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Case No. 2026-1076-

IN THE COURT OF CHANCERY FOR THE STATE OF DELAWARE

FRANCHISE GROUP, INC. LITIGATION TRUST, by and through its Litigation Trustee, LAWRENCE HIRSH, Plaintiff, v. BRIAN KAHN; MATTHEW AVRIL; BRC GROUP HOLDINGS, INC. (f/k/a B. RILEY FINANCIAL, INC.); B.RILEY SECURITIES, INC.; GLASSRATNER ADVISORY & CAPITAL GROUP, LLC (d/b/a B. RILEY ADVISORY SERVICES); BRYANT RILEY; WILLKIE FARR & GALLAGHER LLP; and JEFFERIES LLC. Defendants.	C.A. No. ________

<u>COMPLAINT</u>

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Plaintiff Franchise Group, Inc. Litigation Trust (the "Litigation Trust"), by and through its Litigation Trustee, Lawrence Hirsh, and its undersigned counsel, hereby brings this Complaint against Defendants Brian Kahn ("Kahn"), Matthew Avril ("Avril"), GlassRatner Advisory & Capital Group, LLC (dba B. Riley Advisory Services); B. Riley Financial, Inc. ("Riley Financial" or "B. Riley"), Bryant Riley ("Riley"), Willkie Farr & Gallagher LLP ("Willkie"), and Jefferies LLC ("Jefferies"), and in support thereof respectfully alleges as follows:

I. NATURE OF THE CLAIMS

1. This Complaint arises from a brazen and calculated scheme to defraud Franchise Group, Inc. ("FRG" or the "Company") through a leveraged take-private transaction for the personal benefit of FRG's former Chief Executive Officer, Defendant Brian Kahn. Before the transaction, Kahn was drowning in more than $400 million of concealed personal debt, including over $200 million in loans secured by pledged FRG shares. Kahn took on these debts and pledged these shares to hide the cash collateral deficit he had accrued as the primary trader at a now-defunct hedge fund known as Prophecy Asset Management, L.P. ("Prophecy"). Kahn eventually pled guilty to conspiring to commit securities fraud during his time at Prophecy, with hundreds of millions of dollars in losses.[1]

[1] See Information ¶¶ 1-3, *United States v. Brian R. Kahn*, No. 25-cr-700-01 (D.N.J. Dec. 10, 2025) ("DOJ Information"); Complaint ¶¶ 1–11, 17, 54, 79–80,

2. As the Chief Executive Officer of a publicly traded company, Kahn would be unable to hide these financial improprieties and would face significant backlash from investors. In order to conceal these improprieties, Kahn and his co-conspirators implemented a scheme to take the Company private. Taking FRG private would eliminate the SEC reporting obligations, public disclosure requirements, and shareholder scrutiny that threatened to expose Kahn's concealed debt and his role in the Prophecy fraud to FRG's investors and to government regulators.

3. Facing the imminent unraveling of his fraud and the collapse of his personal financial empire, Kahn, aided and abetted by Defendant Matthew Avril, engineered a leveraged transaction to take FRG private by paying shareholders $30 per share (the "Take-Private Transaction"), which closed on August 21, 2023. Kahn and Avril took this step not because that transaction was in the best interests of FRG, but because it was the only way Kahn could protect the collateral securing his personal loans.

4. The remaining Defendants each played an indispensable role in the scheme, and each was motivated by personal financial incentives that aligned with Kahn's fraudulent objectives. The largest role was played by financial services

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158, *SEC v. Prophecy Asset Mgmt., LP*, No. 3:25-cv-16058 (D.N.J. Sept. 29, 2025) ("SEC Compl.").

company B. Riley Financial and its majority shareholder, Defendant Bryant Riley, who stood to gain enormously from the transaction. Leading up to the Take-Private Transaction, B. Riley was deeply embedded in FRG's operations through significant receivables transactions with FRG's consumer-retail subsidiary, W.S. Badcock Corp. ("Badcock"). B. Riley also held the pledge agreements securing Kahn's concealed personal debt. Together, Kahn and Riley Financial manufactured the conditions that made the Take-Private Transaction appear unavoidable: Riley Financial abruptly threatened to cease purchasing certain receivables from Badcock, manufacturing an acute liquidity crisis. Kahn defrauded FRG, and as a result of the fraud, other members of FRG's board agreed to the Take-Private Transaction.

5. The Take-Private Transaction was facilitated by professionals who were engaged to advise, represent, and safeguard the interests of FRG and its stakeholders, but who instead furthered Kahn's personal interests—each driven by their own financial incentives. Willkie Farr & Gallagher LLP, FRG's primary outside counsel, simultaneously represented Kahn personally in the Take-Private Transaction and in connection with the Prophecy investigation. The lead Willkie partner Tariq Mundiya had been aware of Kahn's criminal exposure since at least June 2021. Despite this knowledge, Willkie took on Kahn's personal representation, received and managed FRG's response to both the SEC and DOJ

subpoenas relating to Kahn's involvement in the Prophecy fraud, and failed to disclose the existence or substance of any of this to FRG's Board of Directors (the "Board") or its Special Committee. While FRG's Board maintained power to make decisions, the board members were defrauded by Kahn into approving the Take-Private Transaction. Willkie facilitated and permitted the Take-Private Transaction to close on August 21, 2023, while knowing that the CEO was the subject of a federal criminal investigation. Willkie then drafted an agreement directing $15 million of FRG's funds to itself to fund Kahn's personal defense. Willkie's conflicts and violations of its ethical duties ultimately led the Bankruptcy Court to disqualify Willkie from representing the Debtors in the bankruptcy proceeding.[2]

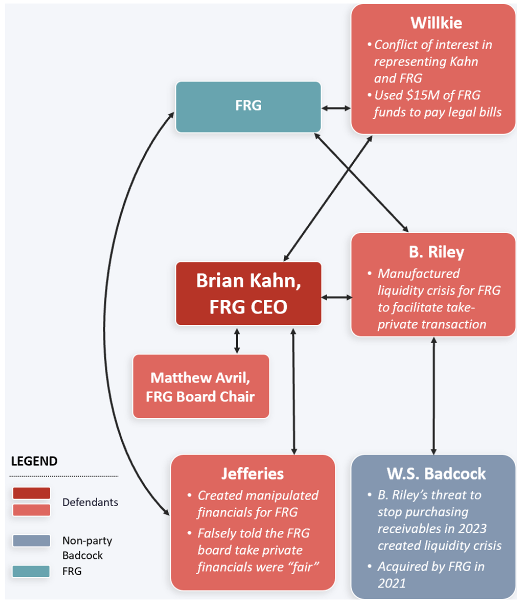
6. Jefferies, engaged as the Special Committee's independent financial advisor, was responsible for analyzing the Take-Private Transaction. Jefferies conspired with Kahn to provide a financial analysis that favored the Take-Private Transaction. Kahn and Defendant Avril (a FRG Board member) selected Jefferies and excluded other Board members from scheduling and most communications. Once engaged, Jefferies coordinated directly with Kahn and Riley Financial on the financial inputs underlying its analysis, failed to flag or investigate revenue overestimates in the projections, and issued a fairness opinion at $30 per share. A

[2] Bench Ruling, *In re Franchise Grp., Inc.*, No. 24-12480-LSS, ECF No. 975 (Bankr. D. Del. Feb. 13, 2025) ("Willkie Disqualification Ruling").

significant portion of Jefferies's compensation was contingent on the transaction's completion, giving it a direct pecuniary incentive to deliver the opinion Kahn wanted.

7. Avril, appointed Chairman of the Special Committee to evaluate the transaction, conspired to defraud FRG with Kahn. As confirmed by Avril, he has maintained a personal and professional relationship with Kahn since the late 1990s, had financial ties to Kahn-affiliated entities, and owed his board seats on multiple Kahn-controlled companies to Kahn himself. But rather than serve as a check on Kahn's influence, Avril functioned as Kahn's agent within the Special Committee—controlling the flow of information to Kahn's benefit, steering the advisor selection process with Kahn, excluding the other committee members from key meetings and communications, sharing confidential Special Committee materials with Kahn before sharing them with other members, and failing to challenge the transaction on price after Riley Financial rejected a single counteroffer. Avril's actions provided a veneer of independence and procedural propriety while in actuality Avril participated in fraudulent conduct at Kahn's behest.

8. Below is a summary of the Parties in this matter:



9. The Take-Private Transaction closed on August 21, 2023. Just fifteen months later, on November 3, 2024, FRG filed for Chapter 11 bankruptcy.[3] On December 10, 2025, Kahn pleaded guilty to conspiracy to commit securities fraud in connection with the Prophecy fraud.[4]

10. On behalf of the Litigation Trust, Plaintiff accordingly brings claims against Kahn and Avril for breach of fiduciary duty, fraud, corporate waste, unjust enrichment, aiding and abetting, and civil conspiracy; against Willkie for breach of fiduciary duty and aiding and abetting Kahn's fraud and breaches of fiduciary

[3] Voluntary Petition for Non-Individuals Filing for Bankruptcy, *In re Franchise Grp., Inc.*, No. 24-12480 (Bankr. D. Del. Nov. 3, 2024), ECF No. 1.

[4] Plea Agreement with Brian R. Kahn at 9, *United States v. Kahn*, No. 25-cr-700-01 (D.N.J.) ("Plea Agreement").

duty; against Jefferies for aiding and abetting Kahn's fraud and breaches of fiduciary duty; against BRC Group Holdings, Inc.; B. Riley Financial and Bryant Riley for aiding and abetting Kahn's fraud and breaches of fiduciary duty and for unjust enrichment.

11. Based on the difference between FRG's enterprise value at the time of the Take-Private Transaction ($2.7 billion) and at the time of bankruptcy ($1.6 billion), adjusted for divestitures ($381 million), the Litigation Trust seeks damages in excess of $700 million related to that transaction. In addition, Plaintiff seeks (a) the professional fees FRG paid to Jefferies, Willkie, and other advisors in connection with the Take-Private Transaction; (b) the compensation paid to Special Committee members; (c) the $15 million exit payment to Kahn; and (d) the approximately $42.3 million in funds Kahn caused to be up-streamed from Holdco to Topco.

II. JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction over this action pursuant to 10 Del. C. § 341. The claims asserted herein arise under and are governed by the laws of the State of Delaware, including the fiduciary duties imposed by Delaware corporate law, and seek equitable and legal relief within this Court's jurisdiction.

13. This Court has jurisdiction over this matter because Plaintiff's claims include claims for breach of fiduciary duty, aiding and abetting breach of fiduciary

duty, fraud, professional negligence, unjust enrichment, and civil conspiracy arising out of the internal affairs and governance of a Delaware corporation, and seek equitable remedies including disgorgement, restitution, constructive trust, and such other equitable relief as this Court deems just and proper. Plaintiff's claims also seek compensatory damages.

14. Venue is proper in this Court because FRG is a Delaware corporation; the fiduciary duties at issue arise under Delaware law; the challenged transaction involved the governance, disclosures, and corporate acts of a Delaware corporation; and a substantial portion of the conduct challenged herein was directed toward FRG in its capacity as a Delaware entity.

15. This Court has personal jurisdiction over Defendant Brian Kahn because he served as FRG's Chief Executive Officer and a member of its Board of Directors, thereby accepting fiduciary obligations under Delaware law; he purposefully directed the conduct alleged herein toward FRG, a Delaware corporation, by controlling transaction negotiations, causing challenged disclosures and omissions to be made to FRG's Board and Special Committee, and directing transfers of corporate property.

16. This Court has personal jurisdiction over Defendant Matthew Avril because he served on FRG's Board and as Chairman of its Special Committee, thereby accepting fiduciary obligations under Delaware law; he purposefully

directed the conduct alleged herein toward FRG by chairing the Special Committee process challenged in this Complaint and steering that process for Kahn's benefit.

17. This Court has personal jurisdiction over Defendant B. Riley Financial, Inc. because it is a corporation organized and existing under the laws of the State of Delaware. This Court also has personal jurisdiction over Defendant GlassRatner Advisory & Capital Group, LLC (d/b/a B. Riley Advisory Services) because it is a limited liability company organized under the laws of Delaware. Both entities purposefully directed the conduct alleged herein toward FRG by submitting the Take-Private Transaction proposal, manufacturing a liquidity crisis involving FRG's operations, and financing and closing the Take-Private Transaction.

18. This Court has personal jurisdiction over Defendant Bryant Riley because he served as an FRG Board member from September 2018 through March 2020, thereby accepting fiduciary obligations under Delaware law; he rejoined the FRG Board following the Take-Private Transaction in August 2023; and he purposefully directed the conduct alleged herein toward FRG by coordinating with Kahn regarding the Take-Private Transaction and Badcock receivables, and participating in the financing and post-closing governance challenged in this Complaint.

19. This Court has personal jurisdiction over Defendant Willkie Farr & Gallagher LLP because it is a limited liability partnership organized on August 25, 2003, and existing under the laws of Delaware. Willkie served as FRG's primary outside counsel from August 2018 through the Take-Private Transaction; owed fiduciary duties to FRG as its counsel; simultaneously represented Kahn personally during the same transaction and in connection with the Prophecy investigation; prepared transaction documents governing the Take-Private Transaction; and purposefully directed the conduct alleged herein toward FRG, a Delaware corporation, by advising on and facilitating the corporate acts and disclosures challenged in this Complaint.

20. This Court has personal jurisdiction over Defendant Jefferies LLC because it is a limited liability company formed under the laws of the State of Delaware on December 23, 1998. Jefferies purposefully directed the conduct alleged herein toward FRG by advising the Special Committee of a Delaware corporation and providing the challenged fairness opinion for the Take-Private Transaction.

21. In accordance with Court of Chancery Rule 8, Plaintiff demands a trial on all issues so triable.

III. THE PARTIES AND PERCIPIENT WITNESSES

A. Plaintiff

22. Plaintiff is the Franchise Group, Inc. Litigation Trust, formed on June 6, 2025 pursuant to the Ninth Amended Joint Chapter 11 Plan of Franchise Group, Inc. and its Debtor Affiliates (the "Plan"), which was confirmed by the Bankruptcy Court on June 2, 2025.[5]

23. The Litigation Trust was established on the Effective Date of the Bankruptcy Plan, pursuant to the Ninth Amended Joint Chapter 11 Plan of Franchise Group, Inc. and Its Debtor Affiliates and the Order Confirming the Ninth Amended Joint Chapter 11 Plan of Franchise Group, Inc. and Its Debtor Affiliates (the "Confirmation Order"). Plan § 1.128; Confirmation Order ¶ 124. The Plan defines "Permitted Litigation Claims" as "the Freedom HoldCo Debtor Litigation Trust Claims and the OpCo Debtor Litigation Trust Claims, including, for the avoidance of doubt, any Claims and Causes of Action belonging to the OpCo Debtors and the Freedom HoldCo Debtors against the Excluded Parties." Plan § 1.159; see also Plan §§ 1.101, 1.152. On the Effective Date, the Debtors irrevocably transferred those claims to the Litigation Trust, where they vested "free and clear of all Claims, Liens, encumbrances, or interests" pursuant to section 1141

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[5] Order Confirming Chapter 11 Plan of Franchise Group, Inc., *In re: Franchise Group, Inc., No. 24-12480-LLS*, ECF No. 1596 (Bankr. D. Del. June 2, 2025)

of the Bankruptcy Code. Plan § 7.10(a); Confirmation Order ¶¶ 24, 124. In accordance with sections 1123(b) and 1123(b)(3) of the Bankruptcy Code, the Litigation Trust holds "the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment" the Permitted Litigation Claims. Plan § 7.4(c); Confirmation Order ¶¶ 109, 111. The Litigation Trustee, Lawrence R. Hirsh, is "deemed to be a judicial substitute for the Reorganized Debtors as the party in interest in the Chapter 11 Cases, consistent with section 1123(b)(3)(B) of the Bankruptcy Code." Confirmation Order ¶ 126; see also Plan § 7.10(b)(i).

24. The claims asserted here against Kahn, Avril, Riley Financial, Riley, Willkie Farr & Gallagher LLP (defined in the Plan as "WFG"), and Jefferies, LLC fall squarely within the Permitted Litigation Claims and were not released, exculpated, waived, or retained by any Reorganized Debtor. The Plan's definition of "Released Parties" expressly excludes the "Excluded Parties," which include, inter alia, Brian Kahn, Bryant Riley, B. Riley Financial, Inc., WFG, and Jefferies, LLC. Plan § 1.191. The Exculpation provision likewise confirms that the Defendants, their Affiliates and Related Parties are not exculpated. Plan § 12.4. Both the Debtor Release and the Third-Party Release provide that "the releases set forth herein do not release the Permitted Litigation Claims." Plan §§ 12.2, 12.3. Only the Reorganized Debtors' Retained Causes of Action — claims against

continuing trade partners or contractual counterparties with whom the Reorganized Debtors maintain ongoing business dealings — are excluded from the Permitted Litigation Claims. Plan § 1.206. The Litigation Trust accordingly has standing and authority to prosecute this action.

25. Plaintiff further has standing to pursue these claims because the Debtors and their estates suffered injuries from the conduct alleged herein, including depletion of estate assets, impairment of FRG's enterprise value, payment of conflicted professional fees and Special Committee compensation, the Kahn exit transfer, and the up-streaming of Holdco funds to Topco. Any recovery will be administered by the Litigation Trust for the beneficiaries designated in the Plan.

B. Defendants

26. Defendant Brian Kahn served as FRG's Chief Executive Officer and a member of its Board of Directors from October 2, 2019 to January 22, 2024. Kahn is not released under the Plan. Kahn purposefully directed the conduct alleged herein toward FRG, a Delaware corporation, by serving as its CEO and director, controlling transaction negotiations, causing challenged disclosures and omissions to be made to FRG's Board and Special Committee, and directing transfers of Debtor and Holdco property.

27. Defendant Matthew Avril served on FRG's Board beginning in September 2018, and was appointed Chairman of the Board in March 2020. Avril has known Kahn since the late 1990s, when Kahn ran a small hedge fund called Kahn Capital. Over time, Kahn placed Avril on a series of boards of companies under Kahn's control or influence. On March 24, 2023, Avril was appointed an independent director and Chairman of FRG's Special Committee that was tasked with evaluating B. Riley's take-private proposal. He ceased serving as an FRG director on August 21, 2023 - the date the Take-Private Transaction closed. Avril did not receive a release under the Plan. Avril purposefully directed the conduct alleged herein toward FRG by serving as a fiduciary of a Delaware corporation and chairing the Special Committee process challenged in this Complaint.

28. Defendant GlassRatner Advisory & Capital Group, LLC (d/b/a B. Riley Advisory Services) is a limited liability company organized under the laws of Delaware. B. Riley Advisory Services was retained to provide financial advisory services to FRG related to the balance of consumer loan receivables originated and serviced by W.S. Badcock LLC.

29. Defendant B. Riley Securities, Inc. is a Delaware corporation and a subsidiary of BRC Group Holdings, Inc.

30. Defendant BRC Group Holdings, Inc. (formerly known as B. Riley Financial, Inc.) is a corporation organized and existing under the laws of the State

of Delaware. Riley Financial purportedly initiated the Take-Private Transaction by submitting a nominally "unsolicited" proposal on March 19, 2023, to acquire all of FRG's outstanding shares at $30 per share. Riley Financial was deeply embedded in FRG's business and financing operations, held the pledge agreements securing Kahn's concealed personal debt, and stood to gain enormously from the Take-Private Transaction. Defendants B. Riley Securities, Inc., GlassRatner Advisory & Capital Group, LLC and BRC Group Holdings, Inc. are hereinafter sometimes collectively referred to as "B. Riley."

31. Defendant Bryant Riley is a majority shareholder of Riley Financial and served as an FRG Board member from September 2018 through March 2020, and rejoined the FRG Board following the Take-Private Transaction in August 2023, where he continued to serve as a director of the Holdco Debtors. Riley purposefully directed the conduct alleged herein toward FRG by coordinating with Kahn regarding the Take-Private Transaction and Badcock receivables, communicating with Kahn about the pressure created by FRG's public-company status, and participating in the financing and post-closing governance challenged in this Complaint.

32. Defendant Willkie Farr & Gallagher LLP is a law firm organized on August 25, 2003, and existing under the laws of Delaware. Willkie is headquartered in New York. Willkie served as FRG's primary outside counsel

from August 2018 through the Take-Private Transaction and simultaneously represented Kahn personally during the same transaction and in connection with the Prophecy investigation. Willkie also previously represented BRC Group Holdings, Inc. in various transactions.

33. Defendant Jefferies LLC ("Jefferies") is the entity formally engaged on April 6, 2023 by FRG's Special Committee to perform financial advisory services in connection with the Take-Private Transaction.

34. Jefferies was formed under the laws of the State of Delaware on December 23, 1998.

35. Jefferies was engaged by FRG to perform financial advisory services for FRG's Special Committee in connection with the Take-Private Transaction. Although engaged as the Special Committee's purportedly independent financial advisor, Jefferies had a pre-existing and undisclosed working relationship with Kahn, functioned as Kahn's *de facto* financial advisor throughout the process, and delivered a fairness opinion based on manipulated financial projections. Jefferies purposefully directed the conduct alleged herein toward FRG by advising the Special Committee of a Delaware corporation and providing the challenged fairness opinion for the Take-Private Transaction. Additionally, Jefferies also ran an undisclosed project for Kahn and B. Riley before the Take Private Transaction using different financials. Although Jefferies was aware that the financials were

different than those in their fairness opinion, it failed to notify FRG either of the engagement or the different numbers.

C. Non-Parties and Percipient Witnesses

36. Tariq Mundiya is a Partner at the Willkie law firm. Mundiya has represented FRG since at least 2018 but also represented Kahn individually in the Take-Private Transaction and in connection with the Prophecy investigation. Mundiya failed to disclose material information to FRG, to the benefit of Kahn.

37. Vintage Capital Management, LLC ("Vintage") is an entity founded, controlled, and approximately 90% owned by Kahn. Vintage and Kahn held approximately 41.9 percent of FRG's voting power prior to the Take-Private Transaction.

IV. FACTUAL ALLEGATIONS

A. Defendant Kahn Helped Take FRG Public and Transformed the Company into an Acquisitions-Driven Holding Company Needing Continuous Outside Financing.

38. FRG, formerly Liberty Tax, Inc., is a Delaware corporation formed in 2010 and served as a diversified operator and acquirer of franchised and "franchiseable" businesses across consumer retail, specialty services, and real estate. Its business model evolved from an initial focus on tax preparation services to an acquisition-driven holding-company platform built around leveraged buyouts, roll-up transactions, and portfolio consolidation. FRG's strategy depended heavily on continuous access to financing. Each major acquisition relied on substantial

first- and second-lien term loans, sale-leaseback arrangements, and securitizations of consumer receivables.

39. Before the Take-Private Transaction, FRG was a publicly traded holding company that owned several retail brands, including Vitamin Shoppe, Pet Supplies Plus, and Buddy's Home Furnishings. Throughout this period, FRG's governance structure included Kahn, Vintage, and individuals tied to them. Vintage and Kahn had approximately 41.9 percent of FRG's voting power prior to the Take-Private Transaction.

40. In 2019, Vintage—an entity founded, controlled, and 90% owned by Kahn—and Riley Financial jointly engineered a merger between Liberty Tax and Buddy's Home Furnishings ("Buddy's"), an entity controlled by Kahn. The combined business was renamed Franchise Group, Inc., and Kahn became CEO on October 2, 2019.

41. Willkie represented Buddy's and Vintage in the 2019 Liberty Tax-Buddy's Merger. At the time of that merger, Buddy's had no preferred shares, as evidenced by the Liberty Tax-Buddy's merger agreement and Buddy's audited and unaudited financial statements, both of which were publicly filed with the SEC. As counsel to Buddy's and Vintage, Willkie was familiar with Buddy's capital structure and knew that Buddy's had never issued any preferred stock.

42. Beginning in 2018, Vintage and Riley Financial jointly acquired control of Liberty Tax and placed their designees on Liberty Tax's board of directors. Riley served on FRG's board from September 2018 through March 2020 and rejoined the FRG Board following the Take-Private Transaction in August 2023. And his company, Riley Financial, became deeply embedded in FRG's business operations through a series of financing arrangements. For example, as part of the Sears Hometown acquisition in 2019, Riley Financial purchased 1 million FRG shares for $12.0 million, the proceeds of which were used by FRG to partially fund the acquisition. Riley Financial also financed FRG's $700 million acquisition of Pet Supplies Plus in 2021.

43. In November 2021, FRG completed the acquisition of W.S. Badcock LLC ("Badcock") for $581.4 million, financed by a $425 million first-lien term loan and a $150 million second-lien term loan. Within weeks, Badcock entered into a Master Receivables Agreement with B. Riley Receivables, LLC, selling a tranche of receivables for approximately $400 million. In September 2022, Badcock entered into a second Master Receivables Purchase Agreement with B. Riley Receivables II, LLC. These receivables transactions provided Riley Financial unique visibility into FRG's financial condition and created the conditions that Riley Financial would later exploit to justify the Take-Private Transaction.

B. Kahn Used FRG's Business to Conceal Personal Indebtedness Related to Trading Losses He Incurred as Prophecy's Primary Trader.

44. As confirmed by documents and multiple witnesses, while serving as CEO of FRG, Kahn was personally indebted in excess of $400 million, including more than $200 million of loans secured by pledged FRG shares. Kahn was also a central figure in a massive hedge fund plot to conceal trading losses at Prophecy, an SEC-registered investment adviser that raised over $500 million from investors. Prophecy allocated the vast majority of its capital to Kahn, who controlled approximately 78% of the fund's leveraged trading capital and accumulated hundreds of millions of dollars in undisclosed losses.

45. By early 2020, Kahn's cumulative trading losses allegedly exceeded $400 million, yet Prophecy had never reported a single losing quarter. To conceal those losses, Kahn and Prophecy's co-owners engaged in a years-long pattern of sham round-trip transactions, fabricated collateral documents—including fictitious preferred stock certificates and forged signatures—and serial misrepresentations about the funds' performance, diversification, liquidity, and collateral protections. The scheme unraveled in March 2020 when Prophecy's auditor resigned and withdrew its audit opinion and Prophecy suspended all investor redemptions, leaving investors with losses exceeding $350 million.

46. Prophecy purportedly maintained a so-called "first-loss" business model under which Prophecy allocated the capital under its management to sub-

advisors, who then traded the capital in brokerage accounts held by Prophecy. From at least 2015 through 2020, Kahn, through several of his affiliates, acted as a sub-advisor to Prophecy's funds. Unbeknownst to Prophecy's investors, approximately $312 million, or approximately 86% of the funds' approximately $363 million in capital, eventually wound up being managed by Kahn's various entities. Prophecy generally did not require Kahn to post sufficient cash or other collateral to cover his potential losses. By October 2017, Kahn owed Prophecy approximately $19 million in collateral to backstop his trading losses, a deficit that he did not cure. To avoid reporting losses to Prophecy's auditor (Deloitte), its administrator, and its investors, Prophecy recorded Kahn's trading losses on its books as a receivable from Kahn and his affiliates (the "Kahn Receivable"). By the end of 2019, the Kahn Receivable accounted for nearly 53% of Prophecy's assets under management.

47. On June 1, 2022, Kahn entered into a settlement with Prophecy related to his misconduct (the "Prophecy Settlement"). As part of that settlement, Kahn granted the Prophecy Settlement Trust preferred shares in Buddy's to guarantee payment of his more than $75 million personal obligation under the settlement—however, these shares in Buddy's did not exist. In other words, Kahn used the same species of fabricated collateral—fictitious Buddy's preferred

stock—to settle the very fraud claims arising from his prior use of fictitious Buddy's preferred stock.

48. As part of the Prophecy Settlement, the Prophecy Settlement Trust was formed for the benefit of Prophecy's investors. Among the Trust's assets were approximately 2.5 million FRG shares that Kahn agreed to convey to an entity called Vintage Opportunity Partners, L.P. ("VOPLP"), which Kahn controlled through his control of VOPLP's general partner, Vintage Opportunity Partners GP, LLC ("VOPGP"). However, the Prophecy Settlement Trust held the sole economic and voting interest in the limited partner in VOPLP. Although Kahn controlled VOPGP, he was precluded by the limited partnership agreement from disposing of any FRG shares owned by VOPLP at a price below $60 per share without the consent of the limited partner, which was controlled by the Trust. Under the terms of the Merger Agreement, the price per share was $30—half the consent threshold.

49. As a further requirement of the Prophecy Settlement, Kahn caused Samjor to issue two promissory notes to Prophecy—the First Note, with a maturity date of February 28, 2023, and the Second Note, in the principal amount of $290 million, with a maturity date of 36 months—both personally guaranteed by Kahn, which were assigned to the Trust. On or about February 28, 2023—approximately one month after FRG received the SEC subpoena relating to the Prophecy fraud—Samjor and Kahn defaulted on the First Note by failing to remit payment of the

principal and all accrued interest, as well as to repay other obligations to the Trust. Willkie became aware of Kahn's default on his payment obligations to the Trust well before the Take-Private Transaction commenced, as Willkie counseled Kahn in negotiating and documenting a forbearance agreement in which Kahn admitted his defaults.

50. The Prophecy Settlement further provided that if the FRG shares held by the Trust generated proceeds equal to or greater than $252 million within 18 months or $260 million within 24 months, Kahn's payment obligations to the Trust would be satisfied. Concurrently, Kahn owed as much as $200 million in personal debt to certain BRC affiliates. Thus, Kahn had a clear motive to find a way to quickly and dramatically increase the value of his equity stake in FRG in order to have a chance to satisfy all of this personal debt. Kahn determined that taking FRG private was his best opportunity to substantially increase the value of his FRG stake and have a chance to repay his personal debts.

51. Between April and June 2019, Kahn assisted in creating a fictitious "Buddy's Newco LLC Series A Preferred Stock Agreement" that purported to show Prophecy owned $125 million worth of Buddy's preferred stock. These shares were never actually issued. Kahn falsely confirmed with Prophecy's auditor that he had authority to issue the stock, and this fabricated collateral was used to secure Kahn's trading positions at Prophecy.

52. As both Kahn and Hughes admitted in connection with their guilty pleas, between April and June 2019, Kahn and Hughes fabricated two purported Preferred Stock Agreements that falsely indicated that Prophecy held $75 million ("Buddy's PSA-1") and $150 million ("Buddy's PSA-2") in Buddy's preferred stock. Both agreements were fraudulently backdated to address Deloitte's audit findings. Kahn and Hughes also fabricated two Buddy's Convertible Stock Certificates purportedly held by Prophecy, which were also fraudulently backdated—one for $75 million and the other for $150 million. Hughes provided the fabricated documents to Prophecy's auditor, and Kahn falsely confirmed that the Buddy's preferred stock was validly issued and outstanding as of December 31, 2018.

53. As Kahn's losses mounted, Kahn, Hughes, and Spotts' scheme to conceal the extent of Kahn's trading losses involved additional efforts to give the false impression that Kahn had posted millions of dollars in additional collateral, including siphoning off millions of dollars from Prophecy in a secret round-trip transaction that returned to Prophecy repackaged as Kahn's money, as well as various bogus loan agreements, personal guaranties, and promissory notes. To replace the Kahn Receivable on Prophecy's balance sheet, Kahn created a fictitious limited partnership called Samjor LP ("Samjor"). According to the Samjor partnership agreement, Kahn was to capitalize the partnership by contributing

approximately $194 million in FRG shares, with Samjor issuing the sole limited partnership interest to Prophecy. In reality, Kahn never contributed the FRG shares to the partnership, rendering worthless the Samjor limited partnership interest issued to Prophecy.

54. On December 10, 2025, Kahn pleaded guilty to conspiracy to commit securities fraud in connection with the Prophecy fraud. The charging document to which Kahn pled guilty (the "Information") contained the following facts:

a. "From in or around January 2017 to in or around March 2020, defendant Brian R. Kahn ('KAHN') conspired with John Hughes ('Hughes') and Co-conspirator-1 (collectively, the 'Co-conspirators') to defraud dozens of investors ('investors' or 'Victims') who had invested approximately $360 million in investment funds managed by Prophecy Asset Management LP ('Prophecy'), through lies, deception, false and misleading statements, and material omissions relating to, among other things, the manner and purpose in which KAHN and the Co-conspirators used money from those funds and the financial position of Prophecy's funds leading up to its collapse in or around March 2020."

b. “The goal of the conspiracy was for the Co-conspirators to enrich themselves by obtaining hundreds of millions of dollars of Victims’ funds through false and misleading statements and material omissions regarding how the Victims’ investments would be used and the Funds’ profitability.”

55. As detailed in the Information, Hughes and Co-conspirator-1 falsely told investors that the funds were provided to sophisticated traders with proven track records of successful investing who would put up their own cash as collateral on potential losses. In truth, most of the funds went to numerous different trading entities, each overseen and controlled by Kahn. As Kahn’s losses escalated, Hughes and Co-conspirator-1 simply continued to provide Kahn with funds. As part of his plea agreement, Kahn agreed that the losses for purposes of the U.S. Sentencing Guidelines were in the range of $150 million to $250 million.

C. Kahn Made False Representations on His FRG Director and Officer Questionnaires to Conceal that He Had Pledged His FRG Shares as Securities for His Debts.

56. On March 20, 2020, March 19, 2021, March 4, 2022, and February 10, 2023, Kahn falsely answered “No” on his annual Directors’ and Officers’ Questionnaires when asked whether “any of the shares of common stock of FRG beneficially owned by [Kahn] were pledged as security for indebtedness or used as collateral in any transaction, arrangement or agreement.” Each Questionnaire also

contained an acknowledgment that the information furnished would be used in FRG's proxy statements and regulatory filings.

57. These answers were knowingly false. On April 24, 2020, Kahn and his wife pledged approximately 7.1 million FRG shares as collateral for Riley Financial loans under a Guaranty and Pledge Agreement. On June 25, 2021, Vintage borrowed $36 million from B. Riley Commercial Capital, LLC under a second lien promissory note. By December 28, 2022, the aggregate principal amount outstanding under the First Lien B. Riley Loan alone had reached $76,676,984. Kahn also had substantial undisclosed pledges to Prophecy; by the time the Take-Private Transaction closed, Kahn's total borrowings from Prophecy exceeded $200 million.

58. On January 3, 2020, Vintage and Riley Financial entered into an amended and restated secured promissory note and additional secured promissory note, allowing Vintage to borrow tens of millions of dollars from Riley Financial. On August 9, 2023, just twelve days before the Take-Private Transaction closed, the Second Lien B. Riley Loan was amended to add an additional loan of $19,182,069.94, and Vintage pledged to deliver certain shares in FRG stock into a B. Riley Wealth Management, Inc. securities account. At closing, Kahn and Lauren Kahn personally guaranteed Vintage's payment of its loan from Riley Financial and granted Riley Financial a security interest in certain personal assets

as part of a broader Guaranty and Pledge Agreement. The depth and breadth of these undisclosed financial entanglements between Kahn and Riley Financial made them covert partners in the Take-Private Transaction, each with powerful incentives to ensure the deal closed regardless of its consequences for FRG.

59. FRG's April 7, 2023 definitive proxy statement provided that "none of our directors, officers or other employees may engage in the following transactions: … pledging Company securities as collateral for a loan." Kahn's concealments render this statement false and misleading.

D. Kahn and His Long-Time Friend, Bryant Riley of Riley Financial, Orchestrated the Conditions that Led to the Take-Private Transaction to Support Their Private Interests at FRG's Expense.

60. Beginning in January 2023, Kahn initiated discussions with Jefferies about a potential management-led take-private transaction.

61. Riley and Kahn had been discussing a possible transaction for months before the purportedly "unsolicited" March 19, 2023 offer. As early as December 9, 2022, Riley emailed Kahn a financial analysis regarding a potential purchase of FRG. Riley viewed an acquisition of FRG as increasingly appealing in light of a decline in FRG's public share price.

62. On March 8, 2023, Chris Wood of Cannell Capital emailed Kahn regarding a fund that was calling out the relationship between Kahn and Riley and reporting that it was hearing "[g]oing private rumors at the end of January [2023]."

Kahn forwarded the email to Riley. Riley responded: "Makes me want to buy more. Working perfectly into your hands." That contemporaneous communication shows that, before the March 19, 2023 proposal was presented as "unsolicited," Kahn and Riley understood that market pressure and going-private rumors were advancing Kahn's interests and were coordinating around that pressure without disclosure to FRG's Board.

63. On March 3, 2023, Kahn and Riley discussed the possibility that Riley Financial would purchase $59.6 million in Badcock Q1 accounts receivable. The financial details included an 85% purchase price of $50.7 million, expected unlevered cash flows of $55.1 million, a 10% equity contribution of $6.0 million, and financing costs of $5.4 million. Kahn and Riley were actively negotiating the Badcock receivables arrangements at the precise time when Riley Financial's purported decision to cease purchasing receivables was being used to justify the Take-Private Transaction. Kahn and Riley orchestrated this scheme to fraudulently push the FRG Board to approve the Take-Private Transaction.

64. With these private negotiations between Kahn and Riley near final, Riley Financial suddenly informed FRG that it would cease purchasing Badcock receivables. This was part of the scheme for Kahn and Riley Financial to create a liquidity crisis to justify taking FRG private. Pursuant to this scheme, on March 19, 2023, Kahn reported to the Board that B. Riley would cease purchasing Badcock

receivables and emphasized that continued sales of those receivables were critical to maintaining compliance with FRG's credit facility covenants. That same day, B. Riley presented an offer to take FRG private as a solution to this emergent crisis. The private negotiations between Kahn and Riley, including the March 3, 2023 receivables discussions and Riley's prior take-private analysis, were not disclosed to the FRG Board.

65. Additionally, FRG's Board was not informed that Kahn was already engaged in advanced discussions for an alternative solution: selling Badcock to Conn's, another chain of furniture stores, in a transaction that was consummated shortly after the Take-Private Transaction closed. On April 3, 2023, Kahn emailed a representative of JPMorgan Chase that the Conn's deal was "really close" to closing. Kahn purposefully concealed the existence of the Conn's alternative from the Board while promoting the Take-Private Transaction as the only viable path forward.

66. On February 27, 2023, weeks before Riley Financial's purportedly unsolicited offer, Riley asked Kahn about FRG's Badcock receivables, asking whether Kahn was "trying to effectively become the equity on these deals going forward." Kahn confirmed his intent to Riley that he wanted to become the equity on the Badcock deal, but noted he could not take that step "as pubco" due to

"optics." In other words, both Riley and Kahn viewed FRG's public company ("pubco") status as an impediment to their plans.

67. The sequence of events, viewed in its totality, demonstrates that Riley Financial's decision to stop purchasing Badcock receivables was not an independent business decision but a choreographed step with Kahn to create the conditions that would make a take-private transaction appear necessary. Riley Financial used its position as a critical counterparty to create a liquidity crisis that Riley Financial itself then offered to solve through the acquisition. The July 14, 2023 proxy repeated this narrative to shareholders, warning that the inability to continue selling Badcock receivables could impair dividend payments and potentially trigger a default. Kahn then used this manufactured crisis to justify the transaction to the Board and Special Committee, while suppressing the alternative of selling Badcock to Conn's. Kahn's fraud made it impossible for the Board to make an informed, neutral decision.

E. Riley Financial Proposed the Take-Private Transaction While Knowing of Kahn's Undisclosed Pledged Shares and that the $30-Per-Share Offer Price Was a Farce.

68. Riley Financial held the pledge agreements securing Kahn's loans, even as FRG's public filings stated under penalty of the federal securities laws that no pledges existed. Most pointedly, FRG's April 7, 2023 definitive proxy statement, issued just nineteen days after Riley Financial submitted its purportedly

“unsolicited” proposal, stated that “none of its directors, officers, or employees may … pledge company securities as collateral for a loan.” Riley Financial—a sophisticated financial services firm, former board participant, and active counterparty to FRG’s ongoing business—had access to and should have been familiar with these SEC filings.

69. Indeed, before the Merger Agreement was executed on May 10, 2023, Riley Financial’s own counsel raised Kahn’s undisclosed pledges with Kahn and FRG’s counsel at Willkie. Riley Financial’s counsel recognized the undisclosed pledge while performing due diligence into its pledge for the Take-Private Transaction. At no point did Willkie (or Riley Financial’s counsel) inform either FRG’s Board or the Special Committee of the undisclosed pledges. Nor did anyone at Riley Financial or Willkie disclose the pledged shares to the second-lien lenders providing hundreds of millions in transaction financing for a transaction in which the CEO’s equity stake was encumbered by undisclosed liens held by the very party that had proposed the deal. Indeed, not only was this information omitted, but Kahn also falsely represented that he was personally investing $200 million of value in the transaction in order to provide comfort to lenders.

70. Kahn, Riley Financial, and Willkie violated their duties to FRG’s Board by concealing this information.

71. Riley Financial's awareness of the intertwined financial interests is further evidenced by contemporaneous communications. On August 8, 2023, just thirteen days before the Take-Private Transaction closed, Riley and Kahn discussed the priority of liens on Kahn's shares in a UBS account and Wells Fargo account. Kahn commented that a B. Riley employee had "brought that up yesterday suggesting that I hadn't disclosed a loan that isn't mine." Riley Financial's own internal personnel were identifying disclosure issues with Kahn's pledges, yet Riley Financial proceeded to close the transaction without ensuring disclosure to the Board, the Special Committee, or the lenders. As a result, FRG's Board was prevented from making an informed decision.

72. On August 16, 2023, five days before the Take-Private Transaction closed, Kahn responded to Riley regarding appraisal notices from shareholders who owned over 900,000 shares, stating: "[L]et's see who else gives notice … My instinct is if its 100mm or more its a pretty easy decision to take the financing. And it's pretty easy case on the merits since but for the go private the public shareholders were in big trouble - and that's easy to prove beyond any doubt." Kahn believed the Take-Private Transaction had been structured to make the company's public shareholders appear to have no viable alternative—the precise manufactured condition alleged herein.

F. Kahn's Long-Time Friend and Business Partner, Defendant Avril, Improperly and Fraudulently Steered FRG's Special Committee to Prevent Meaningful Independent Oversight.

73. On March 24, 2023, FRG's Board created a Special Committee of independent directors consisting of Defendant Avril, Cynthia Dubin, and Thomas Herskovits to evaluate the B. Riley proposal and other strategic alternatives. However, Avril did not act as an independent director and instead conspired with Kahn to defraud FRG and push the Take-Private Transaction forward.

74. Defendant Avril's actions hindered the Special Committee's ability to provide meaningful independence or oversight. Its chairman, Defendant Avril, lacked independence from Kahn. As confirmed by Avril himself, Avril has known Kahn since the late 1990s, had invested in Kahn-affiliated entities, and owed his board seats on multiple Kahn-controlled companies to Kahn himself.

75. Rather than serving as an independent fiduciary, Avril functioned as Kahn's proxy within the Special Committee. Among other things, Avril altered the flow of information to Kahn's benefit. For example, on March 19, 2023, the day of B. Riley's "unsolicited" acquisition offer, Avril forwarded the proposal to outside counsel. On March 22, outside counsel emailed Avril—but not Dubin or Herskovits—the draft Board resolutions forming the Special Committee. On March 23, Avril emailed outside counsel instructing them to attend the Board meeting, stating "info will come from [Kahn]." Avril actively left other Special

Committee members out of communications to ensure that FRG's Board would not discover Kahn's fraudulent conduct.

76. Avril also influenced the Special Committee's selection of potential financial advisors for the Take-Private Transaction with Kahn. Between March 26 and 31, Avril, Kahn, and outside counsel at Wachtell, Lipton, Rosen & Katz ("Wachtell") coordinated interviews of potential financial advisors. Kahn personally scheduled interviews with four candidates. Neither Dubin nor Herskovits was copied on any scheduling emails. The Zoom invitation for Jefferies's interview was sent to Avril and Wachtell, not Dubin or Herskovits. Avril and Kahn excluded other Special Committee members from the process to make sure that Jefferies was hired.

77. Avril also excluded other members of the Special Committee from key meetings. On April 3, Avril (without the other Special Committee members), Jefferies, and Wachtell met to discuss Jefferies's preliminary financial analysis. On April 14, Kahn's counsel Willkie met with Wachtell and Avril, but not other Special Committee members. On April 16, 2023, Avril, Kahn, Wachtell, and Willkie met, and the Special Committee, not knowing of Kahn and Avril's behind-the-scenes maneuvers, granted Kahn "broad latitude" to pursue "discussions, negotiations and actions" in connection with any potential acquisition transaction, provided that the Special Committee would have "the opportunity to weigh in

before [Kahn] enters into binding commitments, agreements, etc. that could reasonably be expected to impact the company." Kahn and Avril's previous concealments prevented the Special Committee from knowing the depth of Kahn's conflicts of interest.

78. On April 16, 2023, Willkie requested the removal of the Special Committee's consent rights from FRG's SEC disclosure for the Take-Private Transaction. The lack of consent rights would have given Kahn carte blanche in entering into agreements on behalf of FRG without Special Committee approval. In doing so, Willkie prioritized Kahn's personal interests and shielded him from having to obtain Special Committee consent for transactions related to the Take-Private Transaction. In response to this request, Wachtell reiterated that the Special Committee expected to have the "opportunity to weigh in" before Kahn entered into binding commitments, making it clear that the Special Committee did not cede total authority to Kahn.

G. Purportedly Independent Advisor Jefferies Entered into a Conflicted Engagement with FRG and Manipulated Its Fairness Opinion to Support Kahn's Agenda.

79. Jefferies's involvement in the Take-Private Transaction predated Riley Financial's purportedly "unsolicited" March 19, 2023 offer by months. Between January and February 2023, Kahn enlisted Ryan Mash of Jefferies to assist in analyzing a potential acquisition of FRG.

80. Not knowing the full extent of this pre-existing relationship, on March 30, 2023, the Special Committee unanimously determined to engage Jefferies as its independent financial advisor. Jefferies was formally engaged on April 6, 2023 as a result of Kahn and Avril's concealments.

81. At the time of Jefferies's engagement by the Special Committee, Jefferies had already discussed and shored up the financial "fairness" of the Take-Private Transaction pursuant to Kahn's wishes. A "Disclosure of Relationships with B. Riley and Franchise Group" dated April 6, 2023 partially disclosed that in January 2023, Jefferies was contacted by Kahn regarding a potential debt financing and recapitalization transaction and Jefferies provided analysis but did not disclose the extent to which Kahn had been directing Jefferies's work product for months.

82. Once formally engaged, Jefferies continued to coordinate directly with Kahn rather than through the Special Committee. Jefferies also knew that its projections incorporated flawed financial information that was material to any fairness analysis, knew that Kahn and Riley Financial were relying on the $30-per-share fairness opinion to close the Take-Private Transaction, and did not disclose the details of its conversations with Kahn regarding the projections when it issued the fairness analysis. As a result, the FRG Board had no significant reason to doubt Jefferies's fairness opinion.

83. On May 5, 2023, Kahn updated the FRG Board on negotiations, indicating that Kahn and affiliates would control the surviving company and Riley Financial would participate as a financing source. As a result, the transaction had evolved from a purportedly unsolicited Riley Financial proposal into a management buyout led by Kahn himself, yet neither Avril nor Jefferies demanded any change in deal terms or additional consideration. On May 9, 2023, Jefferies rendered a fairness opinion stating that the $30 per share merger consideration was, "from a financial point of view, fair" to FRG's shareholders.

H. Willkie Represented Kahn Personally in the Take-Private Transaction and Concealed a Criminal Investigation into Kahn While Continuing to Serve as FRG's Corporate Counsel and Advising FRG on the Take-Private Transaction.

84. Willkie served as FRG's primary outside counsel from 2018 through the Take-Private Transaction, advising on substantially all of its corporate transactional matters and substantially all of its financing transactions since 2019. In March 2023, Willkie decided to represent Kahn personally in the Take-Private Transaction while continuing to serve as FRG's corporate counsel. Willkie represented Kahn, through partner Tariq Mundiya, in negotiating the Merger Agreement, the Rollover Contribution Agreement, and the Equity Commitment Letter against the very entity for which Willkie had served as primary outside counsel for five years. The institutional knowledge Willkie possessed about FRG's

operations, finances, weaknesses, and negotiating strategies now benefited Kahn, not the Company.

85. Willkie partner Tariq Mundiya had been personally aware of Kahn's Prophecy exposure since at least June 2021. On June 15, 2021, an outside investor emailed FRG's Chief Administrative Officer, Andrew Kaminsky, a link to a February 2021 article identifying Kahn by name as the dominant sub-adviser for Prophecy hedge funds that had suffered hundreds of millions of dollars in losses. Kaminsky immediately contacted Mundiya by phone for help responding to the investor. Thus, on or before June 15, 2021, Mundiya was personally aware of the Prophecy allegations and was Kahn's designated point person for managing inquiries about them.

86. On January 23, 2023, the SEC served FRG with a subpoena seeking records regarding the issuance of Buddy's Home Furnishing's preferred shares. At Kahn's direction, the subpoena was routed to Mundiya at Willkie. On the same day, Willkie attorney Sean Ewen performed "research for B. Kahn question" and research "regarding take-private deals with stub equity," billing both to FRG. The routing of this subpoena through Mundiya—who was simultaneously advising Kahn on a take-private transaction—ensured that the Board would not learn of the subpoena's true significance.

87. Willkie represented FRG in connection with FRG's response to the SEC Subpoena. FRG, via Willkie, produced the Buddy's Disclosure Letter to the SEC, but claimed that FRG was in possession of no documents responsive to the SEC's request for records pertaining to the issuance of the Buddy's preferred stock—implicitly confirming that no such preferred stock was ever issued. Willkie already knew that there was no Buddy's preferred stock because Willkie had been familiar with Buddy's capital structure since at least 2019 by virtue of Willkie's involvement in the Liberty Tax-Buddy's Merger. The SEC Subpoena's focus on fabricated securities—which Willkie independently knew to be fabricated—was an obvious red flag that Kahn was under investigation for securities fraud.

88. On June 5, 2023, the DOJ served FRG with a subpoena requesting, among other things, documents related to Prophecy and communications with Kahn. The subpoena specifically included a request for documents to be submitted to an FBI agent. FRG's General Counsel forwarded the subpoena to Mundiya at Willkie. On July 12, 2023, Willkie learned that the DOJ was "particularly interested in the fact that we do not possess the Buddy's Newco stock certificates transferred to Prophecy or any related Board materials." On July 13, 2023, Willkie responded to the DOJ subpoena, producing 43 documents. By this date, Willkie, and in particular Mundiya, had notice that there was an underlying dispute between Kahn and Prophecy that the DOJ was investigating. Whatever formal division of

responsibilities Willkie may claim existed, Mundiya's team was operationally handling the entirety of the Prophecy-related subpoena response while simultaneously representing Kahn personally.

89. Upon information and belief, Willkie and Kahn responded to the DOJ on behalf of FRG without informing the Board of Directors of FRG, the Special Committee, or their respective counsel that FRG had received the DOJ Subpoena. The DOJ Subpoena sought, among other things, all documents related to or referencing the Prophecy funds for the period January 1, 2015 through the date of the DOJ Subpoena, as well as "documents involving any pledge, assignment, or transfer of FRG or Buddy's Newco preferred stock" to certain Prophecy entities and certain categories of documents and communications "between Brian Kahn or any other FRG or Buddy's Newco board member, officer, executive, or employee, and Jeffery Spotts, John Hughes, or any other representative of" certain Prophecy entities. The particular focus of the DOJ Subpoena left no doubt that Kahn, Hughes, and Spotts were, at a minimum, subjects of an ongoing criminal investigation, and more likely, targets of such criminal investigation.

90. The DOJ subpoena arrived after the Merger Agreement was signed on May 10, 2023, but well before the Take-Private Transaction closed on August 21, 2023. Neither the Board nor the Special Committee was informed of the DOJ subpoena.

91. Willkie did not establish ethical walls between its FRG team and its Kahn team until November 7 and 10, 2023—nearly three months after the Take-Private Transaction closed. As the Bankruptcy Court previously found, "Willkie did not establish a wall for the Take-Private Transaction until after it had concluded. Thus, the knowledge gained from its representation of Mr. Kahn in the Take-Private Transaction is imputed to the firm as a whole."[6]

92. The scope and magnitude of Willkie's conflicted representation was extraordinary. During the Take-Private Transaction and related matters, Willkie simultaneously served as: (i) counsel to FRG in responding to the SEC and DOJ Subpoenas; (ii) counsel to Kahn with respect to his Prophecy-related issues, including securing the consent from the Prophecy Settlement Trustee to permit the Rollover of the 2.5 million FRG shares held by the Trust; (iii) counsel to Topco as the purchaser under the Merger Agreement; (iv) counsel to Kahn as the controlling stockholder with respect to the Investment Advisory Agreement and the Topco operating agreement; (v) counsel to Vintage as the borrower under the New Vintage Loan; and (vi) counsel to the Kahns as guarantors under the Guaranty. These concurrent engagements created irreconcilable conflicts at every level of the transaction.

[6] Willkie Disqualification Ruling, at 19:25-20:4.

93. Willkie also knew that Kahn's stock was pledged before the Take-Private Transaction and withheld the information from FRG and its lenders. On August 7, 2023, Willkie helped prepare a Letter Agreement with the following recitals: "WHEREAS, 5,061,255 of the Shares (the 'Specified Shares') are held in an account of Pledgors [Kahn, and his wife Lauren Kahn] at B. Riley Wealth Management, Inc., which is subject to a control agreement in favor of Holders [B. Riley and its affiliates] … [FRG] acknowledges Pledgors pledge of the Specified Shares to the Holders." In addition, before the Merger Agreement was executed, Riley Financial's counsel raised the matter of non-disclosure of the pledge arrangement with Willkie during certain negotiations. Willkie had actual knowledge of Kahn's pledged shares and chose not to disclose the information to FRG's Board.

I. The Take-Private Transaction Closes Without the Special Committee or Investors Knowing of Kahn's Legal Troubles, the Pretextual Justification for the Take-Private Transaction, or Riley's, Jefferies', or Willkie's Conflicted Representations.

94. The Take-Private Transaction closed on August 21, 2023, and FRG became a wholly owned subsidiary of Freedom VCM, Inc. ("Holdco"), with Freedom Topco ("Topco") as its ultimate parent. At the closing, among other things: (i) Riley Financial entered into a First Amendment to Equity Fee Letter to pay Riley Financial $16.5 million; (ii) the Investment Advisory Agreement between Vintage and B. Riley Securities, Inc. was terminated, with Riley Financial

entitled to be paid $20,910,666.87; (iii) Riley Financial and other holders sold B. Riley Receivables II, LLC to a Topco affiliate for a $58.9 million promissory note; (iv) Vintage entered into a secured promissory note with Riley Financial, secured by Topco units and personal guarantees from Kahn and Lauren Kahn; and (v) the FRG managers rolled over their equity stakes into the new post-merger entity and received cash payouts due to accelerated vesting of restricted stock units. In addition, Kahn became President and Secretary of Holdco, Laurence became Vice President and Treasurer, and Kahn, Laurence, and Riley became directors of the Holdco Debtors.

95. On November 2, 2023, less than three months after the Take-Private Transaction closed, the SEC filed an enforcement action against Prophecy's co-founder John Hughes. On that same day, in the criminal case, Hughes pleaded guilty to conspiracy to commit securities fraud, admitting to conspiring with Kahn to defraud dozens of Prophecy investors who had invested approximately $360 million in funds through lies, deception, misleading statements, and material omissions about the purported low-risk, transparent, and diversified nature of Prophecy's funds. Bloomberg identified Kahn as an unindicted co-conspirator, publicly linking FRG's CEO to a nearly $300 million investment fraud. The revelation threw FRG's Board into crisis and delayed the pending Badcock sale.

96. In November 2023, when FRG's Executive Vice President Andrew Laurence learned the full extent of Kahn's personal borrowings of more than $200 million from Riley Financial, Laurence held a 3:00 a.m. call with Kahn, telling him "how dare you" allow Laurence to proceed "blindly" without this knowledge. Laurence told Kahn: "shame on you that it took this process for me to learn about your personal leverage profile, which obviously would have been instructive as we thought about some of the things that we were doing or not doing." Meanwhile, Kaminsky reported that he learned of Riley Financial's loans to Kahn and "was blown away" and felt "taken." Kaminsky said management was in "panic mode." When Kaminsky questioned Riley regarding how he came to loan Kahn $200 million, Riley responded that he had "made a lot of money with Kahn earlier on" and that "as Kahn's balance sheet grew, Riley said that his balance sheet grew as well." Riley conceded to Kaminsky that "Kahn definitely went too far this time."

J. Kahn Leverages Consent Rights He Obtained Through the Take-Private Transaction to Extort FRG One Last Time.

97. Following the public disclosure of the Prophecy allegations, Kahn leveraged his consent rights over the pending sale of Badcock to Conn's—consent rights he obtained through the Take-Private Transaction. He refused to consent to the critical sale or step down as CEO unless FRG paid him $15 million to fund his personal legal defense. Some of FRG's own officers described this demand in unambiguous terms: Kaminsky characterized it as Kahn having "blackmailed" the

Company, and Laurence referred to it as a "shake down." The $15 million was structured as a ten-year note payable by Kahn, but Kaminsky stated that FRG did not expect to be repaid.

98. On December 18, 2023, Willkie drafted an agreement between Topco and Kahn for Topco to deposit $15 million with Kahn's counsel—Willkie itself, through Mundiya—to pay for legal fees and expenses related to Willkie's representation of Kahn in responding to the SEC's subpoenas and the investigation into Prophecy. Willkie represented Kahn on one side of the transaction and FRG on the other. Tariq Mundiya and Mike Brandt of Willkie represented Kahn with respect to the consulting agreement, even though Willkie attorneys were representing FRG in the same transaction. In a follow-up communication, Willkie stated that it included an option for Kahn to have a "recapture of control" of FRG, "although [it] will be hard to define what exoneration means" for Kahn to regain control. On January 19, 2024, the $15 million indemnification was converted into a loan from Topco to Kahn as part of the negotiations surrounding Kahn's departure and his consent to the Badcock sale. The economic substance did not change: FRG was funding Kahn's defense of the fraud that Willkie knew about and failed to disclose.

99. Between November 10 and December 15, 2023, Holdco transferred approximately $42,291,134 in aggregate to Topco, with the Holdco bank account

reaching $0 as a result of the December 15, 2023 transfer. Kahn authorized the movement of funds to Topco. On October 13, 2023, Holdco had also sent $10 million, belonging to Topco, to an account at TD Ameritrade Clearing, Inc. These fund movements stripped the operating company of its liquidity for the benefit of the entity controlled by Kahn.

100. On January 19, 2024, Kahn exited from FRG with the consulting agreement, incentive plan, and the $15 million payment described above.

101. On January 26, 2024, one week after exiting FRG, Kahn texted a family member that he "never wanted to be public" but "didn['t] want to force liberty tax [] shareholders out so we kept it all public. Then as we added brands like vitamin shoppe, sylvan, badcock, Pet supplies plus; and American freight --> i had an opportunity to add debt and increase my equity ownership so we took it private." This admission confirms that Kahn defrauded FRG's Board to approve the Take-Private Transaction because of his desire to increase his personal equity position and eliminate the constraints of public company status. Kahn's encouragement of the Take-Private Transaction was not driven by any genuine concern for FRG's best interests.

K. FRG's Insolvency and Bankruptcy Filing.

102. FRG's financial condition continued to deteriorate, and it filed for Chapter 11 bankruptcy on November 3, 2024.[7] FRG and Holdco were insolvent from and after the Take-Private Transaction. The Take-Private Transaction was completed through a significant level of leverage, and the Company was significantly over-levered, with negative equity, on a pro forma basis. There is substantial evidence that FRG was balance-sheet insolvent as of the Take-Private Transaction closing date, and it remained insolvent thereafter, including at the time of the transfers to and for the benefit of Kahn and Willkie described herein.

L. Willkie's Attempt to Further Profit from Acting as FRG's Bankruptcy Counsel is Denied by the Bankruptcy Court.

103. Prior to the Take-Private Transaction, Willkie, through its simultaneous representation of Kahn and FRG, was well aware of Kahn's hidden involvement in the Prophecy fraud, his massive undisclosed personal debts, and his need to take FRG private in order to conceal these problems. Indeed, Willkie represented Kahn in numerous issues related to these problems. Although Willkie owed FRG the duty of undivided loyalty (requiring it to avoid conflicts of interest), Willkie assisted Kahn in hiding his problems and the reasons for the Take-Private

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[7] *In re Franchise Grp., Inc.*, No. 24-12480 (LSS) (Bankr. D. Del. May 14, 2025).

Transaction from FRG. Willkie disregarded this duty when it prioritized Kahn's personal interests above those of FRG during the Take-Private Transaction.

104. Despite these rampant conflicts from simultaneously representing Kahn's and FRG's divergent interests, Willkie attempted to continue to profit from this scheme by seeking appointment as FRG's bankruptcy counsel. In trying to obtain the Bankruptcy Court's approval to do so, Willkie filed two declarations from its Chairman, Matthew Feldman ("Feldman"), dated December 19, 2024 (the "Feldman Dec.")[8] and February 3, 2025 (the "Feldman Supp. Dec.").[9] On January 13, 2025, the U.S. Trustee filed an objection in the Bankruptcy Court to the retention of Willkie as counsel for FRG.[10]

105. In these declarations, Willkie admitted its extensive representation of Kahn in various capacities *since at least 2018*, including:

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[8] Declaration of Matthew A. Feldman in Support of Debtors' Application for Order Authorizing the Retention and Employment of Willkie Farr & Gallagher LLP as Co-Counsel for the Debtors, *Nunc Pro Tunc* to the Petition Date, Docket No. 474-2 (Dec. 19, 2024).

[9] Supplemental Declaration of Matthew A. Feldman in Further Support of Debtors' Application for Order Authorizing the Retention and Employment of Willkie Farr & Gallagher LLP as Co-Counsel for the Debtors, *Nunc Pro Tunc* to the Petition Date, Docket No. 889 (Feb. 3, 2025).

[10] Objection of the United States Trustee to Debtors' Application for an Order Authorizing the Retention and Employment of Willkie Farr & Gallagher LLP as Co-Counsel for the Debtors, *Nunc Pro Tunc* to the Petition Date, Docket No. 730 (Jan. 13, 2025).

- Representing Kahn's interests in numerous transactions for Vintage Capital Management from 2018 through 2024. Feldman Dec. ¶¶ 14-19;
- Representing Kahn in the Take-Private Transaction "[b]etween March and August of 2023." Feldman Dec. ¶ 21; and
- Representing Kahn individually in his separation from FRG in January 2024. Feldman Dec. ¶ 26.

106. Willkie's required undivided loyalty to FRG was further disregarded by its representation of various B. Riley entities in "certain ongoing litigation matters, including securities class action lawsuits. . ." that were related to FRG. Feldman Dec. ¶ 28. Additionally, Willkie did not disclose that it also represented B. Riley with respect to *Calenture, LLC v. B. Riley Financial, Inc.*, No. 21-cv-6087-MKV (S.D.N.Y. 2021), a case involving B. Riley's ownership of then-publicly-traded shares of FRG.[11]

107. Attempting to minimize its conflicts in order to obtain the Bankruptcy Court's approval, Willkie purported to establish an "exclusionary ethical wall" between its lawyers representing Kahn and its lawyers representing FRG on November 7, 2023. Feldman Dec. ¶ 23. But by this late date, the Take-Private

[11] U.S. Trustee Objection, ¶ 27.

Transaction has already closed, rendering this purported wall irrelevant, to the extent that it actually existed.

108. On February 12, 2025, the Bankruptcy Court denied FRG's application to retain Willkie as debtor's counsel because of the actual conflicts the firm faced in representing both FRG and Kahn, which would impede its ability to recommend or bring litigation claims on behalf of FRG against Kahn. Critically, the Bankruptcy Court found that the fact that Willkie did not establish appropriate ethical walls until *after* the Take-Private Transaction had concluded meant that "the knowledge [Willkie] gained from its representation of Mr. Kahn in the take-private transaction is imputed to the firm as a whole."[12] For this reason, the Bankruptcy Court found that *an "actual conflict" existed and denied Willkie's application to proceed as FRG's counsel in the bankruptcy*.[13]

109. Within hours after the Bankruptcy Court denied Willkie's retention application, Feldman emailed a B. Riley affiliate employee who had urged him not to seek retention, apologizing for the error in judgment:

> Obviously i owe you an apology. You were 100% right and I was wrong. I will say I learned some new facts in the last 6 weeks I did not know when we spoke but even given the new information I should have been more objective before we filed. Please accept my apology and I genuinely hope this doesn't impact your firm.

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[12] Willkie Disqualification Ruling, at 19:21-20:4.

[13] *Id*. at 21:5-6.

This apology demonstrates Willkie's knowledge that its conflicts were significant and had the potential to cause damages to other parties.

M. FRG's Damages Incurred as a Result of Defendants' Tortious Conduct.

110. The public disclosure of Kahn's involvement in the Prophecy fraud directly destroyed FRG's post-Take-Private business plan, on which the entire transaction was premised. The disclosures about Kahn and the Prophecy fraud seriously impaired FRG's ability to sell or otherwise monetize any of its businesses, which in turn meant that FRG could not deleverage its balance sheet and reduce the related liquidity and cash flow burdens associated with its high debt levels. For example, FRG was in the process of securitizing the royalty stream for its Pet Supplies Plus franchise. That transaction would have generated substantial revenues enabling FRG to drastically decrease its secured debt. However, that transaction did not proceed due to the Prophecy fraud. FRG's key lender constituents also began tightening control over the company by increasing the interest rate payable on an outstanding loan facility and placing additional restrictions on how FRG could apply the proceeds from certain transactions. In other words, the entire business model upon which the Take-Private Transaction was premised, and upon which FRG's continued viability depended, became impossible to execute due to potential and identified counterparties' unwillingness to do business with FRG.

111. Based on the difference between FRG's enterprise value at the time of the Take-Private Transaction ($2.7 billion) and at the time of bankruptcy ($1.6 billion), adjusted for divestitures ($381 million), damages from the Take-Private Transaction exceed approximately $700 million.

112. The Litigation Trust also seeks recovery of: (a) the professional fees FRG paid to Jefferies, Willkie, and other advisors in connection with the Take-Private Transaction, currently alleged to total approximately $16.7 million; (b) the compensation paid to Special Committee members, currently alleged to total approximately $280,000 (including $100,000 to Defendant Avril); (c) the $15 million exit payment to Kahn; and (d) millions of dollars of illegal dividends, representing the funds Kahn authorized to be up-streamed from Holdco to Topco between November and December 2023.

V. CAUSES OF ACTION

COUNT I

BREACH OF FIDUCIARY DUTY
<u>(Against Defendant Kahn)</u>

113. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

114. As FRG's Chief Executive Officer and a member of its Board of Directors, Kahn owed FRG fiduciary duties of care, loyalty, and good faith under Delaware law.

115. Kahn breached his fiduciary duties to FRG by, among other things, causing FRG to enter into the Take-Private Transaction that was not in FRG's best interests, but instead served Kahn's own personal and financial interests.

116. Kahn's breaches of fiduciary duty include, without limitation:

a. Concealing from the Board (and lenders) his more than $400 million in personal debt, including over $200 million in loans from Riley Financial secured by pledged FRG shares, which created a massive undisclosed conflict of interest in connection with the Take-Private Transaction;

b. Concealing from the Board his involvement in the Prophecy fraud and the resulting criminal and regulatory investigations, which were material facts that would have caused the Board to take action to protect FRG;

c. Engineering the Take-Private Transaction for his personal benefit—to protect his pledged FRG shares and eliminate the constraints of public company status—rather than for the benefit of FRG and its stakeholders;

d. Manufacturing a pretextual liquidity crisis by orchestrating Riley Financial's threat to cease purchasing Badcock receivables, which was used to stampede the Board into approving the Take-Private Transaction;

e. Leveraging consent rights obtained through the Take-Private Transaction to extort $15 million from FRG to fund his personal legal defense; and

f. Authorizing the transfer of approximately $42.3 million from Holdco to Topco, stripping the operating company of its liquidity for the benefit of the entity he controlled.

117. As a direct and proximate result of Kahn's breaches of fiduciary duty, FRG suffered damages in excess of $700 million, plus the professional fees paid to advisors in connection with the Take-Private Transaction, the compensation paid to Special Committee members, the $15 million exit payment, and the approximately $42.3 million in funds up-streamed from Holdco to Topco.

COUNT II

FRAUD
(Against Defendant Kahn)

118. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

119. Kahn made and caused to be made material misrepresentations and concealments to FRG's Board, Special Committee, management, stockholders, and lenders in connection with the Take-Private Transaction. The misrepresentations and omissions were made in FRG's D&O Questionnaires, Board and Special Committee meetings and materials, transaction communications, SEC disclosures, and financing. Kahn's fraudulent misrepresentations, concealments, and omissions include, without limitation:

a. His more than $400 million in personal debt, including over $200 million in loans from Riley Financial secured by pledged FRG shares;

b. His financial entanglements with Riley Financial, including but not limited to, Vintage Capital Management LLC borrowing millions of dollars from Riley Financial;

c. His involvement in the Prophecy fraud and the criminal and regulatory investigations arising therefrom;

d. His conversations to sell Badcock to Conn's;

e. The pretextual nature of the manufactured liquidity crisis that was used to justify the Take-Private Transaction; and

f. The true purpose of the Take-Private Transaction, which was to serve his personal financial interests rather than the interests of FRG.

120. Kahn also knowingly caused false representations and material omissions to be included in the transaction documents governing the Take-Private Transaction. The Merger Agreement contained numerous false representations, including: (a) Section 5.6(e), which falsely represented that FRG had disclosed all material correspondence with the SEC, while concealing the SEC Subpoena; (b) Section 5.7(d), which falsely represented that FRG had disclosed to its auditors and audit committee any fraud involving management, while concealing Kahn's participation in the Prophecy fraud; (c) Section 5.9(a), which falsely represented that there were no material Proceedings (including governmental investigations and subpoenas) against FRG or any Indemnified Party, while concealing the SEC and DOJ investigations; and (d) Section 5.10(b), which falsely represented that no Material Adverse Effect had occurred, while concealing the investigations and Kahn's criminal exposure. In the Rollover Agreement, Kahn caused VOPLP to falsely represent that it had the "sole and unrestricted power" to dispose of the approximately 2.5 million FRG shares "free and clear of any and all Encumbrances," when in fact the Prophecy Settlement Trust's consent was required for any disposition below $60 per share.

121. Kahn knowingly and intentionally concealed and misrepresented material facts that he had a duty to disclose as FRG's CEO and director, including:

a. On March 20, 2020, March 19, 2021, March 4, 2022, and February 10, 2023, Kahn falsely answered "No" in FRG D&O Questionnaires when asked whether his FRG shares were pledged as security for indebtedness or used as collateral, even though his FRG shares had been pledged to Riley Financial and others;

b. On and after January 23, 2023 and June 5, 2023, Kahn concealed from the Board and Special Committee the SEC and DOJ subpoenas and his involvement in the Prophecy fraud, including by routing the subpoenas through Willkie and Mundiya while Willkie was representing Kahn personally;

c. On March 19, 2023 and thereafter, Kahn concealed from the Board and Special Committee that the purported Badcock receivables liquidity crisis was manufactured through his coordination with Riley Financial, including the March 3, 2023 receivables discussions and Riley's prior take-private analysis; and

d. Throughout the Take-Private Transaction process, Kahn concealed the true purpose of the Take-Private Transaction: to protect his pledged FRG shares, preserve his personal equity upside, obtain control rights that he later used to extract the $15 million exit transfer, and eliminate public-company constraints that threatened to expose his fraud.

122. These misrepresentations and omissions were material because they concerned Kahn's disqualifying conflicts, the integrity of the Take-Private Transaction process, the accuracy of FRG's disclosures and financing representations, and whether the Board and Special Committee could fairly evaluate the transaction. Had the Board, Special Committee, stockholders, or lenders known the truth, FRG would not have approved or closed the Take-Private Transaction on the terms alleged herein.

123. FRG justifiably relied on Kahn's misrepresentations and omissions through its Board, Special Committee, management, disclosures, and financing process. Kahn's fiduciary position, superior knowledge, and control over the omitted information made that reliance reasonable, and his concealment proximately caused FRG to enter into the Take-Private Transaction, pay conflicted professional and committee fees, fund the $15 million exit transfer, and suffer the damages alleged herein.

124. As a direct and proximate result of Kahn's fraud, FRG suffered damages in excess of $700 million.

COUNT III

CORPORATE WASTE
(Against Defendant Kahn)

125. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

126. As FRG's Chief Executive Officer and a member of its Board, Kahn had a fiduciary duty not to waste corporate assets.

127. Kahn caused FRG to waste corporate assets by, among other things, causing FRG to pay compensation and fees to advisors for a transaction that was not in FRG's best interests, and by causing FRG to pay him $15 million to fund his personal legal defense.

128. There was no legitimate corporate purpose for these payments, and no reasonable person could have concluded that these transactions were fair to FRG.

129. The corporate waste committed by Kahn includes, without limitation:

a. The professional fees paid to Jefferies, Willkie, and other advisors in connection with the Take-Private Transaction;

b. The compensation paid to Special Committee members in connection with the Take-Private Transaction; and

c. The $15 million exit payment to Kahn to fund his personal legal defense.

130. As a direct and proximate result of Kahn's waste of corporate assets, FRG suffered damages in an amount to be proven at trial.

COUNT IV

ILLEGAL DIVIDENDS/UNLAWFUL DISTRIBUTION
(Against Defendants Kahn and Bryant Riley)

131. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

132. Under 8 Del. C. § 170(a), a corporation may pay dividends or make distributions to its stockholders only "out of its surplus" or, if no surplus exists, "out of its net profits for the fiscal year in which the dividend is declared and/or the preceding fiscal year." A distribution made in violation of this limitation is an unlawful distribution.

133. Under 8 Del. C. § 174(a), directors who "willfully or negligently" vote for or assent to the payment of a dividend or distribution contrary to the provisions of 8 Del. C. §§ 160 or 173 are jointly and severally liable to the corporation for the full amount of the unlawful distribution, to the extent that the distribution exceeded the amount that could have lawfully been paid from available surplus or net profits.

134. In addition to the statutory cause of action under Section 174, Delaware common law recognizes that a distribution made by a corporation to its

stockholder or parent that renders the corporation insolvent, or that is made while the corporation is already insolvent, constitutes a breach of fiduciary duty and/or an unlawful transfer recoverable for the benefit of the corporation's creditors. Under the common law, the directors who authorized such a distribution are personally liable for the resulting injury to the corporation and its creditors.

135. As alleged herein, between November 10 and December 15, 2023, Holdco transferred approximately $42,291,134 in aggregate to its parent entity, Topco, with the Holdco bank account reaching $0 as a result of the December 15, 2023 transfer. On October 13, 2023, Holdco had also sent $10 million, belonging to Topco, to an account at TD Ameritrade Clearing, Inc.

136. The transfers from Holdco to Topco constituted dividends, distributions, or upstream payments of corporate assets from a subsidiary to its parent within the meaning of 8 Del. C. §§ 170 and 174. Although characterized as fund movements, the transfers had the economic substance of a distribution: corporate assets were moved from the operating company (Holdco) to the entity controlled by Kahn (Topco), for the benefit of Topco's equity holders, without any consideration flowing back to Holdco in return.

137. These distributions were not made in the ordinary course of business, were not supported by any bona fide intercompany obligation, and served no legitimate corporate purpose of Holdco. Rather, Kahn authorized the movement of

funds to Topco. The fund movements stripped the operating company of its liquidity for the benefit of the entity controlled by Kahn.

138. At the time of the challenged distributions between October and December 2023, Holdco did not have a lawful surplus from which the distributions could be made, nor did Holdco have net profits for the fiscal year in which the distributions were made or the preceding fiscal year sufficient to support the distributions.

139. FRG and Holdco were insolvent from and after the Take-Private Transaction. The Take-Private Transaction was completed through a significant level of leverage, and the Company was significantly over-levered, with negative equity, on a pro forma basis. There is substantial evidence that FRG was balance-sheet insolvent as of the Take-Private Transaction closing date (August 21, 2023), and it remained insolvent thereafter, including at the time of the transfers described herein.

140. Holdco's balance-sheet insolvency at the time of the challenged transfers means that Holdco's liabilities exceeded its assets, and it therefore had no "surplus" within the meaning of 8 Del. C. § 154 (i.e., the excess of net assets over the aggregate par value of all issued shares). A corporation with negative equity has, by definition, no surplus from which a lawful distribution may be made.

141. In addition, Holdco did not have net profits for the fiscal year 2023 or the preceding fiscal year 2022 sufficient to support the challenged transfers, given FRG's deteriorating financial condition, the significant debt load imposed by the Take-Private Transaction, and the impairment of FRG's business operations caused by the disclosure of Kahn's involvement in the Prophecy fraud in November 2023.

142. At the time of the challenged transfers (October through December 2023), the directors of Holdco included Kahn, Andrew Laurence, and Bryant Riley. Kahn became President and Secretary of Holdco following the Take-Private Transaction, and Kahn, Laurence, and Riley became directors of the Holdco Debtors. Defendant Kahn authorized the transfers from Holdco to Topco. (¶ 99.) As President and a director of Holdco, Kahn willfully directed and assented to the challenged distributions in violation of 8 Del. C. § 170. Kahn knew that Holdco was insolvent and over-levered, knew that the transfers would strip Holdco of its remaining liquidity, and nonetheless authorized the transfers for his personal benefit through Topco, the entity he controlled.

143. Defendant Bryant Riley, as a director of the Holdco Debtors, willfully or negligently voted for or assented to the challenged distributions. Riley knew or should have known that Holdco was insolvent and lacked the surplus required by Delaware law to make the challenged distributions, given Riley's deep involvement in FRG's financial affairs, his position as a director, and Riley Financial's role as a

primary counterparty and lender to FRG. Riley stood to benefit from the transfers through his interest in and control over Riley Financial, which was a creditor of Kahn and had powerful incentives to ensure that Kahn maintained access to FRG's and Holdco's resources.

144. As a direct and proximate result of the unlawful distributions, Holdco was stripped of approximately $42,291,134 in liquid assets—the entirety of its available cash—rendering it unable to fund ongoing operations, service its debt obligations, or meet the needs of its creditors. The Holdco bank account reached $0 as a result of the December 15, 2023 transfer.

145. The challenged distributions directly and proximately contributed to FRG's and Holdco's inability to operate as going concerns and their ultimate bankruptcy filing on November 3, 2024.

146. Pursuant to 8 Del. C. § 174(a), Defendants Kahn and Riley are jointly and severally liable to the corporation for the full amount of the unlawful distributions—approximately $42,291,134—together with interest from the dates of the respective transfers.

147. In addition, under Delaware common law, Defendants Kahn and Riley are liable for damages suffered by FRG and its creditors as a result of the unlawful distributions, including but not limited to: (a) the full amount of the distributions ($42,291,134); (b) consequential damages resulting from the depletion of Holdco's

operating liquidity, including the impairment of ongoing business operations and the acceleration of insolvency; and (c) such other damages as may be proven at trial.

COUNT V

UNJUST ENRICHMENT
(Against Defendant Kahn)

148. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

149. Kahn was unjustly enriched at FRG's expense through his fraudulent scheme.

150. Through the Take-Private Transaction and related transactions, Kahn obtained substantial personal benefits at FRG's expense, including the protection of his pledged FRG shares, the elimination of public company constraints, and ultimately the $15 million exit payment.

151. Kahn's enrichment came at FRG's expense and included, without limitation:

a. The protection of Kahn's pledged FRG shares and the more than $200 million in personal loans from Riley Financial secured thereby;

b. The elimination of the constraints of public company status, allowing Kahn to avoid the scrutiny that would have otherwise exposed his fraud; and

c. The $15 million exit payment that FRG funded to cover Kahn's personal legal defense costs.

152. It would be unjust to allow Kahn to retain the benefits he obtained through his fraudulent scheme at FRG's expense.

153. Plaintiff is entitled to restitution from Kahn in an amount to be determined at trial, including all amounts by which Kahn was unjustly enriched at FRG's expense.

COUNT VI

BREACH OF FIDUCIARY DUTY
<u>(Against Defendant Avril)</u>

154. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

155. As a member of FRG's Board of Directors and Chairman of the Special Committee, Avril owed FRG fiduciary duties of care, loyalty, and good faith under Delaware law.

156. Avril breached his fiduciary duties to FRG by, among other things, failing to serve as a genuine independent check on Kahn's influence and instead functioning as Kahn's agent within the Special Committee.

157. Avril's breaches of fiduciary duty include, without limitation:

a. Failing to disclose to FRG's Board his personal and professional relationship with Kahn dating back to the late 1990s, his financial ties to Kahn-affiliated entities, and the fact that he owed his board seats on multiple Kahn-controlled companies to Kahn;

b. Steering the advisor selection process in coordination with Kahn, including the selection of Jefferies as the Special Committee's financial advisor;

c. Excluding other Special Committee members from key meetings and communications with Kahn and Kahn's representatives;

d. Sharing confidential Special Committee materials with Kahn before sharing them with other committee members;

e. Failing to challenge the Take-Private Transaction on price after Riley Financial rejected a single counteroffer;

f. Controlling the flow of information to Kahn's benefit and providing a veneer of independence and procedural propriety to a process that was in fact directed by Kahn; and

g. Participating in fraudulent conduct at Kahn's behest, thereby facilitating the Take-Private Transaction that damaged FRG.

158. As a direct and proximate result of Avril's breaches of fiduciary duty, FRG suffered damages in excess of $700 million, plus additional damages to be proven at trial.

COUNT VII

UNJUST ENRICHMENT
(Against Defendant Avril)

159. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

160. Avril was unjustly enriched at FRG's expense through his participation in Kahn's fraudulent scheme.

161. Through his role as Chairman of the Special Committee, Avril received compensation and other benefits from FRG while acting as Kahn's agent rather than serving as a genuine independent fiduciary.

162. Avril's enrichment came at FRG's expense, as the compensation he received was premised on the false representation that he was serving as an independent fiduciary for FRG.

163. It would be unjust to allow Avril to retain the compensation and benefits he received from FRG while acting in a manner contrary to FRG's interests and in furtherance of Kahn's fraudulent scheme.

164. Plaintiff is entitled to restitution from Avril in an amount to be determined at trial, including all compensation and benefits Avril received from FRG in connection with the Take-Private Transaction.

COUNT VIII

AIDING AND ABETTING KAHN'S BREACH OF FIDUCIARY DUTY (Against Defendant Avril)

165. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

166. As alleged herein, Kahn breached his fiduciary duties to FRG.

167. Avril had actual knowledge of Kahn's breaches of fiduciary duty and actual knowledge that his own assistance was wrongful. Avril was personally and professionally close to Kahn, owed his board positions to Kahn, had financial ties to Kahn-affiliated entities, coordinated advisor selection and Special Committee communications with Kahn, and participated in the process while knowing that other Special Committee members lacked the same information.

168. Avril knowingly and substantially assisted Kahn's breaches of fiduciary duty by, among other things, serving as Kahn's agent within the Special Committee, controlling the flow of information to Kahn's benefit, steering the advisor selection process in coordination with Kahn, excluding other committee members from key meetings and communications, sharing confidential committee materials with Kahn, failing to challenge the Take-Private Transaction, and giving

the process a false appearance of independence when he knew the process was compromised.

169. Avril's assistance was knowing, active, and substantial, and was a proximate cause of the damages FRG suffered because it prevented the Special Committee and Board from receiving material information, impaired their ability to negotiate or reject the transaction, and allowed Kahn's conflicted transaction process to proceed to closing.

170. As a direct and proximate result of Avril's aiding and abetting of Kahn's breaches of fiduciary duty, FRG suffered damages in excess of $700 million, plus additional damages to be proven at trial.

COUNT IX

AIDING AND ABETTING FRAUD
(Against Defendant Avril)

171. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

172. As alleged herein, Kahn committed fraud against FRG by making material misrepresentations and omissions to FRG's Board in connection with the Take-Private Transaction.

173. Avril had actual knowledge of Kahn's fraud and actual knowledge that his own assistance was wrongful. Avril was personally and professionally close to Kahn, owed his board positions to Kahn, had financial ties to Kahn-

affiliated entities, coordinated with Kahn in the advisor-selection and Special Committee process, and knew that the Special Committee and Board were being denied material information about Kahn's conflicts and the transaction process.

174. Avril knowingly and substantially assisted Kahn's fraud by, among other things, serving as Kahn's agent within the Special Committee, providing a false veneer of independence and procedural propriety to the Take-Private Transaction, excluding Dubin and Herskovits from key communications, steering Jefferies's selection despite Kahn's involvement, and facilitating approval of the transaction by the Special Committee and the Board without disclosure of material facts.

175. Avril's assistance was knowing, active, and substantial, and was a proximate cause of FRG's damages because it enabled Kahn's misrepresentations and omissions to remain concealed through the Board and Special Committee approval process.

176. As a direct and proximate result of Avril's aiding and abetting of Kahn's fraud, FRG suffered damages in excess of $700 million, plus additional damages to be proven at trial.

COUNT X

BREACH OF FIDUCIARY DUTY
(Against Defendant Willkie)

177. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

178. As FRG's primary outside counsel, Willkie owed FRG fiduciary duties, including duties of loyalty, candor, and confidentiality, and was obligated to act in FRG's best interests. Willkie's fiduciary duties arose from its attorney-client relationship with FRG, its role advising FRG on substantially all corporate transactional and financing matters, and its receipt and use of FRG's confidential information.

179. Willkie breached its fiduciary duties to FRG by, among other things:

a. Agreeing to represent Kahn personally in the Take-Private Transaction while simultaneously serving as FRG's primary outside counsel, creating an irreconcilable conflict of interest that it failed to disclose to FRG;

b. Failing to inform FRG that the $200 million in value the Jefferies represented as Kahn contributing to the Take Private, which meaningfully induced lenders to invest (CEO's $200MM commitment gives clarity and support to the deal), was illusory as it was previously pledged to B. Riley and thus unavailable;

c. Using the institutional knowledge it possessed about FRG's operations, finances, weaknesses, and negotiating strategies for the benefit of Kahn and against the interests of FRG;

d. Receiving and managing FRG's responses to the SEC and DOJ subpoenas relating to Kahn's involvement in the Prophecy fraud while simultaneously representing Kahn personally, and failing to disclose the existence or substance of either subpoena to FRG's Board or Special Committee;

e. Drafting the agreement directing $15 million of FRG's funds to Willkie itself to fund Kahn's personal defense, while simultaneously representing both Kahn and FRG in the same transaction; and

f. Failing to establish ethical walls between its FRG team and its Kahn team until nearly three months after the Take-Private Transaction closed, allowing the imputation of Kahn's confidential information to the entire firm.

180. As a direct and proximate result of Willkie's breaches of fiduciary duty, FRG suffered damages in excess of $700 million, plus the professional fees paid to Willkie in connection with the Take-Private Transaction and the $15 million directed to Willkie to fund Kahn's defense.

COUNT XI

AIDING AND ABETTING BREACH OF FIDUCIARY DUTY
(Against Defendant Willkie)

181. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

182. As alleged herein, Kahn breached his fiduciary duties to FRG.

183. Willkie had actual knowledge of Kahn's breaches of fiduciary duty and actual knowledge that its own assistance was wrongful. Willkie partner Tariq Mundiya had been personally aware of Kahn's Prophecy exposure since at least June 2021, Willkie received and managed the SEC and DOJ subpoenas relating to Kahn's fraud, Willkie knew before closing that Kahn's stock was pledged to Riley Financial, and Willkie simultaneously represented Kahn in the Take-Private Transaction while serving as FRG's primary outside counsel.

184. Willkie knowingly and substantially assisted Kahn's breaches of fiduciary duty by, among other things, representing Kahn in negotiating the Take-Private Transaction against FRG, using FRG confidential information for Kahn's benefit, managing subpoena responses in a manner that prevented FRG's Board from learning of the true significance of the investigations, failing to disclose Kahn's pledged shares, requesting removal of Special Committee consent rights from SEC disclosure, and drafting documents that directed FRG's assets to fund Kahn's personal legal defense.

185. Willkie's assistance was knowing, active, and substantial, and was a proximate cause of the damages FRG suffered because Willkie's concealment and conflicted advice deprived the Board and Special Committee of material information before closing and later enabled Kahn to extract the $15 million transfer for his personal defense.

186. As a direct and proximate result of Willkie's aiding and abetting of Kahn's breaches of fiduciary duty, FRG suffered damages in excess of $700 million, plus additional damages to be proven at trial.

COUNT XII

AIDING AND ABETTING FRAUD
(Against Defendant Willkie)

187. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

188. As alleged herein, Kahn committed fraud against FRG by making material misrepresentations and omissions to FRG's Board in connection with the Take-Private Transaction.

189. Willkie had actual knowledge of Kahn's fraud and actual knowledge that its own assistance was wrongful. Willkie possessed detailed knowledge of Kahn's Prophecy exposure and the related criminal and regulatory investigations, knew that Kahn's stock was pledged to Riley Financial, knew those facts had not been disclosed to FRG's Board, Special Committee, or lenders, and simultaneously

represented Kahn in the Take-Private Transaction while serving as FRG's primary outside counsel.

190. Willkie knowingly and substantially assisted Kahn's fraud by, among other things, representing Kahn in negotiating the Take-Private Transaction against FRG, managing subpoena responses in a manner that concealed the investigations from FRG's Board, failing to disclose Kahn's pledged shares to FRG or its lenders, and drafting the $15 million funding documents after knowing that Kahn's fraud and conflicts had been concealed from FRG.

191. As a direct and proximate result of Willkie's aiding and abetting of Kahn's fraud, FRG suffered damages in excess of $700 million, plus additional damages to be proven at trial.

COUNT XIII

AIDING AND ABETTING BREACH OF FIDUCIARY DUTY
(Against Defendant Jefferies)

192. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

193. As alleged herein, Kahn breached his fiduciary duties to FRG.

194. Jefferies had actual knowledge of Kahn's breaches of fiduciary duty and actual knowledge that its own assistance was wrongful. Jefferies coordinated directly with Kahn and Riley Financial on the financial inputs underlying its analysis of the Take-Private Transaction, knew that Kahn had been directing its

work before its formal engagement by the Special Committee, failed to flag or revenue overestimates in the projections, knew that its contingent compensation created a conflict, and was selected as the Special Committee's financial advisor through a process controlled by Kahn and Avril.

195. Jefferies knowingly and substantially assisted Kahn's breaches of fiduciary duty by, among other things, coordinating with Kahn on the financial inputs for its analysis, failing to inform the Special Committee of the full extent of Kahn's role in its work, issuing a fairness opinion at $30 per share based on flawed projections, and providing the veneer of independent financial analysis to a transaction that was in fact engineered by Kahn for his personal benefit.

196. Jefferies's assistance was knowing, active, and substantial, and was a proximate cause of the damages FRG suffered. Jefferies's significant contingent compensation gave it a direct pecuniary incentive to deliver the opinion Kahn wanted, regardless of whether the transaction was in FRG's best interests, and the Board and Special Committee relied on Jefferies's purportedly independent analysis in allowing the transaction to proceed.

197. As a direct and proximate result of Jefferies's aiding and abetting of Kahn's breaches of fiduciary duty, FRG suffered damages in excess of $700 million, plus the fees paid to Jefferies in connection with the Take-Private Transaction, plus additional damages to be proven at trial.

COUNT XIV

AIDING AND ABETTING FRAUD
(Against Defendant Jefferies)

198. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

199. As alleged herein, Kahn committed fraud against FRG by making material misrepresentations and omissions to FRG's Board in connection with the Take-Private Transaction.

200. Jefferies had actual knowledge of Kahn's fraud and actual knowledge that its own assistance was wrongful. Jefferies coordinated directly with Kahn and Riley Financial on the financial inputs for its analysis, knew that Kahn's role and the flaws in the projections were material to the Special Committee's and Board's evaluation, was aware of concerns regarding the projections underlying the transaction, and knew that its significant contingent compensation created a conflict of interest.

201. Jefferies knowingly and substantially assisted Kahn's fraud by issuing a fairness opinion based on flawed projections that Jefferies coordinated with Kahn, failing to disclose the extent of Kahn's direction and the projection flaws to the Special Committee, and providing the veneer of independent analysis to a transaction that was not in FRG's best interests and that Kahn was pursuing for undisclosed personal reasons.

202. As a direct and proximate result of Jefferies's aiding and abetting of Kahn's fraud, FRG suffered damages in excess of $700 million, plus the fees paid to Jefferies in connection with the Take-Private Transaction, plus additional damages to be proven at trial.

COUNT XV

AIDING AND ABETTING BREACH OF FIDUCIARY DUTY
(Against Defendants B. Riley Financial and Bryant Riley)

203. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

204. As alleged herein, Kahn breached his fiduciary duties to FRG.

205. Riley Financial and Bryant Riley had actual knowledge of Kahn's breaches of fiduciary duty and actual knowledge that their own assistance was wrongful. Riley Financial held the pledge agreements securing Kahn's more than $200 million in concealed personal debt, Riley and Kahn had discussed a take-private transaction for months before the purportedly unsolicited proposal, Riley Financial was deeply embedded in FRG's operations, Riley Financial's counsel raised Kahn's undisclosed pledges before the Merger Agreement was executed, and Riley Financial and Riley stood to gain enormous non-ratable benefits from the Take-Private Transaction.

206. Riley Financial and Bryant Riley knowingly and substantially assisted Kahn's breaches of fiduciary duty by, among other things, nominally submitting

the “unsolicited” take-private proposal after prior coordination with Kahn, threatening to cease purchasing Badcock receivables to manufacture a liquidity crisis, continuing to finance and close the Take-Private Transaction while concealing their true financial ties to Kahn, and receiving transaction-specific benefits including the equity fee, investment-advisory termination payment, receivables promissory note, and protection of loans secured by Kahn’s pledged FRG shares.

207. Riley Financial’s and Bryant Riley’s assistance was knowing, active, and substantial, and was a proximate cause of the damages FRG suffered because their conduct created the apparent liquidity emergency, supplied the purported acquisition solution, concealed the true financial ties with Kahn, and allowed the Take-Private Transaction to close on terms that harmed FRG.

208. As a direct and proximate result of Riley Financial’s and Bryant Riley’s aiding and abetting of Kahn’s breaches of fiduciary duty, FRG suffered damages in excess of $700 million, plus additional damages to be proven at trial.

COUNT XVI

AIDING AND ABETTING FRAUD
(Against Defendants B. Riley Financial and Bryant Riley)

209. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

210. As alleged herein, Kahn committed fraud against FRG by making material misrepresentations and omissions to FRG's Board in connection with the Take-Private Transaction.

211. Riley Financial and Bryant Riley had actual knowledge of Kahn's fraud and actual knowledge that their own assistance was wrongful. Riley Financial held the pledge agreements securing Kahn's concealed personal debt, knew from its own counsel and internal personnel that Kahn's pledged shares raised disclosure issues, knew that the purported liquidity crisis was manufactured to facilitate the Take-Private Transaction, and stood to gain enormous non-ratable benefits from the transaction.

212. Riley Financial and Bryant Riley knowingly and substantially assisted Kahn's fraud by manufacturing the pretextual liquidity crisis, submitting the nominally "unsolicited" take-private proposal after prior coordination with Kahn, participating in the Take-Private Transaction while concealing their true financial ties to Kahn from FRG's Board, Special Committee, stockholders, and lenders, and accepting transaction benefits that depended on closing the tainted transaction.

213. As a direct and proximate result of Riley Financial's and Bryant Riley's aiding and abetting of Kahn's fraud, FRG suffered damages in excess of $700 million, plus additional damages to be proven at trial.

COUNT XVII

PROFESSIONAL NEGLIGENCE
(Against Defendant Willkie)

214. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

215. As alleged herein, as FRG's primary outside counsel from August 2018 through and beyond the Take-Private Transaction, Willkie owed FRG a professional duty of care in the provision of legal services. That duty required Willkie to exercise the degree of knowledge, skill, and diligence ordinarily exercised by reasonably competent attorneys engaged in the same or similar practice under the same or similar circumstances.

216. Willkie's duty of care as FRG's counsel included, without limitation: (a) advising FRG's Board and management of material information bearing on the integrity and propriety of corporate transactions in which Willkie was engaged; (b) identifying and disclosing to the client all material conflicts of interest that could impair the independence or quality of Willkie's legal advice; (c) refraining from representing adverse interests without informed written consent; (d) competently advising on and drafting corporate transactional documents, including ensuring that representations and disclosures were accurate and complete; and (e) not placing the interests of any other client or person above the interests of FRG in matters for which Willkie was retained by FRG.

217. Willkie's duty of care arose from its long-standing attorney-client relationship with FRG and was continuous throughout the period of its engagement, including with respect to Willkie's role in advising on and facilitating the Take-Private Transaction and its subsequent actions during the post-closing period.

218. Willkie breached its duty of care to FRG through the following negligent acts and omissions, among others:

a. Failure to disclose Kahn's pledged shares. Willkie knew that Kahn had pledged FRG shares as collateral for indebtedness to Riley Financial. On August 7, 2023, Willkie itself prepared a Letter Agreement expressly reciting that "5,061,255 of the Shares (the 'Specified Shares') are held in an account of Pledgors [Kahn, and his wife Lauren Kahn] at B. Riley Wealth Management, Inc., which is subject to a control agreement in favor of Holders [B. Riley and its affiliates]." (¶ 93.) In addition, Riley Financial's counsel raised the matter of non-disclosure of the pledge arrangement with Willkie during negotiations prior to the execution of the Merger Agreement. (¶ 69.) Despite this actual knowledge, Willkie failed to advise FRG's Board or Special Committee of the existence of the pledge, failed to advise FRG that its public filings and proxy statements—which represented that no director or officer had pledged FRG shares—were false, and failed to take any action to ensure that FRG's transaction disclosures accurately reflected Kahn's encumbered equity interest. A reasonably competent law firm serving as primary outside counsel would have disclosed this information to the Board upon learning of it, or at a minimum upon the preparation of the August 7, 2023 Letter Agreement.

b. Failure to disclose the SEC and DOJ subpoenas. On January 23, 2023, the SEC served FRG with a subpoena seeking records regarding the issuance of Buddy's preferred shares. On June 5, 2023, the DOJ served FRG with a subpoena requesting documents related to Prophecy and communications with Kahn, including a request for documents to be submitted to an FBI agent. (¶¶ 86, 88.) In both instances, the subpoenas were routed to Willkie partner Tariq Mundiya, who managed FRG's response. Willkie failed to advise FRG's Board or Special Committee of the existence, substance, or significance of either subpoena—notwithstanding that the SEC Subpoena concerned fabricated securities that Willkie independently knew to be fabricated from its involvement in the 2019 Liberty Tax-Buddy's Merger, and notwithstanding that the DOJ Subpoena arrived after the Merger Agreement was executed but before the Take-Private Transaction closed. (¶¶ 86–90.) A reasonably competent outside counsel would have recognized that federal subpoenas related to the CEO's potential criminal exposure constituted material information that had to be disclosed to the Board before the consummation of a transaction of this magnitude.

c. Failure to identify and disclose its own disqualifying conflicts of interest. In March 2023, Willkie undertook the personal representation of Kahn in the Take-Private Transaction while simultaneously continuing to serve as FRG's corporate counsel. (¶ 83.) Willkie simultaneously served in at least six adverse or conflicting capacities in the same transaction. (¶ 92.) Willkie failed to establish any ethical wall between its FRG team and its Kahn team until November 7 and 10, 2023—nearly three months after the Take-Private Transaction closed—and the Bankruptcy Court subsequently found that "the knowledge

[Willkie] gained from its representation of Mr. Kahn in the take-private transaction is imputed to the firm as a whole." (¶¶ 91, 108.) A reasonably competent law firm would have either declined the conflicting representation or, at a minimum, obtained the informed written consent of FRG's Board—which could not have been obtained without full disclosure of the matters Willkie was concealing.

d. Failure to advise on the implications of Kahn's Prophecy exposure for the Take-Private Transaction. Willkie partner Tariq Mundiya was personally aware of Kahn's Prophecy exposure since at least June 2021. (¶ 85.) Willkie counseled Kahn in negotiating and documenting a forbearance agreement with the Prophecy Settlement Trust in which Kahn admitted his defaults on the First Note. (¶ 49.) Willkie knew of the Prophecy Settlement's provision that the approximately 2.5 million FRG shares held by the Trust could not be disposed of below $60 per share—double the $30 transaction price—without Trust consent. (¶¶ 48, 92.) Despite this knowledge, Willkie failed to advise FRG's Board that its CEO had material, undisclosed financial distress and criminal exposure that rendered the Take-

Private Transaction the product of disabling conflicts rather than arms'-length negotiation.

e. Negligent preparation of the $15 million funding agreement. On December 18, 2023, Willkie drafted an agreement between Topco and Kahn for Topco to deposit $15 million with Kahn's counsel—Willkie itself, through Mundiya—to fund Kahn's personal legal defense in connection with the Prophecy investigation. (¶ 98.) Willkie represented Kahn on one side of this transaction and FRG on the other. A reasonably competent law firm would not have prepared a self-dealing agreement under which the client's assets were directed to the firm itself for the benefit of an adversely-interested third party.

f. Requesting removal of Special Committee consent rights. On April 16, 2023, Willkie requested the removal of the Special Committee's consent rights from FRG's SEC disclosure for the Take-Private Transaction, which would have given Kahn carte blanche to enter into agreements without Special Committee approval. (¶ 78.) This request, made while Willkie was simultaneously representing Kahn, prioritized Kahn's interests at the direct expense of the procedural protections available to FRG's independent directors.

g. Failure to advise FRG's lenders of the pledged shares. Willkie failed to disclose the pledged shares to the second-lien lenders providing hundreds of millions in transaction financing for a transaction in which the CEO's equity stake was encumbered by undisclosed liens held by the very party that had proposed the deal. (¶ 69.) A reasonably competent law firm representing the company in such a transaction would have ensured that the lenders received accurate information regarding the collateral and equity structure.

219. But for Willkie's negligent failures to disclose and advise, FRG's Board and Special Committee would have learned of Kahn's pledged shares, the SEC and DOJ subpoenas, Kahn's Prophecy exposure, and Willkie's own disabling conflicts prior to the closing of the Take-Private Transaction. Had FRG's Board been fully informed, the Board would not have approved the Take-Private Transaction on the terms alleged herein, or would have imposed conditions, demanded additional consideration, or pursued alternative transactions—including the pending Badcock sale to Conn's—that would have preserved FRG's enterprise value.

220. In addition, Willkie's negligent preparation of the $15 million funding agreement and its failure to advise the Board of Kahn's conflicts directly caused FRG to make transfers that depleted estate assets and benefited Kahn and Willkie personally.

221. The Bankruptcy Court's disqualification of Willkie as debtor's counsel on February 12, 2025, confirms that Willkie's conflicts were material and disabling. Willkie's own Chairman, Matthew Feldman, acknowledged in his post-ruling email that Willkie's retention effort was in error and that he "should have been more objective." (¶ 109.) The Willkie Disqualification Ruling establishes that the imputation of Kahn's confidential information to the entire firm precluded Willkie from serving FRG's interests throughout the relevant period.

222. As a direct and proximate result of Willkie's professional negligence, FRG suffered damages including, without limitation:

a. A pro rata share of the damages attributable to the Take-Private Transaction, based on the difference between FRG's enterprise value at the time of the Take-Private Transaction ($2.7 billion) and at the time of bankruptcy ($1.6 billion), adjusted for divestitures ($381 million), in excess of $700 million;

b. The professional fees FRG paid to Willkie in connection with the Take-Private Transaction and its advice during the relevant period;

c. The $15 million exit payment directed to Willkie itself for Kahn's personal defense costs; and

d. Such other damages as may be proven at trial.

223. In the alternative, and to the extent that the damages attributable solely to Willkie's negligence (as distinct from the intentional torts alleged in Counts X through XII) are less than the full amount of transactional damages, Plaintiff seeks damages in an amount to be proven at trial reflecting the portion of FRG's losses that Willkie's negligent failures to disclose and advise proximately caused or contributed to, including but not limited to the fees paid to Willkie and the $15 million transfer.

COUNT XVIII

UNJUST ENRICHMENT
(Against Defendants B. Riley Financial and Bryant Riley)

224. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

225. Riley Financial and Bryant Riley were unjustly enriched at FRG's expense through their participation in Kahn's fraudulent scheme.

226. Through the Take-Private Transaction, Riley Financial and Bryant Riley obtained substantial personal and financial benefits, including: (i) the $16.5 million paid pursuant to the First Amendment to Equity Fee Letter; (ii) the $20,910,666.87 payable upon termination of the Investment Advisory Agreement; (iii) the $58.9 million promissory note received in connection with the sale of B. Riley Receivables II, LLC; and (iv) the repayment and protection of the more than $200 million in loans secured by Kahn's pledged FRG shares.

227. Riley Financial's and Bryant Riley's enrichment came at FRG's expense and would not have occurred but for their participation in the fraudulent scheme.

228. It would be unjust to allow Riley Financial and Bryant Riley to retain the benefits they obtained through their participation in Kahn's fraudulent scheme at FRG's expense. Plaintiff is entitled to restitution from Riley Financial and Bryant Riley in an amount to be determined at trial.

COUNT XIX

CIVIL CONSPIRACY
(Against All Defendants)

229. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

230. As a Delaware corporation, the duties owed to FRG by its directors and officers are governed by Delaware corporate law.

231. Under Delaware law, a civil conspiracy requires: (1) a confederation or combination of two or more persons; (2) an unlawful act done in furtherance of the conspiracy; and (3) actual damages resulting from the unlawful act. A civil conspiracy claim requires an underlying wrongful act; the conspiracy itself is not an independent cause of action but rather a means of establishing vicarious liability for the underlying tort.

232. Defendants Kahn, Avril, B. Riley Financial, Riley, Willkie, and Jefferies entered into an agreement, combination, or understanding to accomplish an unlawful purpose, or a lawful purpose by unlawful means—namely, to engineer, approve, and consummate the Take-Private Transaction for Kahn's personal benefit through breaches of fiduciary duty, fraud, and the concealment of material information from FRG's Board, Special Committee, stockholders, and lenders. The agreement was formed no later than early 2023 and is reasonably inferable from Defendants' coordinated course of conduct, including Kahn's pre-offer work with Jefferies, Riley's pre-offer take-private analysis and Badcock receivables coordination with Kahn, Avril's steering of the Special Committee process, Willkie's simultaneous representation and concealment of subpoena and pledge information, and Jefferies's conflicted fairness-opinion work.

233. Each Defendant knowingly joined the conspiracy with awareness of its unlawful objective and acted for personal, conflicted, or non-ratable benefits

outside any legitimate role owed to FRG. Before the Take-Private Transaction, Kahn was concealing more than $400 million of personal debt, including more than $200 million of loans secured by pledged FRG shares, and was a central figure in the Prophecy fraud that was the subject of active SEC and DOJ investigations. Each of the remaining Defendants was aware of Kahn's disabling conflicts, domination of the transaction, and the materiality of the concealed information, yet each agreed to further, and did further, the common scheme in exchange for its own financial or professional benefit.

234. Each Defendant knowingly participated in the conspiracy by, among other things:

a. Kahn orchestrated the collusive Take-Private Transaction with B. Riley while falsely presenting it to the Board as an "unsolicited" proposal; concealed his pledged FRG shares and personal indebtedness exceeding $400 million; suppressed the SEC and DOJ investigations into the Prophecy fraud by causing the subpoenas to be routed to his conflicted personal counsel at Willkie; concealed the alternative sale of Badcock to Conn's; directed the manipulation of FRG's financial projections; and extracted a $15 million payment from FRG as the price of his cooperation.

b. Avril, as Chairman of the Special Committee, functioned as Kahn's proxy rather than an independent fiduciary—steering the advisor-selection process with Kahn, controlling and restricting the flow of information to the other Special Committee members, sharing confidential Special Committee materials with Kahn, excluding Dubin and Herskovits from key meetings and communications, and lending a veneer of independence and procedural propriety to a transaction he knew was compromised.

c. B. Riley Financial manufactured the liquidity crisis used to justify the transaction by abruptly threatening to cease purchasing Badcock receivables at the very time it was negotiating those same receivables purchases with Kahn, submitted a nominally "unsolicited" $30-per-share proposal that it had jointly engineered with Kahn, and financed and closed the transaction while concealing Kahn's pledged shares from the Board, Special Committee, and lenders.

d. Bryant Riley, B. Riley Financial's majority shareholder, had discussed a take-private transaction with Kahn for months before the purportedly "unsolicited" offer, emailed Kahn that short-seller pressure was "Working perfectly into your hands," held the pledge agreements securing Kahn's concealed debt, and rejoined FRG's board following the transaction.

e. Willkie, while serving as FRG's primary outside counsel, simultaneously represented Kahn personally in the Take-Private Transaction, concealed the SEC and DOJ subpoenas and Kahn's pledged shares from FRG's Board and Special Committee, permitted the transaction to close while knowing the CEO was under federal criminal investigation, and drafted the agreement directing $15 million of FRG's funds to fund Kahn's personal defense.

f. Jefferies, engaged as the Special Committee's purportedly independent financial advisor, concealed its months-long pre-existing work for Kahn on the very transaction, coordinated its analysis directly with Kahn and B. Riley, disregarded revenue overestimates in the projections, and issued a fairness opinion at $30 per share to lend financial legitimacy to the transaction.

235. In furtherance of the conspiracy, Defendants committed numerous overt acts, including but not limited to:

a. Kahn's January through March 2023 coordination with Jefferies to analyze the Take-Private Transaction months before B. Riley's purportedly "unsolicited" offer;

b. Riley's December 9, 2022 transmission to Kahn of a financial analysis regarding a potential purchase of FRG, followed by his statement that going-private pressure was "Working perfectly into your hands";

c. B. Riley Financial's March 19, 2023 submission of a nominally "unsolicited" proposal to acquire FRG at $30 per share, coordinated with Kahn's same-day report to the Board that B. Riley would cease purchasing Badcock receivables;

d. Avril's March 22 and 23, 2023 exclusion of Dubin and Herskovits from the draft Board resolutions forming the Special Committee and his instruction to outside counsel that "info will come from [Kahn]";

e. The coordinated interviews of potential financial advisors between March 26 and 31, 2023, and the Special Committee's engagement of Jefferies on April 6, 2023 notwithstanding Jefferies's undisclosed pre-existing work for Kahn;

f. Willkie's routing and management of the SEC and DOJ subpoena responses through Mundiya's team without disclosure to the Board or Special Committee;

g. Jefferies's May 9, 2023 issuance of a fairness opinion at $30 per share despite the known 160% revenue overestimates in the projections;

h. The closing of the Take-Private Transaction on August 21, 2023 without disclosure to the Board, Special Committee, or lenders of Kahn's pledged shares, his criminal exposure, or the Defendants' conflicts; and

i. Willkie's December 18, 2023 drafting of the agreement directing $15 million of FRG's funds to fund Kahn's personal legal defense.

236. The conspiracy was undertaken in furtherance of, and resulted in, multiple underlying torts, including breach of fiduciary duty, fraud, and aiding and abetting breach of fiduciary duty, as alleged herein.

237. As a direct and proximate result of the civil conspiracy among the Defendants, the Litigation Trust and FRG's creditors suffered damages in excess of $700 million, including but not limited to:

a. The difference between FRG's enterprise value at the time of the Take-Private Transaction ($2.7 billion) and at the time of the bankruptcy filing ($1.6 billion), adjusted for divestitures ($381 million);

b. The professional fees paid to Jefferies, Willkie, and other advisors totaling approximately $16.7 million;

c. The $280,000 in compensation paid to Special Committee members;

d. The $15 million exit payment to Kahn; and

e. The approximately $42.3 million in funds improperly up-streamed from Holdco to Topco.

238. The Defendants are jointly and severally liable for all damages caused by the conspiracy.

239. WHEREFORE, on this Count, Plaintiff respectfully requests that the Court enter judgment in its favor and against Defendants Kahn, Avril, B. Riley Financial, Riley, Willkie, and Jefferies, jointly and severally, and award the following relief:

a. Compensatory damages in an amount to be determined at trial, but in excess of $700 million, together with disgorgement of the professional fees and other benefits the Defendants received in connection with the Take-Private Transaction;

b. Pre- and post-judgment interest, the costs of this action, and such other and further relief as the Court deems just and proper.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in its favor and against Defendants, as follows:

a. Entering joint and several judgments against the respective Defendants and in favor of Plaintiff, and awarding compensatory damages in an amount to be determined at trial, but in excess of $700 million, together with disgorgement of professional fees and other ill-gotten gains as alleged herein;

b. Awarding pre-judgment and post-judgment interest to the fullest extent permitted by law;

c. Awarding Plaintiff its costs and expenses, including reasonable attorneys' fees, to the extent permitted by law; and

d. Awarding such further and additional relief as the case may require and the Court may deem just and proper under the circumstances.

DATED: August 18, 2026

THE POWELL FIRM, LLC

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