation dated May 21, 2022 (but not in the Proxy), Duff & Phelps provided cash flow calculations that included tax depreciation and amortization through 2030 and for 2036. A reasonable inference is that Duff & Phelps considered these inputs material to the Board and, accordingly, they would have been material to a reasonable stockholder as well.

89. The omitted inputs regarding free cash flow are even more problematic because of the unconventional and unexplained bifurcation of cash flows that Duff & Phelps used.

90. With respect to the discount rate, the Proxy explains that Duff & Phelps discounted the Company's projected unlevered free cash flows to present value based on a bifurcation of cash flows that were deemed attributed to either the deferred revenue backlog (for "pre-need," before death services) or to projected future sales (for "at-need," at death services). Duff & Phelps applied a discount rate of 3.5% to the revenue backlog and a range of 9.00% - 10.00% for projected future sales. For the terminal value, it applied a discount of 9.00% - 10.00%.

91. It is entirely unclear from the Proxy whether Duff & Phelps applied the lower discount rate at all in the terminal period and, if not, why its bifurcated approach was appropriate only *until* the terminal period.

92. Based on the misleading proxy, a majority of non-Axar-affiliated StoneMor stockholders voted to approve the Merger on November 1, 2022. The Merger closed on November 3, 2022. Plaintiffs and other Class members received \$3.50 per share in cash in exchange for their StoneMor shares.

93. Axelrod, Miller, and Goldenrod stayed on as directors of the surviving company, and Redling was appointed as a director of Axar.

J. The Process Was Unfair

94. In addition to the vote not being fully informed or imposed irrevocably *ab initio*, the process was also unfair because the Special Committee was not independent and disinterested, had an unduly narrow mandate, and failed to meet its duty to negotiate a fair price.

95. *First*, the Conflicts Committee was not independent from Axar because its members had a history of acquiescing to it. Specifically, Negrotti and Wellenbach both have yearslong histories of approving transactions that benefited Axar to the detriment its public stockholders. Since 2018, Negrotti and Wellenbach served as repeat players on various special committees that evaluated, negotiated, and in almost all cases approved, transactions and other deals with Axar that had enabled Axar to gain control over StoneMor.

96. Consistent with its prior behavior, the Conflicts Committee acted loyally to Axar during negotiations. When the Committee learned about Axar's failure to disclose at least five related party transactions, the Committee briefly paused negotiations but acquiesced to Axar's request to restart two months later—without justification. The Proxy says only, “following this conversation [between Axelrod and Negrotti], the Conflicts Committee met on May 2, 2022, and determined that the Conflicts Committee was willing to re-engage in discussions

with Axar.”

97. It seems highly plausible that these issues would have given rise to potential claims by the Company against Axar. Yet the Proxy does not discuss any analysis by the Conflicts Committee of the value of those potential claims. Instead, the Conflicts Committee discussed other potential claims resulting from the related party transactions, including the significant personal liability they were facing and which the Noteholders highlighted in their communications with the Board. Nonetheless, the Conflicts Committee restarted negotiations with Axar upon Axelrod’s request and approved the Merger a short time thereafter.

98. *Second*, the Conflicts Committee did not negotiate a fair price. The Committee was formally authorized to engage in discussions concerning and to negotiate the terms and provisions of strategic alternatives and the Proxy notes that “the Conflicts Committee agreed that Axelrod’s active involvement in the approach from [Park Lawn] should be carefully monitored to avoid creating any perception that Mr. Axelrod was acting with the Conflicts Committee.”

99. In practice, however, the Conflicts Committee delegated negotiations with a superior bidder to Axelrod, who was conflicted. Predictably, Axelrod used his delegated authority to the advantage of Axar and the disadvantage of the Company’s public stockholders. Despite [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

K. The Unfair Process Led to an Unfair Price

100. Unsurprisingly, the unfair process led to an unfair price. The \$3.50 per share that Axar paid for the Company represented a substantial discount to the [REDACTED]

[REDACTED]

[REDACTED] Two potential sources for the unfair price come from management’s projections. The timing of the Merger—coinciding with the Company’s near collapse and subsequent turnaround—also contributed to the unfair price.

(i) *Jefferies Valued the Company at \$5.50 per Share With the Potential For Additional Upside*

101. In November 2021, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Accordingly, it stands to reason that

Axelrod and Axar found the valuation persuasive.¹¹

102. The [REDACTED]

[REDACTED]

103. [REDACTED]

[REDACTED]

¹¹ Of course, if they did not, then a reasonable inference is that they negotiated in bad faith to the detriment of the Company's non-Axar-affiliated stockholders.

(ii) *The Projections Undervalued the Company*

104. Two potential sources for the unfair price of the Merger come from management’s projections, upon which Duff & Phelps relied for its valuation.

105. *First*, the projections predicted an abrupt and unexplained surge in accounts receivable—from \$7.57 million in 2025 to \$20.84 million in 2026—with a more gradual increase persisting through 2036 (ultimately reaching \$24.43 million). In the Duff & Phelps DCF, a similar jump occurred in Net Operating Liabilities—from \$1.03 million in 2025 to \$14.12 million in 2026—increasing steadily and reaching \$23.54 million by the normalized terminal period. There is no explanation for this radical surge, nor is there is no evidence in the record that Duff & Phelps discussed it with management before incorporating it into its valuation. That decision had drastic consequences. Continuing the trend from the pre-2026 period in the projections would increase the Company’s valuation by tens of millions of dollars.

106. *Second*, the Proxy states that “[Axar] intends to continue the Company’s strategy of pursuing bolt-on acquisitions and may opportunistically pursue larger acquisitions depending on capital availability,” but, according to the Proxy, “the management projections and consequently the valuation process did not

attempt to incorporate the impact, whether positive or negative, of any future acquisitions by the Company.” In other words, despite being listed as a key element of the Company’s growth strategy, acquisitions were explicitly excluded from the projections and Duff & Phelps’s valuation.

(iii) The Timing of the Merger Contributed to an Unfair Price

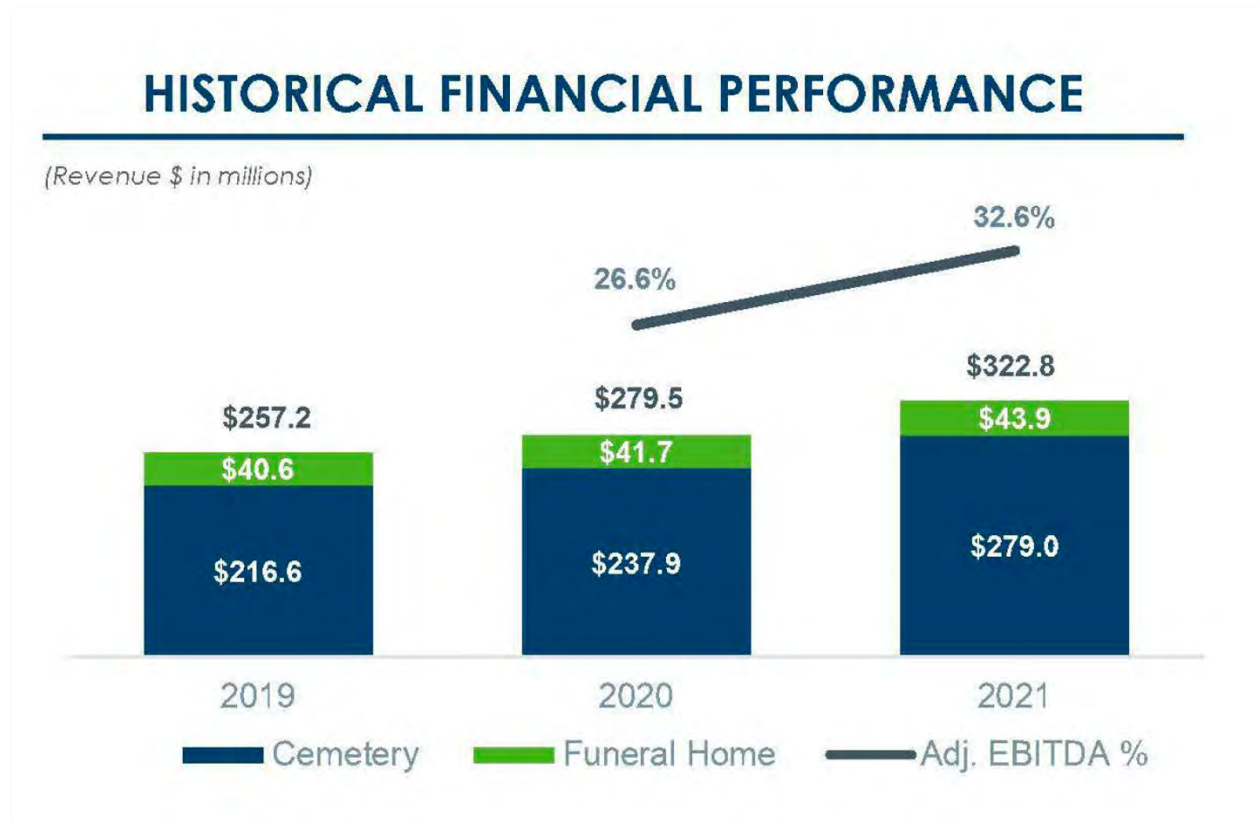
107. The timing of the Merger, coming on the heels of the Company’s near bankruptcy and subsequent turnaround, also contributed to the unfair price.

108. During negotiations and at the time of the Merger, the Company was in the early stages of recovery from its near bankruptcy in 2019. The 2019 recapitalization—which Duff & Phelps referred to in its go-shop presentation as a “significant turnaround strategy”—was largely successful, but the price Axar paid did not capture the full, future effects of that turnaround.

109. From the spring of 2020 to the day before the Company announced the Axar Letter (in September 2021), the Company’s stock price had increased four-fold. And there were many reasons to expect its growth would continue.

110. By the end of 2020, the Company had achieved its highest non-GAAP EBITDA since 2015. According to Board minutes from March 2, 2021, the Company’s Chief Financial Officer attributed these gains to strong sales, good investment returns, and significant cost reductions. The Company’s significant gains

in EBITDA continued into 2021, as shown in this presentation from Duff & Phelps:



111. Duff & Phelps’s operational benchmarks also showed that the Company still had ample room to improve its EBITDA margins. According to Duff & Phelps, and as disclosed in the Proxy, the mean and median EBITDA margins for companies in the deathcare industry during the relevant time periods ranged from 1.6 to 5 times that of the Company, as seen below:

<u>Selected Public Companies</u>			
<u>EBITDA Margin</u>	<u>Company</u>	<u>Mean</u>	<u>Median</u>
3-YR AVG	4.2%	26.5%	26.4%
LTM	6.2%	27.6%	26.4%
2022P	9.2%	26.4%	26.2%
2023P	14.6%	26.9%	27.0%
2024P	16.2%	27.2%	27.5%

112. Duff & Phelps also offered further reasons for optimism about the Company’s growth independent of the Merger. In its presentation on the go-shop period, it noted that, because the top five North American “deathcare” providers control 21% of the market, and only one company has more than 2% of the market share, future consolidation presents “an enormous growth opportunity” for StoneMor. It also highlighted that “[i]mproved investment performance within the trust accounts could have [a] substantial positive effect on profitability.”

113. The Special Committee [REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

114. Finally, Axar indicated that it planned to continue the Company’s

current growth strategies of improving operations and pursuing bolt-on acquisitions—suggesting untapped potential in those strategies. As explained in the Proxy, “[t]he primary detriment of the Merger to such Company stockholders is that such Company stockholders will not participate in the future earnings, growth or value (if any) of the Company, including from any improvements in its operating performance from its turnaround efforts or any acquisitions that Parent or the Surviving Company may pursue following the Merger. . . . Parent intends to continue the Company’s strategy of pursuing bolt-on acquisitions and may opportunistically pursue larger acquisitions depending on capital availability.”

115. Nevertheless, despite these promising indications, the Company was in a unique transition period following its near collapse. Although the Company was recovering well, it still had no analyst coverage and “limited trading volume,” according to the Proxy. Accordingly, it appears that Axar timed the Merger such that the Company’s operational recovery front ran its market credibility and investibility recovery—all but ensuring a lower price.

116. One of Duff & Phelps’s key inputs for its DCF may have also failed to capture the full potential of the Company’s recovery. Duff & Phelps used a perpetual growth rate (“PGR”) of 3% without justifying that number or providing a range of possibilities, like it did for the discount rate, as described above. In the near-term,

inflation is expected to stay well above 3%, and, according to the U.S. Census Bureau, the United States is an “aging nation,”¹² meaning that number of people requiring deathcare services will necessarily increase.

117. Another input to Duff & Phelps’ DCF was the Weighted Average Cost of Capital (“WACC”). According to the Proxy, Duff & Phelps calculated the WACC “utilizing the Capital Asset Pricing Model, a generally accepted method used to calculate the cost of capital, and based on inputs derived from the selected public companies, such as beta and capital structure.” But Duff & Phelps also disclaimed the utility of inputs derived from those comparable companies for valuation purposes. As explained in the Proxy, “the selected public companies analysis and selected mergers and acquisitions transactions analysis were not regarded as significant in the Duff & Phelps analysis, except that they provided information with respect to the Capital Asset Pricing Model and the weighted average cost of capital to use in the discounted cash flow analysis described elsewhere.” It is unclear why Duff & Phelps used these inputs for the WACC, and it is reasonably conceivable that it may have failed to capture the Company’s full potential by doing so.

¹² *Press Release: Nation Continues to Age as It Becomes More Diverse*, CENSUS.GOV (June 30, 2022), <https://www.census.gov/newsroom/press-releases/2022/population-estimates-characteristics.html>.

118. Finally, the minutes of the Conflicts Committee meeting on November 22, 2021 state that Duff & Phelps “[wa]s using a discounted cash flow model and that using a different model w[ould] result in a different valuation.” But there is zero explanation of what those other models would have been or whether the valuation would have been higher. Accordingly, it is reasonably conceivable that the valuation, which was flawed for the reasons explained above, led to an unfair price.

(iv) The Merger Ascribed No Value To Derivative Claims

119. At the time of the Merger, there was a derivative action brought by StoneMor stockholders pending against Axelrod, Miller, Wellenbach, Goldenberg, Negrotti, Redling and former StoneMor director, Robert J. Hellman, Jr. (the “Derivative Action”).¹³ Plaintiff incorporates by reference the allegations of the amended complaint filed in that action on March 11, 2022. The Merger extinguished public stockholders’ derivative standing for the Derivative Action and any other potential derivative claim. Even after discounting for litigation risk, the claims pled in the Derivative Action were potentially worth tens of millions of dollars, an amount

¹³ In response to Plaintiff’s books-and-records demand, StoneMor produced, and Plaintiff’s counsel have reviewed, an unredacted copy of the complaint that was operative in that action at the time of the Merger. *In re StoneMor Inc. Deriv. Litig.*, 2021-1028-SG (Del. Ch.) (amended complaint filed Mar. 11, 2022) (Trans. ID 67388547).

that was material in the context of a sale where StoneMor’s minority stockholders received approximately \$88 million in cash. There is no evidence in the record to suggest that Axar ascribed any value to those claims in connection with the Merger. Similarly, the Merger consideration did not include any allocation of value attributable to derivative claims that would have inevitably arisen against Axar in connection with the buy out of the Noteholders.

CLASS ALLEGATIONS

120. Plaintiffs bring this action individually and as a class action pursuant to Rule 23 on behalf of themselves and all other stockholders whose shares of StoneMor common stock were exchanged for \$3.50 per share in the Merger (the “Class”). The Class excludes Defendants and any officer or director of the Company as of the closing of the Merger.

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

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

123. The Class is so numerous that joinder of all members is impracticable. The number of Class members is believed to be in the thousands and Class members are likely scattered across the United States. Moreover, damages suffered by individual Class members may be small, making it overly expensive and

burdensome for individual Class members to pursue redress on their own.

124. There are questions of law and fact which are common to all Class members and which predominate over any questions affecting only individuals, including, without limitation:

- a. whether Defendants owed fiduciary duties to Plaintiffs and the Class;
- b. whether Defendants breached their fiduciary duties to Plaintiffs and the Class; and
- c. the extent of the Class's damages.

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

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

127. Defendants have acted in a manner that affects Plaintiffs and all members of the Class alike, thereby making appropriate injunctive relief and/or corresponding declaratory relief with respect to the Class as a whole.

128. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual

members of the Class, which would establish incompatible standards of conduct for Defendants; or adjudications with respect to individual members of the Class would, as a practical matter, be dispositive of the interest of other members or substantially impair or impede their ability to protect their interests.

COUNT I

Individual and Class Claim for Breach of Fiduciary Duties Against All Defendants

129. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein.

130. The Defendants owed Plaintiffs and the Class the utmost fiduciary duties of loyalty and care.

131. By reason of the foregoing, Defendants breached their fiduciary duties by agreeing to and entering into the Merger without ensuring that the Merger was entirely fair to Plaintiffs and other public stockholders.

132. As a result of the foregoing, Plaintiffs and the Class have been harmed.

PRAYER FOR RELIEF

133. WHEREFORE, Plaintiffs demand judgment and permanent relief, including injunctive relief, in their favor, in favor of the Class and against Defendants as follows:

- a. Declaring that this action is properly maintainable as a class action and certifying Plaintiffs as Class Representatives;
- b. Declaring that Defendants breached their fiduciary duties in connection with the Merger;
- c. Awarding monetary damages to the Class, including pre- and post-judgment interest;
- d. Awarding Plaintiffs the costs and disbursements of this action, including attorneys' and experts' fees;
- e. Granting Plaintiffs and the other members of the Class such further relief as the Court deems just and proper.

Dated: March 27, 2023

Respectfully submitted,

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