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Case No. 2023-0921-

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

GILLES BEAUCHEMIN, directly on behalf of himself and all other similarly situated stockholders of Sculptor Capital Management Inc., Plaintiff, v. MARCY ENGEL, BHARATH SRIKRISHNAN, CHARMEL MAYNARD, DAVID BONANNO, JAMES LEVIN, WAYNE COHEN and SCULPTOR CAPITAL MANAGEMENT, INC., Defendants.	C.A. No. 2023-____-___

VERIFIED CLASS ACTION COMPLAINT FOR INJUNCTIVE RELIEF

Plaintiff Gilles Beauchemin, a stockholder of Sculptor Capital Management, Inc. ("Sculptor" or the "Company"), on behalf of himself and all other similarly situated stockholders of Sculptor, respectfully submits this Verified Class Action Complaint (the "Complaint") against the Sculptor board of directors (the "Board") for breach of fiduciary duties. The Board is comprised of defendants Marcy Engel, Bharath Srikrishnan, Charmel Maynard, David Bonanno, James Levin, and Wayne Cohen (each, a "Director"). The allegations in the Complaint are based on Plaintiff's

knowledge as to himself and on information and belief, including the investigation of counsel and review of publicly available information, as to all other matters.

INTRODUCTION

1. The Board has determined to sell the Company for cash and has entered into a merger agreement with Rithm Capital Corp. ("Rithm") to accomplish a sale at $11.15 per share of Company Class A Common Stock. But the directors are forsaking their fiduciary duties in this context. In breach of those duties, they are maintaining improper barriers to stockholders receiving the highest value for their stock in this end-stage transaction. In particular, the Board is maintaining standstill obligations on competing bidders through non-disclosure agreements ("NDAs") that prevent a competing bidder offering approximately 15% greater consideration from communicating and presenting its competing bid to the market and stockholders.

2. To some degree, the Board appears to recognize the problem. It belatedly released the competing bidders from the standstill obligations, but only in a limited way. On August 21, 2023, the Board communicated to competing bidders that it was releasing them from the part of the standstill preventing private presentation of uninvited bids to the Board.

3. On August 21, 2023, a consortium of bidders (the "Consortium"), led by Bidder J whose prior involvement in the bidding process included offering bids *higher* than Rithm's, submitted a bid of $12.76 per share of Company Class A

Common Stock to the Board. On August 30, 2023, the Board disclosed its receipt of the $12.76 bid and its purported reasons for rejecting the higher bid. These reasons include the Board's purported view of risks around obtaining client consents, debt financing and incentives to close the transaction due to damages caps in the event of breach. The Board's purported reasons for rejecting the Consortium's Bidder J-led bid led have evolved in comparison to the Board's stated reasons for rejecting Bidder J's earlier bids. The evolution reflects that Bidder J has been responding to the Board's feedback to make its bid more attractive, but the Board has moved the goalposts and continues to reject the higher bid despite Bidder J's improvements.

4. Meanwhile, the Board has not released Bidder J or the Consortium from the standstill restrictions that prevent Bidder J from publicly responding to the Board's characterization of its bid and communicating directly with stockholders or directly presenting a competing bid. To comply with its fiduciary duties, the Board must allow free competition for the highest cash price for the Company's stockholders. The stockholders' need for compliance is acute and exigent while a bid almost 15% higher is on the table. Accordingly, plaintiff seeks expedited relief and an injunction preventing the Board from continuing to enforce improper standstill restrictions against the Consortium, Bidder J and any other potential bidders for the Company.

THE PARTIES AND RELEVANT NON-PARTIES

5. Plaintiff is a current Sculptor stockholder and has continuously held shares of Sculptor common stock at all relevant times.

6. Sculptor is a global alternative asset manager and a specialist in opportunistic investing. Sculptor invests across credit, real estate and multi-strategy platforms in all major geographies. As of August 1, 2023, Sculptor had approximately $34.0 billion in assets under management. Sculptor is named as a party because the Company is a necessary party for the relief Plaintiff seeks. Plaintiff does not bring a claim against the Company.

7. Defendant James Levin joined Sculptor in 2006 and has been a Director since June 2020. He has served as the Company's Chief Executive Officer since April 1, 2021 and Chief Investment Officer since February 14, 2017.

8. Defendant Wayne Cohen joined Sculptor in 2005 and has been a Director since April 2021. He has served as the Company's President and Chief Operating Officer since 2009.

9. Defendant Marcy Engel has been a Director since June 2018 and has been chairperson of the Board since February 2021.

10. Defendant Charmel Maynard has been a Director since November 2021.

11. Defendant Bharath Srikrishnan has been a Director since November 2020.

12. Defendant David Bonanno has been a Director since March 2021.

13. Non-party Daniel Och was the founder, chairman and former CEO of Och-Ziff Capital Management, a predecessor of the Company. Och and other former executive managing directors of the Company, Harold Kelly, Richard Lyon, James O'Connor and Zoltan Varga, are referred to by the Company and in this Complaint as the "Former EMD Group."

14. "Bidder J" has been widely reported to be Boaz Weinstein and the "Consortium" is reportedly led by Weinstein and includes Marc Lasry, Bill Ackman and Jeff Yass. *See e.g.,* Hema Parmer and Katherine Burton, *Sculptor Says Weinstein Raised Offer, Still Prefers Rithm*, Bloomberg (Aug. 30, 2023).

15. Boaz Weinstein is the founder and chief investment officer of Saba Capital Management LP, an investment firm with approximately $9.7 billion in discretionary assets under management.

16. Marc Lasry is a founder and chief executive officer of Avenue Capital Group, an investment firm with approximately $7.2 billion in discretionary assets under management.

17. Bill Ackman is a founder and chief executive officer of Pershing Square Capital Management, L.P., an investment firm with approximately $16 billion in discretionary assets under management.

18. Jeff Yass is a founder of Susquehanna International Group, one of the largest proprietary trading firms in the world.

SUBSTANTIVE ALLEGATIONS

I. Background of Sculptor and Its Leadership

19. Sculptor was founded as Och-Ziff Capital Management LLC by Daniel Och, who was also its CEO. In 2016, Och and the Company settled an investigation under the Foreign Corrupt Practices Act in connection with which Och and the Company, respectively, paid disgorgement, fines and penalties of approximately $2.2 million and $412 million.

20. Och resigned as CEO effective February 5, 2018. He continued as chairman of the Board until his resignation from that position on March 31, 2019.

21. Och's departure from the Company was not smooth. Before his departure, the Company's chief investment officer Defendant James Levin was considered Och's protégé, but this relationship soured. Since his departure, Och has

been a frequent critic of Levin and Levin's compensation package, which exceeded $145 million in 2021.[1]

22. For example, on October 4, 2022, Och sent the Board a letter expressing concern that "especially over the past two years, [] the Company's board has failed to discharge its duties by, among other things, enabling and enriching a management team that is more focused on its own compensation than the Company's future."[2] The October 2022 letter asserted that Och had been contacted by "several third parties who have asked us whether the Company might be open to a strategic transaction that would not involve current senior management continuing to run the Company."[3] Och also stated that he had "reason to believe that one or more representatives of senior management has reached out to one or more third parties about a potential transaction."[4]

II. Special Committee Is Formed to Field an Offer that Never Comes

23. On May 23, 2022, months before Och sent his letter to the Board in October 2022, the Company had formed a special committee, comprised of

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[1] Ex. 29 to Och SC 13D/A (October 4, 2022) available at https://www.sec.gov/Archives/edgar/data/1403256/000119312523218018/d509648dex9929.htm.

[2] Ex. 25 to Och SC 13D/A (October 4, 2022) available at https://www.sec.gov/Archives/edgar/data/1403256/000119312522257217/d382105dex25.htm.

[3] *Id.*

[4] *Id.*

Defendants Engel and Maynard (the "Special Committee"). The Special Committee was formed in response to an overture from Bidder A in March 2022 that led to an NDA between Bidder A and the Company. The NDA between Bidder A and the Company did not include a standstill provision.

24. The mandate of the Special Committee was to conduct a review of a potential transaction with Bidder A, evaluate strategic alternatives and take all other actions relating to such a potential transaction and any alternatives as the Special Committee may deem necessary. The Special Committee retained Latham & Watkins as its counsel.

25. While Bidder A sent its proposal to the Board, the Special Committee did not engage with Bidder A directly and instead instructed the Company's management "to engage with Bidder A to determine whether a proposal regarding a potential transaction would be forthcoming."[5] While ceding engagement to the Company's management, the Special Committee also purported to instruct management "that any discussion or negotiation regarding the terms of such a proposal must be led by the Special Committee."[6]

26. On June 13, 2022, the Special Committee discussed retaining a financial advisor. The Special Committee did not retain a financial advisor of its own

[5] Ex. A, Sculptor Capital Management, Inc., Preliminary Proxy Statement, Schedule 14A (August 21, 2023) (the "Proxy Statement") at 37.

[6] *Id.*

until October 2022. Meanwhile, just a week after the discussion about retaining a financial advisor for the Special Committee, the Special Committee authorized the Company and management to retain J.P. Morgan as the Company's financial advisor.

27. As the process unfolded, J.P. Morgan assumed the primary role dealing with potential bidders. J.P. Morgan would not provide the Board a memorandum disclosing its relationships with bidders until almost a year later, on June 10, 2023. Those relationships include fees of approximately $40 million paid by Rithm in the previous two years. The Company will also pay J.P. Morgan an estimated fee of $17.5 million in connection with the transaction with Rithm, $5 million of which is currently payable, with the remainder payable upon consummation.

28. The communications with Bidder A—first, that Bidder A expected to make a proposal, and second, that Bidder A would not make a proposal—were received by and filtered through the Company's management. According to management, Och and the Former EMD Group caused Bidder A to refrain from making a proposal.

29. On August 24, 2022, while Bidder A was apparently considering making a proposal, the Former EMD Group filed a Section 220 action, C.A. No. 2022-0748-SG. The Section 220 action stemmed from a demand for books and records made on April 28, 2022. According to management, Bidder A cited Och's

Section 220 action and his Schedule 13D filings (which were not made until October 2022) in not making a bid.

30. In October 2022, management also told the Special Committee the Former EMD Group was to blame for a myriad of other problems at the Company, including investor redemptions, investors declining to commit additional capital, and purportedly risk of investment professionals leaving the Company. The Proxy Statement does not note the impact Sculptor's poor performance may have had on such issues, but as the Former EMD Group noted in its Section 220 complaint, "Sculptor's main fund returned just 5%, running 10% behind its competitors, and ranking 'near the bottom of the pack compared with its multistrategy peers.'" Compl. C.A. No. 2022-0748-SG at ¶ 6. While Sculptor was underperforming and had an equity value of significantly less than $1 billion, Defendant Levin was being paid more than $100 million in annual compensation.

31. In October 2022, the Special Committee determined that it would initiate a process to engage with third parties that may be interested in a potential acquisition of the Company. The Proxy Statement states that the impetus for taking this initiative was to finally resolve the disputes with the Former EMD Group.

III. A Wider Process Commences

32. On October 12, 2022, Bidder B and Bidder C each separately contacted J.P. Morgan to express interest in a potential transaction with the Company. The

Special Committee authorized J.P. Morgan to engage in discussions with Bidder B and Bidder C.

33. In October 2022, the Special Committee determined to retain PJT Partners as its financial advisor. Nevertheless, the Company's advisor, J.P. Morgan, continued to lead the process. On October 31, 2022, J.P. Morgan proposed a list of thirty-one potential acquirors to contact. PJT Partners contributed one additional potential counterparty on November 2, 2022.

34. On November 13, 2022, the Special Committee received a preliminary offer from Bidder B to acquire 100% of the equity of the Company for an equity valuation of $800 million.

35. On November 14, 2022, Rithm entered into an NDA with the Company.

36. Meanwhile, the Company's litigation counsel had been negotiating with the Former EMD Group regarding its Section 220 action and the Company entered into a settlement agreement with the Former EMD Group on November 17, 2022 (the "Settlement Agreement"). In connection with the Settlement Agreement, the Company announced on November 18, 2022 that it had formed the Special Committee to explore potential strategic alternatives and retained legal and financial advisors.

37. The Proxy Statement states that on November 17, 2022, the Special Committee met and received an update from the financial advisors in which it was

reported that 70 potential acquirors had been in contact with J.P. Morgan or PJT Partners following the November 18, 2022 press release regarding the Settlement Agreement and formation of the Special Committee. This appears to be a mistake in the Proxy Statement regarding the exact sequencing of the meeting relative to the press release issuance.

38. The Proxy Statement states that with respect to the 70 potential acquirors, 25 had signed NDAs. Twenty-four of the NDAs contained standstill provisions and 22 contained "don't ask/don't waive" standstill provisions, five of which fell away upon announcement of the Merger Agreement. The Board waived one aspect of the "don't ask/don't waive" provisions on August 18, 2023, approximately one month after announcing the transaction with Rithm. The Board communicated that partial waiver to the counterparties on August 21, 2023, but otherwise left the standstills intact. Significantly, the waiver is partial in that it does not waive the standstill altogether, but instead only permits the potential acquirors to submit confidential proposals to the Board. The partial waiver does not permit potential acquirors to communicate publicly with stockholders regarding potential bids for the Company that compete with the signed transaction with Rithm.

39. On November 22, 2022, the Company and Bidder D entered into an NDA.

IV. The Special Committee Receives Indications of Interest but Treats Bidder J Differently

40. On November 29, 2022, the deadline set for preliminary indications of interest in the first-round process letter sent to interested bidders, J.P. Morgan and PJT Partners received a number of indications of interest. Bidder E proposed an equity valuation of $574 million for 100% of the equity of the Company; Rithm proposed $700 million; and Bidder C proposed $750 million. Bidder F proposed a transaction that involved selling the Company's collateralized loan obligation ("CLO") business and did not submit a bid with a cash value for 100% of the equity of the Company.

41. Additional competitive bids arrived in the ensuing days. On December 1, 2022, Bidder D proposed a range of values from $640 million to $830 million for 100% of the Company. On December 2, 2022, Bidder G proposed $800 million for 100% of the Company. On December 4, 2022, Bidder H proposed an enterprise valuation between $705 million and $800 million for 100% of the equity of the Company.

42. On December 19, 2022, Bidder J, the bidder publicly reported to be Boaz Weinstein, expressed interest in a potential transaction with the Company. On December 21, 2022, Bidder J signed an NDA with the Company. Since the Proxy Statement indicates that the only NDA without a standstill was the NDA with Bidder

A, it is reasonably inferable—if not entirely clear—that Bidder J's NDA contained a standstill.

43. On January 3, 2023, a second round process letter was distributed to Rithm, and Bidders B, C, D, G and H. The second round process letter included a draft merger agreement the bidders were asked to mark up. The second round process letter asked for bids by January 25, 2023.

44. The second round process letter and enclosed merger agreement were not distributed to Bidder J, the bidder with a currently substantially higher bid than Rithm.

45. On January 11, 2023, the Special Committee met and, acting on advice of its counsel as disclosed in the Proxy Statement, authorized "high-level conversations between the Company's management and potential acquirors" regarding "post-closing compensation philosophy." No price terms regarding the consideration to be paid to the Company's public stockholders had been agreed between the Special Committee and any bidders at this time.

46. On January 16, 2023, notwithstanding that it had not received a second round process letter, Bidder J submitted a proposal at a price of $11.00-12.00 per share of Class A Common Stock.

47. Three bids from the second round group arrived between January 25 and January 29. Rithm's bid was the lowest of the three and lower than Bidder J's

January 16 bid. On January 25, 2023, Bidder B proposed $11.50 per share of the Company's Class A Common Stock and Bidder D proposed $11.75-12.50. Rithm submitted a bid of $550 million, less than any of the other bids. Rithm's bid also excluded any liability to the Former EMD Group under a tax receivable agreement that provides for certain substantial payments (approximately $173.4 million) from the Company, which further reduced the headline price Rithm was offering.

48. On February 1, 2023, J.P. Morgan and PJT Partners discussed management compensation with Rithm. This discussion is characterized in the Proxy Statement as "preliminary high-level compensation philosophy." Following this discussion, Rithm's legal counsel sent a revised version of the issues list with respect to the draft merger agreement.

49. While other bidders remained in the running, Bidder D had provided a list of issues with the draft merger agreement, and no best and final offer had been requested by the Special Committee. The Proxy Statement states that by February 2, 2023, there was a "tentative agreement with Bidder D on price and material terms." With this purported agreement on price and material terms, the Special Committee apparently authorized the Company's management and Defendants Levin and Cohen to begin compensation discussions with Bidder D. On February 2, 2023, the Company's management and Bidder D discussed "compensation philosophy."

50. Also on February 2, 2023, the Special Committee met with its advisors and J.P. Morgan.[7] This meeting occurred roughly three weeks after the second round process letter had enclosed a draft merger agreement. But the Proxy Statement indicates that the draft circulated in January had not included a client consent condition: "Latham & Watkins discussed that the auction draft merger agreement *would* contain a condition to the buyer's obligation to consummate the transaction that Company clients representing a threshold amount of revenue run rate have provided their consent to the transaction."[8] (emphasis added). Including such a provision is "customary in asset management transactions in which the potential acquiror is not proposing to materially change the investment strategy or team of key investment professionals at the Company."[9] The Special Committee, with input from Company management and its counsel, set the threshold for the client consent condition at 80%. In other words, a buyer could decline to close if clients representing less than 80% of the revenue run rate did not provide their consent to the transaction. These terms were shared with potential acquirors on February 10, 2023.

[7] J.P. Morgan attended most of the Special Committee's meetings that are described in the Proxy Statement despite being retained by the Company and not answering directly to the Special Committee.

[8] Proxy Statement at 47.

[9] *Id.*

V. Bidder J Continues to Express Interest and the Special Committee Belatedly Provides a Process Letter; Exclusivity Provided to Bidder D

51. On February 7, 2023, the Company's management with J.P. Morgan and PJT Partners, but not the Special Committee, met with Bidder J, the Weinstein-affiliated bidder, "including its founder and one of its partners … to provide an overview of the Company and discuss investment strategies."[10]

52. On February 8, 2023, the Special Committee finally instructed J.P. Morgan, the Company's banker, to provide Bidder J with a bid process letter that requested a bid as soon as possible along with a list of high priority diligence requests.

53. On February 8, 2023, the Company's management provided the Special Committee with projections under two scenarios, one in which a transaction occurred and the other in which a transaction did not occur. In the scenario with no transaction, the Company's management presented a negative outlook and noted that "the Company was experiencing elevated redemption requests and negative impact on the Company's ability to raise new capital" which Company management again characterized as being "primarily" the fault of the Former EMD Group. Sculptor management's poor performance is not noted as a secondary or other factor.

[10] *Id.*

54. Purportedly a tentative agreement on price and terms had been reached with Bidder D before the February 2, 2023 discussion about management compensation, but that was not actually true. The conclusion that an agreement had been reached appears to have been reverse-engineered to allow the management compensation discussion to happen after such purported tentative agreement. In reality, the terms and conditions were still very much in flux. On February 12, 2023, Bidder D submitted a revised proposal at a transaction price of $11.80, a revised issues list with respect to the merger agreement and a markup of the client consent condition, and a request for further discussions with Company management regarding post-closing compensation.

55. On February 15, 2023, Bidder D increased its price to $12.00 per share in response to discussions with J.P. Morgan and requested exclusivity. Meanwhile, Rithm was expected to submit a revised offer of $10.00 per share that included assumption of the tax receivable agreement liabilities. Bidder J submitted a bid of $700 million, but J.P. Morgan cast this proposal in a negative light, noting that Bidder J did not have committed debt or equity financing and was behind with respect to a markup of a merger agreement (having only been provided a process letter by J.P. Morgan a week earlier).

56. The Special Committee authorized the Company to enter into an exclusivity agreement with Bidder D at this time. Again, while final price terms had

not been set with Bidder D, the Special Committee gave an even more liberal license to Company management to have compensation discussions with Bidder D following the execution of an exclusivity agreement.

57. On February 18, 2023, the Company and Bidder D entered into an exclusivity agreement.

58. On the same day, Bidder J, who had only been provided a process letter ten days earlier on February 8, submitted a proposal offering $12.00-$14.00 per share of Company Class A Common Stock, a proposal to which the Special Committee could not respond pursuant to the exclusivity agreement with Bidder D. Bidder J reached out again on February 21 to provide a further update, which also had to be ignored.

VI. The Exclusivity Agreement with Bidder D Breaks Down and the Process is Re-Opened but Rithm Is Favored while Bidder J Continues to Respond to the Purported Concerns with its Bid

59. During the remainder of February, March and April 2023, the Special Committee and its advisors, J.P. Morgan, Company management, Bidder D and the Former EMD Group discussed issues relating to the Former EMD Group's support or lack of support for a transaction with Bidder D and whether such support was critical to Bidder D proceeding with the transaction. In early May 2023, after these discussions did not produce agreement among the constituencies, Bidder D stopped responding to outreach from the Special Committee. On May 11, 2023, the Special

Committee authorized the Company to terminate the exclusivity agreement with Bidder D.

60. On May 13, 2023, the Special Committee authorized Company management to share updated projections with Rithm, which management did on May 15, 2023. The Proxy Statement does not indicate whether or when these projections were shared with Bidder J.

61. On May 16, 2023, Rithm, Bidder H and Bidder J were provided with an updated merger agreement.

62. On May 24, 2023, Rithm proposed a transaction at $11.00 per share of Company Class A Common Stock, which was updated the next day to also indicate that Rithm would require Defendant Levin and other key executives to enter into new employment agreements concurrently with the merger agreement and later clarified to identify Defendant Levin as the only executive whose employment agreement would be required.

63. On June 6, 2023, Bidder J proposed a transaction at $11.00 per share of Company Class A Common Stock that addressed the purported shortcomings with its previous proposal that J.P. Morgan had identified. The updated proposal "provided details regarding Bidder J's expected sources of financing to support the payment of consideration in its proposal" but "did not provide evidence of

commitments with respect to such financing."[11] Bidder J further asked to co-bid with Bidder H, a party that had interest in buying the Company's CLO business, and asked to speak with the Former EMD Group. The Special Committee allowed the co-bid, but did not allow Bidder J to speak with the Former EMD Group.

64. On June 7, 2023, Rithm asked to speak with Defendant Levin regarding his compensation.

65. On June 11, 2023, the Special Committee met and discussed that Rithm had conditionally agreed to increase its proposed price to $12.00 per share of Company Class A Common Stock, subject to the accuracy of its assumptions regarding how much it would have to pay in employee compensation. The Special Committee then authorized Rithm and Defendant Levin to fully negotiate Levin's employment and compensation package. Ultimately, Rithm's offer to the public stockholders was reduced after the further compensation-related discussions with Defendant Levin.

66. Also on June 11, 2023, J.P. Morgan requested that Bidder J provide a markup of the draft merger agreement, another purported shortcoming of Bidder J's proposal. Bidder J provided the markup three days later on June 14, 2023. At a meeting on June 16, 2023, Bidder J's markup and bid in general were cast in a negative light, purportedly because, in addition to purported issues with the

[11] Proxy Statement at 55.

creditworthiness of the financing sources and amount the Company could collect upon a breach, "Bidder J had indicated its intent to not have Mr. Levin (considered a 'key man' under certain client arrangements) continue in a long-term role at the Company."[12] Since Defendant Levin would not be retained, the Special Committee discussed that his non-retention would make it more difficult to obtain client consents and close the deal. Thus, the fact that Bidder J did not plan to retain Defendant Levin was, for the first time, identified as a risk to closing. In fact, the first process letter had expressly "specified that interested parties would not be required to retain any Company personnel following the closing of the potential transactions."[13]

67. On June 30, 2023, after its discussions with Defendant Levin and after holding out the prospect of $12.00 per share as long as its expectations about employee compensation were correct, Rithm revised its proposal back down to $11.00 per share.

68. On July 7, 2023, Bidder J proposed a purchase price of $11.50 per share and a lower (more favorable to the Company) client consent threshold of 75%. Nevertheless, the Special Committee was told by the Company's management that it "remained concerned about its ability to retain current employees, and the

[12] Proxy Statement at 58.
[13] *Id.* at 40.

likelihood of achieving the client [lower] consent condition" if the Special Committee pursued a transaction that did not contemplate management's continued employment at the Company. In contrast, the Company's management conveyed its optimism about facilitating a transaction with Rithm that maintained their positions: "the Company's management informed the Special Committee of the Company's management's expectation that the Company would likely be able to meet the client consent condition and other closing conditions contained in the draft merger agreement with Rithm."

69. On July 8, 2023, PJT Partners told Bidder J's financial advisor that the Special Committee wanted Bidder J to further revise its proposed client consent condition. The next day, Bidder J's legal counsel confirmed that Bidder J was willing to further revise the proposed client consent condition.

70. From July 10 to July 17, 2023, Bidder J negotiated with the Special Committee's advisors regarding the client consent provision, eventually proposing $11.00 per share of Company Class A Common Stock with an 80% client consent threshold for the Company's CLO business line, an 80% client consent threshold for the Real Estate line and potentially forgoing a client consent threshold for the Company's Multi-Strategy and Opportunistic Credit Funds business lines.

71. On July 22, 2023, Rithm made its final proposed offer of $11.15 per share of Company Class A Common Stock. The Special Committee met the next

day, July 23, 2023, and received a fairness opinion from PJT Partners regarding the Rithm transaction. With respect to the outstanding negotiations with Bidder J, the Special Committee concluded that Bidder J was not prepared to execute a definitive agreement and recommended entry into the merger agreement with Rithm. A Board meeting was held later that day at which J.P. Morgan rendered a fairness opinion on the Rithm transaction and the Board approved the transaction.

72. On July 24, 2023, the Company and Rithm announced the transaction.

VII. Post-Signing, the Special Committee Blocks Bidder J's Attempts to Provide Stockholders with More Consideration

73. On August 12, 2023, Bidder J, with the Consortium of some of the largest financiers in the world, made a substantially higher bid for the Company. The Consortium offered $12.25 per share of Company Class A Common Stock. This time, the Bidder J Consortium included binding equity commitment letters, one of the issues the Special Committee had raised with Bidder J's previous bid. But the Special Committee continued to find fault with the offer for approximately 10% more consideration than it had accepted from Rithm. The Proxy Statement describes the topping offer in negative terms and highlights its purported issues as compared to the Rithm deal. These purported issues move the goalposts from not having provided financing commitment letters (now provided), conditionality around obtaining client consents (even though these thresholds are substantially lower than the client consents in the Rithm transaction and, in addition, Bidder J's bid proposed

retaining Defendant Levin, which would allay the purported concerns around obtaining the consents), to questions regarding a sale of the Company's CLO business as part of the Consortium's bid and purported shortcomings in the ability of the Company to obtain damages upon breach of the merger agreement.

74. On August 13, 2023, the Special Committee met to discuss the Consortium's topping bid, but despite the bid's financial superiority and inclusion of some of the most serious investment management firms in the world, the Special Committee did not conclude that the topping bid was—or was reasonably expected to lead to—a Superior Proposal (as defined in the Rithm merger agreement). The Rithm merger agreement defines Superior Proposal to mean:

> a *bona fide* written Acquisition Proposal … (other than an Acquisition Proposal resulting from a material breach of Section 6.02) that the Company Board (acting upon the recommendation of the Special Committee) determines in good faith, after consultation with its outside financial and outside legal advisors, taking into account such factors as the Company Board considers to be appropriate, including the timing, likelihood of consummation, legal, financial, regulatory and other aspects of such Acquisition Proposal (including the sources and terms of any financing, financing market conditions and the existence of a financing contingency and the identity of the Person making the proposal) and any revisions to the terms of this Agreement made or proposed in writing by Parent, is reasonably likely to be consummated in accordance with its terms, and if consummated, would be more favorable, from a financial point of view, to the Company Stockholders (in their capacity as such) than the Transactions.

Annex A to Proxy Statement at A-18.

75. The Special Committee requested clarification from the Consortium regarding the funding commitments, the CLO business sale, a sources and uses table,

the scope of regulatory approvals that would be required, the rollover of certain equity, employee compensation matters, and governance following closing. On August 14, 2023, the Consortium provided the additional clarifications regarding sources and uses, estimates of total funds needed and its anticipated timeline, but did not have a binding commitment from Bidder H to fund $260 million in respect of the debt financing of the CLO sale.

76. On August 16, 2023, the Special Committee met and formulated additional purported issues with the Consortium topping bid. These include that the Consortium bid purportedly underestimates the amount of financing needed to consummate the transactions and whether the Consortium really intended to pay $12.25 per share of Company Class A Common Stock if it knew how much more financing would be required. Based on these and the previously formulated purported issues, the Special Committee declined to declare the Consortium's topping bid a Superior Proposal or reasonably likely to lead to a Superior Proposal under Section 6.02(c)(ii) of the merger agreement with Rithm.

77. On August 18, 2023, the Special Committee recommended, and the Board adopted, a resolution waiving all existing standstill provisions applicable to bidders, but only insofar as to allow potential bidders to submit confidential proposals to the Board or the Special Committee. The standstill provisions continue

to prevent potential bidders from communicating with stockholders directly to provide the bidder's view of the issues identified by the Board.

78. On August 21, 2023, this limited waiver was communicated to the NDA counterparties.

VIII. The Consortium Raises its Bid Again and Responds to the Special Committee's Moved Goalposts

79. Also on August 21, 2023, the Consortium submitted an increased offer to the Special Committee. The Consortium raised its bid to $12.76 per share of Company Class A Common Stock. But in once again declining to declare the topping bid of approximately 15% greater consideration a Superior Proposal, the Special Committee returned to issues to which the Consortium had already responded.

80. The Special Committee's headline objection revolved around the client consent condition. The Consortium's previous proposal already reduced the required client consents to substantially lower than Rithm's 85% consent requirement. In addition, while the Special Committee had purportedly been concerned that not retaining Defendant Levin would make it harder for the Consortium's bid to obtain the requisite consents, its previous proposal also addressed this concern by offering to retain Defendant Levin on terms substantially similar to the Rithm transaction.

81. The other issues the Special Committee identified with the Consortium's bid continued to be issues that it could negotiate with the Consortium, such as tightening financing commitments and increasing potentially recoverable

damages in the event of a breach of a merger agreement with the Consortium. Given that the Consortium has offered two topping bids—the most recent entailing approximately 15% greater consideration—the Board is breaching its fiduciary duties by continuing to block the topping bid and issuing disparaging disclosures regarding the Consortium's bid while holding the Consortium to a standstill that prevents it from responding, and not declaring the Consortium's bid a Superior Proposal or reasonably likely to lead to a Superior Proposal.

IX. The Special Committee and the Board Are Following a Pattern this Court Has Found Likely to Be a Breach of Fiduciary Duties

82. The Board and the Special Committee have determined to sell the Company for cash. This determination has important consequences as recognized in *In re Topps Co. Shareholders Litig.*, 926 A.2d 58 (Del. Ch. 2007), resting on *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173 (Del. 1986) and *Paramount Communications Inc. v. QVC Network Inc.*, 637 A.2d 34 (Del. 1994). The Board is "duty bound to pursue the highest price reasonably attainable." *Topps*, 926 A.2d at 89. In analogous circumstances, this Court has held that the refusal to release a viable bidder from a standstill agreement threatens irreparable injury to stockholders, justifying injunctive relief.

83. In *Topps*, the topping bid was approximately 10% greater than the existing bid. This was sufficient to preclude the incumbent buyer (Eisner) from having any "contractual basis to complain about a Topps board decision to treat

Upper Deck as an Excluded Party in light of Upper Deck's 10% higher bid price." *Topps*, 926 A.2d at 89. The decision to treat Upper Deck as an Excluded Party in *Topps* was equivalent to the Board or Special Committee in the Rithm deal concluding that the Consortium's bid is reasonably likely to lead to a Superior Proposal. ("[A]n 'Excluded Party' … was defined as a potential bidder that the board considered reasonably likely to make a Superior Proposal." *Topps*, 926 A.2d at 65.)

84. The Topps board made the same type of excuses as the Special Committee is making here as to why it would not declare the topping bid reasonably likely to lead to a Superior Proposal, including limits on liability in the event the transaction did not close (*Topps*, 926 A.2d at 89) and regulatory issues (*id*). The Court found the Topps board's decision not to deem Upper Deck's offer reasonably likely to lead to a Superior Proposal "highly questionable."

85. The *Topps* situation similarly involved a chief executive, like Defendant Levin, who had strong interests in maintaining his current position. In *Topps*, the CEO Shorin "was motivated to find a buyer who was friendly to him and would guarantee that Shorin and Silverstein, his son-in-law, would continue to play leading roles at Topps." *Id.* at 83. Levin has been paid almost $200 million in the past two years and has ample incentive to resist a transaction that will eventually oust him. Rithm has promised to retain Levin while the Consortium has indicated Levin's retention is less important. In fact, the Consortium's recent concession to

keep Levin after closing appears to have been intended to respond to the Special Committee identifying Levin's continuation as linked to deal certainty. The Special Committee, aligning with Levin's interests, effectively communicated that unless Levin keeps his job, the Special Committee will consider the deal subject to undue execution risk because it will risk obtaining client consents.

86. This purported concern about Levin continuing is an about-face from the Special Committee-approved first round process letter. In the first-round process letter, it was specifically noted that bidders would not have to keep any employees post-transaction. The Special Committee appears to have acceded to what amounts to a veiled threat from the Company's management: any deal that does not include continuation of Company management is subject to execution risk because investment professionals will leave and the Company's employees will find it "difficult" to obtain client consents for a deal that will not involve their continuing employment.

87. Finally, the *Topps* decision also discussed how a standstill can operate to unfairly prevent a bidder from communicating with stockholders. As the *Topps* Court noted, while they have legitimate uses, "standstills are also subject to abuse. Parties like Eisner often, as was done here, insist on a standstill as a deal protection. Furthermore, a standstill can be used by a target improperly to favor one bidder over

another, not for reasons consistent with stockholder interest, but because managers prefer one bidder for their own motives." *Topps*, 926 A.2d at 91.

88. Under the merger agreement with Rithm, the Board has improperly limited its ability to waive the full scope of potential bidders' NDAs, but a contractually viable path still exists to allow the Consortium to be released from its standstill and the Board must exercise its fiduciary duties to execute that path or otherwise achieve the same result.[14] The keystone to the viable path is the Board exercising its fiduciary duties to declare that the Consortium's bid is reasonably likely to lead to a Superior Proposal.

89. If the Board or Special Committee concludes pursuant to Section 6.02(c)(ii) of the Rithm merger agreement that a bid is, or is reasonably likely to lead to a Superior Proposal, then the Company may enter into an "Acceptable

[14] It is also a breach of fiduciary duty for the Board to have entered into a merger agreement that improperly limited its options to fully waive standstill agreements with potential bidders. Under Section 6.02(a)(ii)(C), the Board's ability to waive standstills is limited to waiving that part of the standstill that "prohibits a confidential proposal being made to the Company Board or the Special Committee" and then only if the Board or Special Committee has concluded that such limited waiver is required by its fiduciary duties. If the Board or Special Committee concludes that its fiduciary duties require a broader waiver, the merger agreement does not contractually permit such a broader waiver (except for the circumstance described above involving a bid reasonably likely to lead to a Superior Proposal) and the Board is stuck between breaching the contract or its fiduciary duties. Putting the Company in such a position is a breach of fiduciary duty.

Confidentiality Agreement" with the bidder. An Acceptable Confidentiality Agreement "need not include any 'standstill' or similar terms."

90. The Board and Special Committee are, like the directors in *Topps*, duty-bound to free the Consortium from its standstill so that the Consortium can fully present its bid to the Company and its stockholders. "If Upper Deck makes a tender at $10.75 per share on the conditions it has outlined, the Topps stockholders will still be free to reject that offer if the Topps board convinces them it is too conditional." *Topps*, 926 A.2d at 91. Refusing to release the Consortium from its standstill is a breach of fiduciary duty: "Given that the Topps board has decided to sell the company, and is not using the Standstill Agreement for any apparent legitimate purpose, its refusal to release Upper Deck justifies an injunction. Otherwise, the Topps stockholders may be foreclosed from ever considering Upper Deck's offer, a result that, under our precedent, threatens irreparable injury." *Id.* at 92.

91. Furthermore, the Board and Special Committee's continued enforcement of the standstill against the Consortium constitutes a breach of their fiduciary duties of disclosure. Again, as described in *Topps*:

> Topps went public with statements disparaging Upper Deck's bid and its seriousness but continues to use the Standstill to prevent Upper Deck from telling its own side of the story. The Topps board seeks to have the Topps stockholders accept Eisner's bid without hearing the full story. That is not a proper use of a standstill by a fiduciary given the circumstances presented here. Rather, it threatens the Topps stockholders with making an important decision on an uninformed basis, a threat that justifies injunctive relief.

Topps, 926 A.2d at 92.

92. Here the Board and Special Committee have provided stockholders a one-sided story, hiding behind the standstill with the Consortium, and leaving the stockholders being asked to accept the inferior Rithm acquisition "without hearing the full story" from the topping bidder.

CLASS ACTION ALLEGATIONS

93. Plaintiff brings this action pursuant to Rule 23 of the Rules of the Court of Chancery, individually and on behalf of all other holders of Sculptor common stock that have been or will be harmed or threatened with harm by the conduct described herein and their successors in interest (the "Class"). Excluded from the Class are the Defendants named herein and any person, firm, trust, corporation, or other entity affiliated with any of the Defendants and their successors in interest.

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

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

96. The class is so numerous that joinder of all members is impracticable. As of August 8, 2022 (the Company's last 10-Q filing), 24,996,767 shares of Company Class A Common Stock were issued and outstanding and on information and belief are owned beneficially by thousands of dispersed public stockholders.

97. The case presents questions of law and fact that are common to all class members and predominate over any questions affecting only individuals, including, but not limited to whether:

(a) The Board and Special Committee violated their fiduciary duties by declining to release the Consortium from its standstill obligations, with the effect that stockholders are losing the opportunity to accept a higher bid for the Company and the right to be fully informed regarding such competing bid; and

(b) Plaintiff and the other members of the Class would be irreparably damaged by the conduct alleged herein absent injunctive relief.

98. Defendants have acted on grounds generally applicable to the Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole. To the extent Defendants continue their unlawful conduct complained of herein, preliminary and final injunctive and equitable relief on behalf of the Class as a whole will be entirely appropriate.

99. Plaintiff is committed to prosecuting this Action and has retained competent counsel experienced in litigation of this nature. Plaintiff's claims are typical of the claims of the other members of the Class, and Plaintiff has the same

interests as the other members of the Class. Plaintiff is an adequate representative of the Class.

100. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class that would establish incompatible standards of conduct for Defendants or adjudications with respect to individual members of the Class that would, as a practical matter, be disjunctive of the interests of the other members not party to the adjudications or substantially impair or impede their ability to protect their interests.

CLAIMS FOR RELIEF

COUNT I

Direct Claim for Breach of Fiduciary Duty Against the Director Defendants

101. Plaintiff incorporates by reference all prior paragraphs as if fully set forth herein.

102. The Board and the Special Committee are breaching their fiduciary duties by blocking a superior proposal for the Company that values the Company's Class A Common Stock at approximately 15% more than the transaction with Rithm and not releasing the Consortium from their standstill obligations to present the competing bid to the market and/or stockholders.

103. Plaintiff and the other members of the Class will be irreparably harmed absent enjoinment of the Board and Special Committee from enforcing any standstill obligations against the Consortium.

104. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment and the following relief against Defendants:

A. A preliminary and permanent injunction enjoining the Board and Special Committee from enforcing the standstill restrictions described above against the Consortium, including but not limited to provisions that would limit the Consortium's ability to communicate with stockholders and/or other potential bidders;

B. A preliminary injunction enjoining the Board and Special Committee from consummating a transaction with Rithm until the Consortium is able to bid for the Company without restriction from the standstill obligations being imposed by the Board and Special Committee;

C. An order declaring and decreeing that this action is properly maintainable as a class action, and certifying Plaintiff as Class representative and Plaintiff’s counsel as class counsel;

D. A judgment declaring and decreeing that the Defendants have breached their fiduciary duties;

E. An award of reasonable attorneys' fees and costs; and

F. Such other and further relief as this Court may find just, proper and equitable.

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