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Case No. 2023-1043-

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

DANIEL S. OCH, HAROLD A. KELLY, JR., RICHARD LYON, JAMES O'CONNOR, and ZOLTAN VARGA, directly on behalf of themselves and all other similarly situated stockholders of Sculptor Capital Management Inc., *Plaintiffs*, v. MARCY ENGEL, BHARATH SRIKRISHNAN, CHARMEL MAYNARD, DAVID BONANNO, JAMES LEVIN, WAYNE COHEN, SCULPTOR CAPITAL MANAGEMENT, INC., SCULPTOR CAPITAL LP, SCULPTOR CAPITAL ADVISORS LP, SCULPTOR CAPITAL ADVISORS II LP, CALDER SUB, INC., CALDER SUB I, LP, CALDER SUB II, LP, CALDER SUB III, LP, and RITHM CAPITAL CORP., *Defendants*.	C.A. No. 2023-____-

VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF

Plaintiffs Daniel S. Och, Harold A. Kelly Jr., Richard Lyon, James O'Connor, and Zoltan Varga (collectively, the "Founders" or the "Plaintiffs"), on behalf of themselves and all other similarly situated stockholders of Sculptor, respectfully submit this Verified Complaint against the Board of Directors (the "Board") of Sculptor Capital Management, Inc. ("Sculptor" or the "Company"), the Special

Committee of the Board of Directors of Sculptor (the "Special Committee" or the "Committee") and Rithm Capital Corp. ("Rithm"). The Board is comprised of defendants Marcy Engel, Bharath Srikrishnan, Charmel Maynard, David Bonanno, James Levin, and Wayne Cohen (each, a "Director" and together the "Director Defendants"). The Special Committee is comprised of Marcy Engel and Charmel Maynard (together, the "Special Committee Members"). Upon knowledge as to themselves and their own actions, and upon information and belief as to all other matters, the Founders allege as follows:

NATURE OF MATTER

1. The Founders own more than 15% of the Company voting stock and number among the Company's original and largest stockholders. They bring this action to challenge the deal protection devices that the Board adopted to protect management's favored deal—Rithm's $12.00 offer—from a superior rival bid of $12.76 (and potentially $13.00) that was proposed by "the Consortium," a group of hedge fund managers led by Boaz Weinstein.

2. On July 24, 2023, the Board announced that it had agreed to sell Sculptor to Rithm for $11.15 per Class A share. At the time, the preliminary proxy disclosed that Rithm's offer was far from the highest offer received by the Company.

3. Thereafter, following over two months of repeatedly rebuffing the Consortium's escalating bids, on October 12, 2023, the Board announced that Rithm

had agreed to raise its offer and to acquire Sculptor for $12.00 per Class A share (the "Merger").

4. The Company's Definitive Proxy of October 12, 2023 (the "Proxy") discloses that at the time the Board accepted the $12.00 deal, the Consortium had a pending $12.76 offer, after having repeatedly raised the price and removed contingencies to meet the Special Committee's ever-shifting demands. The Consortium further stated that it would raise the bid to $13.00 if the Special Committee waived a standstill provision and permitted them to negotiate a deal with the Founders to roll over their shares into the acquired company.

5. In accepting the $12.00 bid over the potential $13.00 bid, the Board not only took a lower price, but also agreed to a series of measures to tilt the playing field in Rithm's favor and directly harm the interests of the stockholders.

6. First, the Board waived Rithm's standstill to permit it to acquire an additional 6.5% of the voting shares. (Previously, Rithm had purchased the support of the 26% of the Company's equity controlled by Sculptor's officers and directors.)

7. Second, the Board eliminated an earlier provision of the merger agreement with Rithm requiring that the transaction be approved by a majority of independent stockholders.

8. Third, the Board raised the break-up fee significantly, now representing nearly 4% of the equity value of the Merger.

9. While granting Rithm these concessions for its $12.00 offer, the Board continually erected barriers to frustrate the Consortium's much higher offer of $12.76 or $13.00. To date, the Board has refused to waive a standstill preventing the Consortium from publicly communicating with stockholders about their demonstrably superior proposal, and it has repeatedly demanded other unreasonable concessions from the Consortium that it never sought from Rithm.

10. The Special Committee's effort to favor Rithm's lower price has a simple explanation: Rithm committed to keep Mr. Levin as Chief Investment Officer, to preserve the material terms of his exorbitant pay package, and to give him a walkaway right that would invite him to renegotiate an even better deal shortly after the Merger closes. By contrast, the Consortium has proposed an "Office of the CIO" by which new personnel would be brought in to augment the investment team.

11. The proposed Merger reflects just the latest step in a long line of actions by which the Directors have demonstrated that they are beholden to Mr. Levin and place his interests over the stockholders' interests. Over the past several years, Mr. Levin has shaped the Board of Directors and wielded that leverage to extract ever-escalating pay packages. Between January 2020 and December 2021, ***seven*** directors departed, including ***five*** who resigned mid-term. Mr. Levin capitalized on his position and those departures to hand-pick directors who would serve his interests.

12. On December 17, 2021, the Board awarded Mr. Levin a compensation package worth $145.8 million (the "Compensation Package"), making him the 14th highest paid public-company CEO in the United States that year. As Bloomberg recognized, the Compensation Package reflected "a staggering amount at a firm with a market value then around $1 billion."[1] Institutional Shareholder Services ("ISS") excoriated the Compensation Package for its "extraordinary magnitude" and "excessively dilutive" features.[2] Predictably, that indefensible award decimated the Company's equity value—causing the share price to drop from $20.02 on the date of the award to $9.42 as of July 21, 2023, the last trading day before the announcement of the initial deal with Rithm.

13. The Compensation Package has hung as a millstone around the Company's neck since the Board awarded it under the dubious circumstances highlighted by J. Morgan Rutman upon his resignation from the Board. In December 2021, the Company was valued at $1 billion; yet now, the Board approved an end-

[1] Anders Melin, *Outrage at Hedge Fund Proves Futile as U.S. CEOs Reap Record Pay*, Bloomberg (Aug. 18, 2022), https://www.bloomberg.com/graphics/2022-highest-paid-ceos/. ("Even in the moneyed world of high finance, advisers warned, Jimmy Levin's pay deal was an exceedingly rich one. The newly appointed chief executive officer of Sculptor Capital Management Inc. would almost certainly make around $100 million a year, they told the hedge fund's board. And if results were good, Levin's haul could very well approach twice that—a staggering amount at a firm with a market value then around $1 billion.").

[2] *See* ISS Proxy Analysis & Benchmark Policy Voting Recommendations Report, at 1, 14 (Apr. 25, 2022).

stage transaction worth less than $550 million to stockholders. The cratering of the Company's equity value reflects the foreseeable consequence of the Board's disregard of its fiduciary duties and the transfer of value to a management team whose results have been mediocre at best.

14. The Merger threatens to crystallize the losses stockholders suffered due to the exorbitant and off-market terms provided in the Compensation Package. The Proxy details repeatedly how multiple bidders, including Rithm itself, lowered initial offers to account for Sculptor management's compensation demands.

15. The Consortium has not followed Rithm's commitment to Mr. Levin. That is likely why the Consortium has always been able and willing to exceed Rithm's bid, and why the Consortium's last offer topped the increased Merger price by more than 8%.

16. That is also why, for months, the Special Committee has rejected the Consortium's bids, to the chagrin of many in the financial industry. Activist investor Manny Pearlman recently posted on X (the former Twitter): "I hereby nominate Sculptor Capital Management's board to the Hall Of Fame (or is it Shame) of worst boards ever. The independents on this board should never be allowed to serve as an

independent again. That means you Marcy Engel, Bharath Srikrishnan, Charmel Maynard and David Bonanno."[3]

17. In repeatedly rejecting the Consortium's superior bids, the Special Committee has cited two concerns that it dubbed "Consortium-Specific Transaction Risks," namely (1) the Consortium's financing, and (2) the Consortium's ability to obtain consent from Sculptor's clients. Both concerns are pretextual, and the Consortium has repeatedly addressed both with a series of new and even more favorable bids.

18. On financing, the Special Committee has repeatedly moved the goalposts to justify rejecting the Consortium bid. As an initial matter, the stated concern over the Consortium's financing is preposterous. The "Consortium" includes some of the most successful investors in the United States, including not only Boaz Weinstein, but also Marc Lasry, Bill Ackman, and Jeff Yass. Wall Street has responded to Sculptor's concerns over the financial wherewithal of these investors with incredulity. The Company's supposed financing requirement was neither imposed in its initial solicitation of bids nor ever required of Rithm.

19. Even so, between the Consortium's bid on August 12, 2023, and its most recent bid on September 30, 2023, the group met every one of the Special

[3] Manny Pearlman, X (Oct. 12, 2023, 6:47 PM), https://x.com/relayman/status/1712600957052232165?s=20.

Committee's financing demands, ultimately making an offer with the same financing conditions as Rithm, an all-cash transaction without any contingency for outside financing.

20. The Special Committee's stance on the client-consent condition has proven even more arbitrary and weighted against the Consortium. The Special Committee initially claimed that it invited all bidders and was neutral with respect to their position on incumbent management. That claim was a farce. When faced with Rithm (a bidder who committed to keep management) and the Consortium (a higher bidder without that commitment), the Special Committee repeatedly stated that that the Consortium's bid was too risky because clients might prefer current management.

21. The Special Committee's proposed bid terms invited bidders to include a client-consent condition, which is an industry standard condition for asset managers. The initial July 24, 2023 deal with Rithm contained an 85% client-consent condition, while the Consortium had offered a lower 75% condition on July 7, 2023. Nonetheless, the Special Committee claimed that the Consortium's client-consent condition, which was more favorable to the Company than Rithm's condition, was too risky.

22. When it came to Rithm, the Special Committee accepted a client-consent condition that would allow Rithm to walk away if merely 15% of the clients

of Sculptor's hedge fund objected to the deal. Yet when it came to the Consortium, the Special Committee effectively required the Consortium to be bound to purchase the Company even in the extraordinary scenario that all employees and clients fled the Company, leaving it an empty shell.

23. Even so, the Consortium worked to meet the Special Committee's unreasonable demands, progressively reducing the required client-consent percentage and ultimately eliminating it entirely with respect to the Company's public equity strategies. Yet even then, the Special Committee refused to declare the Consortium's bid superior.

24. Incredibly, while maintaining that the client-consent condition in the Consortium's proposal imposed unacceptable deal risk, the Special Committee refused to conduct reasonable due diligence to determine whether a significant number of clients would, in fact, oppose the Consortium's offer. Initially, the Special Committee relied solely upon the opinion of Sculptor management that clients would not consent to a deal that did not preserve their role.

25. When pressed publicly, the Special Committee retained a consultant to evaluate the views of the Company's clients, but the Special Committee refused to allow the consultant to speak with the clients (even though the clients are obviously aware of the publicly announced sale process). According to the Proxy, the Special

Committee only asked that the consultant analyze the client base, speak with Company employees (i.e., management), and then provide an opinion.

26. The Special Committee's dereliction of its diligence duties has not been lost on neutral observers, such as Matt Levine of Bloomberg, who opined on September 18, 2023: "Surely the whole ballgame here is: (1) Figure out how many of your clients would leave if you agreed to sell to Boaz Weinstein. (2) Tell shareholders the answer. For some reason Sculptor won't do that!"[4]

27. Throughout the sale process, the Special Committee has favored a deal that preserves Mr. Levin's role and worked backwards from that result. Even as the Consortium met the Special Committee's demands and increasingly made its negotiation positions appear unreasonable, the Special Committee has refused to budge because it prefers Mr. Levin's interests to those of stockholders.

28. The Special Committee's actions over the past several weeks remove any doubt that it favors only one result. Since the initial announcement of the Rithm transaction at $11.15, the Company's stock has been trading well over $12.00, because the stockholders assumed that Rithm would either match the Consortium's higher bid, or the Special Committee would ultimately respect its fiduciary duties and accept the materially higher offer.

[4] Matt Levine, *Sculptor Sticks with the Deal It Knows*, Bloomberg, at 6 (Sept. 18, 2023), https://www.bloomberg.com/opinion/articles/2023-09-18/sculptor-sticks-with-the-deal-it-knows.

29. Yet, even though the Consortium has stated that it is prepared to pay $13.00, the Special Committee agreed to an amended deal with Rithm at only $12.00, and did so by accepting a series of extraordinary conditions that have the effect of tilting the playing field against the Consortium (and any other potential bidder) and undermining stockholders' ability to vote down the Rithm deal.

30. The Special Committee's acceptance of only $12.00 per share is even more perplexing because, as reported in the Proxy, Rithm had told the Special Committee on September 29, 2023, that it would be willing to pay $12.20 per share and amend the terms of management's compensation in order to win the Founders' support.[5] Even after Rithm expressed a willingness to go to $12.20, there is no indication in the Proxy Statement that, after Rithm failed to reach a deal with the Founders, the Special Committee put any pressure on Rithm or management to match the higher deal offered just days before. Instead, it simply accepted the proffered $12.00.

31. Moreover, the Special Committee and Rithm had every reason to fear that the stockholders would vote down a $12.00 Rithm deal. Large stockholders, such as the Founders and former CEO Rob Shafir, have publicly expressed their

[5] Sculptor Capital Management, Inc., Definitive Proxy Statement, Schedule 14A, at 84 (Oct. 12, 2023) (the "Proxy Statement"), available at https://www.sec.gov/Archives/edgar/data/1403256/000114036123047968/ny20009939x12_defm14a.htm.

belief that the Consortium's offer is a superior proposal. And the Company's stock price is trading well above the $12.00 price, closing at $12.22 on the day after Rithm's $12.00 deal was announced.

32. Given the likely (and resulting) market reaction to the revised Merger proposal, and aware of the Consortium's likely $13.00 bid, the Board and Rithm worked together to minimize the risk that the Rithm deal would be rejected by stockholders.

33. First, the Special Committee agreed to waive Rithm's standstill obligations in its nondisclosure agreement so that Rithm could cut a private deal with Delaware Life Insurance Company—who has a representative on the Board—to purchase an additional 6.5% of voting power in the Company. On October 12, 2023, Rithm purchased those warrants and exercised them at a price well in excess of the miserly deal offered to stockholders. In combination with Sculptor management, the parties to the Merger now control approximately 33% of the voting power of the Company—or two-thirds of what they need to approve the Merger.

34. Second, the Special Committee agreed that it would remove a requirement from its original merger agreement with Rithm, which provided that the Merger must be approved by a majority of disinterested stockholders (the "Disinterested Vote"). The Disinterested Vote provided unaffiliated stockholders the right to vote down the deal, but now that a superior proposal has emerged, the

Special Committee and Rithm fear that they would lose that vote and so decided to scrap it.

35. Third, the Special Committee also agreed to a more onerous breakup fee with Rithm, requiring any rival bidder to pay $20.3 million, up from $16.6 million, to support the Special Committee's (and Sculptor management's) preferred Merger partner.

36. In addition, the Special Committee has further tilted the playing field firmly in favor of Rithm by selectively enforcing NDAs. For months, the Special Committee has strictly held the Consortium to its NDA, preventing the Consortium from communicating directly with the public stockholders or the Company's clients, or negotiating with the Founders. At the same time, the Special Committee has readily waived Rithm's NDA to permit it to negotiate with the Founders and to purchase 6.5% of the vote. The Special Committee also has demanded that the Consortium accept burdensome client-consent conditions and bear the risk that management may salt the fields and poison the well should the Consortium's deal be accepted. The Special Committee did not demand such off-market terms from Rithm in its amended merger agreement.

37. None of these measures served the interests of the stockholders, to whom the Directors owe their fiduciary duties. Taken together, the Special Committee Members breached their fiduciary duties to stockholders by agreeing to

unreasonable contractual provisions that are intended to result in a lower deal price for the stockholders. Rithm, which knew that the Special Committee's actions constituted a breach of fiduciary duty, has sought to buy the vote rather than convince independent stockholders of the merits of the deal (or improve their offer). Working together, the Special Committee and Rithm are pushing forward an inferior deal that insulates and protects Sculptor management at the expense of the public stockholders receiving a superior bid.

38. The Merger is moving full steam ahead despite the Special Committee's and the Board's evident and ongoing breaches of fiduciary duties. The Consortium remains barred from discussing its proposal with anyone, including the Founders, Sculptor's clients, and all other stockholders. Nonetheless, the Proxy discloses that the Consortium's bid offers substantially higher consideration for public stockholders as compared to the Merger. Accordingly, the Founders seek an expedited trial and appropriate injunctive relief to ensure that the Company's stockholders are able to benefit from a fair and robust sale process that results in a deal that maximizes the value to stockholders rather than once again advancing the interests of Sculptor management.

PARTIES

39. Sculptor is a publicly traded alternative asset manager. Sculptor is a Delaware corporation with its principal place of business located at 9 W. 57th St.,

39th Floor, New York, NY 10019. Sculptor is named as a party because the Company is a necessary party for the relief that Plaintiffs seek.

40. In 1994, Plaintiff Daniel Och founded Och-Ziff Capital Management. In 2007, the Company completed an initial public offering and listed its Class A Stock on the New York Stock Exchange ("NYSE"). After Mr. Och retired as Chairman of the Board, and at his request, the Company changed its name to Sculptor in September 2019.

41. The Founders are some of the largest stockholders of the Company. Either directly or through trusts, the Founders hold over 15% of Sculptor's outstanding equity. They have continuously held shares of Sculptor stock since the Company's 2007 public offering, and they are committed to holding stock in Sculptor until the conclusion of all proceedings contemplated by this Complaint.

42. 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.

43. 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.

44. Defendant Marcy Engel has been a Director since June 2018 and has been chairperson of the Board since February 2021. She is also a member of the Special Committee.

45. Defendant Charmel Maynard has been a Director since November 2021. He is also a member of the Special Committee.

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

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

48. Defendant Rithm Capital Corp. is a publicly traded asset manager focused on the real estate and financial services industries. Rithm is a Delaware corporation that is organized to qualify as a real estate investment trust with its principal place of business at 799 Broadway, 8th Floor, New York, NY 10003.

49. Sculptor Capital LP is a Delaware limited partnership and subsidiary of Sculptor. Sculptor Capital LP is named as a party because it is a necessary party for the relief that Plaintiffs seek.

50. Sculptor Capital Advisors LP is a Delaware limited partnership and subsidiary of Sculptor. Sculptor Capital Advisors LP is named as a party because it is a necessary party for the relief that Plaintiffs seek.

51. Sculptor Capital Advisors II LP is a Delaware limited partnership and subsidiary of Sculptor. Sculptor Capital Advisors II LP is named as a party because it is a necessary party for the relief that Plaintiffs seek.

52. Calder Sub, Inc. is a Delaware corporation and subsidiary of Rithm. Calder Sub, Inc. is named as a party because it is a necessary party for the relief that Plaintiffs seek.

53. Calder Sub I, LP is a Delaware limited partnership and subsidiary of Rithm. Calder Sub I, LP is named as a party because it is a necessary party for the relief that Plaintiffs seek.

54. Calder Sub II, LP is a Delaware limited partnership and subsidiary of Rithm. Calder Sub II, LP is named as a party because it is a necessary party for the relief that Plaintiffs seek.

55. Calder Sub III, LP is a Delaware limited partnership and subsidiary of Rithm. Calder Sub III, LP is named as a party because it is a necessary party for the relief that Plaintiffs seek.

RELEVANT NON-PARTIES

56. "Bidder J" is Saba Capital Management LP, an investment firm with approximately $9.7 billion in discretionary assets under management.

57. Boaz Weinstein is the Founder and Chief Investment Officer of Saba Capital Management LP.

58. Weinstein leads the "Consortium," which includes Marc Lasry, Bill Ackman, and Jeff Yass.[6]

59. Marc Lasry is the Co-Founder and Chief Executive Officer of Avenue Capital Group, an investment firm with approximately $7.2 billion in discretionary assets under management.

60. Bill Ackman is the Founder and Chief Executive Officer of Pershing Square Capital Management, L.P., an investment firm with approximately $16 billion in discretionary assets under management.

61. Jeff Yass is the Co-Founder of Susquehanna International Group, one of the largest proprietary trading firms in the world.

JURISDICTION

62. The Court has subject matter jurisdiction over this action because it brings equitable claims and seeks equitable relief.

63. The Court has personal jurisdiction over each of the Director Defendants because they are members of the Board of a Delaware corporation. The Court has personal jurisdiction over Defendants Sculptor, Rithm, and Calder Sub, Inc., because they are incorporated under the laws of Delaware. The Court has

[6] *See, e.g.*, Hema Parmer and Katherine Burton, *Sculptor Says Weinstein Raised Offer, Still Prefers Rithm*, Bloomberg (Aug. 30, 2023), available at https://www.bloomberg.com/news/articles/2023-08-30/sculptor-says-weinstein-raised-offer-but-it-still-prefers-rithm.

jurisdiction over Defendant Sculptor Capital LP, Sculptor Capital Advisors LP, Sculptor Capital Advisors II LP, Calder Sub I, LP, Calder Sub II, LP, and Calder Sub III, LP, because they are organized under the laws of Delaware.

SUBSTANTIVE ALLEGATIONS

I. BACKGROUND OF SCULPTOR AND CURRENT LEADERSHIP

64. In February 2019, the Company completed a recapitalization pursuant to which Mr. Och and other partners holding Class A Units (generally, retired partners) agreed to forego significant economic value to benefit the long-term interests of the Company. These partners (which included the Founders) effectively offered 35% of their Class A Units to existing members of senior management and new hires and agreed to suspend their rights to share in distributions.

65. In exchange for these concessions, the Company agreed to significant corporate governance provisions in a governance agreement with Mr. Och (the "Governance Agreement"), including a provision requiring approval of at least five out of seven members of the Company's Board, supported by the advice of an independent compensation consultant, before changes could be made to management's compensation.

66. Following the Governance Agreement, in February 2020, Levin demanded that the Board name him the CEO and grant additional compensation, or

he would leave the Company and take with him the investors in funds managed by Sculptor. Faced with Mr. Levin's threats, the Board capitulated.

67. Between June 2020 and November 2021, six directors departed from the Company's seven-person Board. By the time the Board considered Mr. Levin's demand for a new compensation deal at the end of 2021, the Board was reduced to only two directors who had been on the Board when Mr. Levin made his demands in February 2020: Ms. Engel, who voted to approve his demands, and J. Morgan Rutman, who voted against.

68. Mr. Levin formally took over as CEO on April 1, 2021. That day, Sculptor's stock price closed at $22.21.

A. After Becoming CEO, Mr. Levin Exploits His Control Over The Company And The Board To Obtain A Compensation Package That Is 17.7 Times Richer Than His Peers

69. After successfully negotiating an increase in his long-term compensation packages at least four separate times, on an almost annual basis, in 2021 Mr. Levin used his new title as CEO to extract the heftiest pay package yet. The Compensation Package netted Mr. Levin $145.8 million in 2021 alone, making him the 14th highest paid executive in the United States that year. ISS excoriated the Compensation Package for its "extraordinary magnitude" and "excessively

dilutive" features, finding that Mr. Levin's "total pay is 17.7 times the median of peers."[7]

70. In a five to one vote, the Board approved the Compensation Package even though the Company's investment performance had lagged behind its industry peers since Mr. Levin became CEO. In 2021, Sculptor's main fund ranked "near the bottom of the pack compared with its multistrategy peers."[8]

71. Strikingly, Mr. Cohen—Mr. Levin's direct subordinate—cast the deciding and necessary fifth vote to approve the Compensation Package. In addition to being beholden to Mr. Levin, Mr. Cohen also directly benefitted from management equity awards approved with the Compensation Package. Under any standard, including basic NYSE rules regarding public company directors, Delaware law, and the Company's own conflict practices, Cohen was conflicted and should have been recused from the vote. But for Mr. Cohen's participation, the Compensation Package would not have received the supermajority approval required by the Governance Agreement.

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[7] *See* ISS Proxy Analysis & Benchmark Policy Voting Recommendations Report, at 1, 14 (Apr. 25, 2022).

[8] Hema Parmar and Tom Maloney, *Hedge Fund Millions Are at Stake in Sculptor CEO Pay Dispute*, Bloomberg (Feb. 8, 2022), available at https://www.bloomberg.com/news/articles/2022-02-08/the-hedge-fund-millions-at-stake-in-sculptor-ceo-pay-dispute.

72. Sculptor's stock price had also suffered under Mr. Levin's tenure to that point. On the day that the Board approved the Compensation Package, Sculptor's stock price closed at $20.02, which was 8% lower than when Mr. Levin had taken over as CEO—notwithstanding the fact that the S&P 500 Index had increased over 15% during that same eight-month period.

73. Worse still, Mr. Levin's "extraordinarily dilutive" Compensation Package cratered Sculptor's stock price ***to less than half*** of what it was trading at the time the Compensation Package was approved. By July 21, 2023, the trading day prior to announcement of the initial merger agreement with Rithm, Sculptor's stock closed at $9.42, compared to $20.02 just eighteen months prior.

74. Stockholders may not have learned about many of these fiduciary breaches, if not for the decision of Mr. Rutman—the only director to vote against the Compensation Package—to resign on February 2, 2022. The Company disclosed Mr. Rutman's resignation letter on February 3. In his resignation letter, Mr. Rutman described in detail the compensation that Mr. Levin was set to receive and his criticisms of the Board's processes for approving it.

II. THE BOARD PURSUES A POTENTIAL MERGER

A. The Board Forms A Special Committee To Investigate A Potential Merger, But Management Directs Unsuccessful Negotiations With Bidder A

75. On May 23, 2022, the Company formed a special committee comprised of Defendants Engel and Maynard in response to an overture from a bidder ("Bidder A") two months earlier. The Special Committee retained Latham & Watkins as its counsel.

76. The purported 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. It promptly relinquished its duties to Sculptor management.

77. 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."[9] While ceding engagement to the Company's management, the Special Committee also purported to instruct

[9] Proxy Statement at 37.

management "that any discussion or negotiation regarding the terms of such a proposal must be led by the Special Committee."[10]

78. On June 13, 2022, the Special Committee discussed retaining a financial advisor. The Special Committee did not retain a financial advisor of its own until October 2022. Meanwhile, just a week after discussing 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.

79. As the process unfolded, J.P. Morgan, and not an independent investment banker solely answering to the Special Committee, assumed the primary role dealing with potential bidders.

80. 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.

81. On August 24, 2022, the Founders filed a Section 220 action, C.A. No. 2022-0748-SG, in connection with their April 28, 2022, books and records demand for information regarding Mr. Levin's extraordinary compensation. As with virtually every other issue that the Company has faced over the last several years, management blamed the Founders for Bidder A withdrawing from the sale process.

[10] *Id.*

B. New Bidders Emerge To Purchase Sculptor

82. 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.

83. 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.

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

85. On November 18, 2022, the Founders entered into a settlement agreement (the "Settlement Agreement") for their Section 220 Action against the Company. In connection with the Settlement Agreement, the Company disclosed that the Special Committee was exploring possible strategic transactions to benefit stockholders. The Founders supported the Special Committee sale process with the hope that any resulting transaction would deliver a fair price to stockholders reflecting the Company's untapped value. The Founders have made it clear to the Special Committee that any deal should benefit all stockholders, remediate the precipitous transfer of value from the stockholders to management, and enable stockholders to share in future value creation.

86. On or around the time the Company announced the Settlement Agreement, the Company was in contact with dozens of potential acquirors. According to the Proxy Statement, twenty-five signed non-disclosure agreements ("NDAs"), including Rithm.[11] Twenty-four NDAs (all bidders other than Bidder A) contained standstill provisions and twenty-two contained "don't ask/don't waive" standstill provisions.

87. 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 new indications of interest. Bidder E proposed an equity valuation of $574 million; 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.

88. The Special Committee accepted initial bids after the deadline had passed. On December 1, 2022, Bidder D proposed a range of values from $640 million to $830 million. 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

[11] Proxy Statement at 42.

Company. These bidders were invited to participate in the second-round process despite submitting late indications of interest.

89. On December 19, 2022, Bidder J, Boaz Weinstein, expressed interest in a potential transaction with the Company. On December 21, 2022, Bidder J signed an NDA with the Company.

C. The Special Committee Shuts Bidder J Out Of The Second Round Bid Process

90. On January 3, 2023, the Special Committee launched the second-round process with Bidders B, C, D, G, and H, while it knew that an indication of interest from Bidder J was imminent. The Special Committee used the excuse that Bidder J was a "late entrant" who was "behind" in the process to discount Bidder J's interest and offers throughout the rest of the merger process.[12]

91. In fact, the Special Committee disfavored Bidder J because Bidder J, unlike the other bidders who moved forward, did not commit to retain Sculptor's existing management, including Mr. Levin.

92. On January 11, 2023, the Special Committee met and authorized "high-level conversations between the Company's management and potential acquirors" regarding "post-closing compensation philosophy."[13] No price terms regarding the

[12] Proxy Statement at 46, 50.

[13] Proxy Statement at 45–46.

consideration to be paid to the Company's public stockholders had been agreed between the Special Committee and any bidders at this time.

93. On January 16, 2023, less than two weeks after the Special Committee launched the second round of the process, Bidder J submitted its proposal as promised, offering $11.00–12.00 per share of Class A Common Stock.

94. 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. 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 the other bids.

95. 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. By February 2, 2023, there was a "tentative agreement with Bidder D on price and material terms."[14] With this purported agreement on price and material terms, the Special Committee authorized the Company's management, including Mr. Levin and Mr. Cohen, to begin compensation discussions with Bidder D. On February 2, 2023, the Company's management and Bidder D discussed "compensation philosophy."[15] At this point,

[14] Proxy Statement at 47.

[15] *Id.*

the Company had yet to provide a second-round process letter to Bidder J despite Bidder J having submitted its initial offer more than two weeks prior.

D. The Special Committee Sets Its First Goalpost On The Client Consent Condition

96. Also on February 2, 2023, the Special Committee met with its advisors and J.P. Morgan. 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."[16]

97. The Special Committee, with input from the Company's management and its counsel, set the threshold for the client-consent condition at 80%. These terms were shared with potential acquirors on February 10, 2023.

E. The Special Committee Belatedly Sends Bidder J A Second-Round Process Letter, And Then Promptly Enters Exclusivity With Bidder D

98. On February 7, 2023, Sculptor management—***not*** the Special Committee—met with Bidder J, "including its founder [Weinstein] and one of its

[16] *Id.*

partners . . . to provide an overview of the Company and discuss investment strategies."[17]

99. On February 8, 2023, more than three weeks after Bidder J submitted its initial indication of interest, and more than a month after second-round letters had been distributed to other bidders, the Special Committee finally instructed J.P. Morgan, the Company's banker, to provide Bidder J with a bid process letter that requested a second bid as soon as possible. The Special Committee also authorized its advisors to provide Bidder J with certain materials in the virtual data room. By contrast, the Special Committee had granted Bidders B, C, D, G, H, and Rithm access to the data room more than two months before.

100. Singling out Bidder J out as a competitor "with portions of the Company's business[,]" the Special Committee decided that it would withhold certain diligence materials from Bidder J because it worried that "certain diligence information could be used by Bidder J to solicit employees and clients of the Company or to otherwise gain a competitive advantage over the Company."[18] But the Proxy does not provide any basis for the belief that Bidder J would violate its NDA, which protects the Company from these very concerns, much less how this situation differed from normal course due diligence done routinely between

[17] Proxy Statement at 48.

[18] *Id*.

competitors in merger negotiations. Nor does the Proxy explain why Bidder J was so differently situated from Bidders B, C, D, E, F, G, and H, all of whom were also described as "asset management" companies but nevertheless apparently received unfettered access to the data room.

101. The Special Committee also purportedly based its decision to withhold due diligence materials from Bidder J because it had "not demonstrated that it had sufficient committed equity or debt financing or available capital to support payment of the consideration indicated in its previous non-binding indication of interest."[19] Yet again, the Special Committee appears to have chosen rules for Bidder J that differed from other bidders. For instance, Bidder B was fully involved in the sale process for ***nearly four months***, before it withdrew on February 10, 2023, after it proved incapable of securing financing. Moreover, the Proxy is silent on the financing arrangements (or lack thereof) for multiple other bidders, suggesting that the Special Committee's insistence on Bidder J's financing was pretextual.

102. On February 15, 2023, Bidder D increased its price to $12.00 per share 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.

[19] *Id.*

103. Also on February 15, Bidder J submitted a bid of $700 million, ***approximately 21 cents per share higher than Bidder D's bid***, but the Special Committee faulted Bidder J for the absence of committed financing and claimed that it was behind with respect to a markup of a merger agreement (having only received J.P. Morgan's process letter a week earlier).

104. Despite Bidder J's higher offer, on February 18, 2023, the Company entered into an exclusivity agreement with Bidder D. Furthermore, the Special Committee authorized management to discuss compensation with Bidder D even though the deal price had not been finalized, contradicting the Committee's own stated policy.

105. On the same day, Bidder J, who had only received 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. The Special Committee, however, could not respond based on its exclusivity agreement with Bidder D. Bidder J reached out again on February 21 to provide a further update and was ignored.

F. Bidder D Walks Away, And The Special Committee Favors Rithm

106. After entering its exclusivity period, Bidder D sought to speak with the Founders to earn their support of the proposed transaction.

107. As the Proxy reflects, the Founders' primary concern with the proposed deal was that it valued the Company based upon the depressed sale price caused by

the Compensation Package. The Founders believed then, and continue to believe, that in order to maximize the Company's equity value, it was incumbent upon the Board to revisit the Compensation Package, which was a product of the Board's fiduciary breaches.[20] Rather than address those issues, the Special Committee and Bidder D offered the Founders special "inducements" or "Former EMD Considerations" in the hope that they could win the Founders' economic support without remedying the concerns over deal price and management compensation.[21]

108. On May 2, 2023, the Founders requested that Bidder D provide certain information to evaluate the transaction. The Special Committee sent the information requests to Bidder D and requested that it either respond to the information requests or enter into a merger agreement without the Founders' support. Bidder D evidently chose neither option. On May 11, 2023, the Special Committee terminated the exclusivity period and re-opened the sale process.

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

110. On May 16, 2023, the Special Committee's advisors provided Bidder H and Bidder J with an updated merger agreement.

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[20] Proxy Statement at 51.

[21] *Id.* at 52–53.

111. On May 24, 2023, Rithm proposed a transaction at $11.00 per share of Company Class A Common Stock. Rithm also stated that it would require Mr. Levin to enter into new employment agreements concurrently with the merger agreement.

112. On June 6, 2023, Bidder J proposed a transaction at $11.00 per share that addressed the purported shortcomings with its previous proposal. 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."[22] Bidder J further asked to speak with the Founders to win their support. The Special Committee refused to allow Bidder J to speak with the Founders.

G. Rithm Offers $12.00 Conditioned On Its Assumptions Regarding Management Compensation; And The Special Committee Keeps Bidder J On The Sidelines

113. 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 employee compensation. The Special Committee authorized Rithm and Mr. Levin to negotiate Levin's employment and compensation package.

114. Also on June 11, 2023, J.P. Morgan requested that Bidder J provide a markup of the draft merger agreement, another purported shortcoming of its

[22] Proxy Statement at 56–57.

proposal. Bidder J provided the markup three days later on June 14, 2023. At a June 16 meeting of the Special Committee, Bidder J's bid was cast in a negative light, purportedly because, "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 . . . ."[23] Since Bidder J would not retain Mr. Levin, the Special Committee expressed the view that Bidder J may not be able to obtain client consents. Thus, the Special Committee cited Bidder J's lack of commitment to Mr. Levin as a closing risk in conflict with its initial process letter, which claimed "that interested parties would not be required to retain any Company personnel following the closing of the potential transactions."[24]

115. The Special Committee would continue to rely upon the two risks highlighted on June 16, 2023—financing and client consents—as the pretextual excuses for Bidder J's differential treatment going forward.

H. Rithm Lowers Its Offer Because Of Management's Compensation Demands

116. After three weeks of negotiating with Mr. Levin, Rithm reduced its offer price from $12.00 to $11.00. The Company claimed that this reduction had

[23] Proxy Statement at 59.

[24] *Id.* at 58.

nothing to do with Mr. Levin's compensation, but instead that it related only to the compensation to be paid to other members of his management team.

117. These claims are dubious. During this period, Mr. Levin was holding out for compensation concessions and did not agree to a revised employment agreement until July 10, 2023. In addition, Mr. Levin's compensation represented the lion's share of executive compensation that Rithm would have to pay. Every dollar to be paid to Mr. Levin therefore represented another dollar not available to the stockholders.

118. The Proxy itself confirms that Rithm reduced its price from $12.00 to $11.00 because of the money necessary to reach separate deals with Sculptor management. Rithm later increased its offer from $11.05 to $11.15 after negotiating minor reductions to Mr. Levin's compensation.[25]

I. Bidder J Continues To Improve Its Offer While The Special Committee Focuses On Rithm

119. On July 7, 2023, Bidder J proposed a purchase price of $11.50 per share and reduced the client consent threshold to 75%. Nevertheless, the Company's management told the Special Committee that it "remained concerned about its ability to retain current [] employees, and the likelihood of achieving the [lower] client

[25] *Id.* at 60.

consent condition" if the Special Committee pursued a transaction that did not promise management's continued employment.[26]

120. In contrast, the Company's management told the Special Committee that they were confident that clients would consent to Rithm: "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."[27]

121. Between 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 any client-consent threshold for the Company's Multi-Strategy and Opportunistic Credit Funds business lines.

122. On July 22, 2023, Rithm offered $11.15 per share of Company Class A Common Stock. With respect to the outstanding negotiations with Bidder J, the Special Committee concluded that Bidder J was not prepared to execute a definitive

[26] *Id*. at 60–61.

[27] *Id*. at 61.

agreement and recommended the Rithm deal. Later that day, the Board approved the transaction with Rithm.

III. THE BOARD APPROVES THE MERGER TO BENEFIT MR. LEVIN

123. On July 24, 2023, Sculptor announced the Agreement and Plan of Merger (as signed on July 24, 2023, and as amended on October 12, 2023, the "Merger Agreement") between Sculptor, Rithm, and their respective affiliates and subsidiaries whereby Rithm would acquire Sculptor for $639 million, with the Company's public stockholders receiving $11.15 per share of Class A common stock they hold. The Class A Unit Holders would receive roughly an equivalent amount (taking into account differing tax and accounting considerations).

124. Rather than using a sale of the Company as an opportunity to correct or mitigate the Board's mistakes in passing the Compensation Package, the Company ensured that the Merger Agreement locked in Mr. Levin's exorbitant terms and crystallized the losses to the stockholders. Pursuant to the agreement reached between Rithm and Mr. Levin (the "Side Agreement"), Mr. Levin largely keeps the terms set by the Compensation Package and may negotiate future compensation shortly after the Merger closes in 2024. In the event that he is not satisfied with such negotiations, Mr. Levin has a "walk away" right that provides him with, at a minimum, an additional $10 million in cash, acceleration of any outstanding deferred cash interests, and acceleration of any unvested retention awards.

Critically, Mr. Levin will be paid in cash millions of dollars in performance-based awards that were underwater due to the Company's poor performance under his leadership and therefore only payable because of the Rithm transaction. The Side Agreement also releases Mr. Levin from any claims that the Company might have in connection with the Compensation Package.

125. Because the Side Agreement provides Mr. Levin both a guaranteed compensation floor, performance-based awards only payable upon a transaction, and the option to "walk away" with additional payments and accelerated vesting, Rithm ensured that Mr. Levin's interests in the Merger are entirely misaligned with those of ordinary Company stockholders. Mr. Levin also negotiated go-forward compensation that includes a $10 million price floor and a $5 million retention bonus. Rithm also agreed to Mr. Levin's demand that it create a Long-Term Incentive Plan ("LTIP") for him and his management team and allocate at least 20% of the LTIP awards to him.

126. Although the Side Agreement purports to limit Mr. Levin's compensation in 2023 and 2024 by providing a ceiling of $30 million on some of his total compensation, that ceiling contains numerous exceptions that ensures that Mr. Levin will get paid well above that already significant amount. For example, Mr. Levin's carried interest is excluded from the cap.

127. In addition, Rithm secured voting agreements with Mr. Levin, Mr. Cohen, Brett Klein, and Peter Wallach (the "Voting Agreements") obligating them to vote all their shares in favor of the Merger and against any alternative acquisition proposals. Those four managers collectively control approximately 26% of the voting power of stockholders.[28]

IV. BIDDER J'S CONSORTIUM PROMPTLY OUTBIDS RITHM AND THE SPECIAL COMMITTEE MOVES THE GOALPOSTS

128. On August 12, 2023, Bidder J, now acting on behalf of the Consortium, made a substantially higher bid for the Company. The Consortium offered $12.25 per share of Company Class A Common Stock, or an increase of almost 10% over Rithm's offer. This time, the Consortium included binding equity commitment letters, addressing one of the financing issues that the Special Committee had raised with Bidder J's previous bid.

129. The Special Committee continued to find fault with the offer. The Committee moved the goalposts from the absence of financing commitment letters (now provided) and the client-consent condition (with lower thresholds than Rithm and, in addition, a promise to retain Mr. Levin for at least for a year), to questions

[28] Tellingly, although the Voting Agreements bind the managers to strict obligations to support the Merger and no other transactions (including potential alternative transactions that would be more beneficial for stockholders), those agreements do not provide any consideration to the managers in exchange for their votes. It therefore is clear that the consideration for their support for the Merger is the outlandish compensation that they would receive because of it.

regarding a sale of the Company's CLO business as part of the Consortium's bid and purported shortcomings on the Company's ability to obtain damages in the event of a breach of the merger agreement.

130. On August 13, 2023, the Special Committee met to discuss the Consortium's topping bid. Despite the bid's financial superiority and the fact that the Consortium includes some of the most successful investors in the world, the Special Committee found that the topping bid was not likely to lead to a Superior Proposal (as defined in the Merger Agreement).[29] Instead, the Special Committee requested clarification from the Consortium on a number of items which the Consortium promptly provided.

131. The 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 . . .[30]

[29] Annex A to Proxy Statement at A-18.

[30] *Id.*

In short, the Merger Agreement provides that a Superior Proposal is a bona fide offer for the Company that is "more favorable, from a financial point of view, to the Company stockholders."[31]

132. On August 16, 2023, the Special Committee identified additional purported issues with the Consortium topping bid. These included that the Consortium purportedly underestimated the amount of financing necessary. The Special Committee again declined to declare the Consortium's topping bid reasonably likely to lead to a Superior Proposal.

133. On August 18, 2023, the Special Committee recommended, and the Board adopted, a resolution waiving all existing standstill provisions only to the extent that potential bidders could submit confidential proposals to the Board or the Special Committee. The Board refused to allow potential bidders to communicate with stockholders or investors directly either to propose the terms of superior bids, to negotiate with the Founders or other substantial stockholders, or to provide their views publicly with respect to potential transactions.

[31] *Id.*

A. The Consortium Improves Its Offer Yet Again, And The Special Committee Uses Closing Risk From Client Consent Condition As A Pretext For Its Preference To Retain Management

134. On August 21, 2023, the ***Consortium raised its bid to $12.76 per share of Company Class A Common Stock.*** The Special Committee once again declined 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: financing and the client-consent condition.

135. On August 24, 2023, the Consortium made yet another proposal that increased total funding sources to $765 million, including binding commitment letters for $505 million in funding, and plans to fund the transaction with $60 million of debt financing from Bidder H and $200 million in proceeds from the CLO Sale. As a further show of good faith, the Consortium doubled a damages liability cap for a breach of the merger agreement from $19.6 million to $39.2 million.

136. The Consortium also requested that the Special Committee release it from the NDA to permit them to make public statements regarding their proposals and to engage with the Founders (with whom Rithm had been permitted to engage since July). The Consortium noted that it needed to speak publicly about its proposals given the misrepresentations of its proposals in the Company's various proxy statements. The Founders separately requested that they too be permitted to speak and negotiate with the Consortium.

137. The Special Committee refused these requests, claiming that the Merger Agreement's non-solicitation provision tied the Special Committee's hands. The Special Committee's claim was premised on the unsupportable position that the Consortium's offer was not a Superior Proposal, and, somehow, not even reasonably likely to lead to a Superior Proposal. In this instance, the Special Committee again cited differences in "financing conditionality" between the two offers, and the supposed concern about the client condition thresholds.

138. Even though the Special Committee would repeatedly raise the client consent risks, the Special Committee took no steps to test this hypothesis for weeks beyond relying on Mr. Levin and his management team. But such reliance by the Special Committee was unreasonable and not in good faith. A management team opposed to a transaction hostile to its interests surely would overstate factors that would lead to the rejection of such a transaction.

139. Recognizing this fundamental weakness, and after a month of dithering, in late August, the Special Committee hired an "Asset Management Consultant" tasked with evaluating the risk that the Consortium would not meet the client consent condition. As discussed further below, the consultant did only the most surface-level of work and delivered generalized and vague conclusions to paper over the Special Committee's preordained conclusion.

B. After The Consortium Provides The Requested Debt Commitments, The Special Committee Reverses Course And Demands Equity Financing

140. On August 26, 2023, the Consortium improved its proposal yet again by providing five binding commitment letters totaling $304 million of equity financing, $217 million of stockholder loans, and $237 million of debt financing, totaling the entire deal value.

141. The Special Committee responded by informing the Consortium of a new deal requirement that financing must be all equity rather than partial equity.[32]

142. The Special Committee's new requirement was completely at odds with what it had said over the past year concerning the sale process. For example, the Proxy repeatedly states that financing should be in the form of "committed equity ***or debt financing*** or available capital to support payment of the consideration" when discussing the sale process as of November 2022.[33] Likewise, on February 8, 2023, the Special Committee's concern was that Bidder J "had not demonstrated that it had

[32] Proxy Statement at 75 ("Each member of [the Consortium would need] to provide equity financing commitments that total the full $743 million necessary to pay the consideration in the transaction (the "Commitment Amount"). The Special Committee noted a narrow exception for "funded debt commitments" from a "proposed transaction . . . ." *Id.*

[33] *Id.* at 41 (emphasis added).

sufficient committed equity ***or debt financing*** or available capital to support payment of the consideration . . . ."[34]

143. Even in early August, after the Special Committee secured an all-cash deal with Rithm, the Special Committee had not changed its openness to debt financing. There, the Proxy articulates that the Special Committee's stated concern was not the fact that the Consortium was planning to use debt to fund a portion of the transaction, but that it purportedly lacked binding debt commitments. Indeed, the Special Committee instructed its advisors to reach out to the Consortium asking that it provide "documentation evidencing the debt financing commitment from Bidder H and the CLO Sale to Bidder H . . . ."[35]

144. Nevertheless, when the Consortium thereafter provided binding debt financing commitments on August 26, 2023, the Special Committee promptly told the Consortium that those binding commitments were insufficient and all equity financing was required. The Special Committee's about-face is yet more evidence that it is looking for reasons to reject the Consortium and protect the interests of Mr. Levin rather than interests of the Company's stockholders.

[34] *Id.* at 48; *see also id.* at 50.

[35] *Id.* at 66.

C. The Special Committee Demands That The Consortium Bear The Financial Risk That Jilted Management Destroys The Company

145. Also on August 29, 2023, the Special Committee demanded that the Consortium agree to remove ***any client-consent condition*** (despite having agreed to an 85% condition with Rithm). The Special Committee justifies that difference entirely because the Consortium intends to make some changes to how, and by whom, investment decisions are made.[36] And, as discussed below, the details of the Consortium's changes to the investment process are largely unknown because the Consortium has been unable to communicate about them with stockholders or clients.

146. Worse still, the Special Committee demanded that the Company and its employees be relieved from any obligation to maintain the value of the Company up to and through closing in any way, let alone to cooperate in obtaining client consents: "[T]he draft merger agreement should clearly place the risk of business deterioration due to the announcement of the transaction (including the risk of adverse client and employee reactions) on the [Consortium]."[37]

147. Under such circumstances, jilted management like Mr. Levin would have a free pass to torpedo the value of the Company while collecting hundreds of

[36] *Id.* at 66.

[37] *Id.* at 75.

millions of dollars in consideration from their stock and other compensation on their way out.

D. The Consortium Improves Its Offer Yet Again, Despite The Special Committee's Bad Faith

148. On August 31, 2022, the Consortium responded to the Company's unreasonable demands by improving its offer yet again. Specifically, it provided a guaranty from Susquehanna International Group LLP for the full $743 million purchase obligation.[38]

149. The Consortium further clarified on September 3 that the "Investment Function" would be run by an "Office of the CIO" made up of Mr. Weinstein, Mr. Levin, and Kieran Goodwin and Mike Jacobellis, who would collaboratively make investment decisions. The Special Committee criticized this proposal because Goodwin and Jacobellis "have no affiliation with the Company or the Consortium and [] have never worked together in a CIO role . . . ."[39]

150. In short, rather than acting on behalf of the stockholders, the Special Committee chose to second-guess how an experienced asset manager plans to run a

[38] The Special Committee offered weak criticism that the guaranty was "of the obligations of the parties providing the debt and equity commitments" rather than "unconditional." Proxy Statement at 78. But the Special Committee never asked for an "unconditional" guaranty; and the guaranty provided responded directly to the Special Committee's expressed concerns that the billionaires making up the Consortium may not have enough funding to support the deal. *Id.*

[39] *Id.*

business after closing. The Special Committee's purported continuity concerns are a thinly disguised proxy for the Special Committee's preference that the Company's management be retained long-term and given the same unchecked authority that they enjoyed at Sculptor and would enjoy at Rithm. The Special Committee's unjustifiable preference comes directly at the expense of Sculptor's stockholders receiving the best deal.

151. On September 13, 2023, the Special Committee determined, predictably, that the Consortium's proposal was not a Superior Proposal or reasonably likely to lead to a Superior Proposal.

E. The Consortium Continues To Improve Its Offer; Rithm And The Founders Negotiate

152. On September 18, 2023, the Consortium offered to drop the "Office of the CIO" model in favor of Mr. Weinstein becoming CIO of the Company, in response to the Special Committee's criticism. The Consortium further requested that the Company publicly identify the members of the Consortium, that it be released from its NDA restrictions, and that it be permitted to contact the Founders, the Company's clients, and Mr. Levin and other members of Sculptor management.

153. The Special Committee promptly determined that the Consortium's response was insufficient and refused to release it from its NDA or permit it to talk to the Founders, clients, and management.

154. On September 20, 2023, the Consortium offered yet another improved offer. Specifically, the Consortium lowered its client consent threshold for the Multi-Strategic and Opportunistic Credit business lines from 50.1% to 40% and indicated that it could further lower or eliminate the consent threshold if it had the opportunity to speak with certain Company clients that comprise a substantial portion of the revenue associated with those strategies.

155. The Special Committee promptly determined that, while an improvement, the run-rate consent conditions, which were now collectively well below those agreed to with Rithm, still posed too great a risk to closing certainty.

156. On September 21, 2023, the Special Committee learned that the Founders and Rithm were close to an agreement that would raise the deal price to $12.20 per share and would significantly lower Mr. Levin's compensation.

157. On September 22, 2023, the Special Committee decided that it would request that Rithm remove the client-consent condition from the Merger Agreement in a post hoc attempt to standardize its criteria between the two bidders.

158. On September 30, 2023, the Consortium offered to remove the client-consent condition from the Multi-Strategy and Opportunistic Credit business lines, and said that it would consider increasing its price to $13.00 per share

"depending on the outcome of its discussions" with the Founders and their "willingness to enter into a rollover."[40]

159. Given the potential $13.00 per share offer on the table, the Founders determined that they could not agree to support a Rithm deal at $12.20. The Founders publicly stated that the Consortium's potential $13.00 offer was clearly superior to the $11.15 Rithm offer. Rithm then broke off discussions on an amended deal.

F. The Special Committee Entertains The Consortium's Offer, But Again Uses Contrived Excuses To Accept An Inferior Deal With Rithm

160. On October 6, 2023, the Special Committee decided, finally, that it would view the Consortium's September 30, 2023, proposal (the "September 30 Proposal") as reasonably likely to lead to a Superior Proposal.

161. The Special Committee then promptly reasserted unreasonable demands upon the Consortium including: (1) further financial information to back up the binding financing letters by credible parties; and (2) revised merger agreement terms that, as discussed above, required the Consortium to bear all of the risk that the Company and its management would fail to cooperate in maintaining the value

[40] Proxy Statement at 85.

of the business following the merger announcement. The Special Committee gave the Consortium until October 9, 2023 to respond.

162. After the Consortium declined to agree to these outlandish terms on the unreasonable deadline, the Special Committee called its own bluff by returning to a revised deal with Rithm.

V. THE SPECIAL COMMITTEE AGREES TO AN INFERIOR DEAL WITH RITHM WHILE ALLOWING IT TO BUY VOTES

163. The Proxy Statement represents that as of October 4, 2023, "Rithm was not prepared to . . . offer any other improvements to the terms and conditions of the Merger Agreement or the Transactions."[41] But on October 10, 2023, Rithm approached the Board with an offer to increase the Merger price to $12.00 per share of Class A Common Stock, providing that the Special Committee would take several measures to tilt the playing field further in favor of the Rithm deal. Rithm demanded that the Company remove the Disinterested Vote condition, waive Rithm's standstill provision to permit the acquisition of warrants reflecting 6.5% of voting control of the Company, and raise the break-up fee to exorbitant levels.

164. The Special Committee wasted no time approving Rithm's requests. It is particularly ironic that the Special Committee quickly waived the standstill the same day that it was requested to support a Rithm deal at $12.00 per share, when it

[41] Proxy Statement at 87.

had spent months refusing to waive the Consortium's standstill to allow it to win support for a deal as high as $13.00 per share. Further, despite Rithm having previously indicated its willingness to pay $12.20 per share and amend the terms of management's compensation,[42] there is no indication that the Special Committee put any pressure on either Rithm to match the higher deal offered just days before or on management to make concessions to achieve that deal.

165. On October 12, 2023, Rithm and the Company entered into the amended merger agreement (the "Amended Merger Agreement"), which increased the price per share to $12.00—but contained fundamentally inequitable provisions that depress the overall value stockholders would receive from the Merger ***and*** bias the stockholder vote needed to effectuate the Merger in Rithm's favor.

A. The Amended Merger Agreement Allows Rithm To Buy Sculptor Stock Worth Approximately 6.5% Of Sculptor's Outstanding Voting Power, Effectively Locking Up 2/3 Of The Stockholder Vote Required To Effectuate The Merger

166. The Amended Merger Agreement provides for the waiver of the standstill restrictions in Rithm's NDA "solely to the extent such restrictions prohibit [Rithm] from acquiring (and negotiating such acquisition with Delaware Life

[42] *Id.* at 84.

Insurance Company) and/or exercising" warrants for the sale of Sculptor stock held by Delaware Life Insurance Company (the "Company Warrants").[43]

167. On the same day, Rithm and Delaware Life Insurance Company executed a definitive agreement for Rithm to purchase the entirety of the Company Warrants: all 4,338,015 shares of Sculptor Class A Common Stock at $7.95 per share, for an aggregate price of $27,568,961. That same day, Rithm exercised the warrants for the full number of shares.

168. On October 13, 2023, Sculptor issued all 4,338,015 shares, representing approximately 6.5% of the total voting power of Sculptor's outstanding voting stock, to Rithm.

169. In a Schedule 13D filing made the same day, Rithm disclosed its purchase and exercise of the Company Warrants. It stated that it "accelerated the payment of the consideration to purchase the Company Warrants in order to purchase and exercise the Company Warrants ***so that [Rithm] would be able to vote the 4,338,015 shares of Class A Common Stock thereunder in connection with the Issuer's special meeting of stockholders in connection with the [Merger]***."[44]

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[43] Appendix B of the Proxy Statement at B-2.

[44] Sculptor Capital Management, Inc., Schedule 13D, at 4 (Oct. 13, 2023) (the "Rithm Schedule"), available at https://www.sec.gov/Archives/edgar/data/1556593/000114036123048215/ef20012588_sc13d.htm.

170. The Amended Merger Agreement maintains the Voting Agreements obligating Mr. Levin, Mr. Cohen, Brett Klein, and Peter Wallach obligating them to vote all their shares, totaling approximately 26% of voting power, in favor of the Merger and against any alternative acquisition proposals. This, combined with Rithm's 6.5% stake, means that Rithm has already locked up approximately two-thirds of the stockholder vote needed to approve the Merger.

B. The Amended Merger Agreement Removes The Disinterested Vote Requirement, Further Disenfranchising Dissenting Stockholders

171. In the initial Merger Agreement, Sculptor and Rithm agreed that the Merger would require not only on a vote of all stockholders, but also a majority vote of independent stockholders (the "Disinterested Vote"). The Disinterested Vote would have ostensibly ratified the Merger by providing unaffiliated stockholders the opportunity to approve a transaction that had the potential to favor management and other parties. However, under the October 12, 2023 Amendment, Sculptor and Rithm agreed to strike the Disinterested Vote requirement, presumably because they knew that they could no longer secure approval of the majority of the disinterested stockholders.

172. There is little doubt the Merger would have failed the Disinterested Vote. Sculptor's stock is now trading above the deal price (closing at $12.27 on

October 16, 2023), demonstrating that public stockholders still believe that the Company is worth more than what Rithm is offering and should be able to obtain it.

173. In another attempt to lock out Bidder J, the Company agreed to increase its own break-up fee from $16,576,819 to $20,307,196. That 22.5% increase renders the fee preclusive under Delaware law, particularly when considering the significant breakage costs that a topping bidder would bear if it were to choose to terminate existing management following closing.

174. It is apparent that the Company and Rithm waived the standstill, eliminated the Disinterested Vote, and increased the break-up fee for the sole purpose of pushing through the Merger against the interests of the stockholders as a whole. An unconflicted Board of Directors would never have agreed to such measures.

BREACHES OF FIDUCIARY DUTY

I. THE SPECIAL COMMITTEE BREACHED ITS FIDUCIARY DUTY IN CONNECTION WITH THE SALE PROCESS AND WAS AIDED AND ABETTED BY RITHM

A. The Company Selectively Applied NDA Provisions To Ensure The Preferred Outcome That Benefitted Management

175. Through its sale process, Sculptor required twenty-two potential bidders to sign standstill obligations that included non-disclosure and "don't-ask-don't-waive" provisions precluding the bidders from publicly discussing their bid or asking the Company to waive the NDA conditions. Sculptor has not waived any of

these standstills except to permit potential bidders to submit confidential proposals to the Board or the Special Committee, effectively handcuffing outside bidders from communicating with stockholders concerning their proposals for the Company.

176. Delaware law makes clear, however, that the Special Committee must waive standstill conditions if a failure to do so would be inconsistent with their fiduciary duty.[45] The Merger Agreement itself provides for exactly such a mechanism:

> The Company shall not . . . grant any waiver, amendment or release of any Third Party under any standstill or confidentiality agreement; provided that notwithstanding the foregoing, the Company shall be permitted to grant a waiver of or terminate any "standstill" or similar agreement or obligation of any Third Party to the extent such agreement or obligation prohibits a confidential proposal being made to the Company Board or the Special Committee if the Company Board (acting upon the recommendation of the Special Committee) has determined in good faith, after consultation with its outside financial and outside legal advisors, that failure to take such action would be inconsistent with its fiduciary duties under Applicable Law . . . .[46]

177. As a publicly traded company putting itself up for sale, the Board's overriding duty is plain: to maximize the deal value for public stockholders.

178. The Founders repeatedly asked the Special Committee to waive the standstill obligations once it became clear that other bidders were inclined to submit

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[45] *See, e.g.*, *In re Topps Co. S'holders Litig.*, 926 A.2d 58, 91 (Del. Ch. 2007) ("Standstills are also subject to abuse. Parties like [the defendant] 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.")

[46] Merger Agreement, § 6.02

superior alternative proposals to purchase the Company. On August 22, 2023, the Founders asked publicly that the Special Committee release the Consortium—and other realistic bidders—from restrictions on making public statements on their bids so that they could improve their offers for the Company. A release would serve two key purposes: (1) allow the bidder to communicate to stockholders (and Sculptor's clients) about the contents of their bid and (2) ensure that the Founders and other stockholders understood the alternatives available when considering the Rithm deal and Rithm as a potential acquirer.

179. On August 29, 2023, the Founders again wrote to the Special Committee to express their concern that the NDAs were hurting the stockholders. The Special Committee had agreed to allow Rithm to speak and negotiate with the Founders, but it had refused to allow any other bidders to do so or to speak with other stockholders. The Founders told the Special Committee that its stance was contrary to settled Delaware law.

180. As of the date of this Complaint, the Consortium has not been released from their NDA to discuss their acquisition proposal with the Founders or other stockholders.

181. The Special Committee's refusal to allow the Consortium to speak with the Founders undermines their own process and their ability to secure the best deal for stockholders. The Proxy outlines that many bidders—including Rithm—sought

an agreement with the Founders to ensure the group's support for any eventual deal. A potential acquirer's interest in aligning with the Founders makes sense given their significant stock holdings, their long-term view of the value of the Company, and their role as significant creditors under the tax receivables agreement. Indeed, the Proxy describes in detail the Founders' interactions with other bidders and seeks to scapegoat the Founders for causing "perceived instability" during the sale process.[47] The Special Committee had the opportunity to allow all bidders to ease such perceptions by waiving the standstill obligations once a credible superior proposal—like the bid put forward by the Consortium—came forward. But it has repeatedly chosen not to do so.

182. The failure to allow the Consortium to publicly communicate about their bid allowed the Special Committee to protect its own ostensible excuse for preferring the Merger: the client-consent condition. By preventing the Consortium from discussing their bid with anyone, there was no way for the Consortium to test the willingness of Sculptor's clients to support new management. The Special Committee could have even selectively waived the standstill obligations to allow *only* for that communication. But the Committee chose not to do so.

[47] Proxy Statement at 48.

183. Since the Founders sent their letter to the Special Committee on August 29, 2023, the demands that the Special Committee allow the Consortium to communicate with the Founders, stockholders, and Sculptor's clients, grew louder.

184. But the Special Committee refused, even as the Consortium worked to meet their increasingly unreasonable demands. The Consortium's latest offer, as described in the Proxy, eliminated the overall client consent condition, offered $12.76 per Class A share, and expressed the willingness to pay $13.00 if the Special Committee waived the standstill and permitted the Consortium to negotiate a rollover with the Founders (the "September 30 offer"). The Company's own Proxy reveals that the Special Committee believed the September 30 offer was "reasonably likely to lead to a Superior Proposal" but nonetheless they did not waive the standstill obligations.[48] Under the standard set in *Topps*, the failure to loosen the standstill obligations at that point, and likely earlier, showed that the standstill was being used "not for reasons consistent with stockholder interest, but because managers prefer one bidder for their own motives."[49]

185. At the same time the Special Committee recognized that the Consortium's bid was reasonably likely to be a Superior Proposal, it simultaneously

[48] Proxy Statement at 87.

[49] *Topps*, 926 A.2d at 91.

determined that "uncertainty" over the Company's acquisition would be detrimental to Sculptor's clients and stockholders.

186. As a result, the Committee required the Consortium to submit to a new set of conditions within three days of their response on October 6, 2023. According to the Proxy, the Consortium's response on October 10 was insufficient due to their failure to fully "assume the Consortium-Specific Transaction Risks."[50] The Consortium-Specific Transaction Risks, as defined in the Proxy, refer to "certain adverse client and employee reactions" to the Company's acquisition by the Consortium.[51] Of course, the Consortium was helpless to mitigate any possible negative client and employee reactions because the Special Committee refused to waive the NDA for the Consortium to talk to the employees, clients, or any stockholders.

187. Instead of allowing the Consortium to speak to clients, the Special Committee hired an "Asset Management Consultant" to evaluate clients' opinions.[52] According to the Proxy, the Asset Management Consultant took a multi-layered approach that involved "interview[ing] key employees" of the Company and

[50] Proxy Statement at 90.

[51] *Id.* at 89.

[52] *Id.* at 92.

"analyz[ing] specific features of the Company's current client base . . . ."[53] The Special Committee did not, however, permit the Consultant to ask clients whether they would support the Consortium bid.

188. The Special Committee also did not solicit clients' opinions itself. In early September, the Company claimed that "a material percentage of the Company's client base had already raised concerns about the potential for changes to the Investment Function and that, given the large concentration of revenue run rate in a small number of clients, a small number of clients failing to provide consent could result in a failure to satisfy the Consortium Client Consent Condition . . . ."[54] But the Company's management is obviously conflicted when it comes to reporting such client "concerns" and client "concerns" about a hypothetical change is not the same as clients voting against an offer from the Consortium.

189. The Proxy attributes this information about clients to "a combination of (1) discussions during ordinary-course calls with the Company's clients, (2) discussions during calls in connection with seeking consent from clients to the Transactions, and (3) unsolicited calls from clients, in some cases referencing recent press reports . . . ."[55] In other words, the Special Committee chose to rely on

[53] *Id.* at 76.

[54] *Id.* at 79.

[55] *Id.* at 70.

management's representations about the "word on the street" rather than any systematic and disinterested approach to collecting client feedback. In the two months between the Consortium's first $12.26 bid to the $12.76 (and potential $13.00) bid offered on September 30, the Special Committee could have easily polled its clients, called them, or even asked a sample of the largest clients whether they would approve the Consortium acquisition. But the Committee opted to rely solely upon self-reports through management.

190. Put simply, the stockholders deserve concrete and reliable information regarding whether the Consortium's higher-priced proposal is viable from a client perspective. The Special Committee and the Board have steadfastly refused to provide that information to the Committee in favor of offering vague representations of the "word on the street" that are designed to undermine management's disfavored proposal.

191. Tellingly, there is no evidence in the Proxy that the Special Committee contacted clients, or even received information from its informal sources after the Consortium's September 30 offer. The Committee similarly did not reengage the Asset Management Consultant to reevaluate client preferences after September 30. In other words, the Special Committee had no way of knowing what clients thought about the Consortium's improved offer, and the Committee could not reasonably conclude that the client consent issue would preclude the Consortium's acquisition.

192. Just as troubling, the Consortium has never had the opportunity to tell clients or the public their side of the story. If the client consent issue truly barred the Special Committee from accepting a higher proposal, then the Special Committee was ***required*** by their fiduciary duty to try to address clients' concerns, including by facilitating the acquirer's contact with clients. Instead, the Special Committee has hid behind its constrained reading of the don't-ask-don't-waive provision in the Merger Agreement and barred the Consortium from speaking with clients or anyone else.

193. The failure to release the Consortium and other bidders from their NDAs reflects a sale process where the Special Committee worked backwards from their preferred result: a deal that would protect Sculptor management and their compensation even though that result will come at the expense of stockholders. Such a process runs contrary to the standard set in *Topps* and constitutes a breach of fiduciary duty.

B. The Special Committee Lacks Independence From Mr. Levin And Breached Their Fiduciary Duty By Failing To Isolate Him From The Process

194. The Special Committee's breaches of fiduciary duty can be explained by the two members' lack of independence from Mr. Levin. The Proxy confirms as much by noting that during the sale process the Special Committee "discussed that the transaction proposed by Bidder J may make client consent more difficult to

obtain because 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 following the closing of the potential transaction . . . ."[56]

195. As described above, the Special Committee appears to have used Mr. Levin's interest as a repeated excuse to reject Bidder J and the Consortium. Even if the "key man" risk had some factual basis (it does not), the Board failed to take steps necessary to negate the improper influence that Mr. Levin could exert over the sale process due to the control he obtained from the "key man" arrangements, his position as CEO and CIO, and as a significant stockholder of the Company.

196. Mr. Levin has repeatedly proven that he will maximize his leverage at the Company to extract value for himself at the expense of stockholders, both when he first was named CEO in 2020 and again when he pushed the Company to award him the Compensation Package in 2021.

197. Mr. Levin has continued to exert control over the Special Committee's sale process. Beyond the client consent condition, the Proxy Statement acknowledges that Mr. Levin's compensation has played a significant role in what bidders have offered for the Company. Moreover, the Proxy repeatedly notes his and/or his management team's regular attendance at Special Committee meetings.

[56] Proxy Statement at 59.

In total, ten separate pages of the Proxy's background section note the participation of Sculptor management at Special Committee meetings.[57]

198. For example, the Special Committee invited management to its meeting on March 5, 2023, in which the Special Committee "discussed the [Founders'] March 3, 2023, letter to the Special Committee," which raised allegations that "the Company's compensation structure was the primary cause of what [the Founders] viewed as insufficient valuation in the proposals from Bidder D."[58] The Special Committee could not have possibly held an independent discussion about whether Mr. Levin's outsized compensation was negatively impacting transaction value while members of Mr. Levin's management team, including potentially Mr. Levin himself, were in the room.

199. The Special Committee did not observe the traditional corporate protections that would isolate the sale process from Mr. Levin's control. The Special Committee consists of only two members of the Sculptor Board, Marcy Engel and Charmel Maynard. Both of those directors played a role in approving the Compensation Package in violation of their fiduciary duties. Because the Merger would effectively eliminate the risk that they would face liability from those actions by extinguishing potential derivative claims related to Compensation Package,

[57] *See, e.g.,* Proxy Statement at 38–40, 46, 48, 51–55, 57, 59–60, 64–67, 69–70, 72.

[58] Proxy Statement at 51.

Ms. Engel and Mr. Maynard were not truly independent, but had a unique personal interest in approving the Merger.

200. In addition, a leopard does not change its spots. Ms. Engel has a demonstrated history of capitulating to Mr. Levin's demands. And Ms. Engel's compensation doubled in the two years following Mr. Levin's rise to the top at Sculptor. Having proven herself beholden to Mr. Levin and having capitulated to his past demands, it is evident that Ms. Engel ran the Special Committee in close consultation with Mr. Levin and in deference to his interests, rather than with respect to her duties to the stockholders.

C. The Special Committee's Deference To Mr. Levin Tainted The Sale Process

201. As Mr. Levin had done in his prior compensation negotiations with the Board, he exploited his relationships with clients to secure a transaction for his own benefit. The Special Committee's evident predisposition to Mr. Levin's interests has not been lost on outside observers, and on stockholders. As Matt Levine of Bloomberg wrote on September 18, 2023, the Special Committee's estrangement of the Consortium "isn't just turning down a higher offer for a lower one; it's turning down a higher offer for a lower one that ***preserves Jimmy Levin's job***. . . . [F]aced

with the choice between a lower bid that keeps Levin and a higher bid that doesn't, it turns out that Levin is essential."[59]

202. The Special Committee's inability to separate itself from Mr. Levin led directly to approving an undervalued deal for the Company, to consistent efforts to preserve such inferior deals, and to the latest effort to ram that deal through over stockholder objections. The Merger provides security to Mr. Levin's professional, financial, and legal interests. Presented with a choice between those interests and a deal that maximizes value for stockholders, the Board chose the former in a quintessential violation of their fiduciary duties.

II. RITHM AIDS AND ABETS THE BOARD'S BREACHES OF FIDUCIARY DUTY BY RIGGING THE STOCKHOLDER VOTE

203. The Merger is the result of a flawed process infected by the rampant conflicts of Sculptor management and the Board, resulting in a bad deal for stockholders. One would therefore expect the Merger to be voted down. But here, Defendants have taken steps to skew the required stockholder vote in favor of the Merger.

204. The waiver of Rithm's standstill provision, the removal of the Disinterested Vote, and the increase in the break-up fee are all instances of inequities

[59] Levine, Sculptor Sticks with the Deal It Knows, at 4 (emphasis added).

in the Merger process resulting from the Special Committee and the Board's bad faith and self-interest.

205. *First*, the Board's waiver of Rithm's standstill agreement provides Rithm with preferential treatment and allows Rithm to gain control of a significant share of the Company in order to help push through the Merger in collaboration with members of Sculptor's management.

206. On October 12, 2023, Sculptor stock was trading on or above $12.00 per share, so even at *face value* the Amended Merger Agreement sold the Company at a discount.

207. As of October 4, 2023, Rithm had ceased negotiating any effort to amend the Merger. Yet one week later, on October 10, Rithm proposed to amend its purchase price to $12.00 per share in exchange for the Board taking several measures to tilt the playing field in its favor. And the next day, Delaware Life Insurance Company agreed to sell the Company Warrants to Rithm. The Amendment, which was executed on October 12, was thus negotiated in a matter of *hours*.

208. The Board's willingness readily to waive Rithm's standstill is remarkable given that the Board has refused similar standstill waiver requests from the Consortium and other bidders. Despite numerous requests over months, the Board has not released any other bidders, except for Rithm, from the standstill

provisions of their NDAs. Rithm has further taken advantage of this situation by not agreeing that the Special Committee could waive the Consortium's standstill.

209. The Company Warrants, which Rithm purchased and exercised, represent 6.5% of the voting power of the Company. In coordination with Rithm's Voting Agreements with Sculptor management, which lock up approximately 26% of outstanding voting power, Rithm's acquisition of the Company Warrants locks up approximately 33% of the stockholder vote. Thus, a full *one-third* of the stockholder vote is conflicted by collusive agreements.

210. Rithm admits that it paid Delaware Life Insurance Company $27,568,961 to purchase the Company Warrants "so that [Rithm] would be able to vote the 4,338,015 shares of Class A Common Stock thereunder in connection with the Issuer's special meeting of the stockholders in connection with the Transactions scheduled to be held on November 16, 2023."[60] Thus, by Rithm's own admission, it had no legitimate investment reason to purchase these warrants. Rather, Rithm and the Director Defendants engaged in a collusive scheme to buy votes to stack the deck in favor of the cheaper deal preferred by management.

211. Notably, it appears that Rithm reallocated funds that it had one time expected to use to raise the deal price to $12.20. Just one week before, Rithm had

[60] Rithm Schedule at 4.

proposed to the Special Committee that it raise its bid to $12.20, if it could secure a deal with the Founders. Rather than raise the purchase price further in response to the Consortium's potential $13.00 per share offer, Rithm lowered its offer and devoted its savings to buying votes to approve the deal, at the expense of stockholders.

212. In addition to allowing Rithm to buy votes, Rithm also demanded and received the elimination of the Disinterested Vote. The Special Committee removed this provision upon Rithm's demand, because they both know that, at the current trading price of the stock, the disinterested stockholders are not likely to support the inferior Rithm deal.

213. Rithm and the Company also agreed to increase the break-up fee by more than three-and-a-half million dollars, to $20,307,196, or 3.75% of the total equity value of the Company in the Transactions . That preclusive fee amount is yet another collusive attempt to lock up an undervalued transaction that favors management.

CLASS ACTION ALLEGATIONS

214. The Founders bring 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.

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

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

217. 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.

218. 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 forming a Special Committee consisting only of two conflicted directors, allowing Mr. Levin improperly to control the sale process, failing to obtain sufficient value for the Company that would address the losses of the Compensation Package, failing to release the Consortium from their standstill obligations, approving the Merger rather than the Consortium's bid that offers substantially more consideration for public stockholders, and colluding with Rithm to rig

the stockholder vote, 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;

(b) Rithm aided and abetted the Board's breaches of fiduciary duties by knowingly colluding with the Board to rig the stockholder vote, 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

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

219. 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.

220. The Founders are committed to prosecuting this Action and have retained competent counsel experienced in litigation of this nature. The Founders' claims are typical of the claims of the other members of the Class, and the Founders

have the same interests as the other members of the Class with respect to the requested relief. The Founders are an adequate representative of the Class.

221. 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.

CAUSES OF ACTION

COUNT I

Breach Of Fiduciary Duty
(Directly Against The Director Defendants)

222. Plaintiffs incorporate by reference and reallege every allegation contained above, as though fully set forth herein.

223. As directors, Levin, Cohen, Engel, Srikrishnan, Maynard, and Bonanno, were, and continue to be, fiduciaries of the Company and its stockholders, including the Founders. By reason of this fiduciary relationship, the Director Defendants owed and continue to owe Sculptor duties of care and loyalty.

224. The Board announced the formation of a Special Committee and a public sale process for the Company in November 2022, which allowed any potential

acquirer to make a bid for the Company. Under such circumstances, the Board must obtain the best reasonably obtainable sale price for the Company on behalf of the stockholders.

225. The Board and the Special Committee breached their fiduciary duties by (i) forming a Special Committee consisting only of two conflicted directors, Marcy Engel and Charmel Maynard; (ii) allowing Mr. Levin improperly to control the sale process; (iii) failing to obtain sufficient value for the Company that would address the losses of the Compensation Package; (iv) failing to release the Consortium from their standstill obligations; (v) approving the Merger rather than the Consortium's bid that offers substantially more consideration for public stockholders; and (vi) colluding with Rithm to rig the stockholder vote. Independently and collectively, each action constitutes a breach of fiduciary duty.

226. Plaintiff and 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.

227. Plaintiff has no adequate remedy at law.

COUNT II

Aiding And Abetting Breaches Of Fiduciary Duty (Against Rithm)

228. Plaintiffs incorporate by reference and reallege every allegation contained above, as though fully set forth herein.

229. Each member of the Board breached his or her fiduciary duties by colluding with Rithm to rig the stockholder vote.

230. Rithm knowingly aided and abetted the Board's breaches of fiduciary duty. Rithm approached the Board, after stating that it was no longer willing to negotiate, and offered to enter into a transaction inferior to the Consortium's bid if the Board would waive its standstill so that Rithm could buy the Company Warrants. Rithm purchased the Company Warrants and exercised them, gaining control over 6.5% of Sculptor's voting stock, so that it could assist in voting through the Merger.

231. Rithm knew that it was assisting the members of the Board in breaching their fiduciary duties. Rithm knew that the Consortium was offering the Board a deal that provided Company stockholders with more value—at least $12.76 per share—because Sculptor had disclosed this offer in Proxy Statements filed in August and September 2023. Rithm further knew that a bid for $13.00 was on the table if the Special Committee and the Board simply released the Consortium from its standstill so that it could negotiate with the Founders.

232. Rithm also knew that the Special Committee was refusing to release the Consortium from its standstill provisions, due to the Founders' public requests that Sculptor do so, thereby creating an unequal playing field favoring a transaction with Rithm.

233. Rithm further exploited Sculptor management's conflicts of interest by offering the Side Agreement to Mr. Levin and retention bonuses for other members of management. Rithm's efforts exacerbated the pressure that Sculptor management put on the Board to accept the undervalued Merger.

234. The Founders and the Class will be irreparably harmed absent enjoinment of the Board and Special Committee from enforcing any standstill obligations against the Consortium, because they will be forced to accept an inferior proposal for the Company.

REQUEST FOR RELIEF

WHEREFORE, the Founders pray that this Court summarily enter judgment in favor of the Founders and against the Company:

A. A preliminary injunction enjoining Rithm, the Board, and the 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;

B. 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;

C. An order declaring that Rithm may not vote the newly acquired shares of Sculptor stock from Delaware Life Insurance Company in the stockholder vote to be held on the Merger;

D. An order reinstating the provision of the Merger Agreement requiring the approval by a majority of independent stockholders to effectuate the Merger;

E. An order reducing the $20,307,196 break-up fee in the Merger Agreement to the original fee of $16,576,819;

F. 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;

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

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

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

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Dated: October 17, 2023

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