



IN THE COURT OF THE CHANCERY OF THE STATE OF DELAWARE

MICHAEL ROBERT MARCHNER, JR.,
derivatively on behalf of B. RILEY
FINANCIAL, INC., a Delaware
Corporation,

Plaintiff,

v.

BRYANT R. RILEY, ROBERT L. ANTIN,
TAMARA "TAMMY" BRANDT,
ROBERT D. D'AGOSTINO, THOMAS J.
KELLEHER, RENÉE E. LABRAN,
RANDALL E. PAULSON, MICHAEL J.
SHELDON, and MIRIAM "MIMI" K.
WALTERS,

Defendants,

-and-

B. RILEY FINANCIAL, INC.,
Nominal Defendant.

Case No. 2025-0164-LWW

**PUBLIC VERSION OF
TRANS. ID 75635158**

VERIFIED STOCKHOLDER DERIVATIVE COMPLAINT

Plaintiff Michael Robert Marchner, Jr. ("Plaintiff"), derivatively on behalf of nominal defendant B. Riley Financial, Inc. ("B. Riley" or the "Company"), by and through his attorneys, brings the following Verified Stockholder Derivative Complaint (the "Complaint") asserting breaches of fiduciary duty and related claims against B. Riley directors Bryant R. Riley ("Bryant Riley"), Robert L. Antin ("Antin"), Tamara "Tammy" Brandt ("Brandt"), Robert D. D'Agostino

(“D’Agostino”), Thomas J. Kelleher (“Kelleher”), René E. LaBran (“LaBran”), Randall E. Paulson (“Paulson”), Michael J. Sheldon (“Sheldon”), and Miriam “Mimi” K. Walters (“Walters”) (collectively, the “Director Defendants”). The allegations of the Complaint are based on personal knowledge, as to those allegations concerning Plaintiff and documentary evidence, and information and belief as to all other allegations based on, among other things, counsel’s investigation, which includes without limitation: (a) review and analysis of regulatory filings made by B. Riley with the United States (“U.S.”) Securities and Exchange Commission (“SEC”); (b) review and analysis of press releases and media reports issued by and disseminated by B. Riley; (c) books and records produced by B. Riley in response to Plaintiff’s demands pursuant to 8 Del. C. § 220 (the “Section 220 Production”, as further discussed below); and (d) review of other publicly available information concerning B. Riley, Bryant Riley, Franchise Group, Inc. (“FRG”), Brian Kahn, and others.

I. INTRODUCTION

1. B. Riley is a publicly traded financial services platform that was founded in 1997 by Co-Chief Executive Officers Bryant Riley and Kelleher. According to its public disclosures, the Company, through its subsidiaries, provides investment banking, brokerage, wealth management, asset management, direct lending, business advisory, and asset disposition services to a client base including

public and private companies, financial sponsors, investors, financial institutions, legal and professional firms, and individuals.

2. This action concerns Bryant Riley's and the other Board members' breaches of fiduciary duties owed to B. Riley.

3. As a result of Bryant Riley and the B. Riley Board's misconduct, B. Riley has lost its entire or almost its entire \$482.2 million interest in FRG and has seen its stock price plummet from its closing price of \$37.92 on May 10, 2023 to a price on February 11, 2025 of \$4.29 – an astounding \$1.025 billion loss in equity valuation (based on B. Riley's 30,499,931 outstanding common shares).

4. By early 2023, B. Riley had lent to a third party – Brian Kahn and Kahn's company Vintage Capital Management LLC ("Vintage Capital") – over \$200 million secured primarily by shares in FRG (at the time a publicly-traded corporation).

5. When FRG common stock began to decline in price in early 2023, B. Riley's Board of Directors, rather than publicly acknowledge the loan to Kahn, doubled down on B. Riley's commitment to Kahn. In May 2023, in order to create the appearance that B. Riley's loans to Kahn were adequately secured, B. Riley orchestrated a take-private transaction in which B. Riley (as part of a consortium that included Vintage Capital and Kahn) acquired the public interest in FRG

common stock at \$30 a share (“Take-Private Transaction”), publicly disclosing that it had expended \$216.5 million for its share of the equity.

6. The Take-Private Transaction was doomed at inception for disaster.

7. Among other things, Bryant Riley had been advised by FRG’s financial advisor by May 5, 2023 of FRG’s reduced fiscal year (“FY”) 2023 projections [REDACTED]

[REDACTED]

8. Although B. Riley itself is in the financial services business and routinely provides fairness opinions with respect to corporate transactions such as the FRG Take-Private Transaction, [REDACTED]

[REDACTED]

9. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

10. [REDACTED]

[REDACTED]

[REDACTED]

11. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

12. [REDACTED] exceeded the \$440.4 million reported as shareholder's equity on B. Riley's balance sheet as of March 31, 2023.¹

13. Further, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

14. [REDACTED]
[REDACTED]

15. [REDACTED]
[REDACTED], and the Take-Private Transaction was announced on May 10, 2023, FRG released (also on May 10, 2023) disastrous 1Q23 operating results [REDACTED]

¹ B. Riley Financial, Inc., Quarterly Report at 5 (Form 10-Q) (May 8, 2023), https://www.sec.gov/Archives/edgar/data/1464790/000162828023016479/rily-20230331.htm#ied4469b7f7ee47b08a902b322b43141d_25.

18. Thus, by April 24, 2024, at the latest, the Director Defendants were fully cognizant of B. Riley's exposure to FRG/Kahn.

19. Second, it was publicly reported in November 2023 that Kahn had participated in a securities fraud in the late 2010s concerning Prophecy. The facts underlying Kahn's participation in that fraud, however, were public no later than 2021 and should have influenced B. Riley's business relationship with Kahn.

20. FRG (albeit now as a private company) continued to under-perform in 2023 and 2024.

21. Among other things, one of FRG's principal companies, W.S. Badcock Corp. ("Badcock"), was sold to Conn's, Inc. ("Conn's") in late 2023 for \$70 million in Conn's securities, supported by a \$108 million loan from B. Riley to Conn's.

22. Conn's subsequently filed for bankruptcy on July 23, 2024, rendering FRG's stock interest in Conn's worthless. [REDACTED]

[REDACTED]

23. Ultimately, B. Riley was required to acknowledge the need to take a goodwill write-off on its investment in FRG of between \$330 million and \$370 million in the second quarter of 2024.

24. When FRG filed for bankruptcy in November 2024, B. Riley took an additional write-off of \$120 million on its investment and loan to Kahn.

25. Defendants' breaches of fiduciary duty and other misconduct have caused B. Riley to overpay (to put it mildly) for a substantially impaired asset and have also subjected B. Riley to a federal securities fraud class action lawsuit pending in the United States District Court for the Central District of California (the "Securities Class Action"); have necessitated internal investigations; and have caused losses in the hundreds of millions of dollars from the waste of corporate assets, and losses due to the unjust enrichment of the Director Defendants (particularly Bryant Riley and Kelleher) who were improperly over-compensated by the Company by millions of dollars.

26. B. Riley has only recently (on January 14, 2025) filed its Form 10-Q for the second quarter of 2024, due to the Company's and its auditor's ongoing review of the transactions with Brian Kahn, and the Company still has not filed its Form 10-Q for the third quarter of 2024.

27. Notwithstanding these material facts, and the associated dramatic decline in B. Riley's stock price, members of the Board have failed to act. The B. Riley Board has failed to take action against Bryant Riley, including, *inter alia*, terminating Bryant Riley for cause.

Demand for corrective action on the B. Riley Board is excused.

28. [REDACTED]

[REDACTED]

29. B. Riley’s Board has nine directors, each of whom is conflicted and is unlikely to respond to a demand for corrective action.

30. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

31. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] and had secured from

B. Riley an initial 2022 equity investment and loan that enabled Paulson to acquire a third-party company (Dash Medical Holdings, LLC).

32. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]³

Paulson, Bryant Riley, and the B. Riley Board were compromised in the investigation.

33. [REDACTED]

[REDACTED]

[REDACTED]

34. [REDACTED]

[REDACTED]

[REDACTED] the Audit Committee to retain

a second law firm – Winston & Strawn LLP (“W&S”) – that also had conflicts of interest.

35. W&S had previously sponsored at least one B. Riley investor conference and had represented B. Riley’s portfolio companies in business transactions.

36. Other Director Defendants are subject to personal liability for their conduct herein and have disabling associations with B. Riley or Bryant Riley and therefore are conflicted with respect to pursuing claims against Bryant Riley and others.

³ See [REDACTED]. References herein to [REDACTED]” followed by a Bates number, refer to production of books and records made by B. Riley to Plaintiff’s counsel.

37. [REDACTED] Defendant Kelleher [REDACTED] was a fraternity brother with Bryant Riley at Lehigh University. [REDACTED]

[REDACTED]⁴ In addition to their personal relationships, both Kelleher and D’Agostino have long-standing professional relationships with Bryant Riley that precede their time at the Company. Kelleher co-founded B. Riley with Bryant Riley and has held executive management positions for B. Riley entities since 1997. D’Agostino has served on boards with Bryant Riley since at least 2005 and has received nominations to several boards through Bryant Riley’s shareholder activism. As a member of the Audit Committee, Defendant D’Agostino participated in the retention of S&C and W&S.

38. Defendant Kelleher, as Co-CEO and an executive officer of B. Riley, faces personal liability for acquiescing to Bryant Riley in connection with the misconduct alleged herein. Defendant D’Agostino, as a member of the Audit Committee, faces personal liability for his failure to exercise oversight in connection with the misconduct alleged herein.

39. Defendant Sheldon has personal and professional ties with Bryant Riley, extending back to June 2007 when the two served on Aldila, Inc.’s (“Aldila”) board of directors together. [REDACTED]

⁴ [REDACTED]

[REDACTED]

[REDACTED].⁵

40. D’Agostino and Sheldon as the Chair and a member of B. Riley’s Compensation Committee, have continued to award each of Bryant Riley and Kelleher in excess of \$5 million in annual executive compensation and have turned a blind eye to Bryant Riley’s misconduct with respect to Kahn and FRG and the disastrous impact that conduct has caused B. Riley.

41. Defendant Paulson, as Chair of the Audit Committee, faces personal liability his failure to exercise oversight in connection with the misconduct alleged herein [REDACTED].

Defendant Paulson has personally benefitted from his relationship with Bryant Riley, who helped Paulson acquire Dash Medical Holdings, LLC by causing B. Riley to purchase a minority interest in the company and extending the company a \$3,000,000 loan.

42. Defendant Tammy Brandt was chief legal counsel (“CLO”) of FaZe Holdings, Inc. (“FaZe Holdings”), a company controlled by B. Riley, until February 2023.

43. Defendant Miriam “Mimi” Walters was appointed by a B. Riley affiliate to the board of Eos Energy Enterprises, Inc. (“Eos”). Defendant Walters

⁵ [REDACTED].

allowed Bryant Riley and B. Riley to leverage her former membership in Congress to endorse the Eos de-SPAC transaction and the corresponding Proxy solicitation materials. Walters, as a member of the Eos, had personal knowledge of shareholder litigation pursued by Eos shareholders against B. Riley and Bryant Riley individually. Defendant Walters faces personal liability for approving the Take-Private Transaction without sufficient scrutiny, despite prior knowledge of Bryant Riley's conduct with respect to the Eos de-SPAC transaction.

44. Defendant LaBran, as a member of the Audit Committee, faces personal liability for her failure to exercise oversight in connection with the misconduct alleged herein. Additionally, as a member of the Audit Committee, Defendant LaBran participated in the retention of S&C and W&S.

45. Defendant Antin was Co-Founder, CEO, President, and Chairman of the board of the animal healthcare company VCA, Inc ("VCA"), in which Bryant Riley has made substantial investments since at least 1997. Defendant Antin is also listed as Bryant Riley's friend on his Facebook profile. Defendant Antin, as a member of B. Riley's Compensation Committee, has continued to award each of Bryant Riley and Kelleher in excess of \$5 million in annual executive compensation and has turned a blind eye to Bryant Riley's misconduct with respect to Kahn and FRG and the disastrous impact that conduct has caused B. Riley.

II. JURISDICTION

46. This Court has subject-matter jurisdiction over this Action, which asserts claims for, among other things, breaches of fiduciary duty, pursuant to 10 Del. C. §341, which provides that this Court “shall have jurisdiction to hear and determine all matters and causes in equity.”

III. PARTIES

47. Plaintiff, Michael Robert Marchner, Jr., is a stockholder of B. Riley and has held shares of B. Riley common stock since November 2022. Plaintiff will adequately and fairly represent the interests of B. Riley in enforcing and prosecuting its rights.

48. Defendant B. Riley is incorporated under the laws of Delaware with its principal executive offices located in Los Angeles, California. B. Riley’s common stock trades on the NASDAQ exchange under the symbol “RILY.”

49. Director Defendant Bryant R. Riley is the Company’s Co-Founder, and has been its Chairman, and Co-Chief Executive Officer (“Co-CEO”) at all relevant times. For the 2023 fiscal year, Bryant Riley received \$5,563,318 in compensation from the Company.⁶ This included \$700,000 in salary, \$1,889,256 in stock awards, and \$2,974,063 in all other compensation.

⁶ B. Riley Financial, Inc., Annual Report Amendment No. 1 at 11 (Form 10-K/A) (Apr. 29, 2024),

50. According to B. Riley’s April 12, 2024 Form 10-K, Bryant Riley owned 23.8% (or 7,082,900) shares of B. Riley’s outstanding common stock. In its 2023 Form 10-K, B. Riley acknowledged that Bryant Riley’s significant ownership, along with certain other executive officers, directors, and affiliates owning in the aggregate 8.9% of B. Riley’s outstanding stock, “are able to exercise influence over matters requiring shareholder approval, such as the election of directors and the approval of significant corporate transactions, including transactions involving an actual or potential change of control of the company or other transactions that non-controlling shareholders may not deem to be in their best interest.”

51. Further, the Company acknowledged that this concentration of ownership could harm the price of B. Riley common stock by these stockholders’ ability to cause the Company “to enter into transactions or agreements that are not in the best interest of all stockholders[.]”⁷

52. As Co-Founder, Co-CEO, Board Chairman, and, a 23.8% stockholder, Bryant Riley was the *de facto* controller of the eponymously named B. Riley during the relevant time period with control and domination over the members of the B. Riley Board.

https://www.sec.gov/ix?doc=/Archives/edgar/data/1464790/000121390024037190/ea0204798-10ka1_briley.htm.

⁷ B. Riley Financial, Inc., Annual Report at 39-40 (Form 10-K) (Apr. 24, 2024), <https://www.sec.gov/ix?doc=/Archives/edgar/data/1464790/000162828024017512/rily-20231231.htm>.

53. According to B. Riley's 2024 Proxy Statement (at 5), Bryant Riley has served in many different capacities on behalf of B. Riley or its affiliates since B. Riley's founding in 1997:

Mr. Riley served as the Chairman of B. Riley & Co., LLC since founding the stock brokerage firm in 1997 until its combination with FBR Capital Markets & Co., LLC in 2017 and as Chief Executive Officer of B. Riley & Co., LLC from 1997 to 2006. He also served as Chairman of B. Riley Principal Merger Corp. from April 2019 to February 2020, at which time it completed its business combination with Alta Equipment Group, Inc. (NYSE: ALTG); as Chairman of B. Riley Principal Merger Corp. II from May 2020 to November 2020 at which time it had completed its business combination with Eos Energy Enterprises Inc. (Nasdaq: EOSE); and as Chairman of B. Riley Principal 150 Merger Corp. from June 2020 to July 2022, at which time it completed its business combination with FaZe Holdings, Inc. (Nasdaq: FAZE). He served as Chairman of B. Riley Principal 250 Merger Corp. from May 2021 until its dissolution in May 2023. Mr. Riley served as director of Select Interior Concepts, Inc. from November 2019 until October 2021. He also previously served on the board of Babcock & Wilcox Enterprises, Inc. (NYSE: BW) from April 2019 to September 2020; Sonim Technologies, Inc. (Nasdaq: SONM) from October 2017 to March 2019; and Freedom VCM Holdings, LLC (fka Franchise Group, Inc., a public company (Nasdaq: FRG), with the last day of trading of 8/21/23) from September 2018 through March 2020, rejoining in August of 2023. Mr. Riley received his B.S. in Finance from Lehigh University.

54. Indicative of Bryant Riley's domination, a Company subsidiary (B. Riley Principal Investments, LLC) employs his son, Charlie Riley, who graduated Tulane University in 2019. Charlie Riley is employed as an analyst, for which he is excessively compensated. Pursuant to public filings, in 2021, the Company paid Charlie Riley a total compensation of \$230,251 consisting of salary, bonus, and an

award of restricted stock units. In 2022 and 2023, Charlie Riley’s compensation was \$193,860 and \$217,785, respectively.

55. The 2024 Proxy Statement (at 5) states that “Mr. [Bryant] Riley’s experience and expertise in the investment banking industry provides the Board with valuable insight into the capital markets. Mr. [Bryant] Riley’s extensive expertise serving on other public company boards is an important resource for the Board.”

56. Given B. Riley’s influence over the Company, and given his relationships with Board Members, the Director Defendants are unlikely to commence litigation against Bryant Riley on behalf of the Company or to seek to terminate Bryant Riley for cause.

57. Director Defendant Thomas J. Kelleher is the Company’s Co-Founder and has been its Co-CEO and a Director at all relevant times. For the 2023 fiscal year, Kelleher received \$5,563,318 in compensation from the Company.⁸ This included \$700,000 in salary, \$1,889,256 in stock awards, and \$2,974,063 in all other compensation. According to a Proxy Statement filed by B. Riley dated May 10, 2024, Kelleher has a 3.3% stock interest in B. Riley.⁹

⁸ B. Riley Financial, Inc., Annual Report Amendment No. 1 at 11 (Form 10-K/A) (Apr. 29, 2024), https://www.sec.gov/ix?doc=/Archives/edgar/data/1464790/000121390024037190/ea0204798-10ka1_briley.htm.

⁹ B. Riley Financial, Inc., Definitive Proxy Statement at 39 (Schedule 14A) (May, 10, 2024),

58. Director Defendant Robert L. Antin has served as a member of the B. Riley Board since June 2017. Antin is also a member of the Board's Compensation Committee and Environmental, Social, and Corporate Governance ("ESG") Committee. From 2020 through 2023, Antin received total compensation of \$641,215 for service as an outside Board member.

59. Director Defendant Tammy Brandt has served as a member of the B. Riley Board since December 20, 2021. For 2022 and 2023, Brandt received total compensation of \$324,640 for services as an outside Board member. Brandt does not serve on any Board Committee.

60. Director Defendant Robert D. D'Agostino has served as a member of the B. Riley Board since October 2015. D'Agostino is also a member of the Board's Audit Committee and Compensation Committee. From 2020 through 2023, D'Agostino received total compensation of \$665,896 for service as an outside Board member.

61. Director Defendant René E. LaBran has served as a member of the B. Riley Board since August 2021. LaBran is also a member of the Board's Audit Committee and ESG Committee. From 2021 through 2023, LaBran received compensation of \$400,632 for service as an outside Board member.

<https://www.sec.gov/ix?doc=/Archives/edgar/data/1464790/000121390024041725/ea0205510-01.htm>.

62. Director Defendant Randall E. Paulson has served as a member of the B. Riley Board since June 2020. Paulson is also the Chair of the Board's Audit Committee. From 2020 through 2023, Paulson received total compensation of \$608,575 for service as an outside Board member.

63. Director Defendant Michael J. Sheldon has served as a member of the B. Riley Board since July 2017. Sheldon is also a member of the Board's Compensation Committee. From 2020 through 2023, Sheldon received total compensation of \$627,812 for service as an outside Board member.

64. Director Defendant Mimi K. Walters has served as a member of the B. Riley Board since July 2019. Walters is Chair of the Board's ESG Committee. From 2020 through 2023, Walters received total compensation of \$645,668 for service as an outside Board member.

65. For the reasons detailed herein, demand would be futile as to each of the Director Defendants.

IV. SUBSTANTIVE ALLEGATIONS

A. Brian Kahn and Prophecy

66. Even independent of his relationships with B. Riley and Bryant Riley, Brian Kahn has had a checkered past.

67. Though B. Riley was investing with Kahn and as of May 2023 had committed loans and equity investments to Kahn and his controlled entities

(including FRG) in the aggregate of well in excess of \$400 million, the B. Riley Board failed to ensure that management conducted even rudimentary checks on Kahn or his controlled entities, including Vintage Capital.

68. Adverse information on Kahn was readily available if the Board or members of B. Riley senior management had complied with their fiduciary duties by investigating him.

B. Overview of Bryant Riley’s Relationship with Brian Kahn

69. Kahn was, until August 2023, the President, Chief Executive Officer, member of the board of directors, and a controlling shareholder of FRG.

70. Beginning in August 2018, before it was taken private in August 2023, FRG was a publicly traded company that owned and operated, as the franchisor, franchise businesses including Pet Supplies Plus, American Freight, and the Vitamin Shoppe.

71. Kahn is also the Founder and Managing Partner of Vintage Capital, a private equity firm that specializes in defense, manufacturing, and consumer sectors.

72. Previously, Kahn was the Founder and Managing Partner of Kahn Management, Inc.

73. FRG was formed in August 2018, when B. Riley and Vintage Capital merged a predecessor of FRG into Liberty Tax, Inc. (“Liberty Tax”), a publicly traded company.

74. As of July 1, 2023, at the time of the Take-Private Transaction, Kahn and Vintage Capital and its affiliates held approximately 34.8% of the aggregate voting power of FRG through their ownership of FRG common stock.¹⁰

75. B. Riley and its principal Bryant Riley have a longstanding business and financial relationship with Kahn.¹¹

76. Kahn and Bryant Riley served together on FRG's board of directors from September 2018 through March 2020.¹²

77. According to reporting by *The Wall Street Journal* dated February 12, 2024, B. Riley made at least ten different loans to Kahn and Kahn-controlled entities from 2018 through 2023 and, as various public filings reveal¹³, B. Riley and Kahn have a history of economic partnership:

¹⁰ See Franchise Group, Inc., Quarterly Report at 18 (Form 10-Q) (Aug. 8, 2023), <https://www.sec.gov/ix?doc=/Archives/edgar/data/1528930/000152893023000016/frg-20230701.htm>.

¹¹ See e.g., Jonathan Weil, *How an Unremarkable Deal Became a Big Threat to a Small Investment Bank*, THE WALL STREET JOURNAL (Feb. 12, 2023), <https://www.wsj.com/finance/how-an-unremarkable-deal-became-a-big-threat-to-a-small-investment-bank-f819a169>; Donal Griffin et al., *B. Riley Client Misses Date to Repay Investors in Collapsed Fund*, BLOOMBERG NEWS (Feb. 26, 2024), <https://www.bloomberg.com/news/articles/2024-02-26/b-riley-client-misses-date-to-repay-investors-in-collapsed-fund>.

¹² See Jonathan Weil, *How an Unremarkable Deal Became a Big Threat to a Small Investment Bank*, THE WALL STREET JOURNAL (Feb. 12, 2023), <https://www.wsj.com/finance/how-an-unremarkable-deal-became-a-big-threat-to-a-small-investment-bank-f819a169>.

¹³ See B. Riley Financial, Inc., Investor Overview (Form 8-K) (Dec. 13, 2023), <https://www.sec.gov/Archives/edgar/data/1464790/000121390023095379/ea18993>

- In or around August 2018, B. Riley and Vintage Capital together acquired a majority position in Liberty Tax, the publicly-traded predecessor to FRG.
- In or around August 2018, B. Riley backstopped a \$30 million loan from Vintage Capital to Babcock & Wilcox Enterprises, Inc. (“Babcock & Wilcox”), a renewable, environmental, and thermal technologies public company.
- In or around 2018, B. Riley was engaged to provide debt and equity financing for the proposed merger between a subsidiary of Vintage Capital and Rent-A-Center, Inc. (“Rent-A-Center”).
- In or around July 2019, B. Riley helped to effectuate the merger between Liberty Tax and Buddy’s Home Furnishings LLC. (“Buddy’s”), a Vintage Capital-controlled entity. The merged entity would later be renamed Franchise Group, Inc.

7ex99-1_briley.htm; Babcock & Wilcox Enterprises, Inc., Schedule 13D (July 29, 2019), https://www.sec.gov/Archives/edgar/data/1630805/000114420419036488/tv526015_sc13da.htm; Babcock & Wilcox Enterprise, Inc., Press Release (Form 8-K) (Feb. 9, 2021), https://www.sec.gov/Archives/edgar/data/1630805/000110465921016706/tm215894d1_ex99-2.htm; B. Riley Financial, Inc., Annual Report at 6 (Form 10-K) (Apr. 24, 2024), <https://www.sec.gov/ix?doc=/Archives/edgar/data/1464790/000162828024017512/rily-20231231.htm>.

- In or around July 2019, B. Riley provided a loan to Vintage Capital, which was secured by a pledge of 5,000,000 shares of Babcock & Wilcox common stock.
- In or around December 2019, B. Riley arranged the debt financing of Vintage Capital's acquisition of Vitamin Shoppe.
- In or around February 2020, B. Riley provided a loan commitment and partial guarantee of Vintage Capital's acquisition of American Freight.
- In or around November 2020, Vintage Capital refranchised forty-seven (47) Buddy's locations to bebe stores, inc., an affiliate of B. Riley.
- In or around March 2021, B. Riley served as the financial advisor in Vintage Capital's acquisition of Pet Supplies Plus.
- In or around July 2020, B. Riley provided a loan to Stefac LP, a Kahn-affiliated entity, which was secured by a pledge of 2,000,000 shares of FRG.
- In or around February 2021, B. Riley purchased 10,700,000 shares of Babcock & Wilcox common stock from Kahn at \$6.05 per share.
- In or around November 2021, FRG acquired Badcock, a home furnishings company.
- In or around December 2021, B. Riley purchased Badcock's then-existing receivables portfolio for \$400 million.

- In or around October 2022, B. Riley purchased Badcock’s then-existing receivables portfolio for \$148 million.
- Between Q4 2022 and Q1 2023, B. Riley purchased Badcock’s then-existing receivables portfolio for \$377 million.
- In August 2023, B. Riley and Kahn took FRG private at \$30 per share paid to FRG’s public shareholders. Whereas Kahn (Vintage Capital), rolled-over its FRG shares into the private entity, B. Riley made a \$216.5 million investment in the new entity.
- In its 2023 Form 10-K filed with the SEC on April 24, 2024, B. Riley stated that “[i]n connection with closing of the FRG take-private transaction, [B. Riley] terminated an investment advisory agreement (the ‘Advisory Agreement’) with Mr. Kahn. Pursuant to the Advisory Agreement, Mr. Kahn, as financial advisor, had the sole power to vote or dispose \$64.6 million of shares of FRG common stock (based on the value of FRG shares in the FRG take-private transaction as of the closing date of such transaction) held of record by BRS [B. Riley Securities, Inc.]. Upon the termination of the Advisory Agreement, (i) Mr. Kahn’s right to vote or dispose of such FRG shares terminated, (ii) such FRG shares owned by BRS were rolled over into additional equity interests in Freedom VCM in connection with the FRG take-private

transaction, and (iii) Mr. Kahn owed a total of \$20.9 million to [us] under the Advisory Agreement, which amount was added to, and included in, the Amended and Restated Note (as defined below).” To Plaintiff’s knowledge, the 2023 Form 10-K was the first public disclosure of the existence or the terms of the Advisory Agreement.

- In December 2023, B. Riley provided a \$108 million loan to Conn’s, a specialty retailer of home goods, in connection with the Conn’s acquisition of Badcock, the company acquired by FRG in November 2021.

78. In addition to lending to Kahn personally, B. Riley purchased a significant amount of securities from Kahn, which later sharply declined in value.¹⁴ For example, the 10.7 million shares of Babcock & Wilcox common stock that B. Riley purchased at \$6.05 in February 2021 closed at \$1.36 on February 11, 2025. According to Babcock & Wilcox’s most recent Proxy Statement dated April 5, 2024, B. Riley continues to own those 10.7 million shares.

¹⁴ According to short research by *The Friendly Bear*, B. Riley purchased assets from Kahn at inflated levels, including shares of Babcock & Wilcox common stock. See *B. Riley –Beware of False Prophets*, THE FRIENDLY BEAR (Nov. 14, 2023), <https://friendlybearresearch.com/2023/11/14/b-riley-beware-of-false-prophets/>.

79. B. Riley and Kahn faced significant legal exposure after losing a \$126.5 million verdict for breakup fees after failing to consummate a merger with Rent-A-Center.¹⁵

80. The three parties – B. Riley, Vintage Capital, and Rent-A-Center – settled with Kahn’s Vintage Capital assuming the entire monetary liability of \$92.6 million.¹⁶

81. Shortly after this settlement, the amount and size of B. Riley’s loans to and asset purchases from Kahn increased.

C. FRG’s Badcock Acquisition and B. Riley Involvement

82. In November 2021, FRG (then a public company) completed the acquisition of Badcock, a privately-held home furnishings company in the Southeast U.S., in an all-cash transaction valued at approximately \$580 million.

83. At the time of that acquisition, Badcock financed its own sales through consumer credit accounts receivable from customers.

¹⁵ See *Vintage Rodeo Parent, LLC v. Rent-A-Center, Inc.*, Case No. 2018-0927-SG (Del. Ch.).

¹⁶ Pat Maio, *B. Riley, Vintage Capital settle with Rent-A-Center*, LOS ANGELES BUSINESS JOURNAL (Apr. 25, 2019), <https://labusinessjournal.com/news/weekly-news/b-riley-vintage-capital-settle-rent-center/>.

84. In connection with the acquisition of Badcock, FRG sought to explore partnerships with third-party consumer finance vendors to facilitate Badcock's transition out of underwriting, holding and servicing consumer credit accounts.¹⁷

85. The plan to exit the consumer credit business of Badcock was central to FRG's acquisition strategy and capital allocation plan.¹⁸

86. In furtherance of the capital allocation strategy, in December 2021, Badcock entered into a Master Receivables Purchase Agreement with B. Riley Receivables, LLC, a wholly owned indirect subsidiary of B. Riley, pursuant to which the B. Riley subsidiary acquired the then-existing consumer credit receivables portfolio of Badcock for a purchase price of \$400 million in cash.

87. Starting in December 2021, affiliates of B. Riley continued to acquire consumer credit receivables from Badcock from time to time until March 2023.¹⁹

88. B. Riley purchased \$148 million of Badcock receivables in October 2022, and \$377 million of Badcock receivables in 4Q22 to 1Q23.²⁰

¹⁷ Definitive Proxy Statement at 19.

¹⁸ *Id.* at 20.

¹⁹ *Id.*

²⁰ See B. Riley Financial, Inc., Investor Overview at 91 (Exhibit 99.1 to Form 8-K) (Dec. 13, 2023),

https://www.sec.gov/Archives/edgar/data/1464790/000121390023095379/ea189937ex99-1_briley.htm.

89. Beginning in late 2021 and through 2022, FRG pursued steps to transition the Badcock consumer credit business to third-party vendors.²¹

90. FRG and Badcock solicited proposals from various third-party vendors with whom to potentially partner.²²

91. After evaluating several alternatives, in December 2021, Badcock entered into a credit program agreement with a leading credit retail firm, pursuant to which the partner firm implemented its credit platform in a pilot program involving a limited number of Badcock locations.²³

92. The pilot program did not achieve its intended results.²⁴

93. Throughout 2022 and continuing into 2023, FRG and Badcock continued to pursue potential partnerships with a variety of prime and non-prime credit vendors to explore augmenting or replacing Badcock's existing pilot program, but neither FRG nor Badcock was able to find a satisfactory solution.²⁵

94. Beginning in November 2022, FRG initiated discussions with certain of its lenders to consider modifications to FRG's financing arrangements that would

²¹ Definitive Proxy Statement at 20

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

permit Badcock to continue to finance its accounts receivable outside the scope of the covenants under FRG's financing facilities.²⁶

95. In December 2022, FRG met with several third parties (other than B. Riley) about potentially financing Badcock accounts receivable.²⁷

96. In early January 2023, FRG received feedback from its lenders that the amendments to its financing facilities to accommodate the necessary working capital financing would likely come at a significant cost to FRG and ultimately may not be approved by the lenders.²⁸

97. In February and March 2023, B. Riley continued to evaluate its on-going purchases of Badcock accounts receivable, including its concern with the on-going business of Badcock and the potential need for additional credit support from FRG and/or other FRG businesses.²⁹

98. In late February 2023, representatives of B. Riley advised FRG that B. Riley had determined not to continue to purchase any further Badcock accounts receivable.³⁰

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

99. The feedback from B. Riley, in combination with the worsening of certain negative trends in economic conditions facing FRG and its industry more generally, such as persistent high inflation and the impact of weaker consumer trends on FRG's customer segments, led to FRG's realization that a failure to continue to sell Badcock accounts receivable may result in, among other things, the inability over the near and medium term to continue to pay quarterly dividends on FRG common stock and could lead to a potential default under the FRG First Lien Credit Agreement.³¹

100. Representatives of FRG and B. Riley continued to discuss B. Riley's potential further purchases of Badcock accounts receivable.³²

101. As part of those discussions, B. Riley requested additional information regarding both Badcock and FRG and its other businesses to evaluate whether B. Riley would continue such purchases.³³

102. On March 7, 2023, FRG entered into a confidentiality agreement with a subsidiary of B. Riley and provided to B. Riley the following January Projections for the fiscal years 2023 through 2026 (\$ in millions, unless otherwise stated):³⁴

³¹ *Id.* at 20-21.

³² *Id.* at 21.

³³ *Id.*

³⁴ *Id.* at 21 and 56 (footnotes and certain data omitted).

January Projections

The following table summarizes the January Projections for the fiscal years 2023 through 2026 (\$ in millions, unless otherwise stated):

<u>Dollars in millions, unless otherwise stated</u>	<u>2023F</u>	<u>2024F</u>	<u>2025F</u>	<u>2026F</u>
Revenue				
Vitamin Shoppe	\$1,223	\$1,261	\$1,317	\$1,399
Pet Supplies Plus	\$1,393	\$1,475	\$1,648	\$1,859
American Freight	\$ 945	\$1,058	\$1,162	\$1,242
Badcock	\$ 808	\$ 794	\$ 845	\$ 916
Buddy's	\$ 56	\$ 60	\$ 67	\$ 73
Sylvan	\$ 43	\$ 45	\$ 48	\$ 51
Total Revenue	\$4,468	\$4,693	\$5,087	\$5,540
EBITDA⁽¹⁾	\$ 370	\$ 444	\$ 527	\$ 613
Less: D&A	\$ (80)	\$ (90)	\$ (88)	\$ (87)
EBIT⁽²⁾	\$ 290	\$ 354	\$ 439	\$ 526

103. After further discussions between B. Riley and FRG, B. Riley indicated that it would be willing to fund Badcock accounts receivable one final time for the first quarter of 2023, but that it was unwilling to do so for the second quarter of 2023 and beyond.³⁵

104. Representatives of B. Riley advised FRG “that it would prefer to explore the acquisition of all of the outstanding equity of FRG, rather than expose itself to continued balance sheet risk without any equity or similar upside.”³⁶

105. Specifically, on March 16 and March 17, Kahn and Bryant Riley met in person and discussed B. Riley’s potential interest in pursuing such an acquisition, during the course of which Bryant Riley indicated that B. Riley intended to submit a non-binding offer to acquire FRG.³⁷

³⁵ *Id.* at 21.

³⁶ Definitive Proxy Statement at 21.

³⁷ *Id.* at 21.

106. Following an initial books and records production, Plaintiff sought books and records from B. Riley’s Board [REDACTED]

[REDACTED]

[REDACTED].³⁸

107. [REDACTED]

108. [REDACTED]

[REDACTED]

[REDACTED]

109. On Sunday, March 19, 2023, B. Riley delivered a letter to FRG (the “March 19 Letter”) setting forth, on a non-binding basis, B. Riley’s potential interest in pursuing a take-private acquisition of the company at a price of \$30.00 per share of common stock, in cash, subject to a number of terms and conditions (the “Original Proposal”).

110. The Original Proposal made in the March 19 Letter was non-binding and expressly subject to completing due diligence, and on members of FRG management (including Kahn) rolling over their equity stake in FRG and agreeing to continue to manage the company on an ongoing basis.³⁹

³⁸ See [REDACTED]

³⁹ *Id.* at 21.

111. On Monday March 20, 2023, FRG issued a press release prior to market open announcing that it had received an unsolicited non-binding proposal from an unnamed third-party to acquire all the outstanding shares of FRG common stock for a price of \$30.00 per share, subject to certain conditions.⁴⁰

112. Plaintiff sought books and records from B. Riley's Board [REDACTED]

[REDACTED]

[REDACTED]⁴¹

113. [REDACTED].

114. [REDACTED]

[REDACTED].

115. On Friday, March 17, 2023, FRG's shares declined by \$2.13 from \$24.88 to \$22.75, a decline of 8.56%.

116. Plaintiff sought books and records from B. Riley's Board [REDACTED]

[REDACTED]

[REDACTED]

117. [REDACTED]

⁴⁰ *Id.*

⁴¹ *See* [REDACTED]

118. [REDACTED]

119. Shortly after receipt of the non-binding offer from B. Riley, FRG’s board formed a Special Committee to evaluate the offer.

120. The FRG Special Committee retained Wachtel, Lipton, Rosen & Katz as legal counsel and Jefferies LLC (“Jefferies”) as its independent financial advisor.

D. B. Riley’s Due Diligence of the Take-Private Transaction

121. In April 2023, in the context of evaluating B. Riley’s acquisition proposal, FRG’s management updated certain of the assumptions underlying the January Projections to reflect the most current information available to FRG’s management, including “the worsening of certain negative trends in economic conditions facing the Company and its industry more generally, such as persistent high inflation and the impact of weaker consumer trends on the Company’s customer segments” (the “Management Projections”).⁴²

122. According to the Definitive Proxy Statement, on April 14, 2023, the FRG Special Committee had discussions with Jefferies concerning “headwinds

⁴² Definitive Proxy Statement at 53.

affecting the Company” including FRG’s “ability to meet certain thresholds and covenants in its existing indebtedness agreements.”⁴³

123. On April 14, 2023, a representative of B. Riley communicated to representatives of Jefferies B. Riley’s belief that, “in connection with information reviewed in diligence for the proposed transaction, [FRG’s] estimated cash flows for 2023 and 2024 would be lower than in the recent prior fiscal quarters.”⁴⁴

124. B. Riley also confirmed to FRG that it had retained S&C as legal counsel for the proposed transaction.⁴⁵

125. On April 28, 2023, representatives of B. Riley communicated their belief to representatives of Jefferies that, “based on diligence performed and information reviewed after the date of the Original Proposal, including with respect to the Preliminary Management Projections, the value of the company was lower than B. Riley perceived when it made its Original Proposal of \$30.00 per share.”⁴⁶

126. B. Riley “indicated that it would nevertheless be willing to maintain its offer at \$30.00, but that it was unwilling to increase its offer price under any circumstances.”⁴⁷

⁴³ *Id.* at 24.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* at 25.

⁴⁷ *Id.*

127. Representatives of B. Riley further communicated B. Riley’s “willingness to proceed with the proposed transaction at a cash price of \$30.00 per share of FRG common stock on an expedited timeline to facilitate a deal announcement prior to, or contemporaneous with, the Company’s planned earnings announcement on May 10, 2023.”⁴⁸

128. “Between April 30 and May 9, 2023, B. Riley continued to evaluate the nature and structure of the proposed acquisition of [FRG].”⁴⁹

129. “After additional consideration and discussion with its advisors, B. Riley determined that, while it remained interested in providing financing to facilitate a transaction, it would be necessary to do so in a manner that would not result in it controlling or having to consolidate the Company into its financial statements.”⁵⁰

130. “The parties therefore determined that, if a transaction were to proceed, Brian Kahn would control the surviving company from a governance perspective and may own, directly or indirectly, a majority of the outstanding equity of the surviving company.”⁵¹

⁴⁸ *Id.*

⁴⁹ *Id.* at 26.

⁵⁰ *Id.*

⁵¹ *Id.*

131. The following Management Projections, for the fiscal years 2023 through 2026 (\$ millions, unless otherwise stated), were posted to a virtual data room accessible to B. Riley on May 5, 2023⁵²:

The Management Projections

The following table summarizes the Management Projections for the fiscal years 2023 through 2026 (\$ in millions, unless otherwise stated):

Dollars in millions, unless otherwise stated	2023F⁽⁷⁾	2024F	2025F	2026F
Revenue				
Vitamin Shoppe	\$1,248	\$1,272	\$1,309	\$1,359
Pet Supplies Plus	\$1,372	\$1,475	\$1,648	\$1,859
American Freight	\$ 912	\$ 985	\$1,145	\$1,262
Badcock	\$ 592	\$ 591	\$ 660	\$ 730
Dollars in millions, unless otherwise stated	2023F⁽⁷⁾	2024F	2025F	2026F
Buddy's	\$ 57	\$ 60	\$ 67	\$ 73
Sylvan	\$ 42	\$ 45	\$ 48	\$ 51
Total Revenue	\$4,223	\$4,428	\$4,876	\$5,334
EBITDA⁽¹⁾	\$ 242	\$ 281	\$ 366	\$ 440
Less: D&A	\$ (80)	\$ (82)	\$ (78)	\$ (78)
EBIT⁽²⁾	\$ 162	\$ 199	\$ 288	\$ 363

132. According to the Definitive Proxy Statement (at 56), the “Figures for 2023F” in the Management Projections “were updated ... to incorporate Q1 2023 actual results and other updates to the Company model for 2023F.”

133. According to FRG’s Form 10-K from fiscal 2022, FRG reported EBITDA of \$344,506,000. Thus, the Management Projections reflected a 29.75% anticipated 2023 decline in EBITDA from 2022 (1 - \$242,000,000/\$344,506,000).

⁵² *Id.* at 55-56 (footnote and certain data omitted).

134. Moreover, the Management Projections reflected anticipated 2023 EBITDA of \$242 million and anticipated 2023 EBIT of \$162 million – a significant decline in operating performance from the January 2023 projections of \$370 million and \$290 million, respectively.⁵³

E. [REDACTED]

135. [REDACTED]

[REDACTED]

[REDACTED]

136. According to the Board Minutes [REDACTED]

[REDACTED]

137. [REDACTED]

[REDACTED]

138. [REDACTED]

[REDACTED]⁵⁵

⁵³ *Id.*

⁵⁴ [REDACTED]

⁵⁵ [REDACTED]

139. [REDACTED]

[REDACTED] .⁵⁶

140. [REDACTED]

[REDACTED]

141. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

142. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁵⁷

⁵⁶ FRG, in its 2022 Form 10-K stated that “[w]e have included Adjusted EBITDA in this Annual Report because we believe the presentation of these measures is useful to investors as supplemental measures in evaluating the aggregate performance of our operating businesses and in comparing our results from period to period because they exclude items that we do not believe are reflective of our core or ongoing operating results. These measures are used by our management to evaluate performance and make resource allocation decisions each period. Adjusted EBITDA is also the primary operating metric used in the determination of executive management’s compensation. In addition, a measure similar to Adjusted EBITDA is used in our credit facilities.” <https://www.sec.gov/ix?doc=/Archives/edgar/data/1528930/000152893023000005/tax-20221231.htm>.

⁵⁷ At times, the January Projections and Management Projections refer to EBITDA [REDACTED]

143. [REDACTED]

144. [REDACTED]

given the other information concerning Badcock contained in the Preliminary and Final Proxy Statements, including the anticipated difficulty in obtaining financing for Badcock’s accounts receivable, and the overall decline in FRG and Badcock projected EBITDA.

145. [REDACTED]

[REDACTED] “B. Riley’s belief,” as stated in the Definitive Proxy Statement, that “FRG’s estimated cash flows for 2023 and 2024 would be lower than in the recent prior fiscal quarters.”⁵⁸

146. Plaintiff, in connection with his Books and Records Request, [REDACTED]

[REDACTED].⁵⁹

It is not clear whether FRG used the terms EBITDA and Adjusted EBITDA in the Definitive Proxy Statement interchangeably or whether they are intended to convey different information.

⁵⁸ Definitive Proxy Statement at 24.

⁵⁹ See [REDACTED].

147. [REDACTED].

148. [REDACTED]

[REDACTED]

149. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

150. FRG's 4Q22 press release dated February 28, 2023 reported Adjusted EBITDA for 2022 of \$354,038,000.

151. [REDACTED]

[REDACTED]

152. FRG's 4Q22 press release dated February 28, 2023 reported projected Adjusted EBITDA for 2023 of \$355 million.

153. [REDACTED]

[REDACTED]

154. Accordingly, by the end of February 2023, in connection with the release of 4Q22 financial statements, FRG had already reported reduced FY 2022 performance and had substantially reduced its January 2023 projections,

[REDACTED]

155. [REDACTED]

[REDACTED]

[REDACTED]

156. According to the Minutes, [REDACTED]

[REDACTED]

[REDACTED]

157. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

158. [REDACTED]

[REDACTED]

[REDACTED].

159. Plaintiff, in connection with his Books and Records Request, asked B.

Riley [REDACTED]

[REDACTED]

[REDACTED]

160. [REDACTED]

[REDACTED]

[REDACTED]

161. Plaintiff, in connection with his Books and Records Request, asked B.

Riley

[REDACTED]

[REDACTED].⁶⁰

162. [REDACTED].

163. [REDACTED]

[REDACTED].

164. [REDACTED]

[REDACTED]

[REDACTED].⁶¹

165. [REDACTED]

[REDACTED].⁶²

166. According to the Minutes, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].⁶³

⁶⁰ See [REDACTED].

⁶¹ [REDACTED]

⁶² See [REDACTED]

⁶³ [REDACTED]

167. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

168. [REDACTED]

[REDACTED]

[REDACTED] 64.

169. [REDACTED]

[REDACTED]

[REDACTED].

170. [REDACTED]

[REDACTED]

[REDACTED]

171. [REDACTED]

[REDACTED]

[REDACTED] 65

⁶⁴ [REDACTED].

⁶⁵ See [REDACTED].

F. B. Riley and Kahn Take FRG Private

172. On May 10, 2023, at 7:08 a.m., FRG announced in a press release accompanying a Form 8-K that it had entered into an agreement pursuant to which members of the senior management team of FRG led by Kahn, in financial partnership with a consortium that included B. Riley and Irradiant Partners, LP, a private equity firm, would acquire the approximately 64% of FRG’s common stock that the “Management Group” did not own at \$30 a share in order to take FRG private.⁶⁶

173. The press release stated that the “transaction has an enterprise value of approximately \$2.6 billion, including the company’s net debt and outstanding preferred stock.”

174. According to the press release, the “consortium has also received definitive financing commitments from third party lenders and institutional investors, including [B. Riley] and Irradiant Partners, to finance a portion of the purchase price.”⁶⁷

⁶⁶ See Franchise Group, Inc., Press Release at 1 (Exhibit 99.2 to Form 8-K) (May 10, 2023), https://www.sec.gov/Archives/edgar/data/1528930/000110465923057989/tm2315234d1_ex99-2.htm.

⁶⁷ *Id.*

175. Pursuant to the terms, FRG common stockholders, excluding the consortium, received \$30 per share, representing a premium of 31.9% to the company's unaffected closing price of \$22.75 on Friday, March 17, 2023.

G. FRG's 1Q23 Operating Results

176. FRG issued a press release announcing first quarter 2023 operating results at 7:09 a.m. on May 10, 2023, immediately after the announcement of the Take-Private Transaction.⁶⁸

177. FRG's first quarter results were significantly below the prior year's first quarter results and, at least with respect to EBITDA, were significantly below analysts' expectations.

178. [REDACTED]

179. The May 10, 2023 press release reported the following operating results for the first quarter: "For the first quarter of fiscal 2023, total reported revenue for Franchise Group was approximately \$1.1 billion, net loss from operations was approximately \$108.3 million or \$3.16 per fully diluted share, Adjusted EBITDA was approximately \$66.0 million and Non-GAAP EPS was \$0.11 per share. On

⁶⁸ See Franchise Group, Inc., Press Release (Exhibit 99.1 to Form 8-K) (May 10, 2023), https://www.sec.gov/Archives/edgar/data/1528930/000110465923057989/tm2315234d1_ex99-1.htm.

April 1, 2023, total cash on hand was approximately \$98.3 million and outstanding term debt was approximately \$1.4 billion.”⁶⁹

180. Significantly, these results reflected a decrease in reported revenue of approximately \$30 million for the first quarter of 2023 from the \$1.135 billion reported the prior year for the first quarter of 2022.

181. The May 10, 2023 press release reported that EBITDA for the first quarter was negative \$6,739,000 and adjusted EBITDA was \$66,000,000.

182. In the first quarter of 2022, EBITDA was reported of \$130,355,000 and Adjusted EBITDA was reported of \$112,338,000.

183. The May 10, 2023 press release further stated that “FRG management was unable to recommend that the Board of Directors declare a regular quarterly common stock dividend this quarter due to restrictions in FRG’s credit agreements. FRG’s credit agreements permit dividends so long as the Company’s leverage ratio remains below a specified level, and the Company is currently in excess of this level.”⁷⁰

184. FRG in each of the prior six quarters had paid dividends of \$0.625 a share.

⁶⁹ *Id.* at 1.

⁷⁰ *Id.*

185. FRG’s May 10, 2023 conference call provided further negative news concerning FRG’s business, including that (i) “In April [2023] Buddy’s system-wide comps were down 7.8%,” (ii) “Badcock’s system-wide comps ... were down 26.2% in April,” and (iii) American Freight “[c]omps in April were down 12.9%.... Due to the financial performance of American Freight this quarter we took at \$75 million non-cash impairment charge to the goodwill of American Freight[.]”⁷¹

186. [REDACTED]

[REDACTED]

[REDACTED]

187. Kahn concluded the May 10, 2023 conference call by stating that “[i]n light of today’s announcement and our first quarter financial results, we are withdrawing our financial forecast for 2023.”

188. B. Riley’s representatives involved in the FRG Take-Private negotiations would have understood that the disclosure of these 1Q23 operating results, without the announcement of the Take-Private Transaction, would have caused FRG’s stock price to plummet and potentially put Kahn/Vintage Capital into default on loans outstanding to B. Riley.

⁷¹ Franchise Group, Inc., Q1 2023 Earnings Call Transcript (May 10, 2023), available at <https://seekingalpha.com/article/4602786-franchise-group-inc-frg-q1-2023-earnings-call-transcript>.

189. [REDACTED]
[REDACTED].

190. The actual reported first quarter operating results placed in doubt [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]⁷²

191. Plaintiff, in connection with his Books and Records Request, [REDACTED]
[REDACTED]
[REDACTED]³

192. [REDACTED].

193. [REDACTED]
[REDACTED]

H. The Preliminary and Definitive Proxy Statement

194. FRG’s Preliminary Proxy Statements filed with the SEC (dated July 6, 2023) and Definitive Proxy Statement filed on July 14, 2023 contained detailed information concerning (i) B. Riley’s financing of Badcock’s accounts receivable, (ii) the March 19, 2023 non-binding offer, (iii) B. Riley’s interactions with the FRG

⁷² See [REDACTED].

⁷³ See [REDACTED].

Special Committee, Kahn and Jefferies, and (iv) the deterioration of FRG's operations prior to May 8, 2023.

195. Plaintiff, in connection with his Books and Records Request, [REDACTED]

[REDACTED]

196. [REDACTED].

197. [REDACTED].

198. The Definitive Proxy Statement filed with the SEC in connection with the Take-Private Transaction contains a number of materially adverse comments about FRG's operations [REDACTED]

[REDACTED], including that:

- (i) as of April 14, 2023, FRG was experiencing “headwinds affecting the Company, including its ability to meet certain thresholds and covenants in its existing indebtedness agreements.” (at 24);
- (ii) on April 14, 2023, a representative of B. Riley communicated to Jefferies, the Special Committee's financial advisor, B. Riley's “belief that, in connection with information reviewed in diligence for the proposed transaction, [FRG's] estimated cash flows for 2023 and 2024 would be lower than in the recent prior fiscal quarters” (at 24);

(iii) FRG had experienced a “downward trend in the actual results of operations of certain key business segments in March and April 2023” (at 25);

(iv) on April 28, 2023, B. Riley communicated its belief to Jefferies that “the value of [FRG] was lower than B. Riley perceived when it made the Original Proposal of \$30.00 per share” (at 25);

(v) [REDACTED]

(vi) B. Riley “had communicated its willingness to proceed with the proposed transaction ... on an expedited timeline to facilitate a deal announcement prior to, or contemporaneous with, FRG’s planned earnings announcement on May 10, 2023.”⁷⁴

199. [REDACTED]

[REDACTED]

⁷⁴ Definitive Proxy Statement at 25.

[REDACTED]

[REDACTED].

200. *The Friendly Bear*, in its November 3, 2023 research report, formed this conclusion from these facts: “One has to therefore wonder whether B. Riley made a margin loan to Brian Kahn that was upside down and did not want to recognize the loss, deciding it might be better to just take the company private at an inflated mark.”⁷⁵

I. The Take-Private Transaction Closes and Riley Acknowledges an Additional \$64.5 Million Equity Investment in FRG

201. The Take-Private Transaction closed on August 21, 2023. That day, FRG issued a press release accompanying a Form 8-K disclosing that Kahn and other members of FRG management had acquired through an investment vehicle Freedom VCM Holdings, LLC (“Freedom VCM”), the outstanding minority interest in FRG common shares.⁷⁶

202. In a press release dated August 28, 2023, B. Riley announced that it had “led the equity financing to facilitate the \$2.8 billion management-led acquisition” of FRG.

⁷⁵ *B. Riley –Beware of False Prophets*, THE FRIENDLY BEAR (Nov. 14, 2023), <https://friendlybearresearch.com/2023/11/14/b-riley-beware-of-false-prophets/>.

⁷⁶ See Franchise Group, Inc., Press Release at 1 (Form 8-K) (August 21, 2023), https://www.sec.gov/ix?doc=/Archives/edgar/data/0001528930/000110465923093924/tm2324214d1_8k.htm.

203. No explanation was provided for the additional \$200 million enterprise value added from the \$2.6 billion enterprise value contained in FRG’s May 10, 2023 press release.

204. On August 25, 2023, B. Riley stated in a Form 8-K⁷⁷ (at page 3) that “[i]n connection with the Acquisition, a subsidiary of the Company made a new cash Equity Investment of \$216.5 million in FRG’s new parent entity, bringing the Company’s entire equity investment in the parent entity to approximately \$280 million.”

205. Reporting by *The Wall Street Journal* dated February 12, 2024 traced \$64.6 million of the total \$281.1 million of that B. Riley equity investment to rollover shares that had been reported by FRG as owned or controlled by Kahn.⁷⁸

206. The WSJ article also stated that B. Riley had not, as of February 12, 2024, publicly disclosed B. Riley’s separate acquisition of the \$64.6 million in FRG shares.

⁷⁷ See B. Riley Financial, Inc., Current Report at 3 (Form 8-K) (Aug. 25, 2023), https://www.sec.gov/ix?doc=/Archives/edgar/data/0001464790/000121390023070954/ea184102-8k_brileyfin.htm.

⁷⁸ See Jonathan Weil, *Unraveling the Money Trail at B. Riley Financial*, THE WALL STREET JOURNAL (Feb. 12, 2024), <https://www.wsj.com/livecoverage/stock-market-today-dow-jones-02-12-2024/card/unraveling-the-money-trail-at-b-riley-financial-ghNNvsaYRCafETT6ye9z>.

J. FRG's 2Q23 Operating Results

207. On August 8, 2023, FRG publicly issued a press release reporting its 2Q23 operating results. Those operating results were [REDACTED]. For example, for the six months ended July 1, 2023, B. Riley reported adjusted EBITDA of \$119,914,000, [REDACTED].

208. [REDACTED] FRG had experienced a six-month 44.4% decrease in adjusted EBITDA. The six-month decline in adjusted EBITDA is consistent with the full-year decline in EBITDA projected in the May 5, 2023 Management Projections, [REDACTED].

K. B. Riley Common Stock Plummets on Public Rating Agencies' Downgrades of FRG Debt

209. Although FRG, effective August 21, 2023, ceased reporting as a public stock corporation, it continued to have public debt and its debt continued to be rated by the leading debt rating agencies.

210. Shortly after the closing of the Take-Private Transaction on August 21, 2023, the public rating agencies began to downgrade FRG because of the combination of FRG's poor operating results and the added debt caused by the Take-Private Transaction.

211. The FRG debt downgrades in turn had a dramatic impact on the trading price of B. Riley common stock.

212. Thus, for example, on November 1, 2023, Moody's Investors Service ("Moody's") downgraded FRG's corporate family rating to B3 from B2, probability of default rating to B3-PD from B2-PD and senior secured second lien term loan to Caa2 from Caa1.⁷⁹

213. Moody's stated in its press release issued after the close of the market on November 1, 2023 that the downgrade "reflects Franchise Group's weakened operating performance and credit metrics resulting from the ongoing challenges in its home furnishing businesses that drove a 3.9% decline in consolidated revenue in the first half ended July 1, 2023 and a 44.6% decline in adjusted EBITDA."⁸⁰

214. On Monday, November 6, 2023, B. Riley common stock plummeted \$9.02 to \$32.54 from a November 3, 2023 close of \$41.56 a share. *The Fly*, in a news report published over *Bloomberg*, attributed the B. Riley common stock price decline to the Moody's FRG downgrade.⁸¹

⁷⁹ See *Moody's downgrades Franchise Group's CFR to B3; outlook negative*, MOODY'S INVESTOR SERVICE, INC. (Nov. 1, 2023), <https://www.moodys.com/credit-ratings/Franchise-Group-Inc-credit-rating-867269275>.

⁸⁰ *Id.*

⁸¹ *RILY: B. Riley Financial down 7% following recent Moody's downgrade of Franchise Group*, THE FLY (Nov. 6, 2023), available in *Bloomberg* at <https://www.moodys.com/credit-ratings/Franchise-Group-Inc-credit-rating-867269275>.

215. On November 13, 2023, at 11:58 a.m., it was reported over *Bloomberg News* that “B. Riley Financial Inc. shares slumped the most in over three months after S&P Global Ratings downgraded Franchise Group, Inc. ... The stock’s 27% drop to \$18.68 at 10:27 a.m. ... was the most since March 2020 after S&P reduced Franchise Group’s credit rating deeper into junk territory to B- from B.”

216. According to *Bloomberg*, as a result of “disclosed third-quarter [FRG] earnings that fell below expectations, S&P Global Ratings now expects lower profitability and weaker cash flow generation as well as for S&P Global Ratings-adjusted debt levels to stay higher than previous expectations, all pressuring credit measures.”

217. B. Riley common stock closed on November 13, 2023 at \$22.01 a share, a 14.0% decline from its prior day’s close of \$25.60.

218. FRG’s 2Q and 3Q23 operating results and debt downgrade, and the impact of those results and the downgrade on B. Riley’s common stock price, was a further red-flag that should have spurred Board members to evaluate the *bona fides* of the FRG Take-Private Transaction.

L. B. Riley Acknowledges A Separate \$200.5 Million Loan To Vintage Capital Secured By FRG Common Stock

219. B. Riley acknowledged in an Investor Overview presentation dated December 13, 2023 accompanying a Form 8-K, that B. Riley had lent \$201 million

to Kahn’s investment firm Vintage Capital, which pledged its FRG shares as collateral.⁸²

220. According to the December 2023 presentation, the loan bore paid-in-kind (“PIK”) interest of 12% and does not mature until 2027.

221. In other words, B. Riley agreed to accept additional debt secured by extremely risky and overleveraged assets instead of cash interest payments.

222. B. Riley further disclosed, in its 2023 Form 10-K, filed with the SEC on April 24, 2024, that one of its subsidiaries and Vintage Capital “amended and restated a promissory note, pursuant to which Vintage Capital owed our subsidiary the aggregate principal amount of \$200.5 million and bears interest at the rate of 12% per annum payable-in-kind with a maturity date of December 31, 2027.”

223. According to the Form 10-K, the obligations under the Amended and Restated Note are primarily secured by a first priority perfected securities interest in FRG equity interests owned by Kahn.

224. The Form 10-K further acknowledged that “Deterioration in the collateral, including in the performance of Freedom VCM or delays in the execution of its strategies, including the possible disposition of additional businesses and

⁸² See B. Riley Financial, Inc. Investor Overview at 59 (Form 8-K) (Dec. 13, 2023), https://www.sec.gov/Archives/edgar/data/1464790/000121390023095379/ea189937ex99-1_briley.htm.

further de-leveraging of its balance sheet, for the loan receivable may impact the ultimate collection of principal and interest. In the event the loan balance and accrued interest exceed the underlying collateral value of the loan, this will impact the fair value of the loan and result in an unrealized loss being recorded in the consolidated statements of operations.”

225. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

226. According to an article by *Institutional Investor*, short sellers claim that prior to December 13, 2023, B. Riley had made no mention of the Vintage Capital loan in any of its disclosures about FRG.⁸³

227. The loan is not referenced in the Definitive Proxy Statement [REDACTED]

[REDACTED]

⁸³ See Michelle Celarier, *How B Riley Garnered the Biggest Short Interest of 2023*, INSTITUTIONAL INVESTOR (Jan. 12, 2024), <https://www.institutionalinvestor.com/article/2cpgaejc45gocvoqb1ngg/corner-office/how-b-riley-garnered-the-biggest-short-interest-of-2023>.

228. B. Riley’s Board after learning of the loan, through the December 13, 2022 Presentation and through the media, did not conduct any investigation of the loan.⁸⁴

229. Plaintiff, in connection with his Books and Records request, [REDACTED]

[REDACTED]

[REDACTED].⁸⁵

230. [REDACTED]

231. B. Riley’s equity stake (\$281.1 million) and the stated value of the loan (\$201 million), aggregating \$482.1 million, exceeded the shareholder’s equity reported on B. Riley’s financial statements as reported in B. Riley’s 3Q23 Form 10-Q.⁸⁶

M. Kahn Is Implicated in A Securities Fraud Conspiracy

232. On November 2, 2023, Prophecy Asset Management LP (“Prophecy”)’s co-founder, chief-compliance officer, and president John Hughes

⁸⁴ [REDACTED]

⁸⁵ See [REDACTED]

⁸⁶ See Jonathan Weil, *How an Unremarkable Deal Became a Big Threat to a Small Investment Bank*, THE WALL STREET JOURNAL (Feb. 12, 2024), <https://www.wsj.com/finance/how-an-unremarkable-deal-became-a-big-threat-to-a-small-investment-bank-f819a169>.

pled guilty to a multi-year conspiracy charge from the Department of Justice (“DOJ”) to commit securities fraud for his role in hiding approximately \$294 million in losses from investors.⁸⁷

233. The guilty plea described two co-conspirators, one of whom was confirmed by a *Bloomberg News* article published later in the day to be Brian Kahn.⁸⁸

234. According to the criminal indictment, Hughes raised hundreds of millions of dollars for Prophecy by falsely marketing the fund as low-risk with investor money purportedly spread among a number of “sub-advisors” with successful track records.

235. These sub-advisors were supposed to provide cash collateral equivalent to 10% of the Prophecy funds they accessed.

236. In reality, Hughes admitted, 86% of Prophecy’s funds were allocated to a total of six Kahn-controlled entities. Kahn was largely exempt from the collateral requirements.

⁸⁷ See *United States of America v. John Hughes*, Crim. No. 3:23-cr-00867-MAS (D.N.J.).

⁸⁸ See David Voreacos, Prophecy Fund Co-Founder Pleads Guilty to \$294 Million Fraud, *Bloomberg News* (Nov. 2, 2023), <https://www.bloomberg.com/news/articles/2023-11-02/prophecy-fund-co-founder-pleads-guilty-to-294-million-fraud>.

237. According to Hughes, he and his co-conspirators, including Kahn, concealed losses of around \$294 million from investors and their auditors through illicit transactions and forged documents.

238. The same day as the guilty plea, the Securities and Exchange Commission filed a complaint against Hughes for the same misconduct.⁸⁹

239. According to the SEC complaint, Prophecy falsely told investors that their money was split among thirty-three (33) sub-advisors, even though \$1 billion of the fund's leveraged capital was controlled by a single sub-advisor, identified as Brian Kahn by *Bloomberg News*.⁹⁰

240. After suffering losses, Kahn pledged nearly \$200 million in shares of a publicly traded company (presumably FRG) to a limited partnership controlled by Prophecy.

241. According to the lawsuit, Prophecy reported the pledged shares as an asset though it is unclear whether the shares were ever transferred.

⁸⁹ See *Securities and Exchange Commission v. John Hughes*, No. 3:23-cv-21816 (D.N.J. filed November 2, 2023).

⁹⁰ See David Voreacos, *Prophecy Fund Co-Founder Pleads Guilty to \$294 Million Fraud*, BLOOMBERG NEWS (Nov. 2, 2023), <https://www.bloomberg.com/news/articles/2023-11-02/prophecy-fund-co-founder-pleads-guilty-to-294-million-fraud>.

242. The complaint also alleged that Kahn “siphoned off cash” from Hughes and “fraudulently used it as collateral in order to obtain more investment money from the funds.”

243. According to the SEC lawsuit, Kahn’s securities fraud scheme touched several of the transactions that B. Riley was involved in.⁹¹

244. For example, the SEC complaint (at ¶¶122-23) stated that “during the fall of 2018, Prophecy provided a \$36 million unsecured loan to Vintage” with the understanding between Hughes and his co-conspirators that Vintage Capital would use the “loan proceeds to provide rescue financing to a company in which Vintage was heavily invested.”

245. According to the SEC complaint, Prophecy falsely classified the loan as a “Fixed Income” trading strategy to investors and did not disclose that it was being used for rescue financing and that it was going to a Kahn-controlled entity.

246. The company in question appears to be Babcock & Wilcox, which Vintage Capital co-owned with B. Riley. On August 9, 2018, Babcock & Wilcox had disclosed in its Form 8-K filed with the SEC that it received a \$30 million loan from Vintage Capital that was backstopped by B. Riley.⁹²

⁹¹ See *Securities and Exchange Commission v. John Hughes*, No. 3:23-cv-21816 (D.N.J. filed November 2, 2023).

⁹² See Babcock & Wilcox Enterprises, Inc., Form 8-K (Dec. 13, 2023) (“On August 9, 2018, the Company amended its first-lien revolving credit facility and

247. The SEC complaint further alleged that Hughes and the person subsequently identified in the media as Kahn “fabricated certain documents concerning a purported [preferred stock] agreement between Prophecy and Buddy’s [Home Furnishing LLC].” According to the SEC complaint, the purpose was to falsify pledged collateral from Buddy’s to Prophecy to abate Prophecy’s trading losses. B. Riley’s Investor Overview slides dated December 13, 2023 annexed to its Form 8-K indicates that B. Riley played a role in the merger of Liberty Tax and Buddy’s in and around the same time as Hughes and Kahn fabricated the certificates.

248. On November 3, 2023, after the market closed, *The Friendly Bear* posted on X (formerly Twitter):

Brian Kahn is co-conspirator 2 here. This charging document clearly implicates him in Hughes’ crime. There is a high chance of indictment here. \$FRG is extremely overlevered, a “bet on Kahn”, and could lose access to critical funding upon indictment.

...

Did Kahn disclose this to B Riley? Hard to believe that this was withheld or unknown. The parallel civil litigation was known and available for years. Did B Riley disclose it to Nomura when they upsized the facility to buy \$FRG ?

received a commitment for a Last Out Loan that will provide net proceeds of \$30 million from Vintage Capital and backstopped by B. Riley FBR, Inc., to serve as bridge financing toward completion of the Renewable loss projects. The amendments provide among other things for the term loan funding, reset our financial covenants, and require further concessions from the counterparties on our Renewable loss projects.”).

249. Once investors recognized the implications for B. Riley of the Hughes confession and the SEC Complaint, B. Riley's stock price dropped \$9.02, or 22%, to close at \$32.54 per share on Monday, November 6, 2023, on unusually heavy trading volume.

250. In the following days, Bryant Riley offered unmitigated support for Kahn.

251. On November 8, 2023, Bryant Riley stated during an earnings call: "I know that today, a statement came out from Brian [Kahn] denying any involvement and what happened with Prophecy, and that's good enough for me."⁹³

252. He continued that "our confidence in these businesses [FRG] has not waned at all. ... We're going to make a lot of money for our shareholders."

253. "As CEO, Brian Kahn was the architect to help put these businesses together to form FRG as it is known today. I've known Brian for many years and have had no direct experience with what has been alleged."

254. On January 21, 2024, *Bloomberg News* reported that the SEC was investigating B. Riley's transactions with Brian Kahn and Kahn's role in assisting

⁹³ See B. Riley Financial, Inc., Q3 2023 Earnings Call Transcript (Nov 8, 2023), available at <https://seekingalpha.com/article/4650127-b-riley-financial-inc-rily-q3-2023-earnings-call-transcript>.

B. Riley to obtain a \$240 million loan from Nomura Holdings, Inc.⁹⁴ *Bloomberg News* reported the SEC has “carried out interviews in recent months about B. Riley and its relationship with Brian Kahn.”

255. Subsequent reports were published by *Reuters* which stated “SEC officials have been scrutinizing how Kahn led a buyout of Vitamin Shoppe owner FRG last year in a deal arranged by B. Riley.”⁹⁵

256. On January 22, 2024, the following day, *Bloomberg News* reported that Kahn resigned as CEO of FRG.⁹⁶

257. On February 12, 2024, *The Wall Street Journal* reported that “[n]ew details of loans by B. Riley to [Kahn] show a longer and closer relationship than previously known ... [that] also raise questions about whether FRG should have disclosed more details about some of the loans years ago, when its Board included

⁹⁴ See Donal Griffin & David Voreacos, *SEC Probes B. Riley Deals with Client Tied to Failed Fund*, BLOOMBERG NEWS (Jan. 21, 2024), <https://www.bloomberg.com/news/articles/2024-01-22/sec-probes-b-riley-deals-with-client-tied-to-failed-hedge-fund>.

⁹⁵ See *SEC probes B. Riley deals with client tied to failed hedge fund* – *Bloomberg News*, REUTERS (Jan. 22, 2024), <https://www.reuters.com/business/finance/sec-probes-b-riley-deals-with-client-tied-failed-hedge-fund-bloomberg-news-2024-01-22/>.

⁹⁶ See Shelly Hagan, Donal Griffin, & David Voreacos, *Franchise Group’s Kahn Steps Down Amid Hedge Fund Inquiry*, BLOOMBERG NEWS (Jan. 22, 2024), <https://www.bloomberg.com/news/articles/2024-01-22/franchise-group-s-brian-kahn-steps-down-as-ceo-amid-sec-queries>.

two B. Riley executives [i.e. Bryant Riley and Paul Young, former President of B. Riley].”

N. Prior Lawsuits Implicating Kahn

258. Multiple lawsuits and news reports involving Kahn from 2020 through 2022 should have raised red flags to B. Riley and its Board about whether to continue to transact with Kahn. As a result of B. Riley’s complete lack of due diligence, B. Riley has incurred significant exposure from its long-term economic entanglement with Kahn.

259. Kahn was implicated from 2020-22 in several prior lawsuits involving Prophecy similar to that alleged in the DOJ and SEC lawsuits.

260. On June 26, 2020, two funds brought a lawsuit seeking to inspect the books and records of Prophecy Trading Advisors GP, LLC, Prophecy Special Ops GP, LLC, and the general partners’ respective trading funds, Prophecy Trading Advisors, LP (“Trading Advisors Fund”) and Prophecy Special Opportunities Fund, LP GP, LLC (collectively, the “Funds”).⁹⁷

261. According to the complaint, the Funds were supposed to allocate investors’ capital to a group of “sub-advisors” who, in turn, would invest the Funds’

⁹⁷ See *First Landing Fund, LLC et al., v. Prophecy Trading Advisors GP, LLC*, Case No. 2020-0518-PAF (Del. Ch.).

assets, employing a diverse range of strategies with the purpose of avoiding concentrating capital with too few sub-advisors.

262. However, according to a February 19, 2021 article by *Indianapolis Business Journal* (“*IBJ*”) covering the lawsuit, Prophecy “instead concentrated the money with a single Florida manager whose performance tanked when the pandemic threw markets into turmoil early in [2020].”⁹⁸

263. The manager, identified only as “Sub-Advisor #1” in the lawsuit, was identified by the *IBJ* as Brian Kahn.

264. Kahn allegedly had 98% of the Trading Advisors Fund’s assets flowing through him as a sub-advisor by the time the Fund collapsed.

265. According to the lawsuit, the Trading Advisors Fund required sub-advisors to contribute their own “at-risk capital” in an amount equal to a negotiated percentage between 10 and 20 percent of the total net assets to that sub-advisor.

266. The lawsuit alleged that Kahn had not been meeting his negotiated percentage and at one point provided a personal guarantee and shares of a publicly traded company (presumably FRG).

267. According to the *IBJ* article dated February 19, 2021, “Prophecy’s contracts with Kahn require that Kahn restore all losses.”

⁹⁸ See Greg Andrews, *NY hedge fund’s meltdown could cost clients of Carmel investment firm millions*, INDIANAPOLIS BUSINESS JOURNAL (Feb. 19, 2021), <https://www.ibj.com/articles/clients-of-carmel-firm-could-lose-millions>.

268. The *IBJ* article further stated that in May 2020, Prophecy filed an arbitration case against Kahn to collect on those losses.

269. Moreover, on August 24, 2020, a group of investors filed a lawsuit against Prophecy, Kahn, and others for securities violations, fraud, breaches of fiduciary duty, and conspiracy.⁹⁹ The lawsuit alleged that Prophecy’s investment structure was fiction. Rather than being diverse and liquid, the majority of the Funds’ assets were controlled by Kahn with about \$140 million worth of shares in FRG common stock. According to the lawsuit, “[o]f the \$363 million in capital as of January 2020, [Kahn] and Prophecy together sucked \$160 million into a fully hidden side account and \$36 million into other hidden loans. Eventually, 86% of Prophecy’s capital was at Kahn’s disposal.” Moreover, the lawsuit alleges that Kahn “used the majority of these Prophecy funds to accumulate his highly concentrated, illiquid position in [FRG] stock.”

270. The lawsuit was unsealed on May 9, 2022

271. According to *Bloomberg News*, pursuant to an arbitration settlement, Kahn agreed to pay more than \$200 million to Prophecy investors, including cash and shares in FRG.¹⁰⁰

⁹⁹ See *LyonRoss Partners Master Fund LP v. Prophecy Trading Advisors International Ltd*, Case No. 20-cv-06838-JSR (S.D.N.Y.).

¹⁰⁰ *Donald Griffin et al., B. Riley Client Misses Date to Repay Investors in Collapsed Fund*, BLOOMBERG NEWS (Feb. 26, 2024),

272. On February 26, 2024, *Bloomberg News* reported that Kahn had missed a payment deadline from the arbitration settlement in connection with the collapse of Prophecy.¹⁰¹

273. In other words, Kahn faced significant liability for his role in Prophecy's collapse and tied his shares in FRG as part of the settlement. These allegations are based on public information maintained in court documents that were easily accessible to Bryant Riley, the Director Defendants, and B. Riley prior to the Take-Private Transaction.

274. On November 13, 2023, it was reported by *The Fly* that *The Friendly Bear* had published the following advisory to the B. Riley Board of Directors:

B. Riley “has been lending to Brian Kahn (in what we believe are undisclosed transactions) and buying assets from him at inflated values. We think the company needs to immediately open an internal investigation into its entanglements with Kahn.” In a recently published report, *The Friendly Bear* further states that, “Given the tight relationship between B. Riley and Kahn, and the fact that Kahn was consistently borrowing from B. Riley and selling assets to B. Riley, there is no excuse for how B. Riley ‘missed’ the allegations of wrongdoing involving Kahn - it should have caught the allegations in its loan and manager due diligence as related civil litigation was public dating back to 2021.” “B. Riley is over-levered, its investments are atrocious, and it has been bleeding economic value to high level insiders via an unsupported dividend, as well as to friends of the firm through non-economic dealings. We expect the end game for this stock to be extremely ugly - one for the history books.”

<https://www.bloomberg.com/news/articles/2024-02-26/b-riley-client-misses-date-to-repay-investors-in-collapsed-fund>.

¹⁰¹ *Id.*

O. [REDACTED]

275. [REDACTED]

[REDACTED]¹⁰²

276. [REDACTED]

[REDACTED]

[REDACTED]

277. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

278. [REDACTED]

[REDACTED]

[REDACTED]

279. [REDACTED]

[REDACTED]

280. [REDACTED]

[REDACTED]

102 [REDACTED]

[REDACTED]

[REDACTED] 103

281. [REDACTED]

[REDACTED]

[REDACTED] 104

103 [REDACTED]

104 [REDACTED]

282.

[REDACTED]

105

283.

[REDACTED]

106

284.

[REDACTED]

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

285. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

P. Sale of Badcock to Conn’s

286. Badcock was eventually sold by Freedom VCM (the successor to FRG) to Conn’s on December 18, 2023 for preferred stock valued at the time of issuance at \$70 million.

287. According to a press release issued by Conn’s on December 18, 2023, the “transaction was consummated as an all-stock deal with Conn’s issuing 1,000,000 of its non-voting senior preferred shares convertible into a to-be issued class of non-voting common ... representing 49.99% of Conn’s outstanding common stock after giving effect to the stock issuance and assuming the conversion of such preferred shares into non-voting common stock.”¹⁰⁷

¹⁰⁷ Conn’s, Inc., Press Release (Exhibit 99.2 to Form 8-K) (Dec. 18, 2023), <https://www.sec.gov/Archives/edgar/data/1223389/000122338923000051/exhibit992transactionq3fy2.htm>.

288. According to *Bloomberg News*, B. Riley made a loan to Conn’s of \$108 million to facilitate the sale.¹⁰⁸ See also B. Riley 2023 Form 10-K at 102.

289. The B. Riley 2023 Form 10-K (at 102) stated that B. Riley had two separate “other existing loans receivable [from Conn’s] with an outstanding balance of \$62,808 [thousand] as of December 31, 2023.”¹⁰⁹ The two loans had “an aggregate fair value of \$167,568 [thousand] or 31.5% of [B. Riley’s] loan portfolio as of December 31, 2023.”¹¹⁰

290. [REDACTED]

291. The sale price to Conn’s for preferred shares valued at \$70 million was [REDACTED]

[REDACTED], and significantly below the \$390 million estimate provided by B. Riley in a December 2023 Investor Presentation.

292. Conn’s subsequently filed for bankruptcy on July 23, 2024.

¹⁰⁸ Donal Griffin & Rick Green, *One of B. Riley’s Latest Deals Becomes Its Newest Headache*, BLOOMBERG NEWS (July 14, 2024), <https://www.bloomberg.com/news/articles/2024-07-15/one-of-b-riley-s-latest-deals-turns-into-its-newest-headache>.

¹⁰⁹ B. Riley Financial, Inc., Annual Report at 102 (Form 10-K) (Apr. 24, 2024), <https://www.sec.gov/ix?doc=/Archives/edgar/data/1464790/000162828024017512/rily-20231231.htm>.

¹¹⁰ *Id.*

Q. Investigations or Reviews Conducted By Counsel

293. Even after Kahn’s association with Prophecy was publicized by *The Friendly Bear* and *Bloomberg News* in 2023/24, the Board failed to discharge its fiduciary obligations to investigate the circumstances of B. Riley’s association with Kahn.

294. [REDACTED]

295. [REDACTED]

296. [REDACTED]

297. [REDACTED]

111 [REDACTED].

[REDACTED]

298. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

299. [REDACTED]

[REDACTED]

[REDACTED] On February 22, 2024, B. Riley issued a press release stating that “the Audit Committee of the B. Riley Financial Board of Directors [had] retained outside counsel at S&C to conduct a thorough, internal review of Mr. Kahn’s dealings with B. Riley.”¹¹²

300. The press release added that the Audit Committee “had provided Sullivan & Cromwell with a broad mandate to review any and all aspects of these matters.”¹¹³

301. This purported “thorough” and “broad” investigation [REDACTED]

[REDACTED]

¹¹² See B. Riley Financial, Inc., Press Release (Feb. 22, 2024), <https://ir.brileyfin.com/2024-02-22-B-Riley-Financial-Board-of-Directors-Issues-Statement-Regarding-Internal-Review>.

¹¹³ *Id.*

[REDACTED]

[REDACTED].

302. The press release concluded that the S&C internal review “confirmed ... that the Company and its executives, including Bryant Riley, had no involvement with, or knowledge of, any of the alleged misconduct concerning Prophecy”¹¹⁴:

Over the last nine weeks, counsel - with the full cooperation and support from the Board and Company management - conducted its review of the facts and circumstances regarding Mr. Kahn’s relationship with the Company, including all prior transactions, loans and underlying collateral. The review confirmed what the Company previously disclosed: that the Company and its executives, including Bryant Riley, had no involvement with, or knowledge of, any of the alleged misconduct concerning Prophecy.

303. No disclosure was made and presumably no investigation was conducted of [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹¹⁴ *Id.*

[REDACTED]

[REDACTED]. And if an investigation into the above-mentioned details was performed, it is simply not credible to conclude that the Company's executives were uninvolved in any wrongdoing.

304. [REDACTED]

[REDACTED]

[REDACTED].

305. [REDACTED]¹¹⁵, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

306. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

307. [REDACTED]

[REDACTED]

[REDACTED]

115 [REDACTED].

308. [REDACTED]

[REDACTED] .¹¹⁶ [REDACTED]

[REDACTED]

[REDACTED]

309. [REDACTED]

[REDACTED]

[REDACTED].

310. [REDACTED] .¹¹⁷ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

311. [REDACTED]

[REDACTED]

[REDACTED]

312. [REDACTED]

[REDACTED]

[REDACTED].

¹¹⁶ [REDACTED]

¹¹⁷ *See* [REDACTED].

313. [REDACTED]

[REDACTED]

314. [REDACTED] .¹¹⁸ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] ”¹¹⁹

315. [REDACTED]

[REDACTED]

[REDACTED]¹²⁰

316. [REDACTED]

[REDACTED]

[REDACTED]

317. [REDACTED] .¹²¹

¹¹⁸ *See* [REDACTED] .

¹¹⁹ [REDACTED]

¹²⁰ [REDACTED]

¹²¹ [REDACTED] .

318. [REDACTED]

[REDACTED]

[REDACTED].

319. [REDACTED]

[REDACTED]

[REDACTED]

320. [REDACTED]

[REDACTED] 122

[REDACTED]

[REDACTED] 123

321. [REDACTED] 124

[REDACTED]

[REDACTED]

[REDACTED].

322. [REDACTED]

[REDACTED]

122 [REDACTED]

123 [REDACTED]

124 *See* [REDACTED]

323. [REDACTED]

[REDACTED]

324. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹²⁵

325. [REDACTED]

[REDACTED]

[REDACTED]¹²⁶

326. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

327. [REDACTED]

[REDACTED]

[REDACTED] is contrary to the principles set out by the Board of Directors in its 2024 Proxy Statement (at 10):

¹²⁵ *Id.*

¹²⁶ *Id.*

We believe that the independent nature of the Board committees, as well as the practice of our independent directors regularly meeting in executive session without members of the Board who are also members of management including Bryant Riley and Thomas Kelleher or other members of our management present, ensures that our Board maintains a level of independent oversight of management that we believe is appropriate for our Company.

328. [REDACTED]

329. [REDACTED]

330. On April 24, 2024, B. Riley filed a Form 8-K disclosing that it had retained W&S as “independent counsel to assist the Audit Committee in conducting an investigation of the historical relationship between the Company (and its affiliates) and Brian Kahn (and his affiliates) as well as certain related allegations asserted against the Company by certain short sellers.”¹²⁷

331. According to the Form 8-K, this subsequent “independent investigation confirmed that the Company and its executives had no involvement with, or

¹²⁷ See B. Riley Financial, Inc., Current Report at 1 (Form 8-K) (Apr. 24, 2024), https://www.sec.gov/ix?doc=/Archives/edgar/data/1464790/000121390024035532/ea0204428-8k_briley.htm.

knowledge of, any of the alleged misconduct concerning Mr. Kahn or any of his affiliates.”

332. [REDACTED]

[REDACTED]

333. [REDACTED]

334. According to W&S’s website, W&S had been retained to work on the following assignments on behalf of the following B. Riley portfolio companies:

- A B. Riley Financial Inc. portfolio company in its acquisition of providers of landscape maintenance services to commercial and residential customers throughout Florida.
- A B. Riley Financial Inc. portfolio company in its acquisition of an ownership stake in a provider of landscape maintenance services to commercial and residential customers throughout Georgia.

- A B. Riley Financial Inc. portfolio company in its sale to a leading landscape services provider in the Southeast and a platform of Centre Partners and LP First Capital.¹²⁸

Additionally, W&S sponsored B. Riley's 20th Annual Institutional Investor Conference in 2019.¹²⁹

R. Additional Revelations Are Made in B. Riley's 2023 Form 10-K Filed April 24, 2024

335. On February 29, 2024, B. Riley filed with the SEC a Form NT 10-K that stated that it was “unable, without unreasonable effort or expense, to file its Annual Report on Form 10-K for the year ended December 31, 2023 by February 29, 2024, the required filing date, due to delays experienced in finalizing the Company's financial statements.”

336. “This delay, B. Riley stated, resulted from the dedication of time and resources expended by the Company related to the review by the Audit Committee of the Company's Board of Directors, with the assistance of outside counsel, of the Company's transactions with Brian Kahn.”

¹²⁸ <https://www.winston.com/en/professionals/valent-megan#experience>.

¹²⁹ B. Riley FBR to Host 21st Annual Institutional Investor Conference on May 19-21, 2020 in Beverly Hills - Jan 21, 2020.

337. B. Riley subsequently filed its Form 10-K with the SEC on April 24, 2024.¹³⁰

338. In the Form 10-K, Marcam LLP identified, among other weaknesses, the following two weaknesses in internal control:

The Company identified a material weakness relating to the operating effectiveness of management's review controls over investment valuations such that management's review procedures were not operating at a level of precision sufficient to prevent or detect a potential material misstatement in the consolidated statements.

The Company did not have adequate controls in place as of December 31, 2023 to properly identify and disclose material related party transactions in accordance with Accounting Standards Codification ("ASC") 850, Related Party Disclosures, which resulted in a material weakness.

339. As noted above, the Form 10-K also revealed new information concerning the Investment Advisory Agreement with respect to \$64.5 million of shares of FRG common stock and the termination of that Agreement, and the \$200.5 million indebtedness outstanding to Kahn and Vintage Capital.

340. Every member of the B. Riley Board, as signatories to the Form 10-K, had actual knowledge of the FRG \$64.5 million common stock Investment Advisory Agreement and \$200.5 million Kahn-related indebtedness. Those facts represented a material increase in B. Riley's exposure to FRG/Kahn [REDACTED]

¹³⁰ B. Riley Financial, Inc., Annual Report at 74 (Form 10-K) (Apr. 24, 2024), <https://www.sec.gov/ix?doc=/Archives/edgar/data/1464790/000162828024017512/rily-20231231.htm>.

[REDACTED]. The non-management Directors, however, still failed to conduct an adequate investigation or take corrective action to determine why the terms of the Investment Advisory Agreement and Kahn’s \$200.5 million indebtedness facts [REDACTED]

341. The Form 10-K also reported throughout on the \$108 million loan outstanding to Conn’s.

S. B. Riley’s 1Q24 Operating Results

342. On May 15, 2024, B. Riley stated in an earnings release accompanying a Form 8-K that the Company’s net loss was \$51 million during the first three months of 2024 “driven by approximately \$59 million of investment-related losses consisting primarily of non-cash trading losses on investments and fair value adjustments on loans, and realized and unrealized losses on investments.”¹³¹

343. During the earnings call, Riley stated that the investment losses were attributable to changes in the fair market value of the Company’s investments in

¹³¹ See B. Riley Financial, Inc., Earnings Release at 2 (Form 8-K) (May 15, 2024), https://www.sec.gov/ix?doc=/Archives/edgar/data/1464790/000121390024043607/ea0206116-8k_briley.htm.

“Freedom VCM, which consists of the underlying business of [FRG], and also investment in [Babcock & Wilcox].”¹³²

T. B. Riley’s 2Q24 Operating Results

344. B. Riley issued its preliminary 2Q24 operating results in a press release prior to the opening of the markets on August 12, 2024.

345. In its August 12, 2024 press release, B. Riley stated that for the three-months ending June 30, 2024, the Company “expects to report a non-cash markdown of approximately \$330 to \$370 million related to its investment in Freedom VCM, the indirect parent entity of FRG, and the Vintage Capital [Kahn] loan receivable.”

346. B. Riley also announced in the press release that it was suspending payment of its dividend.

347. In a conference call conducted after the issuance of the press release, Bryant Riley disclosed that he had received subpoenas in July 2024 from the SEC focused mainly on B. Riley’s dealings with Kahn.

348. For each of 2Q24 and 3Q24, B. Riley filed with the SEC a Notification of Late Filing of its Form 10-Q.

¹³² See B. Riley Financial, Inc., Q1 2024 Earnings Call Transcript (May 15, 2024), available at <https://seekingalpha.com/article/4693667-b-riley-financial-inc-rily-q1-2024-earnings-call-transcript>.

349. For each of 2Q24 and 3Q24, the Notification stated in words or substance that B. Riley “was unable, without unreasonable effort or expense,” to make the filing “primarily due to delays in finalizing ... the valuations of certain of the Company’s loans and investments.”¹³³

350. B. Riley common stock declined \$8.84 per share to close at \$8.15 per share on August 12, 2024 on the 2Q24 notification of late filing with the SEC.

351. The Board failed to consider the circumstances of the preliminary 2Q24 write-off, including any issues [REDACTED]

[REDACTED]

[REDACTED].

U. FRG Files for Bankruptcy

352. On Sunday, November 3, 2024, FRG filed for bankruptcy.

353. B. Riley disclosed that in addition to the previously announced write-downs of \$370 million, it would take an impairment charge of \$120 million for its investment in FRG.

¹³³ B. Riley Financial, Inc., Notification of Late Filing Form 10-Q at 2 (Form 12b-25) (Aug. 12, 2024), https://www.sec.gov/Archives/edgar/data/1464790/000121390024067768/ea021117201-nt10q_briley.htm; B. Riley Financial, Inc., Notification of Late Filing Form 10-Q at 2 (Form 12b-25) (Nov. 13, 2024), https://www.sec.gov/Archives/edgar/data/1464790/000121390024097559/ea0221011-nt10q_briley.htm.

354. B. Riley’s hundreds of millions of dollars in losses are a result of its loans to Kahn and Conn’s and its participation in the Take-Private Transaction.

355. Given their total abdication of responsibility to the Company and its stockholders, members of the Board of Directors are likely to be personally liable to B. Riley for their breaches of fiduciary duty.

V. B. Riley Belatedly Files Its Second Quarter 2024 Form 10-Q

356. On January 14, 2025, B. Riley belatedly filed its Form 10-Q for the second quarter of 2024.

357. Form 10-Q (at 9) reported that “[f]or the six months ended June 30, 2024, the company incurred a net loss of \$482,769 [thousand] which is primarily related to fair value adjustments totaling \$391,754 thousand related to the Company’s equity investment in Freedom VCM Holdings, LLC [formerly FRG] and the loan to Vintage Capital Management, LLC.”¹³⁴

358. The second quarter Form 10-Q further stated that in addition to the previously disclosed July 2024 subpoenas directed to the Company and Bryant Riley, that on November 22, 2024 the Company and Bryant Riley received “an additional SEC subpoena requesting the production of certain additional documents and information relating to Franchise Group, Inc. ... as well as Mr. Riley’s personal

¹³⁴ B. Riley Financial, Inc., Quarterly Report at 9 (Form 10-Q) (Jan. 13, 2025), <https://www.sec.gov/Archives/edgar/data/1464790/000162828025001398/rily-20240630.htm>.

loan and his pledge of shares of the Company’s common stock as collateral for such loan.”¹³⁵

W. Defendants’ Breaches of Fiduciary Duty Have Exposed the Company to Securities Fraud Liability

359. On January 24, 2024, a B. Riley stockholder filed in the Central District of California a securities fraud class action complaint (the “Securities Complaint”) against B. Riley, Bryant Riley, Kelleher, and Ahn for violations of the federal securities laws.¹³⁶

360. The Securities Complaint alleged that the defendants made materially false and misleading statements, as well as failed to disclose material adverse facts about the Company’s business, operations, and prospects in various public filings, including in press releases, Form 8-Ks, Form 424B5s, Form 10-Qs. Specifically, the Securities Complaint alleged that statements relating to Kahn and FRG failed to disclose “(1) that Brian Kahn had been credibly implicated in a conspiracy to defraud investors of millions of dollars; (2) that, in spite of this involvement, B. Riley continued to finance the transaction enabling Kahn and others to take FRG private through complex arrangements; (3) that the foregoing was reasonably likely to draw regulatory scrutiny to B. Riley; and (4) that, as a result of the foregoing,

¹³⁵ *Id.* at 51.

¹³⁶ *Coan v. B. Riley Financial, Inc.*, Case No. 2:24-cv-00662, (C.D. Cal.).

[Securities] Defendants’ positive statements about the Company’s business, operations, and prospects were materially misleading and/or lacked a reasonable basis.” Securities Complaint, ¶ 31.

361. In breach of their fiduciary duties, the Defendants herein willfully or recklessly caused or permitted B. Riley to make the false and misleading statements and omissions of material fact to the investing public as set forth above.

362. Moreover, the Defendants herein failed to correct and/or caused the Company to fail to correct the false and misleading statements and omissions of material fact referenced herein, rendering them personally liable to the Company for breaching their fiduciary duties.

X. Plaintiff’s Books and Records Request

363. Plaintiff, [REDACTED]

[REDACTED]

[REDACTED]

(a)

[REDACTED]

(b)

[REDACTED]

(c)

[REDACTED]

(d)



(e)



(f)



(g)



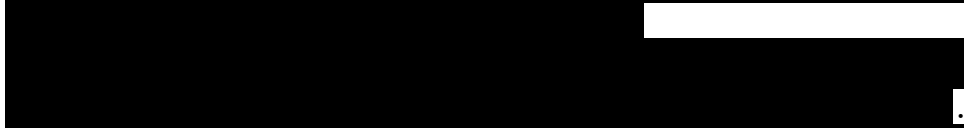
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(i)



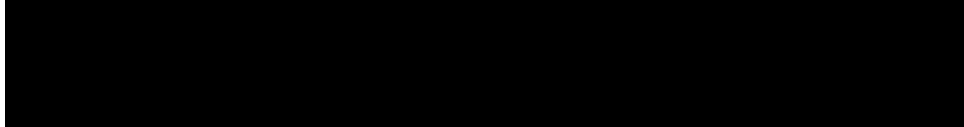
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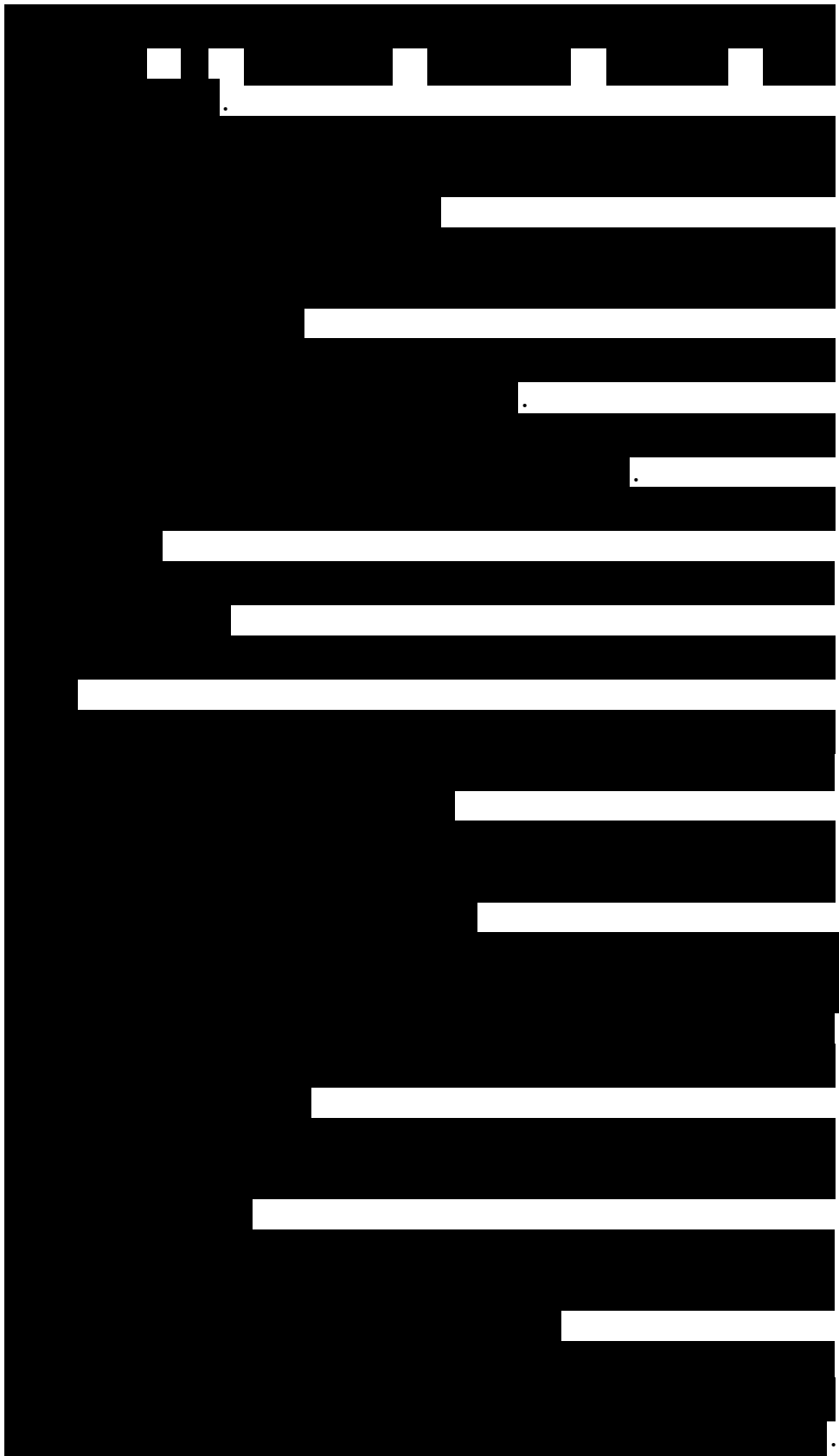
(v)

(w)

(x)

(y)

(z)



(aa)

[REDACTED]

364. B. Riley, through S&C, responded to the demand [REDACTED]

[REDACTED]

[REDACTED]

365.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

366.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

367.

[REDACTED]

[REDACTED]

[REDACTED]

[Redacted]

368. [Redacted]

[Redacted]

369. [Redacted]

[Redacted]

[Redacted]

370. [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

371. [Redacted]

[Redacted]

[REDACTED]

[REDACTED]

[REDACTED]

372. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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373. [REDACTED]

[REDACTED]

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379. [Redacted]

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380. [Redacted]

[Redacted]

381. [Redacted]

[Redacted]

[Redacted]

[Redacted]

382. [Redacted]

[Redacted]

383. [Redacted].

384. [Redacted]

[Redacted]

385. [Redacted]

386. [Redacted]

[Redacted]

[Redacted]

[Redacted]

387. [Redacted]

[Redacted]

[Redacted]

[Redacted]

388. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].”

389. [REDACTED]

[REDACTED]

390. As of the date of [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Y. The Board Should Terminate Bryant Riley’s Employment Agreement

391. The Board should terminate Bryant Riley’s Employment Agreement with the Company, dated April 11, 2023, with cause for his misconduct alleged herein.

392. Pursuant to the Employment Agreement, “termination with cause” is defined as:

- (i) Executive’s willful, intentional and continued substantial misconduct in the reasonable judgment of the Company; (ii) other than due to a Disability, Executive’s repeated, intentional gross negligence of duties or intentional gross failure to act which can reasonably be expected to affect materially and adversely the business or affairs of the

Company or any subsidiary or affiliate thereof in the reasonable judgment of the Company; (iii) Executive's gross material breach of any of the obligations contained herein; or (iv) the commission by Executive of any intentional material fraudulent act with respect to the business and affairs of the Company or any subsidiary or affiliate thereof, in the reasonable judgment of the Company.

393. For the reasons stated above, principally [REDACTED] and causing B. Riley to extend an additional \$108 million in loans to Conn's, and allegedly misrepresenting to investors material facts concerning those transactions, Bryant Riley has committed each of the following: (i) "willful, intentional and continued substantial misconduct, (ii) "repeated gross negligence of duties and intentional gross failure to act which ... affected[ed] materially and adversely the business or affairs of the Company," (iii) "gross material breach[es]" of his obligations under his Employment Agreement, and (iv) "intentional material fraudulent acts with respect to the business and affairs of the Company."

394. Accordingly, pursuant to the Employment Agreement, the Board should provide written notice to Bryant Riley of the existence of the circumstances providing grounds for his termination with cause. Thereafter, if Bryant Riley does not cure the circumstances (if possible) fifteen days from the date on which the notice is provided, the Board should terminate Bryant Riley's Employment Agreement.

V. DERIVATIVE ALLEGATIONS

395. Plaintiff brings this action derivatively to redress injuries suffered by the Company as a direct result of breaches of fiduciary duties by the Defendants.

396. Plaintiff currently owns B. Riley stock and has owned B. Riley stock continuously since November 2022.

397. Plaintiff will adequately and fairly represent the interests of B. Riley and its stockholders in enforcing and prosecuting their rights, and has retained independent counsel competent and experienced in stockholder derivative litigation.

398. The collection of features characterizing Bryant Riley's relationship with B. Riley and its directors gave him enormous influence over B. Riley and its Board of Directors.

399. In addition to his 23.8% equity stake, Bryant Riley was the paradigmatic dominant CEO, who held the most influential corporate positions (co-CEO, Chair, and founder), enjoyed close ties with the directors tasked with supervising B. Riley's business dealings and investments with FRG and Kahn, and [REDACTED]

400. At all relevant times, at least as to the Take-Private Transaction, Bryant Riley controlled B. Riley.

401. Bryant Riley caused B. Riley to commit over \$200 million to a Take-Private Transaction [REDACTED]

402. Bryant Riley further caused B. Riley to commit a \$200.5 million loan, a \$64.6 million Advisory Agreement, a \$108 million Conn's loan, and over \$900 million in Badcock receivables financing [REDACTED]

403. Even after there was cause to scrutinize Bryant Riley's association with Brian Kahn and Vintage Capital, [REDACTED]

404. The Board's belief in Bryant Riley's singular importance shifted the balance of power between management, the Board, and the stockholders.

405. B. Riley's directors' conduct reflects a belief that Bryant Riley is uniquely critical to the eponymously named Company's mission.

406. Given Bryant Riley's dominant position at B. Riley, the non-management directors lacked independence from Bryant Riley – a person who

would face a substantial likelihood of liability on claims that are the subject of the litigation demand.

407. Further, as discussed herein, demand is excused with respect to each director individually.

VI. DEMAND ON THE BOARD IS EXCUSED AS FUTILE AS A MAJORITY OF THE BOARD FACE A SUBSTANTIAL LIKELIHOOD OF LIABILITY AND/OR CANNOT INDEPENDENTLY CONSIDER A DEMAND

408. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

409. Plaintiff has not made any demand on the B. Riley Board to institute this action for the wrongdoing alleged herein. Such demand would be futile and is excused. The FRG Take-Private Transaction was not the product of a valid exercise of business judgment by the Board, who acted with a lack of good faith and without informing themselves of reasonably available facts. As a result of their disloyalty, each of the members of the Board face a substantial likelihood of personal liability for approving and failing to monitor the Take-Private Transaction. Moreover, certain members of the Board that would have considered a demand are not independent.

410. The B. Riley Board that would have considered a demand (the “Demand Board”) is comprised of nine (9) members, each of which is incapable of impartially considering whether to enforce the claims alleged herein for

breaches of fiduciary duties committed by the Director Defendants because of their relationships with Bryant Riley, or because they themselves face a substantial likelihood of liability.

Bryant Riley

411. Bryant Riley cannot independently and disinterestedly consider a demand because he faces a substantial likelihood of liability in connection with the prosecution of this action. As detailed above, as Co-Founder, Co-CEO, and Chairman of the Board of B. Riley, Bryant Riley was the driving force behind (i) B. Riley's purchases of approximately \$925 million of FRG's Badcock accounts receivable portfolio from December 2021 to March 2023, (ii) B. Riley's \$201 million loan to Kahn's Vintage Capital with FRG shares pledged as collateral, and (iii) [REDACTED]

[REDACTED]. Accordingly, Bryant Riley was directly responsible for ensuring that these actions were in the best interests of the Company. Despite having knowledge that incurring additional exposure to FRG would be adverse to the best interests of the Company, and knowledge of FRG's declining financial condition, [REDACTED]

412. Bryant Riley faces a particularly high risk of liability for pursuing a transaction in order to hide B. Riley's balance sheet risk. After review and

discussions concerning Badcock with FRG in March 2023, Riley knew that FRG faced a suspension to its quarterly dividends and a potential default under the FRG First Lien Credit Agreement. Rather than publicly exposing B. Riley's corresponding balance sheet risk caused by the Company's significant exposure from the purchases of Badcock accounts receivable and Kahn and FRG as a whole, [REDACTED]

413. Relatedly, Bryant Riley spearheaded inadequate due diligence efforts so as to push the deal through. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] In short, Bryant Riley pursued the Take-Private Transaction for reasons other than the best interest of the Company – *i.e.*, to hide from the market B. Riley's balance sheet risk caused by its significant exposure in various loans made to Kahn secured by FRG common stock, which Riley himself was directly responsible for.

414. Moreover, in complete abdication of his fiduciary duties, Riley either knowingly or recklessly participated in making and/or causing the Company to make the materially false and misleading statements alleged in the Securities Complaint. Because Riley faces a substantial likelihood of liability, he is incapable of impartially considering a demand.

415. As detailed below, Bryant Riley’s close personal and business ties with certain members of the Board call into question their independence from him. As of February 5, 2025, Bryant Riley has forty-six friends on Facebook, the social media platform. Listed as Bryant Riley’s friends on Facebook are Michael Sheldon, Gina Sheldon (Michael Sheldon’s wife), Meighan Kelleher (Thomas Kelleher’s wife), and Robert Antin. Of Bryant Riley’s thirty-eight non-family member friends on Facebook, four are either B. Riley directors or the spouse of a B. Riley director.¹³⁷

Kelleher

416. There is reasonable doubt whether Kelleher could independently or disinterestedly consider a demand because he faces a substantial likelihood of liability in connection with the prosecution of this action. As detailed above, as Co-Founder, Co-CEO, and member of the Board of B. Riley, Kelleher consciously disregarded his duty in failing to take action to protect the interests of B. Riley shareholders in connection with (i) B. Riley’s purchases of approximately \$925 million of FRG’s Badcock accounts receivable portfolio from December 2021 to March 2023, (ii) B. Riley’s \$201 million loan to Kahn’s Vintage Capital with FRG shares pledged as collateral, and (iii) the FRG Take-

¹³⁷ Of the balance of forty-six names on Bryant Riley’s Facebook, six have the surname Riley and two have the surname Laudati (his wife Carleen’s maiden name).

Private Transaction which brought B. Riley's total equity investment in Freedom VCM to approximately \$281 million.

417. Additionally, Kelleher is a named defendant in the California securities fraud action. In complete abdication of his fiduciary duty, Kelleher either knowingly or recklessly participated in making and/or causing the Company to make the materially false and misleading statements alleged therein. Because Kelleher faces a substantial likelihood of liability, he is incapable of impartially considering a demand.

418. In addition to his personal liability, Kelleher cannot disinterestedly consider a demand because he lacks independence from Bryant Riley due to their long-standing business relationship and close personal friendship. Their relationship goes back to when the two attended Lehigh University together and belonged to the fraternity Alpha Sigma Phi.¹³⁸ According to a 2010 Bryant Riley interview with the *Los Angeles Business Journal*, Bryant Riley and Kelleher started a small business together in college: "We had a T-shirt business, so we were business partners back then. I was the sales guy and he was the artist. He's a very good artist. So we had a little business selling T-shirts and underwear to

¹³⁸ [REDACTED]; *Added Up*, LOS ANGELES BUSINESS JOURNAL (June 13, 2010), <https://labusinessjournal.com/finance/added/#:~:text=My%20first%20big%20stock%2C%20which,that%20worked%20out%20pretty%20wellhttps://labusinessjournal.com/finance/added/#:~:text=My%20first%20big%20stock%2C%20which,that%20worked%20out%20pretty%20well>.

other fraternities.”¹³⁹ Bryant Riley further stated in the interview, “[h]e’s my closest friend.”¹⁴⁰

419. In a 2024 letter to the Board, Bryant Riley described Kelleher as a “close friend of almost 40 years”¹⁴¹ [REDACTED]

[REDACTED]
[REDACTED]¹⁴² Meighan Kelleher, Kelleher’s wife, is listed as Bryant Riley’s friend on his Facebook profile.

420. Kelleher has spent almost three decades working for and with Bryant Riley and B. Riley-affiliated entities and owes, in part, his success to their business collaboration. The two co-founded B. Riley & Co., LLC, a predecessor to B. Riley Financial, Inc., in 1997.¹⁴³ Since then, Kelleher has held several

¹³⁹ *Added Up*, LOS ANGELES BUSINESS JOURNAL (June 13, 2010), <https://labusinessjournal.com/finance/added/#:~:text=My%20first%20big%20stock%2C%20which,that%20worked%20out%20pretty%20well.>

¹⁴⁰ *Id.*

¹⁴¹ B. Riley Financial, Inc., Letter to the Board of Directors by the Reporting Person (Exhibit 1 to Schedule 13D Amendment No. 1) (Aug. 15, 2024), https://www.sec.gov/Archives/edgar/data/1464790/000121390024069983/ea021163301ex99-1_briley.htm.

¹⁴² [REDACTED].

¹⁴³ B. Riley, Financial, Inc., Board of Directors Committee Compensation Composition (Apr. 11, 2023), https://filecache.investorroom.com/mr5ir_briley2/829/BRILEYFIN_Committee%20Composition%20Bios_04.11.2023.pdfhttps://filecache.investorroom.com/mr5ir_briley2/829/BRILEYFIN_Committee%20Composition%20Bios_04.11.2023.pdf.

senior management positions with B. Riley-affiliated entities. From 1997 to 2006, Kelleher served in Chief Financial Officer and Chief Compliance Officer roles at B. Riley & Co., LLC. From 2006 to 2014, Kelleher served as Chief Executive Officer of B. Riley & Co., LLC. From November 2017 to July 2018, Kelleher served as the Co-Chief Executive Officer of B. Riley FBR, Inc., a subsidiary of B. Riley. From August 2014 to July 2018, Kelleher served as President of B. Riley. From July 2018 to the present, Kelleher has served as Co-Chief Executive Officer with Bryant Riley. Kelleher has been a member of the B. Riley Board since October 2015.

421. For the 2023 fiscal year, Kelleher received \$5,563,318 in compensation from the Company. This included \$700,000 in salary, \$1,889,256 in stock awards, and \$2,974,063 in all other compensation.¹⁴⁴ According to a Proxy Statement filed by B. Riley dated May 10, 2024, Kelleher has a 3.3% stock interest in B. Riley.¹⁴⁵

¹⁴⁴ B. Riley Financial, Inc., Annual Report Amendment No. 1 at 11 (Form 10-K/A) (Apr. 29, 2024), https://www.sec.gov/ix?doc=/Archives/edgar/data/1464790/000121390024037190/ea0204798-10ka1_briley.htm.

¹⁴⁵ B. Riley Financial, Inc., Definitive Proxy Statement at 39 (Schedule 14A) (May, 10, 2024), <https://www.sec.gov/ix?doc=/Archives/edgar/data/1464790/000121390024041725/ea0205510-01.htm>.

Paulson

422. There is reasonable doubt whether Paulson could independently and disinterestedly considered a demand.

423. Paulson, the Chair of the Audit Committee, faces a particularly high risk of liability [REDACTED].

424. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

425. [REDACTED]
[REDACTED]
[REDACTED].

426. Pursuant to the Audit Committee’s charter, Paulson was and is responsible for, among other things: “carry[ing] out its oversight responsibility,” “review[ing] the Company’s policies with respect to risk assessment and risk management,” and “review[ing] and approv[ing] all related party transactions in accordance with the Company’s Code of Business Conduct and Ethics or any waiver requested thereto.”

427. Paulson was duty-bound to apprise himself of the ongoing risks caused by (i) B. Riley’s Badcock accounts receivable portfolio, (ii) B. Riley’s

\$201 million loan to Vintage Capital (Kahn) secured by FRG shares, and (iii) the purchase of a 31% equity interest in Freedom VCM for \$281.1 million. Despite his duty of oversight, he ignored numerous red flags, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] By virtue of his position on the Audit Committee, Paulson faces a substantial likelihood of liability for his breaches of fiduciary duties.

428. Moreover, Paulson, as Chair of the Audit Committee, could not have impartially supervised an investigation into B. Riley's dealings with Kahn [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Therefore, Paulson faces a substantial likelihood of liability.

429. For the 2023 fiscal year, Paulson received \$147,156 in compensation from the Company, which included \$66,196 in fees earned or paid in cash, \$75,000 in stock awards, and \$5,960 in all other compensation.¹⁴⁶

430. From 2020 through 2023, Paulson received total compensation of \$608,575 for acting as a B. Riley outside director.

431. In addition to his personal liability, Paulson cannot disinterestedly and independently consider a demand to initiate claims alleged herein because he is beholden to, and not independent from, Bryant Riley. On March 2, 2021, Bryant Riley caused B. Riley to purchase a minority interest in Dash Medical Holdings, LLC (“Dash”) for \$2,400,000, as part of Paulson’s acquisition of the Company.¹⁴⁷ Further, Bryant Riley caused B. Riley to loan \$3,000,000 to Dash Holding Company, Inc. (together with Dash Medical Holdings, LLC, “Dash”) which was repaid with \$96,435 in accrued interest. Paulson controls Dash and sits on its board of directors. Paulson personally benefitted from these transactions. Paulson allowed Bryant Riley to dominate the Board and dictate

¹⁴⁶ B. Riley Financial, Inc., Annual Report Amendment No. 1 at 20 (Form 10-K/A) (Apr. 29, 2024), https://www.sec.gov/ix?doc=/Archives/edgar/data/1464790/000121390024037190/ea0204798-10ka1_briley.htm.

¹⁴⁷ B. Riley Financial, Inc., Definitive Proxy Statement at 12 (Schedule 14A) (Apr. 18, 2023), https://www.sec.gov/ix?doc=/Archives/edgar/data/0001464790/000121390023030674/ea176625-def14a_briley.htm.

the terms of the Take-Private Transaction, and then [REDACTED]

432. Accordingly, Paulson cannot independently consider suing Bryant Riley for his breaches of his fiduciary duties.

D’Agostino

433. There is reasonable doubt whether D’Agostino could independently and disinterestedly consider a demand because he faces a substantial likelihood of liability in connection with the prosecution of this action. D’Agostino served on the Board’s Audit Committee from at least 2023 to the present. For the 2023 fiscal year, D’Agostino received \$147,821 in compensation from the Company, which included \$66,861 in fees earned or paid in cash, \$75,000 in stock awards, and \$5,960 in all other compensation.¹⁴⁸

434. From 2020 through 2023 D’Agostino received total compensation from B. Riley of \$665,896 for serving as an outside Board member.

435. Pursuant to the Audit Committee’s charter, D’Agostino was and is responsible for, among other things: “carry[ing] out its oversight responsibility,” “review[ing] the Company’s policies with respect to risk assessment and risk

¹⁴⁸ B. Riley Financial, Inc., Annual Report Amendment No. 1 at 20 (Form 10-K/A) (Apr. 29, 2024), https://www.sec.gov/ix?doc=/Archives/edgar/data/1464790/000121390024037190/ea0204798-10ka1_briley.htm.

management,” and “review[ing] and approv[ing] all related party transactions in accordance with the Company’s Code of Business Conduct and Ethics or any waiver requested thereto.”

436. D’Agostino was duty-bound to have apprised himself of the ongoing risks caused by (i) B. Riley’s Badcock accounts receivable portfolio, (ii) B. Riley’s \$201 million loan to Vintage Capital secured by FRG shares, and (iii) the purchase of a 31% equity interest in Freedom VCM for \$281.1 million. Despite his duty of oversight, he ignored numerous red flags, including [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

437. Putting aside his own liability, D’Agostino could not independently and disinterestedly consider a demand against Bryant Riley because doing so would require him to implicate the Audit Committee [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. D’Agostino faces a substantial likelihood of liability for his breaches of fiduciary duties by virtue of his position on the Audit Committee.

438. D’Agostino is also incapable of impartially considering a demand because he lacks independence from, or is beholden to, Bryant Riley. [REDACTED]

[REDACTED]

[REDACTED].¹⁴⁹ [REDACTED]

[REDACTED]

[REDACTED].”¹⁵⁰ D’Agostino, therefore, could not independently consider suing Bryant Riley for his breaches of fiduciary duties.

439. [REDACTED], D’Agostino and Bryant Riley have an almost 20-year professional relationship, rendering D’Agostino beholden to Bryant Riley. D’Agostino’s decades-long professional relationship with Bryant Riley began in October 2005 when Bryant Riley, through his voting power and dispositive power over the Alliance Semiconductor Corporation (“Alliance Corp.”) securities held by B. Riley & Co., Inc. and other B. Riley

149 [REDACTED].

150 [REDACTED]

entities¹⁵¹, appointed himself and D'Agostino to the Alliance Corp. board as part of the settlement agreement resolving a proxy contest with the semiconductor company.¹⁵² From 2005 to at least 2008, D'Agostino served on Alliance Corp.'s board alongside Bryant Riley, who became the company's Chair in March 2006. During his time on the board, D'Agostino served on Alliance Corp.'s Nominating and Corporate Governance Committee and its Audit Committee.¹⁵³

440. Additionally, on multiple occasions, Bryant Riley nominated D'Agostino to several existing boards through proxy contests. On August 15, 2006, Bryant Riley, through B, Riley Co., Inc. and its affiliates, called for a special meeting of Integrated Silicon Solution Inc. shareholders to remove several of the company's directors and to fill the vacancies with his own nominees, including himself and D'Agostino, which resulted in B. Riley's

¹⁵¹ As of June 30, 2005, Bryant Riley was the beneficial owner of 2,418,821 (6.80%) of Alliance's common stock outstanding. *See* Alliance Semiconductor Corporation, Annual Report at 11 (Form 10-K) (July 22, 2005), <https://www.sec.gov/Archives/edgar/data/913293/000095013405013859/f07607a1e10vkza.htm>.

¹⁵² Alliance Semiconductor Corporation, Current Report at 4 (Form 8-K) (Oct. 21, 2005), <https://www.sec.gov/Archives/edgar/data/913293/000095013405019526/f13667e8vk.htm#003>.

¹⁵³ Alliance Semiconductor Corporation, Current Report at 2 (Form 8-K) (Nov. 1, 2005), <https://www.sec.gov/Archives/edgar/data/913293/000095013405020194/f14037e8vk.htm>.

appointment to the board in September 2006.¹⁵⁴ On July 23, 2007, Bryant Riley, through Riley Investment Partners Master Fund, L.P., (“RIP”) submitted a shareholder proposal to nominate several persons for election to the board of ESS Technology, Inc., including himself and D’Agostino, at the company’s 2007 annual meeting.¹⁵⁵ At the Annual Shareholder Meeting of the company on June 27, 2008, shareholders approved the re-election of the company’s existing directors.¹⁵⁶ From July 19, 2007 through August 8, 2007, Bryant Riley, through RIP, requested a special meeting of Regent Communications, Inc. shareholders to be held in order to increase the board size by amending the company’s bylaws and to elect certain of Bryant Riley’s proposed persons, including himself and

¹⁵⁴ Integrated Silicon Solution, Inc., Current Report (Form 8-K) (Sep. 12, 2006), <https://www.sec.gov/Archives/edgar/data/854701/000119312506189467/d8k.htm>; Integrated Silicon Solution, Inc., Proxy Statement (Schedule 14A) (Aug. 15, 2006), <https://www.sec.gov/Archives/edgar/data/854701/000111667906001958/issi14a-081506.htm>.

¹⁵⁵ ESS Technology, Inc., Schedule 13D (July 23, 2007), <https://www.sec.gov/Archives/edgar/data/907410/000111650207001376/esstsc13da.htm>; ESS Technology, Inc., Letter (July 23, 2007), <https://www.sec.gov/Archives/edgar/data/907410/000111650207001376/exhibita.htm>.

¹⁵⁶ ESS Technology, Inc. Current Report (Form 8-K) (June 27, 2008), <https://www.sec.gov/Archives/edgar/data/907410/000095013408012039/f41834e8vk.htm#000>.

D’Agostino, to fill the vacancies on the board.¹⁵⁷ On September 14, 2007, as part of the settlement agreement, the board expanded its size and accepted two of Bryant Riley’s nominees (neither himself or D’Agostino) to fill the director vacancies.¹⁵⁸ On April 10, 2008, Bryant Riley, through RIP, sent a letter to Silicon Storage Technology, Inc. announcing its intent to solicit proxies for the election of certain persons, including himself and D’Agostino, to the company’s board of directors at the company’s 2008 annual meeting.¹⁵⁹ On May 21, 2008, the company entered into a settlement agreement with RIP, wherein the company agreed to nominate Bryant Riley to the board.¹⁶⁰

441. Their close-knit business ties remain. On January 6, 2025, B. Riley announced that it served as the exclusive financial advisor to Q-Mation, Inc. (“Q-

¹⁵⁷ ESS Technology, Inc., Letter (Exhibit A) (July 19, 2007), <https://www.sec.gov/Archives/edgar/data/913015/000111650207001373/exh99a.htm>.

¹⁵⁸ Regent Communications, Inc., Current Report (Form 8-K) (Sep. 17, 2007), <https://www.sec.gov/Archives/edgar/data/913015/000095015207007568/128007ae8vk.htm>.

¹⁵⁹ Silicon Storage Technology, Inc., Schedule 13D at 9 (Apr. 10, 2008), <https://www.sec.gov/Archives/edgar/data/855906/000111650208000642/sstisc13da.htm>.

¹⁶⁰ Silicon Storage Technology, Inc., Current Report at 2 (Form 8-K) (May 23, 2008) https://www.sec.gov/Archives/edgar/data/855906/000110465908035582/a08-15203_18k.htm.

Mation”) in connection with its recapitalization by The Halifax Group, LLC.¹⁶¹

D’Agostino has served as President of Q-Mation since 1999. Moreover,

[REDACTED]

[REDACTED]

[REDACTED]”¹⁶².

442. Bryant Riley has made a career out of fostering and maintaining loyal business relationships. If D’Agostino were to act against the interests of B. Riley, he could lose his B. Riley directorship, which constitutes a significant portion of his current income, and jeopardize his personal and professional relationship with Bryant Riley.

443. D’Agostino, along with Sheldon and Antin, is a member of B. Riley’s Compensation Committee. D’Agostino is Chair of the Committee. Notwithstanding the disastrous FRG Take-Private Transaction and public revelations of Kahn’s associations with Prophecy and the \$64.6 million Investment Advisory Agreement, and \$200.1 loan commitment, the Compensation Committee recommended in 2024 that for 2023 Bryant Riley and

¹⁶¹ B. Riley Financial, Inc., Press Release (Jan. 6, 2025), <https://brileyfin.com/blog/b.riley-securities-serves-as-the-exclusive-financial-advisor-to-q-mation-inc.in-connection-with-its-recapitalization-by-the-halifax-group>.

¹⁶² [REDACTED].

Kelleher receive essentially the same pay package, including discretionary payments, as in the prior years.

444. D’Agostino allowed Bryant Riley to dominate the Board and dictate the terms of the Take-Private Transaction, and then as a member of the Audit Committee, [REDACTED]

[REDACTED].

LaBran

445. There is reasonable doubt whether Labran could independently and disinterestedly consider a demand because she faces a substantial likelihood of liability in connection with the prosecution of this action. LaBran served on the Board’s Audit Committee during 2023. For the 2023 fiscal year, LaBran received \$142,835 in compensation from the Company, which included \$61,875 in fees earned or paid in cash, \$75,000 in stock awards, and \$5,960 in all other compensation.

446. From 2021 through 2023, LaBran received a total compensation of \$400,632 for serving as an outside B. Riley Board member.

447. Pursuant to the Audit Committee’s charter, LaBran was and is responsible for, among other things: “carry[ing] out its oversight responsibility,” “review[ing] the Company’s policies with respect to risk assessment and risk management,” and “review[ing] and approv[ing] all related party transactions in

accordance with the Company’s Code of Business Conduct and Ethics or any waiver requested thereto.”

448. LaBran was therefore duty-bound to have apprised herself of the ongoing risks caused by (i) B. Riley’s Badcock accounts receivable portfolio, (ii) B. Riley’s \$201 million loan to Vintage Capital secured by FRG shares, and (iii) the purchase of a 31% equity interest in Freedom VCM for \$281.1 million. Despite her duty of oversight, she ignored numerous red flags, including [REDACTED]

[REDACTED]

449. Putting aside her own liability, LaBran could not independently and disinterestedly consider a demand against Bryant Riley because doing so would require her to implicate the Audit Committee as a whole [REDACTED]

[REDACTED]

[REDACTED] Therefore, LaBran faces a substantial likelihood of

liability for her breaches of fiduciary duties by virtue of her position on the Audit Committee.

450. LaBran allowed Bryant Riley to dominate the Board and dictate the terms of the Take-Private Transaction, and then as a member of the Audit Committee, [REDACTED]

451. LaBran, along with Antin and Walters, is a member of B. Riley’s ESG Committee, which “evaluates and recommends to the Board of Directors director nominees for each election of directors.”¹⁶³ According to B. Riley’s May 10, 2024 Proxy Statement (at 9), when evaluating and recommending candidates for B. Riley’s Board, the ESG Committee considers the following factors:

(i) demonstrated personal integrity and moral character; (ii) willingness to apply sound and independent business judgment for the long-term interests of the stockholders; (iii) relevant business or professional experience, technical expertise or specialized skills; (iv) personality traits and background that appear to fit with those of the other directors to produce a collegial and cooperative Board responsive to the Company’s needs; and (v) ability to commit sufficient time to effectively carry out the substantial duties of a director.¹⁶⁴

¹⁶³ B. Riley Financial, Inc., Definitive Proxy Statement at 9 (Schedule 14A) (May, 10, 2024), <https://www.sec.gov/ix?doc=/Archives/edgar/data/1464790/000121390024041725/ea0205510-01.htm>.

¹⁶⁴ *Id.*

452. There are likely thousands of persons qualified to sit on B. Riley’s Board. However, notwithstanding the stated objectivity and independence with which the ESG Committee evaluates and recommends members to the Board, it consistently nominates friends and business associates of Bryant Riley such as D’Agostino, Paulson, and Sheldon to the Board, further demonstrating that Bryant Riley in fact controls the Board’s and ESG Committee’s activities.

Brandt

453. There is reasonable doubt whether Brandt could independently and disinterestedly consider a demand. Prior to and through her joining B. Riley’s Board on December 20, 2021, Brandt served as the CLO of FaZe Clan Inc. (“FaZe Clan”), a private company, a role she had held since March 11, 2021.¹⁶⁵ After an affiliate of B. Riley acquired FaZe Clan, Brandt was effectively a de facto employee of B. Riley, subject to the control of Bryant Riley and other members of B. Riley senior management.

454. In June 2021, B. Riley Principal 150 Merger Corp. (“B. Riley SPAC”)¹⁶⁶, began discussions with members of FaZe Clan management about a

¹⁶⁵ Jonno Nicholson, *Tammy Brandt joins FaZe Clan as Chief Legal Officer*, ESPORTS INSIDER (Mar. 11, 2021), <https://esportsinsider.com/2021/03/tammy-brandt-joins-faze-clan-as-chief-legal-officer>.

¹⁶⁶ B. Riley SPAC was a publicly held special purpose acquisition corporation formed by B. Riley as sponsor, for the purpose of merging into and taking public a private company.

potential business combination. At the time, Bryant Riley was the Chairman of B. Riley SPAC and had been since 2020. On July 14, 2021, Bryant Riley and Daniel Shribman, B. Riley SPAC's Chief Executive Officer, Chief Financial Officer, and member of the board, had a meeting with members of FaZe Clan management to further discuss a possible transaction.¹⁶⁷

455. As CLO, Brandt was an active participant in the subsequent negotiations and transaction-related discussions. On August 2, 2021, a full kick off meeting was held with B. Riley SPAC, members of the FaZe management team, including Brandt, and other involved advisors and interested parties to discuss the projected transaction timeline prepared by B. Riley Securities, Inc., the underwriter in the B. Riley SPAC's IPO.¹⁶⁸ On August 3, 2021, B. Riley SPAC and FaZe Clan management, including Brandt, and other advisors held a detailed discussion and review of the capital structure of FaZe Clan, discussions on the PIPE Investment process and the path forward.

456. Brandt also was involved in the due diligence conducted by B. Riley SPAC on FaZe's business. On August 20, 2021, after representatives of B. Riley

¹⁶⁷ B. Riley Principal 150 Merger Corp., Proxy Statement at 125 (Form 424B3) (June 21, 2022), https://www.sec.gov/Archives/edgar/data/1839360/000121390022034023/f424b30622_briley150.htm.

¹⁶⁸ *Id.* at 127.

SPAC conducted due diligence on FaZe’s capitalization, Brandt, and other members of FaZe management conducted a detailed review and reconciliation on FaZe’s capitalization. On October 11, 2021, Brandt, Shribman, and their respective counsel had a call to discuss general business and finance matters, which included compensation of executives and shareholder approval of proposed compensation plans, a backstop of the PIPE financing by the Sponsor, an earnout relating to the Founder Shares and Private Placement Warrants, transfer restrictions on the New FaZe securities following closing, and registration rights. The parties also discussed obtaining the consent of FaZe noteholders to the proposed transaction, the timeline for FaZe to deliver its financial statements to BRPM, and set up future meetings between specialists for continued due diligence.¹⁶⁹

457. On April 18, 2022, FaZe Clan management, including Brandt, discussed with Shribman each FaZe Clan business vertical, the revenue and costs of revenue of each vertical, analyzed FaZe Clan’s current performance against the performance projected in September 2021 when the FaZe Forecasts were initially prepared, and shared with Shribman a slide with preliminary budget considerations.

¹⁶⁹ *Id.*

458. On July 19, 2022, FaZe Clan was acquired by B. Riley SPAC¹⁷⁰ effective July 19, 2022 in a transaction¹⁷¹ in which FaZe Clan merged into B. Riley SPAC. At the close of the transaction, B. Riley SPAC changed its name to FaZe Holdings Inc.

459. On March 10, 2022, prior to the de-SPAC, B. Riley Principal Commercial Capital, LLC, a B. Riley affiliate, loaned \$20 million to FaZe Clan, which accrued interest at a rate of 7% per year, compounded quarterly and was secured by all assets of FaZe Clan.¹⁷² The loan was repaid upon closing of the de-SPAC.¹⁷³

¹⁷⁰ B. Riley SPAC was a publicly held special purpose acquisition corporation formed by B. Riley as sponsor, for the purpose of merging into and taking public a private company.

¹⁷¹ B. Riley Principal 150 Merger Corp., Press Release (Form 8-K) (July 15, 2022), https://www.sec.gov/Archives/edgar/data/1839360/000121390022039722/ea162942ex99-1_b Riley.htm.

¹⁷² B. Riley Principal 150 Merger Corp., Proxy Statement (Form 424B3) (June 21, 2022), https://www.sec.gov/Archives/edgar/data/1839360/000121390022034023/f424b30622_b Riley150.htm.

¹⁷³ See Definitive Proxy Statement dated January 26, 2024 at F-23 (“In March 2022, Legacy FaZe entered into a Bridge Loan Agreement with B. Riley Commercial Capital, LLC, an affiliate of B. Riley 150, pursuant to which Legacy FaZe received a term loan in the amount of \$10.0 million in a single advance. Upon receipt of a borrowing notice from Legacy FaZe to B. Riley Lender in April 2022, B. Riley Lender issued Legacy FaZe a second advance of \$10.0 million.”).

460. Upon completion of the merger, Brandt served as CLO and Head of Business and Legal Affairs of FaZe Holdings until February 3, 2023.¹⁷⁴ According to FaZe Holdings' 2023 Proxy Statement (at 15), Brandt continued with FaZe Holdings in an advisory role through at least June 4, 2023.¹⁷⁵

461. Subsequent to the merger, Shribman was simultaneously Chief Investment Officer of B. Riley as well as Chairperson of the FaZe Holdings board and Compensation Committee until his resignation from FaZe Holdings on August 24, 2023. FaZe Holdings were subsequently acquired on March 8, 2024 by GameSquare Holdings, Inc. ("GameSquare").

462. At the time of the GameSquare acquisition, B. Riley Principal Investments, LLC, an affiliate of B. Riley, was FaZe Holdings' largest shareholder, accounting for 14.5% of FaZe Holdings' voting shares (excluding shares held by Daniel Shribman). According to the Definitive Proxy Statement for the GameSquare acquisition, "BRPI is a wholly-owned subsidiary of B. Riley Financial, Inc. Bryant R. Riley is the co-Chief Executive Officer and Chairman of the Board of Directors of BRF. As a result, each of BRF and Bryant R. Riley

¹⁷⁴ FaZe Holdings Definitive Proxy Statement dated January 26, 2024 at 217. [https://www.sec.gov/edgar/search/#/ciks=0001839360&entityName=FaZe%2520Holdings%2520Inc.%2520\(CIK%25200001839360\)](https://www.sec.gov/edgar/search/#/ciks=0001839360&entityName=FaZe%2520Holdings%2520Inc.%2520(CIK%25200001839360)).

¹⁷⁵ FaZe Holdings Inc., Definitive Proxy Statement at 13 (May 1, 2023), https://www.sec.gov/Archives/edgar/data/1839360/000114036123022092/ny20008672x3_def14a.htm.

may be deemed to share voting and investment power over the shares held by BRPI.”

463. In other words, while Brandt was CLO of FaZe Holdings, she was essentially a B. Riley employee. She served under Shribman, who was an executive at B. Riley, and worked for a company that was subject to significant share voting and investment power of B. Riley. Given Brandt’s status as a de facto employee at the time, she would not be considered an “Independent Director” by Nasdaq’s Corporate Governance standards, which states that “a director who is, or at any time during the past three years was, employed by the Company[,]” “shall not be considered independent[.]” Nasdaq 5606(a)(2)(A). Accordingly, Brandt could not objectively consider a demand to investigate or prosecute claims adverse to Bryant Riley’s interests.

464. On June 4, 2024, former stockholders of B. Riley SPAC sued certain B. Riley entities and individual defendants, including Bryant Riley and Shribman, involved in the de-SPAC transaction in the Delaware Court of Chancery.¹⁷⁶ The complaint alleges that the prospectus on the transaction was materially misleading, amounting to breaches of fiduciary duties by defendants.

¹⁷⁶ *Carter v. B. Riley Securities Inc., et al.*, No. 2024-0605-KSJM (Del. Ch. filed June 7, 2024).

On December 3, 2024, the deposition of Brandt was scheduled in connection with the case.¹⁷⁷

465. Moreover, Brandt is beholden to, and not independent from, Bryant Riley because while a de facto employee of B. Riley, under the control of Bryant Riley, Brandt reaped millions of dollars in compensation that she would not have otherwise received. According to FaZe Holdings' 2023 Proxy Statement (at 13), Brandt was awarded total compensation of \$2,928,963 in 2022, the year in which she was heavily involved in the negotiations on the transaction with B. Riley SPAC.¹⁷⁸ This included \$400,000 in salary, \$175,000 in bonuses, \$2,294,259 in stock awards, and \$59,563 in all other compensation. As a result of the de-SPAC transaction, Brandt was also awarded beneficial ownership of 954,272 shares of FaZe Holdings common stock, including 890,674 shares over which she had the right to acquire voting and investment power upon the exercise of stock options within 60 days of the record date.¹⁷⁹

¹⁷⁷ See *Carter v. B. Riley Securities Inc., et al.*, No. 2024-0605-KSJM at Dkt. No. 29 (Del. Ch. filed June 7, 2024).

¹⁷⁸ FaZe Holdings Inc., Definitive Proxy Statement at 13 (May 1, 2023), https://www.sec.gov/Archives/edgar/data/1839360/000114036123022092/ny20008672x3_def14a.htm.

¹⁷⁹ FaZe Holdings Inc., Definitive Proxy Statement (Schedule 14A) (January 26, 2024), https://www.sec.gov/Archives/edgar/data/1839360/000121390024007071/defm14a0124_faze.htm.

466. Brandt allowed Bryant Riley to dominate the Board and dictate the terms of the Take-Private Transaction.

Walters

467. There is reasonable doubt whether Walters is capable of impartially considering a demand because she lacks independence from, or is beholden to, Bryant Riley. In November 16, 2020, B. Riley Principal Merger Corp. II (“BMRG”), a SPAC sponsored by an affiliate of B. Riley merged with the then-private Eos Energy Storage, LLC, a manufacturer of battery storage systems.¹⁸⁰ In connection with the combination, Walters was appointed to the board of directors of the combined company Eos, a position she would not have otherwise received but for her connections with Bryant Riley.¹⁸¹ In exchange for her placement on the Eos board, Walters allowed Bryant Riley and B. Riley to leverage her status as a former Member of the U.S. House of Representatives from California’s 45th District with experience working “on key legislation, business and policy initiatives related to energy”¹⁸² as well as her prior

¹⁸⁰ Eos Energy Enterprises, Inc., Press Release (Nov. 16, 2020), <https://investors.eose.com/static-files/12810657-9579-4a99-bc1c-362ada02038d>.

¹⁸¹ Eos Energy Enterprises, Inc., Press Release (Oct. 23, 2020), <https://www.sec.gov/Archives/edgar/data/1805077/000121390020032979/ea128818ex99-1 briley2.htm>.

¹⁸² Eos Energy Enterprises, Inc., Definitive Proxy Statement at 138 (Schedule 14A) (Oct. 23, 2020),

membership to the Energy and Commerce Committee to legitimize Eos and its public statements concerning future performance.

468. In connection with the BRMG-Eos merger, BMRG issued a definitive proxy statement on October 23, 2010, which touted BMRG's due diligence of Eos and made several representations that the merger was in the best interest of BMRG shareholders. The definitive proxy statement also disclosed Walters' appointment as a director on the Eos board following the business combination, with a detailed recitation of her professional background, including membership in Congress.

469. Given Walters' background as a U.S. Representative, this appointment had the effect of an endorsement of BMRG's representations in the Proxy Statement, and the viability of the combined entity as a whole.

470. Walters served on the Eos board along with Daniel Shribman, B. Riley's Chief Investment Officer, until November 2022, when Shribman resigned from the Eos board.¹⁸³ For the fiscal year ended December 31, 2020,

https://www.sec.gov/Archives/edgar/data/1805077/000121390020032903/defm14a1020_brileyprincipal2.htm.

¹⁸³ Eos Energy Enterprises, Inc., Definitive Proxy Statement at 14 (Schedule 14A) (Mar. 27, 2023) (Schedule 14A),

<https://www.sec.gov/Archives/edgar/data/1805077/000162828023009280/eos-2023definitiveproxy.htm>.

Walters received \$169,589 in compensation from Eos.¹⁸⁴ This included \$75,007 in stock awards and \$94,582 in option awards.

471. From 2020 through 2023, Walters received total compensation of \$694,838 for serving as an Eos outside board member. Her total compensation as an outside Board member for Eos and B. Riley for those four years was \$1,340,506.

472. Notably, Walters continued to serve on the Eos board, despite subsequent negative developments surrounding the company. After the de-SPAC, Eos significantly underperformed, falling short of revenue projections forecasted in the Proxy Statement and other solicitation materials, lowering its revenue guidance, and even casting “substantial doubt as to [its] ability to continue as a going concern.”¹⁸⁵ On January 14, 2021, Iceberg Research published a short report raising questions about the definitive proxy statement’s revenue projections for FY 2021.

¹⁸⁴ Eos Energy Enterprises, Inc., Definitive Proxy Statement at 29 (Schedule 14A) (Apr. 30, 2021), <https://www.sec.gov/Archives/edgar/data/1805077/000162828021008307/eos-2021proxy.htm>.

¹⁸⁵ Eos Energy Enterprises, Inc., Annual Report at 20 (Form 10-K) (Feb. 25, 2022), <https://www.sec.gov/ix?doc=/Archives/edgar/data/0001805077/000162828022004017/eose-20211231.htm>.

473. On March 8, 2023, current and former stockholders of BMRG sued the BMRG's board of directors, including Bryant Riley and Daniel Shribman, and the B. Riley Principal Sponsor Co. II, LLC, the sponsor of the transaction, for breaches of fiduciary duties related to false and misleading disclosures in the proxy statement issued in connection with the transaction including disclosures on (1) projections regarding Legacy Eos's future performance; (2) existing customer commitments impacting near-term expectations; and (3) the net cash per share underlying the [BMRG] shares in connection with the Merger. The lawsuit subsequently settled for \$8.5 million.

474. The stock price of Eos drastically declined from a high of \$30.44 per share at close of January 12, 2021, shortly after the de-SPAC, to \$1.92 per share at close of [REDACTED]

[REDACTED] By May 8, 2023, Walters was aware of the allegations against Bryant Riley raised in the Eos lawsuit, which should have tipped Walters off to scrutinize the FRG Take-Private Transaction. However, Walters continued to defer and submit to Bryant Riley.

475. There is reasonable doubt given her lack of scrutiny with respect to membership on Eos's board of directors that Walters would independently consider and respond to a demand to commence litigation against Bryant Riley and other directors of the B. Riley Board. Walters allowed Bryant Riley to stake

her credibility to legitimize the de-SPAC merger to BMRG shareholders, without scrutinizing the false and misleading statements in the proxy statement issued in connection with the transaction. Despite Eos's continued underperformance, attacks from short reports, and litigation related to the company's false and misleading proxy disclosures – of which Walters effectually endorsed – Walters has continued to serve on Eos's board. Walters has suffered damage to her goodwill through her affiliation with Eos, yet she has not resigned from the board. Inasmuch as Walters has taken a back seat and acquiesced to Bryant Riley in connection with Eos, there is reasonable doubt that she would take action against Bryant Riley and other directors for misconduct alleged herein. Walters is unlikely to assert a claim against Bryant Riley, who through his stock ownership, executive position, years of service, and dominant personality, controls the B. Riley Board.

476. Walters is also unlikely to make a claim against Bryant Riley or others because she herself is potentially liable for approving the Take-Private Transaction without sufficient scrutiny, notwithstanding the red flags from Bryant Riley's conduct with respect to Eos.

477. Walters, along with Antin and LaBran as members, is the Chair of B. Riley's ESG Committee, which "evaluates and recommends to the Board of

Directors director nominees for each election of directors.”¹⁸⁶ According to B. Riley’s May 10, 2024 Proxy Statement (at 9), when evaluating and recommending candidates for B. Riley’s Board, the ESG Committee considers the following factors:

(i) demonstrated personal integrity and moral character; (ii) willingness to apply sound and independent business judgment for the long-term interests of the stockholders; (iii) relevant business or professional experience, technical expertise or specialized skills; (iv) personality traits and background that appear to fit with those of the other directors to produce a collegial and cooperative Board responsive to the Company’s needs; and (v) ability to commit sufficient time to effectively carry out the substantial duties of a director.¹⁸⁷

478. There are likely thousands of persons qualified to sit on B. Riley’s Board. However, notwithstanding the stated objectivity and independence with which the ESG Committee evaluates and recommends members to the Board, it consistently nominates friends and business associates of Bryant Riley such as D’Agostino, Paulson, and Sheldon to the Board, further demonstrating that Bryant Riley in fact controls the Board’s and ESG Committee’s activities.

¹⁸⁶ B. Riley Financial, Inc., Definitive Proxy Statement at 9 (Schedule 14A) (May, 10, 2024), <https://www.sec.gov/ix?doc=/Archives/edgar/data/1464790/000121390024041725/ea0205510-01.htm>.

¹⁸⁷ *Id.*

Sheldon

479. There is reasonable doubt whether Sheldon is capable of impartially considering a demand because he lacks independence from, and is beholden to, Bryant Riley. [REDACTED]

[REDACTED].¹⁸⁸ Sheldon and his wife Gina Sheldon are listed as Bryant Riley's friends on his Facebook profile.

480. This relationship extends back to at least June 5, 2007, when Sheldon began serving on Aldila's board of directors alongside Bryant Riley.¹⁸⁹ The two continued to serve on Aldila's board until they each tendered their resignations as directors on February 23, 2010.¹⁹⁰ Sheldon continued his professional relationship with Bryant Riley in July 2017 when he was appointed as a member of B. Riley's Board. For the 2023 fiscal year, Sheldon received \$139,085 in compensation from the Company, which included \$58,125 in fees earned or paid in cash, \$75,000 in stock awards, and \$5,960 in all other

¹⁸⁸ [REDACTED].

¹⁸⁹ Aldila, Inc., Current Report (Attachment to Form 8-K) (June 5, 2007), <https://www.sec.gov/Archives/edgar/data/902272/000110465907045460/a07-160471ex99d1.htm>.

¹⁹⁰ Aldila, Inc., Current Report (Form 8-K) (Feb. 25, 2010), <https://www.sec.gov/Archives/edgar/data/902272/000110465910009769/a10-456018k.htm>.

compensation.¹⁹¹ From 2020 through 2023, Sheldon received \$627,812 in total compensation for serving as an outside B. Riley Board member. Sheldon, therefore, could not independently consider suing Bryant Riley for his breaches of fiduciary duties.

481. Sheldon, along with D'Agosino and Antin, is a member of B. Riley's Compensation Committee. Notwithstanding the disastrous FRG Take-Private Transaction and public revelations of Kahn's associations with Prophecy and the \$64.6 million Investment Advisory Agreement, and \$200.1 loan commitment, the Compensation Committee recommended in 2024 that for 2023 Bryant Riley and Kelleher receive essentially the same pay package, including discretionary payments, as in the prior years.

482. Sheldon allowed Bryant Riley to dominate the Board and dictate the terms of the Take-Private Transaction.

Antin

483. There is reasonable doubt that Antin is capable of impartially considering a demand because he lacks independence from, or is beholden to, Bryant Riley. Upon information and belief, Bryant Riley and Antin have had a

¹⁹¹ B. Riley Financial, Inc., Annual Report Amendment No. 1 at 20 (Form 10-K/A) (Apr. 29, 2024), https://www.sec.gov/ix?doc=/Archives/edgar/data/1464790/000121390024037190/ea0204798-10ka1_briley.htm.

relationship since at least 1997. Antin co-founded the animal healthcare company VCA in 1986 and served as Chief Executive Officer, President, and Chairman of the board until the company was privately acquired in September 2017.¹⁹² According to an interview with the Los Angeles Business Journal, Bryant Riley purchased large amounts of VCA shares since at least 1997.¹⁹³ Robert Antin is listed as Bryant Riley’s friend on his Facebook profile. Antin established an irrevocable trust that held shares of B. Riley common stock for the benefit of his children, the Robert Antin Children Irrevocable Trust (the “Antin Trust”). Bryant Riley served as the sole trustee of the Antin Trust with voting and dispositive power over the shares until the shares of B. Riley common stock were transferred to a different entity.¹⁹⁴

484. Moreover, Antin is unlikely to assert a claim against Bryant Riley, who through his stock ownership, executive position, years of service, and dominant personality, controls the B. Riley Board.

¹⁹² B. Riley Financial, Inc., Board of Directors, <https://ir.brileyfin.com/board-of-directors>.

¹⁹³ *Added Up*, LOS ANGELES BUSINESS JOURNAL (June 13, 2010), <https://labusinessjournal.com/finance/added/#:~:text=My%20first%20big%20stock%2C%20which,that%20worked%20out%20pretty%20well>.

¹⁹⁴ B. Riley Financial, Inc., Beneficial Ownership Report (Schedule 13D Amendment) (Aug. 15, 2024), https://www.sec.gov/Archives/edgar/data/1207269/000121390024069983/ea0211633-13da1riley_briley.htm.

485. Antin, along with Sheldon and D’Agostino, is a member of B. Riley’s Compensation Committee. Notwithstanding the disastrous FRG Take-Private Transaction and public revelations of Kahn’s associations with Prophecy and the \$64.6 million Investment Advisory Agreement, and \$200.1 loan commitment, the Compensation Committee recommended in 2024 that for 2023 Bryant Riley and Kelleher receive essentially the same pay package, including discretionary payments, as in the prior years.

486. Antin, along with Walters and LaBran, is a member of B. Riley’s ESG Committee, which “evaluates and recommends to the Board of Directors director nominees for each election of directors.”¹⁹⁵ According to B. Riley’s May 10, 2024 Proxy Statement (at 9), when evaluating and recommending candidates for B. Riley’s Board, the ESG Committee considers the following factors:

(i) demonstrated personal integrity and moral character; (ii) willingness to apply sound and independent business judgment for the long-term interests of the stockholders; (iii) relevant business or professional experience, technical expertise or specialized skills; (iv) personality traits and background that appear to fit with those of the other directors to produce a collegial and cooperative Board responsive to the

¹⁹⁵ B. Riley Financial, Inc., Definitive Proxy Statement at 9 (Schedule 14A) (May, 10, 2024), <https://www.sec.gov/ix?doc=/Archives/edgar/data/1464790/000121390024041725/ea0205510-01.htm>.

Company's needs; and (v) ability to commit sufficient time to effectively carry out the substantial duties of a director.¹⁹⁶

487. There are likely thousands of persons qualified to sit on B. Riley's Board. However, notwithstanding the stated objectivity and independence with which the ESG Committee evaluates and recommends members to the Board, it consistently nominates friends and business associates of Bryant Riley such as D'Agostino, Paulson, and Sheldon to the Board, further demonstrating that Bryant Riley in fact controls the Board's and ESG Committee's activities.

488. Antin allowed Bryant Riley to dominate the Board and dictate the terms of the Take-Private Transaction.

COUNT I

Derivative Count for Breach of Fiduciary Duty Against Defendant Bryant Riley

489. Plaintiff repeats and realleges all previous allegations as if they had been set forth in full herein.

490. Defendant Bryant Riley, as Board Chairperson and co-CEO, and controlling stockholder of B. Riley, owes the Company and its stockholders the fiduciary duties of due care, loyalty and good faith.

491. Defendant Bryant Riley breached his fiduciary duties by, among other things, exploiting his control over the Company and causing B. Riley to (i)

¹⁹⁶ *Id.*

enter into the FRG Take-Private Transaction, which brought B. Riley's total equity investment in Freedom VCM to \$281 million, (ii) allow Vintage Capital to maintain a \$201 million loan with FRG shares pledged as collateral, and (iii) provide a \$108 million loan to Conn's in December 2023, in connection with Conn's acquisition of Badcock (an FRG company) despite knowledge of all of the foregoing.

492. Defendant Bryant Riley breached his fiduciary duties by, among other things, recklessly, knowingly and in bad faith facilitating the FRG Take-Private Transaction in order to hide B. Riley's balance sheet risk and by spearheading inadequate due diligence to that effect.

493. Moreover, Defendant Bryant Riley breached his fiduciary duties by knowingly or recklessly participating in making and/or causing the Company to make the materially false and misleading statements alleged herein.

494. Defendant Bryant Riley's breaches of fiduciary duties have harmed the Company. In addition to waste in the hundreds of millions of dollars for long-term economic entanglement with Kahn, B. Riley is now exposed to a securities class action and government investigations for the same misconduct.

COUNT II

Derivative Count for Breach of Fiduciary Duty Against Defendant Kelleher

495. Plaintiff repeats and realleges all previous allegations as if they had been set forth in full herein.

496. Defendant Kelleher, as a director and Co-CEO, owes the Company and its stockholders the fiduciary duties of due care, loyalty and good faith.

497. Defendant Kelleher breached his fiduciary duties by (i) approving the FRG Take-Private Transaction, which brought B. Riley's total equity investment in Freedom VCM to \$281 million, (ii) allowing Vintage Capital to maintain a \$201 million loan with FRG shares pledged as collateral, (iii) failing to take corrective action against Bryant Riley for the FRG Take-Private Transaction and related transactions, (iv) wasting corporate assets by approving improper compensation and bonuses to Bryant Riley, and (v) allowing B. Riley to provide a \$108 million loan to Conn's in December 2023, in connection with Conn's acquisition of Badcock (an FRG company) despite knowledge of all of the foregoing.

498. Defendant Kelleher, breached his fiduciary duties by acquiescing to Bryant Riley, who knowingly and in bad faith facilitated the FRG Take-Private Transaction in order to hide B. Riley's balance sheet risk and who spearheaded inadequate due diligence to that effect.

499. Moreover, Defendant Kelleher breached his fiduciary duties by knowingly or recklessly participating in making and/or causing the Company to make the materially false and misleading statements alleged herein.

500. Defendant Kelleher's breaches of fiduciary duties have harmed the Company. In addition to waste in the hundreds of millions of dollars for long-term economic entanglement with Kahn, B. Riley is now exposed to a securities class action for the same misconduct.

COUNT III

Derivative Count for Breach of Fiduciary Duty Against Defendants Paulson, D'Agostino, and LaBran

501. Plaintiff repeats and realleges all previous allegations as if they had been set forth in full herein.

502. Defendants Paulson, D'Agostino, and LaBran, as directors of B. Riley and as members of B. Riley's Audit Committee, owe B. Riley and its stockholders the fiduciary duties of due care, loyalty, and good faith.

503. Defendants Paulson, D'Agostino, and LaBran breached their fiduciary duties for the misconduct alleged herein, including, but not limited to (i) approving the FRG Take-Private Transaction, which brought B. Riley's total equity investment in Freedom VCM to \$281 million, (ii) allowing Vintage Capital to maintain a \$201 million loan with FRG shares pledged as collateral, (iii) failing to take corrective action against Bryant Riley for the FRG Take-

Private Transaction and related transactions, (iv) wasting corporate assets by approving improper compensation and bonuses to Bryant Riley and Kelleher, and (v) allowing B. Riley to provide a \$108 million loan to Conn's in December 2023, in connection with Conn's acquisition of Badcock (an FRG company) despite knowledge of all of the foregoing.

504. Defendants Paulson, D'Agostino, and LaBran failed to conduct due diligence with regard to these transactions, failed to apprise themselves of the ongoing risks, failed to exercise appropriate oversight of Bryant Riley, and instead turned a blind eye when confronted with red flags unambiguously demonstrating the need for Board-level action to ensure the Company's interests were protected. These breaches constituted violations of the duties of the members of the Audit Committee under its charter.

505. Moreover, as alleged herein, Defendant Paulson breached his fiduciary duty in connection with [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Despite being duty-bound to exercise appropriate oversight, conduct adequate due diligence, and apprise himself of the risks involved, Defendant Paulson [REDACTED]

[REDACTED], despite Defendant Paulson's own independent duty of oversight.

506. Defendant D'Agostino in particular acted as Chair of B. Riley's Compensation Committee and was instrumental in recommending Bryant Riley's and Kelleher's 2023 compensation to the Board.

507. As a result of Defendants Paulson, D'Agostino, and LaBran's breaches of fiduciary duties, B. Riley has suffered significant harm in an amount to be proven at trial.

COUNT IV

Derivative Count for Breach of Fiduciary Duty Against Defendants Antin, Brandt, Sheldon, and Walters

508. Plaintiff repeats and realleges all previous allegations as if they had been set forth in full herein.

509. By virtue of their positions as B. Riley directors, Defendants Antin, Brandt, Sheldon, and Walters owed fiduciary duties of care, loyalty, and good faith to the Company and B. Riley stockholders.

510. Defendants Antin, Brandt, Sheldon, and Walters breached their fiduciary duties for the misconduct alleged herein, including, but not limited to (i) approving the FRG Take-Private Transaction, which brought B. Riley's total equity investment in Freedom VCM to \$281 million, (ii) allowing Vintage Capital to maintain a \$201 million loan with FRG shares pledged as collateral,

(iii) failing to take corrective action against Bryant Riley for the FRG Take-Private Transaction and related transactions, (iv) wasting corporate assets by approving improper compensation and bonuses to Bryant Riley and Kelleher, and (v) allowing B. Riley to provide a \$108 million loan to Conn's in December 2023, in connection with Conn's acquisition of Badcock (an FRG company) despite knowledge of all of the foregoing.

511. Defendants Antin and Sheldon in particular served on B. Riley's Compensation Committee and recommended Bryant Riley's and Kelleher's 2023 compensation to the Board.

512. As a result of the Defendants Antin, Brandt, Sheldon, and Walters' breaches of fiduciary duties, B. Riley has suffered significant harm in an amount to be proven at trial.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

(a) Declaring that this action is properly maintainable as a derivative action;

(b) Declaring that a demand upon the Demand Board would be futile and is therefore excused;

(c) Declaring that Defendants breached their fiduciary duties to B. Riley;

(d) Awarding damages in an amount to be proven at trial, together with pre- and post-judgment interest;

(e) Awarding Plaintiff the costs and disbursements of prosecuting this action, including reasonable attorneys' fees and expenses; and

(f) Awarding such other and further relief as the Court deems just and proper.

Dated: February 14, 2025

COOCH AND TAYLOR, P.A.

PUBLIC VERSION

FILED: February 20, 2025

OF COUNSEL (*pro hac vice motions forthcoming*):

WOLF POPPER LLP
Robert C. Finkel
Adam J. Blander
Justyn J. Millamena
845 Third Avenue, 12th Floor
New York, NY 10022
(212) 759-4600
rfinkel@wolfpopper.com
ablender@wolfpopper.com
jmillamena@wolfpopper.com

By: /s/ Carmella P. Keener
Carmella P. Keener (No. 2810)
Brandywine Building
1000 N. West St., Suite 1500
Wilmington, DE 19801
(302) 984-3816
ckeener@coochtaylor.com

Counsel for Plaintiff