SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

AKHIL MAGO, DAVID BECKER, ANDREW FRANK, and NATHANIEL EWING, individually and as agent for the NATHANIEL MCNICHOLS EWING 2019 FAMILY TRUST; Plaintiffs, v. SCULPTOR CAPITAL MANAGEMENT, INC., SCULPTOR CORP., SCULPTOR CAPITAL ADVISORS LP, SCULPTOR CAPITAL LP, AND SCULPTOR CAPITAL ADVISORS II LP, and RITHM CAPITAL CORP; Defendants.	Index No. _____ **VERIFIED COMPLAINT**

Plaintiffs Akhil Mago, David Becker, Andrew Frank, and Nathaniel Ewing, individually and as agent for the Nathaniel McNichols Ewing 2019 Family Trust (collectively, "Plaintiffs") by their undersigned attorneys, for their Verified Complaint against Defendants, allege the following upon information and belief, except as to the allegations pertaining to Plaintiffs, which are alleged upon personal knowledge.

NATURE OF THE ACTION

1. This action seeks a declaratory judgment that the announced plan of Sculptor Capital Management, Inc. ("Sculptor" or the "Company") to wipe out Plaintiffs' vested partnership interests, and "re-allocate" their share of $127 million in merger proceeds to other stakeholders, in an effort to shore up support for Sculptor's sale to Rithm Capital Corp. ("Rithm"), violates the terms of Plaintiffs' governing partnership agreements, including certain provisions that expressly prohibit such adverse amendments by merger without consent.

2. On October 27, 2023, Sculptor, an alternative asset manager with approximately $34.2 billion in assets under management, filed an amended proxy confirming that on November 16, 2023, its shareholders would vote on its proposed sale to Rithm for $12.70 per share, in a deal with an implied value of approximately $720 million. The announcement marked an increase in Rithm's offer price, which secured the agreement of the Company's founder Dan Och ("Och"), and certain other former Company executive managing directors (collectively, with Och, the "Former EMD Group"), to swing their more than 15% voting block in support of the bid.

3. The Former EMD Group also agreed to dismiss the lawsuit they had filed in Delaware Chancery Court, which was hurtling toward an expedited November 9 hearing to halt the transaction on the grounds that the Company's Board, beholden to Chief Executive & Investment Officer and Director Jimmy Levin, was improperly pushing through the Rithm deal and strategically blocking a rival bidding group (the "Weinstein Consortium") that was willing to pay $13.50 per share, because only the Rithm deal "committed to keep [current Sculptor CEO] Mr. Levin as Chief Investment Officer, to preserve the material terms of his exorbitant pay package, and to give him a walkaway right that would invite him to renegotiate an even better deal shortly after the Merger closes." (*Och, et al. v. Engel, et al.*, Case No. 2023-1043 (Del. Ch.), Verified Complaint for Injunctive Relief ("Och Compl.") ¶¶ 10-12.).

4. The Former EMD Group's Delaware lawsuit was not the first battle between Och and his former protégé and heir apparent, Levin, involving Levin's compensation. Since the February 2017 announcement of a $250 million pay package for Levin, tensions in the Company rose, culminating by that year's end in disputes over business and governance plans, and succession. In January 2018, Och stepped down from his role as CEO, staying on as Chairman until March 2019. In connection with that management transition, in February 2019, the Company

recapitalized the equity interests of its subsidiary operating partnerships (collectively, the "Operating Partnerships" or "Partnership") to implement an agreement by Och and other former executive managing directors to reallocate 35% of their Partnership "Class A Units" to then-current senior management and new hires in the form of a new class of Partnership equity incentive interests—"Class E Common Units" (the "Class E Units" or "E Units").

5. In February, 2022, Sculptor Board member Morgan Rutman resigned, stating in a publicly filed letter that his resignation was in protest of governance failures illustrated by the Board's decision to award Levin "staggering" annual compensation "well in excess of any appropriate comparator," making Levin among the highest paid CEOs in recent years and giving him an interest in the Company that would exceed the holdings of the founders of Apollo Global Management Inc., Blackstone Inc., and KKR & Co Inc. in the funds they founded.

6. Following Mr. Rutman's noisy resignation, in August 2022, Och sued Sculptor for access to its books and records to determine whether the Board was truly independent, and whether approval of Levin's compensation—$145.8 million in 2021, on annual revenue of $626 million—gave rise to claims for breaches of fiduciary duty based on mismanagement and waste. In November 2022, after months of scrutiny and challenge to Levin's "ever-escalating pay" despite "subpar" performance, Sculptor settled Och's books and records litigation, and announced that it would form a special committee to explore a third-party sale transaction to maximize value for shareholders. The Rithm deal comes out of that process.

7. Given the long-contentious relationship between the Company, Levin, and Och, it was apparent that the Former EMD Group would not easily support a deal that would allow for massive continued payouts to Levin. To have the best shot at enticing the support and securing the approval of Och and his compatriots, and with Rithm asserting that its bid was the most it

would pay, the Company sought to allocate as much of the proposed finite merger proceeds as possible to the interests held by the Former EMD Group, without dipping in to deal terms specifically benefitting Levin. With the wallets of the constituencies at the bargaining table effectively closed, the Company made what it described in its Proxy as a "discretionary" decision not to revalue the Capital Account balances of the Partners and the Carrying Value of Partnership property, the result of which was to eliminate from the merger proceeds payout "waterfall" the Partnership's Class E Units. According to the Proxy, and based on a prior Rithm bid, the E Units otherwise would be entitled to share in approximately $120 million of the merger proceeds; an amount that with the latest increased Rithm bid should exceed $127 million.

8. The Company's purported discretionary reallocation of $127 million of merger currency, to stakeholders apparently deemed most important to getting the Rithm deal done, comes at the unlawful and direct expense of Plaintiffs. Plaintiffs were Sculptor's Global Head of Structured Products, Chief Legal Officer, General Counsel and Chief Operating Officer – Europe, and Director of Global Equity Research; all former Executive Managing Directors who collectively hold more than three million of the Partnership's Class E Units. The E Units represent earned incentive-based compensation in the form of future profits interests in the Partnership, issued in exchange for Plaintiffs' pre-existing "D Units" and/or agreements to accept reduced salaries and defer tens of millions of dollars in cash compensation.

9. At the time of the February 2019 Restructuring, the compensation required to retain the talents and incentivize the contributions of key personnel like Plaintiffs was more than the Company could afford. The solution was to defer compensation that otherwise would be received as salary (or payouts on preexisting incentive compensation awards) in exchange for E Units that entitled Plaintiffs to profits distributions: (1) after a multi-year "Distribution Holiday" or (2) in

conjunction with a sale of the Company. The result of the bargain was that—notwithstanding Levin's compensation package—the Company could preserve and replenish its coffers while retaining and recruiting talent, and that talent (including Plaintiffs) would receive commensurate compensation, deferred to a later time. That bargained-for economic arrangement is reflected in the Partnership Agreement's "Book-Up Provisions," which set forth the allocation waterfall for profit distributions, and govern the timing and circumstances under which those distributions are made.

10. To protect that economic bargain, the Partnership Agreement includes "Class E Consent Rights" (the "Consent Rights"), which provide that certain actions "shall not be taken"—including by merger—that would forestall or eliminate payout on Plaintiffs' profit interests without the "prior written consent of the holders of a majority" of the E Units. And, to insulate the Consent Rights from being skirted through side deals with certain holders, the Partnership Agreement also provide that "no consent fee or other consideration shall be offered to such holders" in exchange for their consent.

11. The Rithm deal does exactly what the Consent Rights prohibit. The proposed merger (1) effects a fundamental amendment to the Book-Up Provisions because it changes the timing and circumstances under which Plaintiffs receive their deferred distributions (to: "never"); and (2) based on a discretionary determination by the Partnership's general partner (a shell corporation controlled by the Company), reallocates merger consideration that would have gone to the E Units to other classes of interests instead.

12. The Company did not even attempt to obtain the necessary consents. Instead, Sculptor has managed to finagle a deal structure under which: (i) Rithm, which owns and controls mortgage servicers (*i.e.*, companies that service and make decisions on loans that collateralize

mortgage-backed securities), will also own and control funds whose investments on behalf of its investors include mortgage-backed securities that can be affected by servicer decisions—and own them at a price below what the Weinstein Consortium was prepared to pay; (ii) Levin will maintain his Chief Investment Officer role, while locking in extraordinarily valuable "golden parachute" provisions and "preserving the material terms of his exorbitant pay package"; and (iii) the success of (i) and (ii) are ensured with a big enough slice of the merger pie to the Former EMD Group—including by protecting its substantial Partnership Class A holdings against direct dilution by the participation of Class E Units—to secure its support.

13. On top of that, Levin and other E Unit holders, who are current employees Rithm wants to retain post-merger, are being offered replacement consideration for their to-be-wiped-out E Units, including in the form of a $35 million "retention pool" (*i.e.*, cash bonuses) and replacement profit interests through a new long-term incentive plan; consideration that—consistent with the Partnership Agreement—cannot be exchanged for consent.

14. While the deal now looks to work for the Sculptor, Rithm, Levin, and Former EMD Group parties, Plaintiffs, on the other hand, stand to lose millions of dollars in what should be deferred compensation value that is expressly protected against such effects. If Sculptor consummates the Rithm deal and cancels Plaintiffs' E Units for no consideration as planned, without requisite consent, the result is a prohibited amendment by merger of the Consent Rights, including because following that change, Plaintiffs will *never* receive their deferred compensation.

15. This is not a situation in which a contracting party can decide on the basis of its economic efficiency to ask for forgiveness instead of permission. Plaintiffs' Consent Rights give them a seat at the table *before* Defendants close a deal that would so impair Plaintiffs' rights. Plaintiffs thus seek a declaration that consummation of the Rithm deal, as structured and without

requisite consent, will constitute a violation of Plaintiffs' contractual rights under the parties' governing Partnership Agreement.

PARTIES

Plaintiffs

16. Plaintiff Akhil Mago is formerly an Executive Managing Director and the Global Head of Structured Products at Sculptor. Mr. Mago joined Sculptor in 2008, and after leaving, remains a Partner in each of the Company's Operating Partnerships. Mr. Mago holds 2,280,903 E Units. Mr. Mago resides in New York, New York.

17. Plaintiff David Becker is formerly the Chief Legal Officer of Sculptor, a role he held between July 2014 and January 2017. Mr. Becker has served as General Counsel and Senior Policy Director of the United States Securities and Exchange Commission ("SEC"), and is currently Senior Counsel at Cleary Gottlieb Steen & Hamilton LLP, where he was a partner before and after joining the SEC. Mr. Becker is a Partner in each of the Company's Operating Partnerships and holder of 186,280 E Units. Mr. Becker resides in Montgomery County, Maryland.

18. Plaintiff Andrew Frank is formerly an Executive Managing Director of Sculptor, and its General Counsel and Chief Operating Officer – Europe. Mr. Frank joined Sculptor in 2007, and after leaving, remains a Partner in each of the Company's Operating Partnerships. Mr. Frank holds 128,882 Partnership Class E Units. Mr. Frank resides in Bergen County, New Jersey.

19. Plaintiff Nathaniel Ewing is formerly an Executive Managing Director and the Director of Global Equity Research at Sculptor. Mr. Ewing joined Sculptor in 2004, and after leaving, remains is a Partner in each of the Company's Operating Partnerships. He is the agent of the Nathaniel McNichols Ewing 2019 Family Trust, which holds 500,000 Partnership E Units for the benefit of Mr. Ewing and his family. Mr. Ewing resides in New York, New York.

Defendants

20. Defendant Sculptor Capital Management, Inc. (f/k/a Och-Ziff Capital Management Group Inc) is a Delaware corporation with its principal place of business in New York, New York.

21. Defendant Sculptor Capital Holding Corporation (f/k/a Och-Ziff Holding Corporation, "Holding Corp." or the "General Partner") is a Delaware corporation and subsidiary of the Company with its principal place of business in New York, New York.

22. Defendant Sculptor Capital LP (f/k/a OZ Management LP) is a Delaware limited partnership and subsidiary of the Company with its principal place of business in New York, New York.

23. Defendant Sculptor Capital Advisors LP (f/k/a OZ Advisors LP) is a Delaware limited partnership and subsidiary of the Company with its principal place of business in New York, New York.

24. Defendant Sculptor Capital Advisors II LP (f/k/a OZ Advisors II LP, together with Sculptor Capital LP and Sculptor Capital Advisors LP, the "Operating Partnerships" or the "Partnership") is a Delaware limited partnership and subsidiary of the Company with its principal place of business in New York, New York.

25. Defendant Rithm Capital Corp., a Delaware corporation, together with its subsidiaries, Calder Sub, Inc., a Delaware corporation, Calder Sub I, LP, a Delaware limited partnership, Calder Sub II, LP, a Delaware limited partnership, and Calder Sub III, LP, a Delaware limited partnership, has entered a certain Agreement and Plan of Merger, as amended, to acquire Sculptor. Rithm is named as a Defendant pursuant to CPLR 1001, and only inasmuch as its joinder is necessary for complete relief; Plaintiffs bring no cause of action against Rithm.

RELEVANT NONPARTIES

26. James Levin has been a member of the board of directors of the Company (the "Board") since June 2020. He has served as the Company's Chief Executive Officer since 2021 and Chief Investment Officer since 2017. Levin holds 3,918,863 E Units (approximately 30.1% of such interests outstanding).

27. Wayne Cohen has been a member of the Board (a "Director") since April 2021. He has served as the Company's President and Chief Operating Officer since 2009. Defendant Cohen holds 705,272 E Units (approximately 5.4% of such interests outstanding).

28. Marcy Engel has been a Director since 2018 and has been Chairperson of the Board since 2021. She is also a member of the special committee of Directors that ran the bidding process and, ultimately, recommended approval of the Rithm deal (the "Special Committee").

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

30. Bharath Srikrishnan has been a Director since 2020.

31. David Bonanno has been a Director since 2021.

JURISDICTION AND VENUE

32. This Court has jurisdiction over this action pursuant to CPLR §§ 301-302.

33. This Court has jurisdiction over Defendants because each Defendant transacts business and otherwise maintains significant contacts in New York related to the Partnership, as well as because the parties to the Partnership Agreement (defined below) agreed to the exclusive jurisdiction of New York state and federal courts for disputes arising out of that agreement, including with respect to Plaintiffs' E Units and associated consent rights. As stated in the Partnership Agreement:

> Each Partner that is not an International Partner hereby submits to and accepts for itself and in respect of its property, generally and unconditionally, the exclusive jurisdiction of the state and federal courts of the State of New York for any dispute arising out of or relating to this Agreement or the breach, termination or validity thereof

(Partnership Agreement § 10.4(d).)

34. Venue is proper in New York County pursuant to CPLR 501 and CPLR 503(a) and (c) pursuant to the above-referenced contractual provision and because that is the principal place of business of the Company and its subsidiary affiliates, including Holding Corp. and the Operating Partnerships.

FACTUAL ALLEGATIONS

A. Plaintiffs' Deferred Compensation

35. Plaintiffs are all former high-ranking employees of Sculptor. They agreed to have part of their compensation deferred, and instead accepted partnership interests reflecting future profit interests in Sculptor.

36. In their capacity as Partners in the Operating Partnerships, Plaintiffs received, or had their historic interests converted into, E Units pursuant to the governing partnership agreements.

37. The governing partnership agreement for Sculptor Capital Advisors LP is attached hereto as **Exhibit A**, which is substantially equivalent to the partnership agreements governing the other two Operating Partnerships (all three such substantially equivalent agreements referred to herein, collectively, as the "Partnership Agreement").

38. E Units were created by amendments to the Partnership Agreement in 2019 as part of the Restructuring, which restructured the Partnership to correct misalignments of equity and equity incentives between former, and then-current members of management. E Units are future profits interests, designed to incentivize commitment of key investment professionals and senior

leadership. The purpose and effect of E Units was to build the Partnership's long-term value and stability by deferring other forms of compensation that—if paid sooner—would deplete the Partnership's coffers and not sufficiently incentivize management to maximize long-term returns.

39. For example, as part of the restructuring, certain outstanding profit interests were replaced with E Units. (*See* Partnership Agreement § 3.1(e) (describing 2019 conversion of certain "Class D Common Units" into E Units).) E Units also replaced some cash compensation, meaning many Partners took a significant reduction in their annual compensation.

40. Following the restructuring, additional E Units were awarded to Plaintiffs and other managers as a component of incentive compensation and as retention inducements.

41. Plaintiffs estimate that in exchange for their E Units and related rights, they forwent in the aggregate more than $30,000,000 in collective annual compensation from the Company, and also forwent external opportunities to earn higher cash compensation, including with their agreement in certain cases to full year or multi-year non-competition provisions.

B. Plaintiffs' Rights to Future Distributions Under the Book-Up Provisions

42. By accepting E Units in lieu of other compensation, Plaintiffs bargained to defer such compensation to a later time—*to wit*, upon the occurrence of events described in the Partnership Agreement. Plaintiffs did not agree to forfeit their deferred compensation, and they did not understand the Partnership Agreement to provide a mechanism by which the deferred compensation embodied in their E Units could be cancelled without consideration at the discretion of the General Partner.

43. As set forth in the Partnership Agreement, one event triggering distributions to holders of E Units is the conclusion of a certain "Distribution Holiday" upon the Company's cumulative accrual of $600 million in revenue since the 2019 restructuring. Based on projected revenues and the Company's disclosure that the revenue target was more than 90% complete as of

June 30, 2023, the Distribution Holiday will likely conclude (if it has not already) within the next several months, absent consummation of the Rithm Deal or other transaction that purports to cancel the E Units or otherwise effect the amendment of the Partnership Agreement with respect to conclusion of the Distribution Holiday.

44. Distributions to holders may be made upon the sooner of (1) the end of the Distribution Holiday or (2) sale of the Partnership yielding sufficient value for proceeds to flow to E Units in the allocation waterfall—*i.e.*, the priority set forth in the Partnership Agreement for allocation of gains and losses to the various capital and profits interests comprising the Partnership. (Partnership Agreement §§ 5.2(b), 6.1(c).)

45. The allocation waterfall is determined by revaluing or "booking-up" the Partnership's assets and capital accounts to reflect their present fair market values. (*Id.* § 5.2(b).) In short, a "book-up" crystalizes a partnership's gains or losses of contributed capital in order to distinguish what present-day value is allocable to such original capital versus what share of the value is allocable to profit interests. Thus, whereas the E Units may be "out of the money" at a certain sale price if the allocation waterfall is determined based on stale book values of the Partnership's property and partner capital accounts, they may be "in the money" and entitled to share in the proceeds from the same sale price when those accounts and Partnership property are revalued to reflect current fair market value.

46. The various provisions of the Partnership Agreement "governing a revaluation of the Capital Accounts of the Partners"—as well as "each relevant definition" used therein—are collectively defined as the "Book-Up Provisions." (Partnership Agreement § 1.1.)

47. Among the Book-Up Provisions, the Partnership Agreement specifically (but not exhaustively) identifies Section 5.2(b)(iii), which prescribes the circumstances under which the

"Partnership property shall be revalued" (including with respect to certain sale events ***or*** upon the conclusion of the Distribution Holiday), and Section 6.1(c), which prescribes the "order of priority" for "[a]llocation of Liquidating Gains."

48. The Book-Up Provisions set forth the contractual framework for determining (1) whether any of the Partnership's value is profits allocable to holders of E Units (*i.e.*, whether those interests are "in the money" upon revaluation of the Partnership) and (2) when those profits are distributable (*i.e.*, upon a certain sale event or following the conclusion of the Distribution Holiday).

C. Plaintiffs' Consent Rights to Block Amendments to the Book-Up Provisions, Block Discretionary Allocations Favoring Other Interests, and Block Amendments to their Consent Rights

49. To ensure that the Book-Up Provisions are not amended to indefinitely forestall or altogether eliminate Plaintiffs' entitlement to their temporarily deferred compensation, the Partnership Agreement provides that certain "actions shall not be taken without the prior written consent of the holders of a majority of the then-outstanding Class E Common Units." (*Id.* § 3.1(g)(iii).)

50. One such prohibited action is "amendment (directly or indirectly, whether by merger, recapitalization, amendment, or otherwise) of [] the Book-Up Provisions in a manner that is adverse to the Class E Common Units." (*Id.* § 3.1(g)(iii)(C).)

51. Another is "[a]ny action by the [Company or its affiliates] (directly or indirectly, whether by merger, recapitalization, amendment, or otherwise) that is adverse to the holders of Class E Common Units in a manner disproportionate to the holders of the Class A Shares." (*Id.* § 3.1(g)(iii)(A).) The Partnership Agreement specifies—"for the avoidance of doubt"—that such adverse action includes "the disproportionate allocation of income (loss) to any class of Units . . .

as a result of the exercise by the General Partner or any other Person of its discretion or other rights to take or omit to take actions or make other determinations [t]hereunder." (*Id.*)

52. To ensure these consent rights are not circumvented by selectively inducing certain holders of E Units not to enforce their rights (at the expense of the remaining holders), the Partnership Agreement also provides that "[i]n connection with any consents to be obtained from the holders of Class E Common Units under this Section 3.1(g)(iii), no consent fee or other consideration shall be offered to such holders." (*Id.*).

53. Furthermore, to ensure that the consent rights themselves cannot be eliminated without requisite consent, the Partnership Agreement expressly prohibits "[t]he amendment (directly or indirectly, whether by merger … or otherwise) of … this Section 3.1(g) [Class E Consent Rights]." (*Id.* § 3.1(g)(iii)(C)(ii).)

54. The provisions of the Partnership Agreement that generally govern "Amendment to the Agreement" further support and bolster Plaintiffs' consent rights. (*Id.* § 10.2.). Section 10.2(a) provides, in relevant part: "in addition to any applicable requirements under Section[] … 3.1(g)(iii), this Agreement may be amended by the General Partner without the consent or approval of any Partners, provided, however, that, except as expressly provided herein … (i) if an amendment adversely affects the rights … of an Individual Limited Partner … other than on a *pro rata* basis with other holders of Units of the same class, such Individual Limited Partner must provide his prior written consent to the amendment; [and] (ii) no amendment may adversely affect the rights … of the holders of a class of Units … without the prior written consent of Individual Limited Partners that … hold. Majority of the outstanding Units of such class …." (*Id.*)

D. Defendants' Proposed Cancellation of Plaintiffs' Interests for No Consideration Without Consent

55. On October 12, 2024, the Company filed a definitive Proxy Statement (the "Proxy"), attached hereto as **Exhibit B**, soliciting shareholders to vote to approve the sale of the Company to Rithm (the "Rithm Deal"). The vote is scheduled for November 16, 2023. Certain supplements to the Proxy disclosing additional facts and amendments to the Rithm Deal are attached hereto as **Exhibits C, D, E, and F.**

56. The board of directors of the Company (the "Board") instructed the General Partner to cause the Partnership to accept, approve, ratify, and otherwise adopt the Rithm Deal.

57. Plaintiffs understand that the other conditions to closing have been met such that—absent judicial intervention—the transaction may be consummated upon shareholder approval.

58. If consummated, the Rithm Deal would adversely amend by merger the Consent Rights, by changing the timing and circumstances under which Plaintiffs receive distributions on their E Units, which would be "cancelled for no consideration" when the Partnership entities merge with certain Rithm subsidiaries. (*Id.* at 44 n. 3; *see also id.* at 10, 128.)

59. Defendants failed to seek the requisite consents.

60. The Company admits that E Units would otherwise be entitled to future distributions—*to wit*, "[i]f the Mergers did not occur, and each Operating Partnership appreciated sufficiently to result in a full book-up, the holders of [] E Units would be entitled to a pro rata share of the proceeds of a capital transaction" or other "future distributions that would have been received upon termination of the Distribution Holiday." (*Id.* at 128.) Under the Rithm Deal, however, any such "right to [] future distributions will cease." (*Id.* at 129.)

61. The E Units have current value.

62. According to the Proxy, the General Partner purported to exercise its discretion (at the instruction of the Company and the Board) to not revalue the Partnership's assets and accounts, where, if such revaluation were conducted, holders of E Units (including Plaintiffs) would be entitled to $127 million in merger proceeds pursuant to the income allocation waterfall set forth in the Partnership Agreement. Instead, as a result of not conducting such revaluation, those proceeds are being allocated to other stakeholders.

63. The primary beneficiaries of such re-allocation are certain stakeholders holding substantial "Class A" Partnership interests (identified in the Proxy as the Former EMD Group), who will receive the bulk of the merger proceeds that would have been allocated to the E units if a revaluation had occurred.

64. As set forth in the Proxy, the Former EMD Group hold significant voting power and other rights that—if asserted—could undermine the Rithm Deal. Until October 27, 2023, the Former EMD Group had been vehemently opposed to the Rithm deal, including making numerous public statements against the transaction and filing a lawsuit in Delaware seeking to have the transaction enjoined.

65. On information and belief, the Company's decision to forgo revaluation was made to help induce the Former EMD Group to support the Rithm Deal.

E. Defendants' Selective Offering of Consent Fees and Other Consideration

66. According to the Proxy, most holders of E Units are current employees at the Company. As set forth in the Proxy, Rithm would like to retain many of those employees after it acquires the Company, including Levin.

67. In conjunction with the Rithm Deal, Levin and other current employees are being offered replacement consideration for their E Units, including cash bonuses and replacement profit interests through a long-term incentive plan.

68. Certain current employees have been told that they will be "made whole" by such replacement consideration in the Rithm deal for loss of their E Units.

69. Levin and Cohen, as well as other senior executives of the Company who hold E Units, are also receiving separate pre- and post-closing compensation packages in exchange for their support for the Rithm deal, including their release of claims under the Partnership Agreement related to their E Units.

F. Plaintiffs' Attempts to Preserve Their Consent Rights

70. On September 30, 2023, Plaintiffs apprised Defendants that, as then-contemplated, the Rithm Deal would violate Plaintiffs' rights and could not close because (1) the proposed cancellation of E Units for no consideration was subject to Plaintiffs' Consent Rights, (2) the Company had made no effort to obtain requisite consents, and (3) instead, the Company had improperly sought to buy support for the deal from certain holders through replacement consideration. Plaintiffs offered to negotiate a resolution that would respect their bargained-for consent rights without the need for judicial intervention.

71. Defendants did not meaningfully engage, nor did Defendants deny the Company's failure to obtain majority consent to the proposed cancellation E Units for no consideration. Instead, in a response letter sent October 5, 2023, the Company took the position that "no amendment" of the Partnership Agreement implicating Plaintiffs' consent rights would be affected by the Rithm Deal, such that Plaintiffs' consent right "never comes into play."

72. On October 12, 2023, the definitive Proxy crystalized the terms of the Rithm Deal and set the shareholder vote for November 16, 2023.

73. On October 16, 2023, Plaintiffs provided Defendants with additional information and arguments regarding Plaintiffs' consent rights and apprised Defendants that, in light of the

upcoming shareholder vote, Plaintiffs would be forced to seek injunctive relief to preserve those rights if Defendants did not meaningfully engage.

74. On October 24, 2023, Defendants declined to so engage, reiterating their position that the Partnership Agreement is "not amended in any way" by the Rithm Deal.

75. Defendants confirmed that the "reasons for [the Company's] decision not to pursue discretionary retroactive historical revaluations" was that such decision favored other stakeholders over holders of E Units.

76. Defendants further confirmed their position that the decision not to revalue was an exercise of the General Partner's purported "discretion" under the Partnership Agreement.

77. Defendants also confirmed that "[n]o consents have been sought for the Merger from any Class E Unitholder."

78. On October 27, 2023, the Company announced that it had reached an agreement with the Former EMD Group to support the Rithm Deal that includes increased merger consideration flowing to those stakeholders.

79. The Former EMD Group agreed to dismiss its Delaware lawsuit, vote in favor of the Rithm Deal, and otherwise not take any action to undermine the transaction. With the Former EMD Group's support, the Company has locked-up sufficient voting power to approve the Rithm Deal, making the result of the shareholder vote a foregone conclusion.

G. Plaintiffs' Reservation of Rights

80. Plaintiffs reserve all rights, causes of action, and remedies in law or equity related to the allocation and distribution of Partnership value after any consummation of the Rithm Deal, any other transaction, or following the imminent conclusion of the Distribution Holiday.

CAUSE OF ACTION
Declaratory Judgment – Breach of Contract
(Against All Defendants Except Rithm)

81. Plaintiffs incorporate by reference all of the foregoing paragraphs as if fully set forth herein.

82. The Partnership Agreement is a valid and enforceable contract.

83. Plaintiffs have performed their material obligations under the Partnership Agreement.

84. The Partnership Agreement prohibits Defendants from, *inter alia:* (1) amending the Book-Up Provisions (*see* Partnership Agreement § 3.1(g)(iii)(C)(i)) and (2) making discretionary allocations that favor other classes of interests at the expense of E Units (*see id.* § 3.1(g)(iii)(A) without first obtaining certain consents from affected parties (or holders of majority of affected interests), including Plaintiffs.

85. By its terms and effect, the Rithm merger would (1) amend the Book-Up Provisions and (2) effect a discretionary allocation that favors other classes of interests at the expense of E Units.

86. Defendants did not obtain requisite consents.

87. As a result, the Rithm Deal breaches the Partnership Agreement with respect to Plaintiffs' Consent Rights set forth therein.

88. Violation of the Consent Rights constitutes irreparable harm.

89. Because this is a justiciable controversy, Plaintiffs are entitled to (1) a declaration under CPLR § 3001 that consummation of the Rithm Deal as structured, and without obtaining the requisite consents, is a breach of the Partnership Agreement and (2) an injunction prohibiting such consummation of the Rithm Deal without obtaining the requisite consents.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment against Defendants and request the following relief:

A. A declaration that consummation of the Rithm Deal without the requisite consents is a breach of the Partnership Agreement with respect to Plaintiffs' Consent Rights set forth therein;

B. An order enjoining Defendants from consummating the Rithm Deal (or any substantially similar transaction) unless and until all breaches identified in such declaration are cured; and

C. Such other and further relief that the Court finds just and proper.

Dated: November 1, 2023
New York, New York

ROLNICK KRAMER SADIGHI LLP

By: */s/ Michael J. Hampson*

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VERIFICATION

STATE OF NEW JERSEY)
) ss.:
COUNTY OF ESSEX)

Akhil Mago, being duly sworn, deposes and says:

1. I am a Plaintiff in the above-titled action.

2. I have read the foregoing Verified Complaint and know the contents thereof.

All statements of fact therein are true and correct to my own knowledge, except to the matters stated to be alleged upon information and belief, which matters I believe to be true.

Akhil Mago

Sworn and Subscribed before me this 1st day of November, 2023

NOTARY PUBLIC

DEBORAH A. MCBRIDE - NOTARY PUBLIC
No. 2076133
THE GREAT SEAL OF THE STATE OF NEW JERSEY
Comm. Exp. May 30, 2025
NEW JERSEY