



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

CITY OF MIAMI GENERAL
EMPLOYEES' AND SANITATION
EMPLOYEES' RETIREMENT TRUST,
Derivatively on Behalf of Nominal
Defendant FIDELITY NATIONAL
FINANCIAL, INC.,

Plaintiff,

v.

WILLIAM P. FOLEY, II, DOUGLAS K.
AMMERMAN, THOMAS M.
HAGERTY, DANIEL D. LANE,
RICHARD N. MASSEY, HEATHER H.
MURREN, RAYMOND R. QUIRK,
JOHN D. ROOD, PETER O. SHEA, JR.,
CARY H. THOMPSON, MVB
MANAGEMENT, LLC, and
TRASIMENE CAPITAL
MANAGEMENT, LLC,

Defendants,

and

FIDELITY NATIONAL FINANCIAL,
INC., a Delaware corporation,

Nominal Defendant.

C.A. No. 2020-0650-KSJM

**PUBLIC [REDACTED]
VERSION AS FILED
AUGUST 7, 2020**

STOCKHOLDER DERIVATIVE COMPLAINT

City of Miami General Employees' and Sanitation Employees' Retirement Trust ("Plaintiff"), on behalf of itself and for the benefit of nominal defendant Fidelity National Financial, Inc. ("FNF" or the "Company"), brings the following Stockholder Derivative Complaint (the "Complaint") against (i) William P. Foley, II, ("Foley"), Douglas K. Ammerman ("Ammerman"), Thomas M. Hagerty ("Hagerty"), Daniel D. Lane ("Lane"), Richard N. Massey ("Massey"), Heather R. Murren ("Murren"), Raymond R. Quirk ("Quirk"), John D. Rood ("Rood"), Peter O. Shea ("Shea"), and Cary H. Thompson ("Thompson") for breaching their fiduciary duties as directors and/or officers of FNF (collectively the "Director Defendants"); (ii) Trasimene Capital Management, LLC ("Trasimene") and MVB Management, LLC ("MVB") for aiding and abetting; and (iii) Trasimene and MVB for unjust enrichment. The allegations of the Complaint are based on the knowledge of Plaintiff as to itself, including the investigation of counsel, the review of publicly-available information, and the review of certain books and records produced by the Company in response to Plaintiff's demand made under 8 *Del. C.* § 220 (the "Section 220 Demand"), as to all other matters.

I. INTRODUCTION

1. FNF Founder and long-time Chairman Bill Foley operates a veritable spider's web of inter-related corporate entities. He controls the voting power of

several of these entities. With respect to most of his affiliated entities, Foley exerts his influence through a pattern of patronage.

2. This case arises because Foley, having for years “skimmed” millions of dollars at a time from so many of his entities, grossly overreached in connection with his merger of FNF and non-party but Foley-affiliated FGL Holdings, Inc. (“FGL”), destroying hundreds of millions of dollars of stockholder value all at once in service of his plan to syphon much of that value to himself and his loyalists.

3. Foley gets his way at his various affiliated entities by stacking the boards and management with directors and officers whom he has known, worked with closely and financially supported for years, typically decades. He rewards those loyalists with additional director and officer positions at his affiliated entities, as well as by giving them exclusive investment opportunities.

4. By cultivating a coterie of loyalists, Foley faces no resistance when he wants to extract non-ratable benefits for himself from his affiliated entities. Foley’s well-oiled patronage machine ensures his loyalists serving in director and officer roles will turn a blind eye while Foley takes a piece of the action for himself.

5. FNF has long been a prime example of how Foley runs his affiliated businesses. Foley founded FNF and has served as its Chairman since 1984. Excluding Foley, the board of directors of FNF (the “Board”) consists of individuals

with *over 130 years* of combined service on the Board, not even counting their time as executives at FNF or other Foley-related entities. As demonstrated by **Exhibit A**, attached hereto, nearly every member of the FNF Board shares deep and longstanding ties to Foley and his affiliated entities.

6. In 2019, Foley decided he wanted FNF to acquire FGL. FGL had been acquired in 2017 by a special purpose acquisition vehicle (“SPAC”) formed by Foley and his longtime business partner, Chinh Chu (“Chu”). Since acquiring FGL, Foley and Chu had personally extracted millions of dollars per year from FGL (while serving as co-Chairmen) thanks to an investment management agreement with an affiliate of The Blackstone Group Inc. (“Blackstone”), which in turn paid rich and questionable sub-advisory fees to Defendant MVB Management, LLC (“MVB”), another Foley/Chu venture.

7. Causing FNF to acquire FGL made sense to Foley personally, as his equity interest in FGL exceeded his equity in FNF, and any potential transaction would give him multiple improper means to enrich himself. But combining FNF and FGL made little sense to FNF stockholders. FNF and FGL operated in separate hemispheres of the insurance world—title insurance and annuities, respectively—meaning acquiring FGL did not provide FNF with any synergies.

8. On October 11, 2019, given the obvious Foley conflicts in any FNF

buyout of FGL, FNF's General Counsel, Michael Gravelle ("Gravelle"), suggested the Board form a special committee (the "Special Committee"). In typical Foley fashion, the Special Committee consisted of individuals with deep ties to him and his affiliated entities. Indeed, as the facts below demonstrate, the Special Committee was hopelessly compromised because the reason for its existence (*i.e.*, Foley) always controlled it.

9. The Special Committee's advisors began their work on the deal before the Committee's creation and were self-evidently pre-selected for the Special Committee. Indeed, shortly before putting the Transaction in motion in the fall of 2019, Foley created (and together with fellow FNF and FGL director, Defendant Richard Massey, currently manages) Defendant Trasimene Capital Management LLC ("Trasimene"), the first of the Special Committee's financial advisors. Bank of America Securities, Inc. ("BofA Securities"), the Special Committee's other financial advisor, employs Defendant Thompson, and together with Trasimene began work on the Transaction well before the Special Committee was formed.

10. Moreover, the resolutions forming the Special Committee limited the Committee's mandate to simply reviewing and evaluating a potential transaction between FNF and FGL and did not permit consideration of alternatives.

11. At the Special Committee's first formal meeting, it abdicated what

little authority it had by authorizing Foley and Trasimene to negotiate on the Special Committee's behalf. The proverbial fox was negotiating on behalf of the henhouse.

12. By February 6, 2020, Foley had negotiated, and the Special Committee accepted, a transaction in which FNF would acquire FGL for \$12.50 per share in either cash or FNF stock (subject to proration to ensure a 60% cash payout), representing an equity value of approximately \$2.7 billion (the "Transaction"). All told, the Special Committee met 6 times for a total of 3.7 hours.

13. The market's reaction to the Transaction, which represented a significant premium to FGL's trading price, demonstrates its harm to FNF's outside investors. As outlined in Section V(A), below, over \$843 million of FNF's market capitalization disintegrated upon announcement. Showing that the problem was not just an overpayment for FGL but also value misdirection from both companies' investors in favor of Foley, the net value destruction among the two companies resulting from news of the Transaction exceeded \$423 million. As one analyst put it, there were "no obvious synergies (and none were cited)" and "[w]hile the valuation is a good price for [FGL] shareholders, we don't see that being part of FNF adds a whole lot to the franchise."

14. A properly functioning and independent Special Committee would have resisted in the face of Foley using the Transaction to extract non-ratable

benefits for himself at the expense of unaffiliated FNF stockholders. But the Foley patronage machine functioned as intended and the Special Committee either did not care that Foley was diverting value to himself or knew that he would reward them in the future for rubber-stamping the deal he wanted and turning a blind eye.

15. *First*, Foley reaped non-ratable benefits through the sub-advisory agreements between MVB and Blackstone. Through the Transaction, Blackstone renegotiated the terms of its previous investment management agreements while giving MVB more in fees for no more work. Blackstone, obviously more than capable of handling the management of any FNF/FGL investment management on its own, would direct at least [REDACTED] in advisory fees to MVB (which evidently consists of just Foley and Chu). MVB would receive an additional [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] In other words, Foley used the Transaction to maintain and then extend investment management agreements in which Foley's-entities send tens of millions of dollars per year away from FNF stockholders and to Foley and his cohorts, using Blackstone as the intermediary.

16. *Second*, Foley reaped non-ratable benefits through the exorbitant [REDACTED] fee FNF paid Trasimene in connection with the Transaction and its entry into

a five-year “services agreement” with FNF. To earn that fee, the fatally conflicted Trasimene gave just two presentations to the Special Committee and did not render a fairness opinion. BofA Securities, which did render a fairness opinion, received only [REDACTED] in connection with the Transaction.

17. *Third*, Foley extracted non-ratable benefits through another of his affiliated entities, QOMPLX, Inc. (“QOMPLX”), for which Foley serves as the Chairman and Massey serves as the CEO and a director. FNF “insisted” that FGL retain QOMPLX (and not any other industry competitor) to address supposed cybersecurity issues between the signing and closing. QOMPLX was paid for a questionable purpose and stands to reap additional ongoing fees post-closing.

18. As detailed below, the FNF Board consists of a majority of directors beholden to and lacking independence from Foley. Several Board members, including Foley, Massey, and Thompson are directly benefiting from the misconduct alleged herein, in the form of direct payments to their affiliated entities (*i.e.*, MVB, Trasimine, QOMPLX, and BofA Securities/BAML). At a minimum, eight of the ten-member FNF Board could not independently consider a demand.

19. This Action seeks to put a stop to Foley’s incessant value-stripping activities. The FNF buyout of FGL crossed the line from “modest” misdirection of funds to the flagrant. Because the Transaction was never conditioned on a

stockholder vote, FNF stockholders had zero voice at the ballot box. The absence of a stockholder vote guaranteed that Foley’s preferred deal—the approval of which would have been uncertain if subject to independent stockholder approval—would be approved only by the people that played a role in Foley’s patronage machine. Judicial intervention and strong accountability is warranted.

II. THE PARTIES

20. **Plaintiff** is the defined benefit retirement plan for more than 4,000 active and retired civilian employees of the City of Miami, Florida. Plaintiff is, and has been, at all relevant times, a beneficial owner of shares of FNF common stock.

21. **Nominal Defendant FNF** is a provider of title insurance, escrow, and other title-related services, as well as transaction services to the real estate and mortgage industries. FNF is incorporated in Delaware and has its corporate headquarters at 601 Riverside Avenue, Jacksonville, Florida, 32204. FNF’s common stock trades on the New York Stock Exchange (the “NYSE”) under the ticker symbol “FNF.”

22. **Defendant Foley** is the founder of FNF and has served as FNF’s Chairman since 1984. Foley served as FNF’s CEO from 1984 to May 2007 and as FNF’s President from 1984 to December 1994. Before consummation of the Transaction, Foley also served as Co-Executive Chairman of FGL with Chu. As further discussed below at Sections IV(A) and VII and as illustrated in **Exhibit A**,

Foley used overlapping directorships at his various business ventures—including, but not limited to, Trasimene, Cannae Holdings, Inc. (“Cannae”), QOMPLX, Black Knight, Inc. (“Black Knight”), Black Knight Sports and Entertainment, LLC (“Black Knight Sports”), Ceridian HCM Holding, Inc. (“Ceridian”), Trebia Acquisition Corp. (“Trebia”), Foley Trasimene Acquisition Corp. (“FTAC”), and The Dun & Bradstreet Corporation (“D&B”)—to create and surround himself with loyalists that will protect him over public investors.

23. Foley rewards his loyalists with exclusive and highly prestigious investment opportunities. For example, through serving as Chairman, CEO, and sole board member of Black Knight Sports, the entity which owns and operates the Las Vegas Golden Knights professional hockey team (the “Vegas Golden Knights”), Foley has provided numerous FNF directors the ability to become minority owners of a professional sports franchise.

24. **Defendant Ammerman** has served as a director of FNF since 2005. He currently serves as Chairman of FNF’s Audit Committee and served as Chairman of the Special Committee formed in connection with the Transaction. From 2003 to 2006, Ammerman served as a director of CKE Restaurants, Inc. (“CKE Restaurants”) (along with Defendants Foley and Lane) and from 2013 to 2017, he served as a director of Remy International, Inc. (“Remy”), along with Foley. As

shown on **Exhibit A**, Ammerman sits on several boards of companies either affiliated with or controlled by Foley, including: (i) FTAC, along with Defendants Foley (founder and Chairman), Hagerty, and Massey; (ii) D&B, along with Defendants Foley (Chairman), Hagerty, and Massey; and (iii) J. Alexander's Holdings, Inc. ("J. Alexander's") along with Defendant Quirk. Ammerman also holds a limited partnership interest in Star Parent, L.P. ("Star Parent"), the limited partnership that owns D&B and which is controlled by Bilcar, LLC, a private investment entity controlled by Foley. Ammerman also serves as a director of Star Parent's general partner, along with Foley (Chairman), Hagerty, and Massey. Ammerman is also a minority owner of Black Knight Sports.

25. **Defendant Hagerty** has served as a director of FNF (and its predecessors) since 2005. Hagerty also served on the Special Committee formed in connection with the Transaction. Hagerty is a Managing Director of Thomas H. Lee Partners, L.P. ("THL") a private equity firm which, as alleged below at Sections IV(A)(ii) and VII(E), has repeatedly co-invested with Foley in various transactions spanning fifteen years. From 2006 to July 2018, Hagerty served on the board of directors of Fidelity National Information Services, Inc. ("FIS")—which FNF took over in 2003 and spun out in 2006—with Defendants Foley (who served as Chairman from 2006 to 2012 and Vice Chairman from 2012 to 2016), Lane, Massey,

and Thompson. As reflected on **Exhibit A**, Hagerty serves on multiple boards of companies either affiliated or controlled by Foley, including: (i) Black Knight, along with Foley (Chairman and former CEO), Massey, and Rood; (ii) FTAC, along with Foley (founder and Chairman), Ammerman, and Massey; (iii) ServiceLink Holdings, LLC (“ServiceLink”), along with Foley, Massey, Rood, and Thompson; (iv) D&B, along with Foley (Chairman), Ammerman, and Massey; (v) and Ceridian, along with Foley (former Chairman). Hagerty owns an equity interest in ServiceLink, along with Massey, Rood, and Thompson. Hagerty also holds a limited partnership interest in Star Parent and serves at a director of Star Parent’s general partner, along with Foley (Chairman) and Massey. THL also holds a significant limited partnership interest in Star Parent. Hagerty is also a minority owner of Black Knight Sports.

26. **Defendant Lane** has served as a director of FNF since 2005 and as a director of FNF’s predecessors since 1989. Lane currently serves as a member of FNF’s Compensation Committee and served on the Special Committee formed in connection with the Transaction. Lane has also served on the board of CKE Restaurants with Foley and Ammerman from 1993 through 2010, during which time Foley served as CEO and Chairman. From 2006 to July 2008, Lane served on the board of FIS with Foley, Hagerty and Thompson, during which time Foley served

as Executive Chairman. Following his FIS directorship, Lane served on the board of Lender Processing Services, Inc. (“LPS”) with Foley and Thompson from July 2008 until March 2009, during which time Foley served as Chairman. LPS was originally spun off from a separate FNF spin-off (FIS) in July 2008 and reacquired in 2014 in a \$2.9 billion acquisition.

27. **Defendant Massey** has served as a director of FNF since 2006. Massey currently serves as Chairman of FNF’s Compensation Committee. Together with Foley, Massey also serves as co-Senior Managing Director of Trasimene, one of two advisors retained by the Special Committee in connection with the Transaction. In addition to Trasimene, Massey holds multiple roles and serves on the boards of multiple companies either affiliated or controlled by Foley. Since May 2016, Massey has served on the board of FGL with Chu and Foley, both of whom served as co-Executive Chairmen. Previously, Massey served as a director of FIS from 2006 to 2017, along with Foley (who served as Chairman from 2006 to 2012 and Vice Chairman from 2012 to 2016), Hagerty, Lane, and Thompson. Currently, Massey serves as CEO of Cannae where he has served on the board with Foley since June 2018. Massey also serves on the boards of: (i) Black Knight, along with Hagerty and Foley (Chairman); (ii) D&B, along with Ammerman, Hagerty, and Foley (Chairman); (iii) QOMPLX, along with Foley (Chairman) and with Massey

serving as CEO; (iv) FTAC, along with Foley (founder and Chairman), Ammerman, and Hagerty, with Massey serving as CEO; and (v) ServiceLink, along with Foley, Hagerty, Rood, and Thompson. Massey owns an equity interest in ServiceLink, along with Hagerty, Rood, and Thompson. Massey also holds a limited partnership interest in Star Parent and serves as a director of Star Parent's general partner, along with Foley (Chairman) and Hagerty. Massey is also a minority owner of Black Knight Sports.

28. **Defendant Murren** has served as a director of FNF since May 2017 and has served on the Company's Audit Committee since April 2018. Murren served on the Special Committee formed in connection with the Transaction. Murren is married to James Murren, the Chairman and CEO of MGM Resorts International ("MGM"), which is the majority owner of the T-Mobile Arena where the Vegas Golden Knights play home hockey games and FNF is season ticket holder. Foley is an investment partner with MGM and 15% minority owner of the T-Mobile Arena.¹

¹ Mark Ewing, *Bill Foley And The National Hockey League's Newest Franchise, The Vegas Golden Knights*, FORBES, July 16, 2017, <https://www.forbes.com/sites/markewing/2017/07/16/bill-foley-and-the-national-hockey-leagues-newest-franchise-the-vegas-golden-knights/#5ea0877b6359> (last accessed July 28, 2020) ("My partners are MGM Mirage and AEG [Anschutz Entertainment Group]. AEG handles selling the suites. MGM manages the arena. We're a tenant. But we are also minority owners' ... His partners in team ownership are the Maloof brothers, who until 2013 owned the Sacramento Kings"; "I'm a 15 percent owner of the stadium."").

29. **Defendant Quirk** has served as a director of FNF since February 2017 and as Chief Executive Officer (“CEO”) of FNF since December 2013. Quirk served on the Special Committee formed in connection with the Transaction. As discussed further below at Section VII(F), Quirk has a long employment history with FNF that spans decades (since 1985). Quirk also serves on the board of J. Alexander’s, along with Ammerman.

30. **Defendant Rood** has served as a director of FNF since May 2013 and serves on FNF’s Audit Committee. Rood served on the Special Committee formed in connection with the Transaction. Rood also sits on the boards of: (i) Black Knight, along with Hagerty, Massey and Foley (Chairman); and (ii) ServiceLink, along with Foley (Chairman) and Thompson. Rood owns an equity interest in ServiceLink, along with Hagerty, Massey, and Thompson. Rood is also a minority owner of Black Knight Sports.

31. **Defendant Shea** has served as a director of FNF since April 2006. Shea serves as Chairman of FNF’s Corporate Governance and Nominating Committee and served on the Special Committee that approved the Transaction.

32. **Defendant Thompson** has been a director of FNF since 2005. Thompson currently is Executive Vice Chairman of Global Corporate and Investment Banking, Bank of America Merrill Lynch (“BAML”), the parent of BofA

Securities. Since 1992, Thompson has served as a director of certain FNF predecessors. From 2001 to 2003, Thompson served as a director of Fidelity National Information Solutions, Inc., along with Foley who served as Chairman. From February 2006 to July 2008, Thompson served as a director of FIS, along with Foley (Chairman), Hagerty, Lane, and Massey. From July 2008 to March 2009, Thompson served on the board of LPS, along with Foley (Chairman), Lane, and Massey. From January 2014 through April 2015, Thompson served on the board of managers of Black Knight Financial Services, LLC, an affiliate of Black Knight Financial Services, Inc., both companies founded by Foley. Thompson serves as a director of ServiceLink, along with Foley, Hagerty, Massey, and Rood. Thompson owns an equity interest in ServiceLink, along with Hagerty, Massey, and Rood.

33. **Defendant MVB** is a New York-based investment management firm controlled and jointly owned by Foley and Chu. Founded in 2017, MVB serves as a “Sub-Adviser” to Blackstone under FGL’s Investment Agreement. As Sub-Adviser, MVB purportedly provides “investment advisory services, portfolio review, and consultation with regard to FGL.” MVB is incorporated in Delaware as a limited liability company. MVB shares the same office and address as CC Capital Management LLC, an affiliate of CC Capital Partners LLC (“CC Capital”), the personal investment vehicle of Chinh Chu, Foley’s business partner and co-

Chairman of FGL.² MVB has no website, phone number or record of having any employees beyond Foley and Chu. Having just formed this two-man operation in 2017, MVB appears to have no relevant credentials and experience on any comparable transactions. In fact, according to SEC filings, the only relevant limited experience MVB has is providing “investment advisory services” to other companies affiliated or controlled by Foley and/or Chu.³ Simply, Foley appears to be conditioning lucrative third party investment management agreements on the third parties agreeing to kick back “sub-advisor” fees to Foley, despite neither needing nor receiving any such advice.

34. **Defendant Trasimene** is a Las Vegas-based private equity asset management company that was founded in August 2019 by Foley. As FNF’s recent public filings confirm, “Trasimene is controlled by” Foley, and he and Massey serve as co-Senior Managing Directors. Trasimene is a limited liability company incorporated in Delaware. Its principal offices are located at 1701 Village Center Circle, Las Vegas, Nevada 89134, the same address as most of Foley’s other

² FNF-FGL-220_0000663.

³ On February 8, 2019, D&B entered into a “services agreement” with MVB and THL Managers VIII, LLC pursuant to which MVB and THL Managers provided services in connection with the take-private transaction of D&B and MVB received \$29.1 million at closing. In connection with the D&B IPO, D&B will pay \$2.5 million to THL Managers.

ventures.

35. The defendants identified above in paragraphs 24 through 26 and 28 through 31 are referred to collectively herein as the “Special Committee Defendants.”

36. The defendants identified above in paragraphs 22 through 32 are referred to collectively herein as the “Director Defendants.”

37. The Director Defendants, are referred to collectively as the “Board,” the “FNF Board” or the “Demand Board.”

38. The defendants identified above in paragraphs 22 through 34 are referred to collectively herein as the “Defendants.”

III. RELEVANT NON-PARTIES

39. FGL is an insurance company offering various types of fixed annuities and life insurance products. FGL was originally incorporated in the Cayman Islands on February 26, 2016 as “CF Corp,” a SPAC formed by Chu and Foley. On November 30, 2017, CF Corp acquired Fidelity & Guaranty Life, Inc. (“Fidelity Guaranty”), a Delaware corporation and changed its name to FGL Holdings. Before the Transaction, FGL’s shares traded on the NYSE under the ticker symbol “FG.”

40. Blackstone is a private equity firm incorporated in Delaware and with

its headquarters in New York. Before the Transaction, Blackstone⁴ held approximately 17.6% of FGL’s shares through Blackstone Tactical Opportunities Advisors L.L.C., which had originally invested in CF Corp. Before the Transaction, Blackstone served as an investment manager of FGL through its subsidiary, Blackstone ISG-I Advisors L.L.C. (“BISGA”).

41. Chu served as Co-Executive Chairman of FGL with Foley since 2016. Chu is the founder and managing partner of CC Capital, formed in 2015. As founder and managing partner of CC Capital, Chu spearheaded the creation of three SPACs, the largest of which was conducted through a joint investment with Foley. The joint SPAC investments between Chu and Foley include: (i) CF Corp., which raised \$1.2 billion to facilitate the purchase of FGL’s predecessor, Fidelity Guaranty; (ii) Collier Creek Holdings, which raised \$475 million to in connection with the purchase of certain businesses from Utz Brands Holdings, LLC; and (iii) CC Neuberger, which raised \$414 million to acquire one or more companies in the financial, technology and business services sectors. In 2018, CC Capital teamed up with Cannae, THL, Black Knight, and Bilcar LLC (Foley’s investment vehicle) to take D&B private for \$6.9 billion. Before founding CC Capital, Chu was a Senior Managing Director and Co-Head of Private Equity at Blackstone, where he spent 25 years in senior

⁴ Two affiliates of Blackstone—CFS Holdings (Cayman) L.P. and CFS Holdings II (Cayman) L.P.—together hold approximately 17.6% of FGL’s ordinary shares.

leadership roles.

IV. SUBSTANTIVE ALLEGATIONS

A. **Foley Cultivates Loyalty Through His Patronage “Machine”**

42. Foley has spent decades cultivating loyalists whom he places on the boards of and in executive roles at his companies. The FNF Board is no different.

43. As illustrated in **Exhibit A**, Foley has woven an intricate web of relationships and favors, inextricably connecting himself to his acolytes by way of shared investment opportunities, board positions, and side deals.

44. The purpose of these relationships is simple: to create a patronage system that allows Foley to obtain non-ratable side benefits for himself.

45. The means of establishing and maintaining these relationships is also simple: Foley rewards his acolytes with a “taste” of the spoils, in the form of board and executive positions at his affiliated entities, as well as exclusive and prestigious investment opportunities, including partial ownership in sports franchises.

46. Defendants Ammerman and Hagerty, who served on the Special Committee, are textbook examples of the product of Foley’s patronage machine.

i. Foley Cultivates and Benefits From Ammerman’s Loyalty Through Repeated Director Positions

47. Ammerman, the Chair of the Special Committee, is a longtime Foley acolyte who has benefited extensively from the Foley patronage machine.

48. In 2003, shortly after retiring from KPMG, Ammerman joined his first Foley-affiliated board, CKE Restaurants.⁵ He joined the FNF Board in 2005. Since then, Ammerman has served as a director of at least five other Foley-affiliated entities, including:

- FTAC, along with Foley (founder and Chairman), Hagerty, and Massey;
- D&B, along with Foley (Chairman), Hagerty, and Massey;
- Star Parent's general partner, along with Foley (Chairman), Hagerty, and Massey;
- J. Alexander's, along with Quirk; and
- Remy, along with Foley (former Chairman).

Ammerman also holds minority interests in Black Knight Sports, which owns the Vegas Golden Knights, and Star Parent, which owned D&B until its IPO.

49. Ammerman's experience as a director of J. Alexander's, which owns and operates a series of chain restaurants, demonstrates his willingness to give Foley non-ratable benefits at the expense of investors. In September 2012, Fidelity National Financial Ventures, LLC ("FNFV"), a former wholly owned subsidiary of

⁵ Foley served as a director of CKE from 1993 until 2005 and served as the Chairman and CEO from 1994 to 2005 and 1994 to 2000, respectively. Lane also served as a CKE director from 1993-2010.

FNF,⁶ acquired J. Alexander’s predecessor entity. In 2015, FNFV spun off J. Alexander’s into an independent, publicly traded company.

50. Like the challenged Transaction, Foley used this spinoff as an opportunity to extract personal, non-ratable benefits. In connection with the spinoff, J. Alexander’s entered into a consulting agreement with Black Knight Advisory Services, LLC (“BKAS”). Foley controlled BKAS and J. Alexander’s CEO, Lonnie Stout, owned 12% of BKAS. Under the consulting agreement (the “BKAS Agreement”), which ran through 2022, J. Alexander’s paid BKAS 3% of its annual adjusted EBITDA in exchange for various “corporate and strategic advisory services.”

51. J. Alexander’s board, consisting of Foley regulars, maintained this lucrative arrangement. J. Alexander’s recognized in its most recent Form 10-K that, notwithstanding the spinoff, “some of our directors still have relationships with FNF” and “ownership of FNF common stock and Cannae common stock by our directors and officers after the separation may create, or may create the appearance of, conflicts of interest when these directors and officers are faced with decisions that could have different implications for FNF than they do for us.” J. Alexander’s

⁶ FNFV, which was formed to hold non-real estate related investments of FNF including Ceridian, Remy, and 99 Restaurants & Pub (among others), was spun off from FNF in November 2017 and renamed Cannae.

further recognized that “some of our directors are members of the board of directors of FNF and/or Cannae or subsidiaries of FNF or Cannae, which may in the future create, or may create the appearance of, conflicts of interests.”

52. Those disclosures put things mildly. In addition to Ammerman and Quirk, J. Alexander’s seven-member board has consisted of a majority of Foley acolytes since 2015, including:

- Frank R. Martire (formerly the Non-Executive Chairman of FIS and a director of Cannae and a former director of Fidelity Newport Holdings, LLC (“FNH”)⁷);
- Ronald B. Maggard, Sr. (a former director of FNH and CKE);
- Timothy T. Janzen (a member of FNH’s Board of Managers since 2009 and the CEO of Newport Global Advisors, L.P., where he engaged in various co-investment opportunities with FNF, or entities controlled by FNF, including FNH, since 2009); and
- Stout (former Executive Vice Chairman of FNH and minority owner of BKAS).

⁷ FNH was formed as a joint venture by Fidelity National Special Opportunities, Inc., a wholly owned subsidiary of FNF, and held as to 55% by Cannae and as to 38.9% by affiliates of Newport Global Advisors, LLC, with other co-investors holding the remaining interests. FNH owned and operated several chain restaurants, including 99 Restaurants, LLC.

53. Foley used his influence over the J. Alexander's board to extract additional benefits for himself and his affiliates. In August 2017, FNFV (then an FNF subsidiary) and FNH announced they had entered into a merger agreement with J. Alexander's, under which J. Alexander's would acquire 99 Restaurants in an all-stock transaction valued at approximately \$199 million, including the assumption of \$20 million in net debt.

54. Foley stood to benefit handsomely had the proposed transaction been consummated: (i) FNF would have owned approximately 52.5% of the outstanding shares of J. Alexander's capital stock; (ii) Foley would have joined the J. Alexander's board; and (iii) the BKAS Agreement would have been terminated, requiring J. Alexander's to pay a \$2.1 million termination fee.

55. The proposed transaction drew swift and sharp stockholder scrutiny. In September 2017, Marathon Partners Equity Management, LLC ("Marathon") expressed concern that "the proposed transaction is overly accommodating to the interests of FNF and other affiliated entities" and "the Board's deep and active ties to FNF are hindering the pursuit of alternative options that could potentially result in better outcomes for shareholders." Similar to the Transaction here, Marathon further observed that the proposed transaction made little strategic sense.

56. Marathon wrote to J. Alexander’s board in October 2017 regarding the related-party nature of the proposed transaction. Marathon noted that the J. Alexander’s had retained Stephens Inc., which had previously provided investment banking services to FNF and had previously employed Massey as a managing director from 2000 to 2006, to render a fairness opinion.⁸

57. Foley continued to attempt to extract personal non-ratable benefits from the proposed transaction. In December 2017, J. Alexander’s disclosed that it would enter into a transition services agreement with FNH and ABRH, LLC, a subsidiary of FNFV, in connection with the proposed transaction (the “Transition Services Agreement”). Under the Transition Services Agreement, FNH and ABRH agreed to provide certain unspecified “transition and support services to” J. Alexander’s for six to twelve months post-closing. Unsurprisingly, Marathon wrote to the J. Alexander’s board again in December 2017, expressing concern that the Transition Services Agreement served “as a prime example of such an unearned accommodation” that “further highlight[ed] the Board’s efforts in favor of” Foley “at the expense of the Company’s shareholders.”

58. Activists were not the only ones bothered by Foley’s conduct. Both ISS and Glass Lewis recommended against the proposed transaction, echoing the

⁸ Weil, Gotshal & Manges LLP (“Weil”) also served as legal advisor to FNFV.

concerns Marathon raised. Glass Lewis observed that “during the negotiation process and at the time the merger agreement was approved by the board, certain directors,” including Quirk and Ammerman, “held interests in counterparties to the transaction that may represent conflicts of interest.” ISS similarly observed, “each of [J. Alexander’s]’s six directors, at the time of negotiations and the transaction, had conflicts as either executives or board members of FNF, FNH, or FNFV” and concluded: “Given [J. Alexander’s]’s directors’ longstanding ties, fiduciary obligations, and economic interests tied to 99 Restaurants, Marathon’s skepticism as to whether [J. Alexander’s]’s directors were looking out for [J. Alexander’s] shareholders’ best interests appears to be a reasonable concern.”

59. On February 2, 2018, independent J. Alexander’s stockholders voted down the proposed transaction, which had been conditioned on a majority-of-the-minority vote. J. Alexander’s stock price, which had fallen 5% when the proposed transaction had been announced, rose more than 3% on the news.

60. Notwithstanding the collapse of the proposed transaction, Marathon continued to press the J. Alexander’s board “to undertake a full review of the [BKAS Agreement] with the goal of eliminating this costly and unjustifiable expense,” emphasizing that the BKAS Agreement “will likely cost J. Alexander’s shareholders over \$825,000 in 2018” and “that the Company receives little, if any, benefit from

this arrangement.” To that end, Marathon asked the board to “put bias and favoritism aside and commence negotiations with Mr. Foley in order to eliminate this costly advisory agreement,” a request that “may be uncomfortable given the Board members’ preexisting relationships with Mr. Foley.” Marathon further noted that J. Alexander’s “purchases a significant but unspecified amount of wine from William Foley entities and also assists in promoting the brand and the Foley Food and Wine Society,” which the J. Alexander’s board could potentially use as leverage in negotiating with Foley.

61. Although J. Alexander’s ultimately terminated the BKAS Agreement in November 2018, Foley could not resist extracting one last taste for himself. The termination provisions of the BKAS Agreement required J. Alexander’s to pay BKAS—and by extension, Foley—\$4.56 million in cash for the remaining 6.8-year term of the Agreement, as well as an additional \$700,000 for the pro-rata portion of the 2018 consulting fee. This was in addition to the approximately \$2.39 million that J. Alexander’s had already paid under the BKAS Agreement.

62. Ammerman and Quirk remain on the J. Alexander’s board.

63. As a reward for his loyalty, Ammerman was given the opportunity to join the D&B board (and invest in Star Parent) along with Hagerty and Massey. Foley further rewarded Ammerman with the opportunity to join the board of his most

recent venture, FTAC, also along with Hagerty and Massey. *See* Section V(C), below.

ii. *Foley Cultivates and Benefits from Hagerty's Loyalty Through Repeated Investment Opportunities for Hagerty and THL*

64. Hagerty—another Special Committee member—is another prime example of the Foley patronage machine.

65. Like Ammerman, Hagerty shares a lucrative relationship with Foley, both in his individual capacity and on behalf of THL, where he has served as a managing director since 1988. Hagerty—a longtime Foley affiliate—began serving as an FNF director fifteen years ago in 2005, when THL was in the process of buying a quarter interest in FNF's subsidiary, FIS.

66. In addition to his service on the FNF Board, Hagerty has served as a director of no fewer than six Foley-affiliated entities, including:

- Black Knight⁹ along with Foley (Non-Executive Chairman; former Chairman and CEO), Massey, and Rood;
- FTAC, along with Foley (founder and Chairman), Ammerman, and Massey;

⁹ On September 29, 2017, FNF completed a series of transactions resulting in a tax-free spin-off of its majority-owned subsidiary, Black Knight Financial Services, Inc. (“BKFS”), and the formation of Black Knight as a new publicly traded holding company, which owns all outstanding BKFS shares.

- Star Parent’s general partner, along with Foley (Chairman), Ammerman, and Massey;
- D&B, along with Foley (Chairman), Ammerman, and Massey;
- Ceridian, along with Foley (former Chairman); and
- FIS, along with Foley (former Executive Chairman), Lane, and Thompson.

Hagerty also holds minority interests in Black Knight Sports and Star Parent.

67. THL and Foley also have a rich history investing with one another. As Foley recently disclosed in a registration statement for FTAC, a SPAC founded by Foley in March 2020 and sponsored by affiliates of Trasimene and Bilcar Limited Partnership (owned by Foley):

William P. Foley II and THL have a long and successful track record of investment partnership that spans over fifteen years. The group’s previous transactions include FIS (two separate investments), Sedgwick CMS, Ceridian, Black Knight, ServiceLink, Dun & Bradstreet, and AmeriLife. Total invested capital in these eight investments was approximately \$7.6 billion, with total THL invested capital of \$2.0 billion.

THL is a significant investor in FTAC. On May 11, 2020, FTAC filed a registration statement on Form S-1 relating to the proposed IPO of 75 million units for \$10.00 per unit, consisting of one share of FTAC’s Class A common stock, and one-third of one redeemable warrant. Cannae and a THL affiliate each entered into forward purchase agreements with FTAC to purchase 15 million Class A shares (30 million total) as well as 5 million redeemable warrants (10,000,000 total) to purchase one

Class A share for \$11.50 per share, for an aggregate purchase price of \$150 million (\$300 million total), or \$10.00 per Class A share, in a private placement to occur concurrently with the closing of an initial business combination.

68. THL also participated in the 2019 take-private acquisition of D&B by Foley and an investor consortium including THL, Cannae, Black Knight, and CC Capital. After the take-private acquisition, Star Parent was D&B's sole stockholder. D&B held its IPO in July 2020, after which point THL owned over 24% of D&B's outstanding shares.

69. Hagerty and THL have benefited from their relationship to Foley in other ways. For example, Hagerty sits of the board of Black Knight, along with another THL managing director, Ganesh Rao.¹⁰ THL previously owned more than 10% of Black Knight's common stock until March 15, 2018. In its most recent proxy statement, Black Knight disclosed: "in the past we have purchased software and systems services from certain entities over which THL exercises control and, prior to the IPO, THL provided certain corporate services to us, including management and consulting services."

¹⁰ Rao is also a director of several other Foley-affiliated entities including Ceridian and ServiceLink.

70. Hagerty and Foley also share in exclusive personal investments. In addition to holding a minority interest in Black Knight Sports, Hagerty acquired a 25% interest in Wharekauhau Lodge, with Foley acquiring the remaining 75% in 2012. Wharekauhau Lodge is an exclusive New Zealand retreat described as “a playground for the rich and famous on Wairarapa’s south coast” and “a favourite of Sir Peter Jackson” as well as other “celebrities, including Jack Black, Tom Cruise, Nicole Kidman, Meg Ryan, the Rolling Stones and Bill Gates.”

71. Given their shared successes, Hagerty has heaped public praise on Foley. In a 2014 interview with ESPN.com, Hagerty stated:

- “I think Bill is one of those very rare characters. He’s just going to be good at everything he does.”;
- “He’s an enormously talented businessman. He’s a leader.”;
- “They [the NHL] couldn’t ask for a better guy.”;
- “I just think the world of the guy. It’s just that simple.”; and
- “He’s just a star. He’s a flat-out star.”

Hagerty similarly told the Las Vegas Review Journal in 2015 that Foley is “this very rare combination of spectacular deal skills and operation skills. The guy has tremendous energy.” And in a 2012 profile in Bloomberg BusinessWeek, Hagerty

describes his “friend” in effusive terms: “Underneath [Foley’s] avuncular exterior lies a steeliness borne of years of deals in the mortgage industry.”

72. As a reward for his loyalty, Hagerty was given the opportunity to join the D&B board (and invest in Star Parent directly and in addition to an investment by THL itself, and ultimately participate in the D&B IPO) along with Ammerman and Massey. Foley has further rewarded Hagerty with the opportunity to join the board of FTAC (which THL has invested heavily in), along with Ammerman and Massey. *See* Section V(C), below.

73. Foley has cultivated loyalty amongst the rest of the FNF Board in much the same way. As evident from **Exhibit A**, almost every FNF director has obtained multiple director positions, executive positions, and/or investment opportunities, through entities affiliated with or controlled by Foley. And while Foley sits at the center of this web, his relationships with the individual FNF directors are not exclusive: more often than not, multiple FNF directors have sat on the same boards of Foley-affiliated entities. What is more, many of these relationships between Foley, FNF directors, and one another, have spanned many years.

B. The Origins of the Transaction

i. Foley Takes FGL Public With Help From FNF

74. Foley planted the seeds of the Transaction in 2017, when a Foley-sponsored SPAC, CF Corp., agreed to buy Fidelity Guaranty.

75. CF Corp. had its own IPO a year earlier, on May 25, 2016. Before the IPO, Foley and Chu acquired approximately 11.25 million Class B founder shares of CF Corp. for \$25,000, or approximately \$0.002 per share.

76. As a SPAC, CF Corp. sought to identify a business combination opportunity “in industries or sectors that complement our management team’s background, and to capitalize on the ability of our management team to identify, acquire and operate a business, focusing on the financial, technology and services sectors in the United States or globally.” “[O]ur management” included Chu, Foley, Massey, and David Ducommun.¹¹

77. CF Corp. found that opportunity on May 24, 2017, when it announced it would acquire Fidelity Guaranty, a fixed indexed annuities and life insurance company, for \$31.10 in cash per share—approximately \$1.835 billion in total—and assuming Fidelity Guaranty’s \$405 million in existing debt.

78. Although CF Corp. did not make the highest bid, it nonetheless prevailed in a bidding war to acquire Fidelity Guaranty because it could quickly

¹¹ Ducommun joined FNF in 2011 as Senior Vice President of Mergers & Acquisitions and previously served as a Director of Investment Banking at Bank of America since 2008. Ducommun shares thick ties with Foley. Among other positions, Ducommun serves as a managing director of Trasimene and as a Senior Vice President of Mergers and Acquisitions for Cannae and previously served as Managing Director of FNFV. Ducommun also took a leading role negotiating the Transaction.

provide “certainty of funding” that other bidders could not. Foley and Chu did not, however, provide the funding certainty needed to close the deal: FNF did.

79. Entities affiliated with Chu and Foley had committed to invest hundreds of millions in common and preferred equity to fund the merger. To support the merger, FNF entered into Equity Commitment Letters to purchase CF Corp. equity for \$235 million. FNF further agreed to fund up to \$195 million to offset any redemptions made by CF Corp.’s stockholders. In addition, FNF committed to “backstop” up to \$200 million of certain funding commitments made in connection with forward purchase agreements. In sum, the maximum exposure to FNF was \$630 million.

80. In consideration for entering into this nine-figure commitment to ensure the CF Corp.-Fidelity Guaranty merger would successfully close, FNF received meager fees (approximately \$5 million) and warrants convertible for 1.2% of CF Corp.’s fully diluted common shares outstanding.

ii. Foley’s Personal Benefit From Acquiring Fidelity Guaranty

81. By buying Fidelity Guaranty, Foley and Chu extracted the long-term benefit of steady investment management income.

82. On November 30, 2017, CF Corp. completed its acquisition of Fidelity Guaranty. Upon closing, CF Corp. changed its name to FGL.

83. FGL's wholly owned subsidiary, Fidelity & Guaranty Life Insurance Company, entered into an investment management agreement with an indirect wholly owned Blackstone subsidiary, Blackstone ISG-I Advisors LLC ("BISGA"). Three extant subsidiaries of CF Corp. simultaneously entered into Investment Management Agreements ("IMAs") with BISGA on substantially the same terms. The IMAs generally provided BISGA a management fee of 0.30% per annum.

84. That same day, Foley put in place his method for syphoning value from FGL. Specifically, although BISGA is more than capable of handling its own provision of investment management services and Foley and Chu do not bring any skill that BISGA needs (other than approval of the IMAs themselves), BISGA entered into form sub-advisory agreements for all of the accounts related to the IMAs with MVB, which Foley and Chu own 50-50.

85. Under the 2017 sub-advisory agreement, MVB would purportedly provide "investment advisory services, portfolio review, and consultation" services for the accounts BISGA managed under the IMAs. In exchange, BISGA committed to pay MVB a sub-advisory fee of "approximately 15% of certain fees paid to the Investment Manager and its affiliates pursuant to the [respective IMA]." This sub-advisory agreement could not be terminated by BISGA unless FGL terminated the IMA. In other words, for assets under management ("AUM") of up to \$25 billion

for which FGL had contracted BISGA's management services, MVB would receive a fee of 0.045%. By 2019, the AUM was just under \$25 billion, and MVB received approximately \$11 million per annum.

86. These payments are not actually for sub-advisory services in the traditional sense. Rather, it appears the sub-advisory agreements are either a payment from BISGA for Foley and Chu using their influence over Fidelity Guaranty to retain Blackstone rather than another investment management firm, or they are simply a ruse for the transfer of cash from the corporation to Foley and Chu.

C. Foley Engineers the Transaction After the Stewart Deal Fails

87. Roughly one year after FGL went public, FNF announced it was purchasing one of FGL's competitors, Stewart Information Services Corporation ("Stewart"). On March 19, 2018, FNF announced it had entered into a definitive agreement to acquire Stewart in a mixed cash and stock deal worth \$1.2 billion.

88. After Stewart and FNF's stockholders approved the merger, the U.S. Federal Trade Commission sued to block the merger. Shortly thereafter, on September 10, 2019, FNF and Stewart terminated the merger.

89. Inferably anticipating that the merger with Stewart would not pass antitrust scrutiny, Foley began orchestrating an alternative plan: a purchase of FGL.

90. On September 12, 2019, Foley emailed his colleagues on the FNF Board to propose a potential purchase of FGL. Two weeks later, on September 25,

Foley spoke with FGL’s CEO, Chris Blunt (“Blunt”), and invited him to visit Foley at FNF’s Las Vegas offices to discuss FGL’s business and operations.

91. After his in-person meeting with Blunt, Foley called Chu, his co-Chairman at FGL, in early October 2019. Although the Board had not formally met to discuss a potential acquisition of FGL, much less formally authorized Foley to express such an interest to FGL, Foley nonetheless informed Chu that FNF was interested in acquiring FGL. Shortly thereafter, Trasimene, a financial advisory firm Foley had just recently founded, started preparing various financial analyses that would support an FNF acquisition of FGL.

92. By October 7, 2019—still before the Board’s initial meeting regarding a potential FGL acquisition—Trasimene already had prepared a 22-page presentation containing a “Key Issues List,” a Selected Transactions Analysis, a Selected Public Companies Analysis, and a Contribution Analysis, as well as a review of the key terms to a renewed Investment Management Agreement with BISGA and MVB.¹² In its presentation, Trasimene noted that FGL’s Investment Management Agreement with BISGA [REDACTED]

[REDACTED]

[REDACTED]

¹² FNF-FGL-220_0000684-705.

D. A Conflicted Special Committee Is Formed and Promptly Delegates Negotiating Responsibility To Foley and Massey

93. On October 11, 2019, the FNF Board held a telephonic meeting to discuss Foley's plan for FNF to purchase FGL.

94. Massey (one of Trasimene's Senior Managing Partners) appears to have given the October 7, 2019 Trasimene presentation to the Board.¹³ Although Massey discussed the "key issues list," which included a single bullet stating "[i]nvestment management contract," he does not appear to have discussed the "Investment Management Agreement Key Terms Slide," discussed above.

95. During the meeting, Gravelle, FNF's Executive Vice President, General Counsel and Corporate Secretary and a Foley loyalist,¹⁴ identified Foley and

¹³ Compare FNF-FGL-220_0000684-705 (providing a "Navy [*i.e.*, FGL] Company Overview," "Trading Summary," "Illustrative Analysis," "Contribution Analysis," and "Key Issue List") with FNF-FGL-220_0000706 ("Massey ... provided a FGL business overview, trading summary, and illustrative acquisition examples" and "then discussed a contribution analysis and the key issues list associated with this possible acquisition.").

¹⁴ Gravelle joined a subsidiary of FNF in 1993 and then joined FNF in 2003. In addition to FNF, Gravelle has served as Executive Vice President and General Counsel of Black Knight and its predecessors since January 2014 and as Executive Vice President, General Counsel and Corporate Secretary of Cannae (previously FNFV) since July 2014. Previously, Gravelle has served in executive roles at numerous Foley-affiliated entities, including Executive Vice President, Chief Legal Officer and Corporate Secretary of FIS from February 2010 until February 2013 and Senior Vice President, General Counsel and Corporate Secretary of Remy from February 2013 until March 2015.

Massey as dual fiduciaries of both FNF and FGL given their service as FGL directors. Foley was further conflicted because he owned roughly 6.7% (14,935,466 shares) of FGL, nearly double his roughly 2.7% stake (6,651,776 shares) in FNF and would thus prefer any potential transaction that favored FGL stockholders at the expense of FNF stockholders.

96. Gravelle also recommended the Board form an independent special committee. The Special Committee, however, was hopelessly compromised from the beginning. Not only did the Special Committee consist of Foley loyalists, the Board had already decided that BofA Securities and Trasimene would advise the Special Committee.

97. As FNF's Registration Statement confirms, the Board identified Thompson as a third conflicted director that could not sit on the Special Committee due to his employment at BofA Securities, which already "had performed and was anticipated to perform certain services for FNF in connection with the potential transaction."

98. By the end of the October 11, 2019 telephonic meeting, the FNF Board (with Foley, Massey, and Thompson abstaining) unanimously approved formation of the Special Committee consisting of Hagerty, Lane, Murren, Quirk, Shea, Rood, and Ammerman (serving as Chairman). Each Special Committee member was

determined to be “independent and disinterested.” However, as discussed in Section VII below and Sections II and IV(A) above, a majority of the Special Committee members were far from “independent and disinterested.”

99. Aside from fatal conflicts plaguing a majority of the Special Committee, its mandate was extremely narrow. As the Board’s October 11, 2019 resolutions confirm, the Committee’s mandate was limited to merely reviewing and evaluating a potential transaction between FNF and FGL, and not any alternatives:

FURTHER RESOLVED, that in furtherance of their duties, the Special Committee shall, and is hereby empowered to examine the Transaction, evaluate and negotiate the terms of the Transaction and take any and all actions, and make any and all decisions relating to the Transaction permitted by law, all on behalf of the Corporation and as the Special Committee deems to be in the best interest of the Corporation, including terminating negotiations of the terms of the Transaction without further action by the Board or, if appropriate, approve the Transaction without further action by the Board.¹⁵

100. From inception, the Special Committee deferred to the Board’s most conflicted fiduciaries—Foley and Massey—to negotiate the most important aspects of the Transaction. As FNF’s Registration Statement confirms, Gravelle discussed with the Board, with Foley, Massey, and Thompson present,

[C]ertain process guidelines in connection with the FNF special committee’s review and evaluation of the potential acquisition of FGL, including that while *Messrs. Foley and Massey may be involved in structuring the potential acquisition of FGL, including with respect*

¹⁵ FNF-FGL-220_0000712.

to price and other key terms and coordinating due diligence, only the FNF special committee should determine whether and how to proceed with respect to the potential acquisition of FGL.

(emphasis added). Sure enough, the Special Committee entirely acquiesced and deferred to Foley and Massey to negotiate the Transaction's key terms.

E. The Special Committee's Conflicted Advisors Were Pre-Selected By Interested Fiduciaries

101. In addition to its conflicted membership, narrow mandate, and overbroad deference to Foley and Massey, the Special Committee's functioning was further compromised because its financial advisors (Trasimene and BofA Securities) appear to have been preselected for the Special Committee. As discussed above, both Trasimene and BofA Securities had begun working on the Transaction before the Special Committee was even formed.

102. Moreover, each of the Special Committee's advisors were deeply conflicted by virtue of their long-term connections to Foley and his affiliated entities.

i. Trasimene Advising the Special Committee Is Farcical

103. Trasimene had disabling conflicts of interests that cannot be reconciled with any notion that the Special Committee functioned with any reliability.

104. As FNF acknowledges in its public filings, "Trasimene is controlled by" Foley. Trasimene, which serves as Foley's personal private equity asset management company, is run by its two co-Senior Managing Directors: Foley and

Massey. Having been formed in August 2019, just before it was tapped to advise on the Transaction, all of Trasimene’s investment assets include companies either affiliated or controlled with Foley, such as Cannae, American Blue Ribbon Holdings, LLC, Ceridian, and D&B.

105. Trasimene’s corporate existence is coterminous with Foley’s corporate spider web, sharing its principal office in Las Vegas with other Foley businesses and ventures, including the Vegas Golden Knights, Black Knight Sports, FTAC, and Cannae. Making matters worse, FNF was also paying Trasimene unspecified “consulting fees,” with no explanation for why or how much FNF was paying to Foley’s newly founded firm.¹⁶

106. Not only did Trasimene lack independence, it lacked experience. Having been formed in 2019, Trasimene had never rendered a fairness opinion on behalf of any publicly traded company. Nor did it render a fairness opinion in connection with the Transaction, since it received fees simply for advising or “negotiating” on the Committee’s behalf, even as it is controlled by the very director whose conflicts gave rise to the Special Committee’s existence.

107. Despite the facts that Trasimene was controlled by Foley, received fees from FNF, and never issued a fairness opinion, the Special Committee nonetheless

¹⁶ FNF-FGL-220_0000239 at 267.

paid FNF a staggering [REDACTED] (more than double the fee earned by BofA Securities, which did render a fairness opinion) in connection with the Transaction. Inexplicably, members of the “Special Committee were aware of these interests and considered them in their determination to engage Trasimene as a financial advisor.”

ii. **BofA Securities Did Not and Could Not Cleanse Foley’s and Trasimene’s Conflicts**

108. As Executive Vice Chairman of Investment Banking at BAML, director Thompson is obviously conflicted in any engagement of BofA Securities. Rather than retain any of the dozens of comparable investment banking firms that could have acted as a secondary advisor on the Transaction, however, Foley’s patronage machine insisted on funneling fees towards Thompson, conflicts be damned. BofA Securities was paid at least [REDACTED] in fees in connection with issuing a fairness opinion to the FNF Special Committee, on top of the millions in additional (undisclosed) fees Bank of America, N.A. received in connection with providing financing to FNF in the Transaction.

109. The Board correctly recognized that BofA Securities’ retention would pose a conflict. This likely came as no surprise to the Board given that Foley and his affiliated businesses were continuing, lucrative clients of BofA Securities and its affiliates. For example:

- Since 2005 FNF has borrowed hundreds of millions in capital from a revolving credit facility with Bank of America, N.A. On June 25, 2013,

- FNF entered into an agreement to amend and restate its existing \$800 million revolving credit facility with Bank of America, N.A.;
- In 2017, BofA Securities served as CF Corp’s financial advisor in connection with its merger with Fidelity Guaranty. Bank of America also provided CF Corp a \$1 billion term loan credit agreement to help facilitate its purchase of Fidelity Guaranty;
 - On August 8, 2018, BAML represented Cannae, CC Capital and THL (among others) in the \$6.5 billion going-private buyout of D&B;
 - On April 22, 2020, in connection with the Transaction, FNF entered into a \$1 billion term loan credit agreement with Bank of America, N.A. to help finance its purchase of FGL;
 - On June 9, 2020, BofA Securities represented FNF in the Company’s issuance of \$650 million of its 3.4% senior notes due June 15, 2030. The net proceeds of these notes are expected to be used to repay the approximately \$640 million principal amount FNF borrowed under Company’s term loan agreement with Bank of America which helped the Company finance the Transaction;
 - On June 19, 2020, BofA Securities acted as joint book-running manager in connection with Trebia’s IPO; and
 - On July 1, 2020, BofA Securities acted as one of the lead book runners on D&B’s \$1.7 billion IPO.

110. As the Company’s October 11, 2019 Board Resolutions expressly confirm, “Cary H. Thompson is employed by Bank of America Merrill Lynch, *which has performed certain due diligence services on the Transaction.*”¹⁷ (emphasis added).

111. Not only did the Board recognize but disregard the conflict, the Board

¹⁷ FNF-FGL-220_0000706 at 711.

candidly admitted that the Special Committee was retaining BofA Securities in part because of the work BofA Securities was *already performing* before the Special Committee was even formed.

112. Recognizing that the Special Committee would retain BofA Securities, the Board determined that Thompson's role with BAML was serious enough of a conflict to exclude him from not only sitting on the Special Committee, but also from voting on the Transaction. Nevertheless, the Special Committee went ahead with BofA Securities, rather than getting truly independent advice.

iii. Weil's Involvement Is Also Suspect

113. Weil, which served as the Special Committee's counsel in this instance, also has significant ties to Foley. Weil has been serving as Foley's and FNF's primary outside counsel for (at least) the past *15 years*.

114. Weil's relationship with Foley dates to at least October 2005, when Weil represented FNF's wholly owned subsidiary, FIS, in connection with its merger with Certegy, Inc. Weil has frequently represented Foley and his affiliated entities since. For example:

- From June 2006 to November 2006, Weil represented FIS in connection with its merger with FNF;
- In May 2007, Weil represented FNF and THL in connection with their acquisition of Ceridian;
- In May 2009, Weil represented FIS in connection with its acquisition

of Metavante Technologies, Inc.;

- In February 2012, Weil represented FNF in connection with its merger of O’Charley’s LLC with American Blue Ribbon Holdings LLC;
- In May 2013, Weil represented FNF in its acquisition of LPS;
- In June 2014, Weil represented FNF in connection with the Company’s proposed issuance of tracking stock;
- In August 2014, Weil represented Ceridian, THL, and FNF in connection with FleetCor Technologies, Inc.’s acquisition Comdata Inc. for \$3.45 billion from a portfolio company owned by investment funds affiliated with THL and FNF;
- In September 2014, Weil represented FNF in connection with FNF’s plan to distribute shares of “New Remy” common stock tax-free to FNFV stockholders;
- In December 2014, Weil represented Black Knight Financial Services, LLC in connection with its corporate reorganization into a corporation; and
- In May 2015, Weil represented Black Knight Financial Services, Inc. in connection with its IPO.

115. Weil continues to represent Foley and his affiliated entities. For example:

- In July 2020, Weil represented D&B in its \$1.7 billion IPO; and
- Weil is currently representing Cannae in its pursuit to acquire CoreLogic, Inc.

116. Despite Weil’s previous and ongoing engagements with Foley, the Special Committee apparently determined to retain Weil at the October 11, 2019 Board meeting—the same day it was formed—before conducting its first official

meeting. There are no minutes or other corporate records documenting, much less supporting the Special Committee’s basis for retaining Weil, nor are there any documents showing that the Special Committee considered Weil’s strong and deep prior relationship with Foley or considered retaining other law firms.

117. Given the conflicts plaguing the Special Committee members themselves, it appears that the Committee had no desire to retain advisors unaffiliated with Foley. There are no minutes or other corporate records explaining the Special Committee’s decision to retain conflicted advisors. Nothing produced in response to the Section 220 Demand suggests the Special Committee considered or interviewed any other advisors.

118. Although the Special Committee was theoretically “empowered to engage its own legal and financial advisors,” given the glaring absence of *any* discussion concerning the retention of financial and legal advisors, the Special Committee plainly did not genuinely assess nor seriously consider Trasimene’s, BofA Securities’, and Weil’s conflicts.

119. Had the Special Committee been composed of independent directors doing their jobs in good faith, they would have received independent financial and legal advice from firms that had no ties to Foley or Thompson.

F. The Special Committee Empowers Foley To Lead Negotiations

120. On October 16, 2019—five days after the Special Committee was

formed, but before it ever met—Foley and members of Trasimene, including Ducommun and Richard Cox, met with Blunt to discuss FNF’s purchase of FGL. During these meetings, Blunt expressed the importance of FGL maintaining its advisor-relationship with Blackstone.

121. Later that same day, Foley, Massey, and Blunt had a “social dinner” where they further discussed an FNF-FGL combination. No Special Committee member attended this “social dinner.”

122. The Special Committee did not meet for the first time until October 28, 2019, nearly two weeks after its formation, and well after merger discussions began. Showing little self-awareness, the Special Committee held its inaugural meeting at 1701 Village Center Circle, Las Vegas, home to Foley’s other business ventures, such as Trasimene, the Vegas Golden Knights, Cannae, and FTAC.

123. The meeting lasted one hour. During this perfunctory meeting, the Special Committee formally engaged Trasimene, as reflected in the resolutions. Beyond the resolutions, however, there is no indication that the Committee discussed retaining a financial advisor, much less an advisor controlled by Foley. Again, the minutes confirm no other financial advisors were interviewed or considered.

124. The Special Committee nonetheless “authorize[d] Mr. Foley, as a member of Trasimene, and the other members of Trasimene [*i.e.*, Massey] and on

behalf of the Special Committee, to engage with an authorized representative of FGL” and “to negotiate the Transaction on behalf of the Special Committee for”

██████████¹⁸

125. One would expect a well-functioning and properly advised special committee to supervise the process rather than hand it to the person whose conflict gave rise to the Special Committee’s creation in the first place. The Special Committee did nothing of the sort.

126. Instead, the full FNF Board met the next day to discuss, among other things, the status of negotiations with FGL. During the meeting, Foley directed the Committee’s Chairman, Ammerman, to “send a confidential offer letter to FGL with an \$11 per share price and a request for exclusivity.”¹⁹

127. Recognizing that Trasimene and Foley had already bracketed the consideration to ██████████ per share, the Special Committee determined to now officially retain BofA Securities. Once again, no minutes document the basis for the Special Committee’s decision to formally retain BofA Securities.

128. On November 1, 2019, before Ammerman sent the “confidential” \$11.00 per share proposal to FGL, the Special Committee and management had FNF

¹⁸ FNF-FGL-220_0000717-718.

¹⁹ FNF-FGL-220_0000721.

enter into a five-year “Services Agreement.” Among other things, the Services Agreement required FNF to pay Trasimene an “Annual Advisory Fee” “based on an hourly rate to be mutually agreed by the Company and [Trasimene]” as well as an “Additional Fee” in connection with a future transaction, which “fee shall be consistent with market terms based on the circumstances, nature and size of the Transaction.” Far from being “consistent with market terms,” Trasimene received a staggering [REDACTED] payable on closing in connection its limited “work” performed in connection with the Transaction, as discussed in Section V(B)(iii), below.

129. In typical Foley fashion, he also gave his loyalists a piece of the action. The Services Agreement further required FNF to pay Richard Cox, a Trasimene employee and a longstanding Foley loyalist, an annual [REDACTED] “Employee Services Fee.”²⁰

130. After executing the Services Agreement, the Special Committee sent a

²⁰ In addition to his role at Trasmine, Cox serves as Executive Vice President and Chief Financial Officer for Cannae. Cox has held several executive positions at FNF since he joined the Company in 2000, including as Senior Vice President and Chief Tax Officer of FNF from June 2012 through June 2014. During Mr. Cox’s tenure at FNF, he also served as the Senior Vice President and Chief Tax Officer of FIS from March 2005 through December 2013, Executive Vice President and Chief Tax Officer of Black Knight Financial Services since January 2014 and served as the Managing Director and Executive Vice President of Cannae since June 2014. Cox also serves as Treasurer of the Folded Flag Foundation, a charity Foley established.

written proposal to FGL’s board of directors, dated November 5, 2019, to acquire all of the outstanding stock of FGL for \$11.00 per share, to be paid 60% cash and 40% in FNF stock. That letter proposal also indicated FNF “would expect to ... preserve and maintain the existing investment management agreement with Blackstone” and, implicitly, the sub-advisory agreement with Foley’s MVB.

131. On November 18, 2019, Chu, FGL and its financial advisor, Credit Suisse, informed the Special Committee through Ammerman and Ducommun (of Trasimene) that “FGL was not interested in pursuing a strategic transaction at that time and did not intend to provide a counterproposal to the FNF proposal letter.”

132. Ammerman and Ducommun and BofA Securities reached out to Credit Suisse on December 4, 2019 to seek further feedback on FNF’s initial \$11.00 per share proposal. Credit Suisse reiterated that FGL was not interested in pursuing a strategic transaction at this time and did not intend to provide any counterproposal. Without ever receiving a counteroffer from FGL, however, the Special Committee began negotiating against itself and submitted a revised proposal to acquire FGL for \$12.00 per share at the same 60%/40% cash-stock ratio later that day.

133. The next day, Credit Suisse informed Ammerman, Ducommun, and BofA Securities that FGL’s special committee would not engage unless FNF increased its offer to \$13.00 per share or higher. Despite not having formally met

since October 28, 2019, the Special Committee immediately responded by submitting a \$12.25 per share proposal telephonically the next day, on December 6.

134. On December 10, 2019, Credit Suisse and Chu informed Ammerman that FGL's special committee had rejected the \$12.25 per share offer.

135. Later that day, the Special Committee convened for the second time. In a meeting that lasted a mere 25 minutes, Trasimene and BofA Securities gave a joint presentation consisting of just two slides: a "Summary of Proposed Terms" and "Illustrative Analysis," the latter of which admits that the Transaction offers FNF and its stockholders "[n]o synergies."²¹

136. The Special Committee decided to present a counteroffer of \$12.50 per share at the 60%/40% cash-stock ratio, which became the final Transaction consideration.

G. Foley Squeezes Further Consideration for Himself Days Before the Transaction Is Approved

i. Foley Extends the Investment Management Agreements

137. With the Transaction consideration now locked in, Foley and FNF spent January negotiating the terms of a new investment management agreement to the benefit of MVB and Foley but to the detriment of FNF.

138. Even though the investment management agreement itself was subject

²¹ FNF-FGL-220_0000723 at 725-26.

to termination upon 30 days' notice, FNF voluntarily hamstrung itself in influencing or improving the terms of the Blackstone investment management relationship as part of the Transaction. With no explanation why it would tie its own hands, FNF signed a letter agreement at some point between December 10, 2019 and January 16, 2020, restricting itself from engaging in discussions with Blackstone “regarding the investment management agreements,” and “it was understood that FNF ... would not engage directly with Blackstone.”

139. Neither FNF nor the Special Committee could directly negotiate for better terms for FNF and its stockholders, which would ultimately foot the bill.

140. Instead of improving the terms for stockholders, the IMA terms became better for Foley and Chu. MVB would receive a higher initial fee than under the original agreement. Certain FNF assets and an unpredictable magnitude of future assets also became subject to BISGA's management (which will likely increase the kickback to MVB).

141. Another one of these terms was an extension of the prior IMAs. Blackstone and FGL extended the term of the contract to five years—two years longer than the initial term set forth in the October 7, 2019 Trasimene deck—which benefits not only Blackstone but MVB, and thus Foley.

142. More importantly, neither FNF nor the Special Committee appears to

have monitored or attempted to engage in the negotiations regarding the sub-advisory agreements benefiting MVB. Neither the final board presentations nor the minutes reflect any attempt by the Special Committee to negotiate or even understand that sub-advisory agreement, even though, as described below, FNF later signed on to parts of the sub-advisory agreement through a side letter.

ii. **Foley Obtains Additional Non-Ratable Benefits Through QOMPLX**

143. In addition to the highly generous extension of the IMAs and sub-advisory agreements, Foley brought another of his affiliated companies into the mix.

144. During a January 31, 2020 Special Committee meeting, Massey and FNF's Chief Information Officer, John Crowley, raised certain "cybersecurity issues" relating to FGL for the first time.

145. Thereafter, Wilkie Farr & Gallagher LLP, FNF's counsel, sent FGL a draft merger agreement that included new conditions and covenants relating to FGL's cybersecurity program and enhancements thereto. One such enhancement was a requirement that FGL enter into a security contract with QOMPLX, a vendor selected by FNF and minority-owned by Cannae.

146. Foley serves as the Chairman of QOMPLX and Massey serves as its CEO and a director.

147. Despite these obvious conflicts, the Special Committee appears to have

spent no time during the January 31, 2020 meeting discussing the necessity of entering into such an agreement at all, much less specifying that the business go to QOMPLX as opposed to any other cybersecurity firm.

148. After the January 31, 2020 meeting, and over the next five days, FGL's management team and its counsel "negotiated the terms of a cybersecurity services agreement with FNF and QOMPLX." Documents produced in the Section 220 Demand do not indicate that any other cybersecurity company was considered.

149. The Special Committee did not meet or participate in these discussions and inferably delegated responsibility to FNF management to negotiate the agreement with QOMPLX. As Trasimene's final financial presentation to the Special Committee demonstrates, Trasimene and the Special Committee spent minimal time discussing either the new Investment Management Agreement or the Master Services Agreement with QOMPLX.

150. Indeed, Trasimene devoted only *two* slides from its final presentation to the Special Committee to discussing the Master Services Agreement with QOMPLX²² and *zero* slides discussing the terms of the new Investment Management Agreement and related side agreements.

151. Ultimately, QOMPLX entered into a Master Licenses and Services

²² FNF-FGL-220_0000854 at 864, 868.

Agreement with FGL, dated February 7, 2020, in connection with the Transaction to address unspecified cybersecurity issues between signing and closing (the “QOMPLX Agreement”). However, QOMPLX’s relationship with FGL appears to extend post-closing: in its February 6, 2020 final Special Committee presentation, Trasimene noted the existence of [REDACTED]

[REDACTED].²³

H. The Special Committee Rubber Stamps Foley’s Transaction

152. On February 6, 2020, the Special Committee met for the final time. Despite the original Special Committee resolution authorizing the Special Committee to approve the Transaction without a full Board meeting, Foley nonetheless made his presence felt. Indeed, the entire Board, including Foley, Massey, and Thompson, participated in the meeting. At the meeting, Trasimene summarized its financial analyses. BofA Securities then opined that the aggregate \$12.50 per share mixed consideration to be paid by FNF in the Transaction was fair, from a financial point of view, to FNF.

153. Then, at some point during this meeting, the Special Committee decided to amend the Services Agreement with Trasimene and bestow [REDACTED] in fees to Trasimene. The minutes never explain why the Committee determined to

²³ *Id.* at 864.

amend FNF's agreement with Trasimene. Indeed, the minutes contain *zero* discussion of the amendment to the Services Agreement. The only mention of the amendment is contained in the meeting resolutions, which state:

WHEREAS, the Corporation desires to enter into an amendment to the Services Agreement with Trasimene, dated November 1, 2019, (the "Trasimene Agreement"), pursuant to which *the Special Committee has determined that it is fair, advisable, reasonable and in the best interests of the Corporation to pay Trasimene up to [REDACTED] in connection with the Transaction and the execution of the Transaction Documents*, payable upon the closing of the [Transaction] (the "Trasimene Fee" and, together with the BofA Fees, the "Fees").²⁴

(emphasis added). The minutes reflect no such discussion or determination.

154. At the end of the meeting, the Special Committee recommended the Board approve the Transaction and adopted resolutions recommending to that effect.

155. All told, the Special Committee met only 6 times for a total of 3.7 hours.

156. Having just listened to the entirety of the Special Committee's final meeting, the Board immediately convened for another 15 minutes. During their brief session, the Board adopted the Special Committee's resolutions and approved the Transaction. Despite their direct involvement in the process, Foley, Massey and Thompson abstained from the vote.

²⁴ FNF-FGL-220_0000934 at 938.

**V. THE TRANSACTION IS UNFAIR AND BENEFITS INSIDERS AT
FNF'S EXPENSE**

A. The Transaction Is Unfair

157. The Transaction was publicly announced on February 7, 2020.

158. Upon announcement of the Transaction, the stock market eliminated hundreds of millions in FNF shareholder value.

159. The prior day, February 6, 2020, following reports that FGL was in talks with FNF regarding an acquisition, FGL's shares rose more than 19% and its market capitalization increased by approximately \$420 million. When the Transaction was officially announced on February 7, FGL's stock price rose marginally while FNF's stock price sank by \$3.06 per share, or 6.2% per share. Over \$843 million of FNF's market capitalization disappeared. In sum, news of the Transaction destroyed over \$423 million dollars in combined value, while taking twice that amount from FNF stockholders.

160. The Transaction was unfair for various reasons. For one, it represented a significant premium to FGL's stock prices for the period between December 1, 2017 to February 5, 2020, the day before the news regarding the Transaction leaked. The average closing stock price for this period was a simple average of \$8.71 per share and a volume-weighted average price of \$8.83—*below* CF Corp.'s IPO price of approximately \$10 per share and significantly below the Transaction price.

161. Indeed, FGL consistently traded below \$10 per share for nearly the *entire* three-year period following CF Corp’s IPO:



162. Analysts have remarked on FGL’s poor stock price performance following CF Corp.’s acquisition of Fidelity Guaranty. A J. P. Morgan analyst noted that since 2017, FGL’s ~15% growth and 30% operating earnings per share growth has led to “P/E multiple compression *worse than* the life sector (~12x to ~9x) and the broader market (S&P P/E flat at ~18x)” and further noted that “FG’s *poor performance* is attributable to its association with Blackstone (BK), a structure that investors have been skeptical about notwithstanding its benefits (access to higher yielding assets and M&A support) ... because of potential conflicts of interest.”

163. Given FGL's poor stock price performance, the premium FNF paid for FGL is perplexing. As several analysts confirmed, any premium paid for FGL could not be explained by synergies, which appeared nonexistent. Analysts found this aspect of the Transaction puzzling. J.P. Morgan, for instance, found "little strategic benefit from a combination beyond diversification." RBC Capital Markets saw "no obvious synergies (and none were cited)," and stated, "[w]hile the valuation is a good price for [FGL] shareholders, we don't see that being part of FNF adds a whole lot to the franchise." And Compass Point Research & Trading expressed "concerns about the fit and financial impact of [FNF's] pending acquisition of FG Holdings."

164. This analyst reaction should have been no surprise to the Special Committee. Indeed, Trasimene had assumed "no synergies" in the Transaction in its December 10, 2019 presentation and again in its final February 6, 2020 presentation.

165. While the Transaction was unfair to FNF, Foley benefited handsomely. Indeed, Foley owned approximately 14.9 million FGL shares, double his approximately 6.7 million FNF shares. Foley's shares in each respective company comprised approximately 6.7% of FGL and approximately 2.7% of FNF, and thus he preferred a Transaction favoring FGL at the expense of FNF.

170. Under the Amended Participation Fee Agreement, [REDACTED]

171. The Amended Participation Fee Agreement diverted value to Foley. As disclosed in FGL’s 10-K for the year ending December 31, 2019, Blackstone managed approximately 88% of FGL’s \$28 billion of AUM—or just under \$25 billion. [REDACTED]

172. Under the Amended Participation Fee Agreement, [REDACTED]

173. With the new five-year term, MVB locked in [REDACTED] in fees.

174. On top of these fees, MVB will receive additional benefits from the investment management relationship that FNF and its subsidiaries would have with BISGA.

²⁷ Amended Participation Fee Agreement 4(a).

175. First, [REDACTED]

[REDACTED]

176. The Amended Participation Fee Agreement provides that, [REDACTED]

[REDACTED]

177. [REDACTED]

[REDACTED]

²⁸ *Id.* at (2)(b).

178. In other words, [REDACTED]

179. Thus, [REDACTED]

[REDACTED] As the Form S-1/A disclosed, the Amended Participation Fee Agreement and the Amended IMAs benefit MVB (and thus Foley) by providing that “certain future investment assets acquired by the Surviving Company and its affiliates will be placed under management by BISGA and be subject to” fee arrangement similar to those under the Amended Participation Fee Agreement.

180. In a move that protects Blackstone and MVB, [REDACTED]

[REDACTED] In connection with the Transaction, FNF signed onto a side letter agreeing to be subject to certain obligations under the Amended Participation Fee Agreement, including [REDACTED]

181. Blackstone and MVB, by contrast, made arrangements that benefited themselves at FNF and its stockholders' expense. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

182. In other words, [REDACTED]

[REDACTED]

[REDACTED].²⁹ This arrangement between BISGA and MVB serves essentially as a kickback for Foley.

183. In essence, Foley directed the Company and FGL to enter into the amended IMA with BISGA to maintain and extend the benefits that he would receive under the attendant sub-advisory agreements.

ii. The QOMPLX Agreement

184. In connection with the Transaction, FGL entered into the QOMPLX Agreement to address unspecified cybersecurity issues between signing and closing. Although under this agreement, FGL was initially required to pay QOMPLX fees

²⁹ *Id.* at (2)(a).

pre-closing, any residual amounts not paid by FGL were transferred to FNF upon closing. Moreover, FGL’s retention of QOMPLX remains ongoing. The QOMPLX Agreement states: [REDACTED]

[REDACTED]

[REDACTED]⁴⁰

185. Since the Transaction closed, FNF has not disclosed that it terminated the QOMPLX Agreement. Indeed, in its February 6, 2020 final Special Committee presentation, Trasimene noted the existence of [REDACTED] [REDACTED] that QOMPLX could capture post-closing.³⁰

iii. The Trasimene Services Agreement

186. Foley (and by extension, Massey) reaped unfair benefits from this Transaction through his control of Trasimene, which received “up to [REDACTED] [for services provided] in connection with the Transaction ... payable upon the closing of the [Transaction],” without even having rendered a fairness opinion.³¹ This [REDACTED] “Additional Fee” was in addition to the “Annual Advisory Fee” and the “Employee Services Fee” FNF agreed to pay Trasimene. By comparison, BofA Securities, which *did* render a fairness opinion, received [REDACTED] and

⁴⁰ FNF-FGL-220_0000957.

³⁰ FNF-FGL-220_0000759 at -769.

³¹ FNF-FGL-220_0000843 at -846.

expenses in connection with the Transaction, including an Opinion Fee of [REDACTED]

C. Foley Rewards His Loyalists Post-Transaction

187. Post-Transaction, Foley has continued to convey benefits to the purportedly independent Special Committee members.

188. First, on May 26, 2020, before the Transaction closed, Ammerman filed a Form 3 as an FTAC director. Ammerman—who had been designated as an FTAC director as early as May 8, 2020, when the preliminary S-1 for FTAC had been filed—received 25,000 shares of Class B common stock, or “founder’s shares” in FTAC.³²

189. Public filings revealed that on May 19, 2020, the sponsors (*i.e.*, Foley) had transferred 25,000 shares to each of the “independent director nominees at their original purchase price.” Those independent director nominees included Ammerman, Hagerty, Massey, Gravelle, and Ducommun.

190. The original price that the sponsors had paid for founders’ shares had been \$25,000 for over 22 million shares, or approximately **\$0.001 cents** per share.³³

³² Form S-1, filed as of May 8, 2020.

³³ *Id.* (“During the period ended April 7, 2020, our sponsors paid in the aggregate \$25,000, or approximately \$0.001 per share, to cover certain of our offering costs in consideration of 21,562,500 shares of our Class B common stock, par value \$0.0001.”).

In other words, each of the independent directors paid almost nothing to receive their 25,000 founders' shares. FTAC's shares trade post-IPO at approximately \$10.50 per share, for a total value of approximately \$262,500 and a per-share unrealized gain of \$10.499 per share. Each of these directors also stand to gain handsomely from their founders' shares when FTAC finds a company to acquire.

191. On June 4, 2020—three days after the Transaction closed—Foley officially announced FTAC had the second largest fundraise ever for a SPAC. According to one newspaper article, “[w]hile [FNF] was putting the finishing touches on [the Transaction], Foley raised \$900 million.” Cannae, another Foley-affiliated entity, invested \$150 million into FTAC securities.

192. On June 9, 2020—five days later—Dun & Bradstreet Holdings, Inc. filed a preliminary Form S-1 for an initial public offering of D&B.

193. As D&B directors, Foley, Chu, Ammerman, Hagerty, and Massey stand to gain from the IPO, which will eventually provide them liquidity for their shares of D&B common stock. Ammerman also gains as he will be paid handsomely for this directorship, receiving \$155,702 for the year ending December 31, 2019.

194. Also standing to benefit is Star Parent, the consortium that took D&B private and which, following the take-private transaction, owned all 314 million shares of stock and is the entity through which directors, officers, and employees of

D&B will hold shares in Dun & Bradstreet Holdings, Inc. Star Parent shares the same New Jersey filing address as Defendant Ammerman (as well Black Knight and other affiliated entities), who also hold shares in D&B.

VI. DERIVATIVE ALLEGATIONS

195. Plaintiff brings this action derivatively to redress injuries suffered by the Company as a result of breaches of fiduciary duties by the Director Defendants and further damage caused by Trasimene, MVB, and Chu.

196. Plaintiff currently is a beneficial owner of FNF common stock and has owned FNF common stock continuously during the relevant time period. Plaintiff will adequately and fairly represent the interests of FNF in enforcing and prosecuting its rights and has retained counsel competent and experienced in stockholder derivative litigation.

VII. THE DEMAND BOARD CANNOT DISINTERESTEDLY AND/OR INDEPENDENTLY CONSIDER A DEMAND

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

198. Plaintiff has not made a demand on the Demand Board³⁴ to investigate or initiate the claims asserted herein because demand is excused as futile.

³⁴ The Demand Board consists of Defendants Foley, Ammerman, Hagerty, Lane, Massey, Murren, Quirk, Rood, Shea, and Thompson.

199. Such demand would be futile and useless, and is thereby excused, because a majority of the Demand Board is either interested in the Transaction and/or lacks independence from FNF's Chairman and founder, Foley. For the Court's convenience, a chart illustrating the interconnections among the Board members is attached hereto as **Exhibit A**. In addition to and as a supplement to the allegations listed above and reflected on **Exhibit A**, Plaintiff alleges the following:

A. Foley

200. Foley cannot disinterestedly and independently consider a demand because he undeniably had personal and financial interests in the Transaction that differed from the interests of FNF and its stockholders.

201. Foley is conflicted because he (i) was co-Chairman of FGL's board of directors, and is therefore a dual fiduciary; (ii) owns nearly twice as many FGL shares than FNF shares; (iii) is extracting [REDACTED] in fees through his financial advisory firm Trasimene; (iv) will receive millions in fees through his 50% interest in MVB, a Sub-Advisor under the Amended Investment Management Agreement with Blackstone and FNF/FGL; and (v) will indirectly receive fees initially paid by FGL under the QOMPLX Agreement pre-closing and then from FNF to QOMPLX post-closing.

202. In light of these unique interests, the FNF Board passed a resolution determining that Foley (along with Massey and Thompson) should be excluded from

the Special Committee.³⁵ FNF’s Registration Statement issued in connection with the Transaction also expressly concedes that Foley (as well as Massey) “may have conflicts between their interests and those of FNF.” It would be against Foley’s own economic interests to initiate and pursue derivative claims challenging the Transaction which was unfairly beneficial to him and FGL.

B. Massey

203. Massey is an FGL director and a co-Senior Managing Director of Trasimene with Foley, a position Massey highly covets and lists as his primary employer.³⁶ As a dual fiduciary of FNF and FGL and as a senior executive of Trasimene—which received ██████████ in compensation from FNF in connection with the Transaction—Massey is patently conflicted.

204. Massey also could not objectively consider a demand to investigate or prosecute claims that could ultimately be adverse to Foley (or himself) due to his ongoing employment and business relationships. Massey is one of Foley’s most trusted executives and advisors, and as a result, occupies multiple roles in Foley’s web of enterprises, as reflected in the attached **Exhibit A**. In addition to serving as co-Senior Managing Director of Trasimene,³⁷ Massey serves as: (i) CEO of Foley’s

³⁵ FNF-FGL-220_0000711.

³⁶ FNF-FGL-220_0000403.

³⁷ In his Director Questionnaire, date January 13, 2020, Massey answered “No” as

personal investment vehicle and holding company Cannae, (ii) CEO of Foley's analytics and insurance software company QOMPLX, (iii) CEO of FTAC, Foley's recently formed SPAC; and (iv) consultant to Trebia, another Foley SPAC. In addition to Massey's ongoing employment relationship, Massey sits on several boards of directors alongside Foley including: FGL, Black Knight, Cannae, QOMPLX, FTAC, and D&B.

205. Beyond his employment and directorships, Massey is: (i) a co-investor with Hagerty, Rood, and Thompson in ServiceLink where Foley, Rood, and Thompson serve as directors;³⁸ and (ii) a co-investor with Foley, Ammerman, and Hagerty in Star Parent. Notably, Massey is also one of the select few Foley loyalists (along with Hagerty, Ammerman, and Rood) that owns a minority interest in the exclusive Black Knight Sports venture, the entity which owns the Vegas Golden Knights professional hockey team.

206. Massey's close relationship with Foley is further evident through the generosity given to Foley's charitable causes. In 2018, Massey donated \$639,409

to whether his employer or any affiliate conducted business in 2019 with FNF. FNF-FGL-220_0000711. As alleged with particularity herein, this answer is not true given that Trasimene signed a five-year Services Agreement with FNF on November 1, 2019.

³⁸ Hagerty and THL also hold a 20.9% equity interest in ServiceLink, an FNF subsidiary formed from the reorganization of LPS in 2014 and consists of FNF's former ServiceLink division and LPS's former transaction services business.

to The Folded Flag Foundation, a charity founded by Foley.

207. In recognition of these disabling conflicts, FNF's Registration Statement issued in connection with the Transaction expressly concedes that Massey (as well as Foley) "may have conflicts between their interests and those of FNF." In further confirmation of his conflict, the FNF Board passed a resolution determining that Massey, Foley, and Thompson should be excluded from the Special Committee.³⁹

C. Thompson

208. Thompson cannot disinterestedly and independently consider a demand to initiate the claims alleged herein because he is interested in the Transaction and is not independent of Foley.

209. Thompson is the Executive Vice Chairman of Global Corporate and Investment Banking at BAML, the parent company of BofA Securities. Thompson indirectly benefited and was interested in the Transaction because BofA Securities received [REDACTED] in fees in connection with its advisory work to the FNF Special Committee.

210. Thompson is also incapable of considering a demand because his **28-year** professional relationship with Foley renders him not independent. Since 1992,

³⁹ FNF-FGL-220_0000711.

Thompson has served as a director of certain FNF predecessors. From 2001 to 2003, Thompson served as a director of Fidelity National Information Solutions, Inc., along with Foley who served as Chairman. From February 2006 to July 2008, Thompson served as a director of FIS and then, from July 2008 to March 2009, he served as a director of LPS. Both FIS and LPS share deep ties with Foley and his affiliated entities. From January 2014 through April 2015, Thompson served on the board of managers of Black Knight Financial Services, LLC, an affiliate of Black Knight Financial Services, Inc., both companies founded by Foley. Thompson also serves on the board of and owns equity in ServiceLink (along with Foley, Hagerty, Massey, and Rood). According to the Los Angeles Business Journal, Thompson has completed over \$1 trillion in transactions spanning over 30 years. Among those transactions, he lists the D&B take-private transaction led by Foley as one of his biggest achievements. Recognizing these conflicting relationships, the Board excluded Thompson from the Special Committee.⁴⁰

D. Ammerman

211. Ammerman cannot independently consider a demand because his *17-year* professional relationship and highly material financial, business and social interconnections with Foley render him not independent of Foley.

⁴⁰ FNF-FGL-220_0000711.

212. Ammerman’s nearly two-decade long relationship with Foley began in 2003, after he retired from KPMG and joined the CKE Restaurants board when Foley served as Chairman. After leaving the CKE Restaurants board in 2006, Ammerman spent the next 14 years serving on boards affiliated with Foley, including: (i) FTAC (with Hagerty, Massey, and Foley serving as Chairman); (ii) D&B (with Hagerty, Massey, and Foley serving as Chairman);⁴¹ (iii) J. Alexander’s (currently with Quirk); (iv) Remy (with Foley serving as Chairman); and (v) the general partner of Star Parent (along with Hagerty, Massey, and Foley serving as Chairman).

213. Moreover, Ammerman derives a substantial income—nearly \$750,000 in 2019 alone—from his service on Foley-affiliated boards, including \$155,000 in cash from D&B, \$172,875 in cash and stock from J. Alexander’s, and \$414,322 in cash and stock from FNF. As a retiree, this income is patently material to him.

214. Further illustrating Ammerman’s close relationship with Foley, Ammerman co-invests with Foley in Star Parent (along with Hagerty and Massey), the entity which owns D&B, as well as Black Knight Sports (along with Hagerty,

⁴¹ In his Director Questionnaire—which public companies typically use to make director independence determinations—Ammerman specifically left out his D&B directorship, while other members of the FNF Board disclosed their membership of D&B’s board. *See* FNF-FGL-220_0000291-292.

Massey and Rood), Foley's entertainment business which owns the Vegas Golden Knights.

215. Given this multi-faceted 17-year relationship with Foley, Ammerman cannot independently investigate, initiate or prosecute the claims alleged herein.

E. Hagerty

216. Hagerty similarly cannot independently consider a demand due to a lucrative co-investing relationship with Foley that *spans over 15 years*.

217. Since 1988, Hagerty has been a Managing Director of private investment firm THL. Hagerty became an FNF director at the same time THL was in the process of buying a quarter interest in FNF's subsidiary, FIS. As discussed above in paragraphs 25 and 67-69 and as illustrated in **Exhibit A**, Foley and THL have a long, ongoing, successful investing partnership, which includes co-investments in FIS, Sedgwick CMS, Ceridian, Black Knight, ServiceLink, D&B, and AmeriLife. Total invested capital in these eight investments was approximately \$7.6 billion, with total THL invested capital of \$2.0 billion.

218. As set forth in more detail above in paragraphs 25, 70, 72, and 189, Hagerty also has exclusive personal investments with Foley, including his co-investments with Foley in: (i) FTAC (along with Ammerman, Massey, and THL); (ii) Black Knight Sports (along with Ammerman, Massey, and Rood); and (iii) Wharekauhau Lodge.

219. Beyond his investing relationship with Foley, Hagerty has served on multiple boards of entities either affiliated or controlled by Foley, including: (i) Black Knight (along with Massey, Rood, THL Managing Director Ganesh Rao, and Foley as Non-Executive Chairman); (ii) FTAC (along with Ammerman, Massey, and Foley serving as founder and Chairman), (iii) D&B (along with Ammerman, Massey, and Foley serving as Chairman); (iv) Ceridian (along with Foley, who previously served as Chairman); (v) FIS (along with Lane, Thompson, and Foley, who previously served as Executive Chairman); and (vi) the general partner of Star Parent (along with Ammerman, Massey, and Foley serving as Chairman).

220. If Hagerty were to initiate claims against Foley, Hagerty would jeopardize THL's (and his own) valuable co-investments as well as his beneficial and lucrative relationship with Foley.

F. Quirk

221. Quirk, FNF's CEO, cannot disinterestedly and independently consider a demand because he is beholden to and reports to Foley, FNF's Chairman and founder.

222. Quirk's professional relationship with Foley spans *thirty-five years*, beginning in 1985 when Foley hired Quirk when Foley was a controlling stockholder of FNF's predecessor. Since then, Quirk has served in numerous executive and management positions at FNF, including Executive Vice President, Co-Chief

Operating Officer, Division Manager and Regional Manager. In 2013, Foley rewarded Quirk's loyalty by promoting him to CEO.

223. FNF is Quirk's sole employer,⁴² and Quirk has received and continues to receive from FNF substantial compensation that is material to him. For the years 2018 and 2019, Quirk received total compensation of \$3,061,902 and \$3,500,000, respectively. FNF also employs Quirk's daughter-in-law Sara Bennett, who works as an operations manager at FNF.

224. Quirk also serves on the board of J. Alexander's, a directorship that he has held since 2015 when Foley spun-off J. Alexander's from FNFV. In the Company's Schedule 14A filed with the SEC on April 23, 2020, the Board publicly acknowledged that "Quirk is not independent because he is Chief Executive Officer and an employee of FNF."

225. As a senior officer of FNF and with a daughter-in-law employed at the Company, Quirk could not objectively consider a demand to investigate or prosecute claims adverse to Foley's interests, such as the claims asserted herein.

G. Murren

226. Given Foley's ongoing relationship with MGM and James Murren, Defendant Murren's husband, Murren cannot independently and disinterestedly

⁴² FNF-FGL-220_0000445.

consider a demand.

227. Murren joined the Board in May 2017 after Foley negotiated the lease for the Vegas Golden Knights team to play in the T-Mobile Arena. Murren's husband is James Murren, the Chairman and CEO of MGM. MGM owns a majority interest in the T-Mobile Arena where the Vegas Golden Knights play home hockey games and where FNF holds season tickets. Foley is an investment partner with MGM and 15% minority owner of the T-Mobile Arena with MGM.

H. Rood

228. Rood lacks independence due to his co-ownership of the Vegas Golden Knights franchise with Foley, Hagerty, Ammerman, and Massey through his investment interest in Black Knight Sports. The ownership of a professional sports franchise worth hundreds of millions of dollars involves close cooperation and detailed planning, indicative of a continuing, close relationship. Rood's co-ownership of the Vegas Golden Knights with Foley indicates that Rood would not be able to act impartially when deciding whether to move forward with a suit implicating Foley. Rood also lacks independence from Foley due to his overlapping directorships with Foley. Rood sits on the board with Foley at: (i) ServiceLink where he is also a co-investor along with Massey, Hagerty, and THL and where Foley is Chairman; and (ii) Black Knight where Foley is Chairman.

229. Each member of the Demand Board allowed the process resulting in

the Transaction to be run by Foley and three advisory firms with known conflicts and deep connections to Foley. The Demand Board failed to address these conflicts, as well as the multiple conflicts of interest inherent in the Transaction and the membership of the Special Committee. Thus, a demand on the Demand Board would be futile and useless and is thereby excused because the Demand Board and Director Defendants acted in bad faith in connection with the Transaction.

COUNT I

DERIVATIVE CLAIM FOR BREACH OF FIDUCIARY DUTY AGAINST FOLEY, MASSEY, AND THOMPSON

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

231. Foley, Massey and Thompson, as FNF directors, owed the Company the utmost fiduciary duties of care and loyalty. Foley, Massey, and Thompson were required to: (i) use their ability to control and manage FNF in a fair, just, and equitable manner, and (ii) act in furtherance of the best interests of FNF. Under Delaware law, Foley, Massey and Thompson must, but cannot, show that the Transaction is entirely fair to FNF.

232. In breach of their fiduciary duties, Foley, Massey, and Thompson devised and orchestrated the unfair and self-dealing Transaction to benefit their respective affiliated organizations. Among other things, Foley, Massey and

Thompson exploited their influence over the Board to steer the Company into a process with a conflicted Special Committee, which resulted in the grossly unfair Transaction.

233. Foley, Massey, and Thompson breached their fiduciary duties by, among other things: (i) agreeing to the Transaction that will bestow separate consideration and non-ratable benefits on Foley; (ii) allowing Foley to receive a windfall of separate consideration through various side deals which benefit Foley to the Company's detriment; and (iii) receiving lucrative fees from the Transaction indirectly through their affiliations with BofA Securities and Trasimene, businesses where Foley, Thompson, and Massey hold senior roles.

234. By reason of the foregoing acts, practices, and courses of conduct, Foley, Massey, and Thompson have failed to lawfully discharge their fiduciary obligations toward the Company.

235. As a result of Foley, Massey, and Thompson's breaches of fiduciary duty, the Company has been harmed. The Company is therefore entitled to damages and any other appropriate relief for Foley, Massey, and Thompson's breaches of fiduciary duty.

COUNT II

**DERIVATIVE CLAIM
FOR BREACH OF FIDUCIARY DUTY
AGAINST THE SPECIAL COMMITTEE DEFENDANTS**

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

237. The Special Committee Defendants, as FNF directors, owe the Company the utmost fiduciary duties of due care, good faith, loyalty and disclosure. Under Delaware law, the Special Committee Defendants must, but cannot, show that the Transaction is entirely fair to FNF.

238. The Special Committee Defendants failed to fulfill their fiduciary duties in connection with the Transaction by, among other things, (i) conducting an acquisition process with a conflicted Special Committee and predetermined, conflicted financial advisors; (ii) failing to equip the Special Committee with a sufficiently broad mandate to explore alternatives other than the Transaction; (iii) failing to properly supervise Foley's conflicts of interest and implement measures designed to prohibit him from benefiting from the various side deals described herein; (iv) bestowing non-ratable benefits on Foley, Trasimene, and MVB; and (v) agreeing to the Transaction on terms unfair to the Company.

239. As a result of the Special Committee Defendants' breaches of fiduciary duty, the Company has been harmed as a result of the overpayment to FGL, Foley,

MVB, and Trasimene. The Company is therefore entitled to damages and any other appropriate relief for the Director Defendants' breaches of fiduciary duty.

COUNT III

DERIVATIVE CLAIM FOR AIDING AND ABETTING AGAINST TRASIMENE AND MVB

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

241. Trasimene and MVB were aware of the Director Defendants' fiduciary duties of care and loyalty to the Company.

242. Trasimene and MVB knowingly participated in breaches of fiduciary duty by the Director Defendants and thus are liable for aiding and abetting such breaches.

243. As explained herein, the Director Defendants breached their fiduciary duties in approving the Transaction.

244. Through their affiliation with Foley and other directors on the FNF Board, Trasimene, and MVB knowingly solicited, encouraged and/or participated in the unfair Transaction.

245. Thus, through their own efforts and those of its representatives and affiliates, Trasimene and MVB substantially assisted the Director Defendants to breach their fiduciary duties in approving the Transaction.

COUNT IV

DERIVATIVE CLAIM FOR UNJUST ENRICHMENT AGAINST TRASIMENE AND MVB

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

247. As detailed herein, the Transaction is unfair to the Company and is the product of breaches of fiduciary duty by the Director Defendants.

248. The terms of the Transaction are unfair to FNF and provide improper and valuable benefits to Trasimene and MVB. Trasimene and MVB were—and continue to be—the direct recipients of the improper and valuable benefits flowing from the Transaction. Those benefits were derived by unlawful means.

249. Under these circumstances, it would be unconscionable to permit Trasimene and MVB to retain the improper benefits received pursuant to the Transaction.

IX. RELIEF REQUESTED

WHEREFORE, Plaintiff, on behalf of FNF, requests judgment as follows:

- A. Finding the Director Defendants liable for breaching their fiduciary duties owed to the Company;
- B. Finding that demand on the FNF Board is excused as futile;
- C. Finding Trasimene and MVB liable for aiding and abetting breaches of

fiduciary duty by the Director Defendants;

D. Finding Trasimene and MVB liable for unjust enrichment;

E. Awarding the Company damages in an amount which may be proven at trial;

F. Awarding the Company pre-judgment and post-judgment interest, as well as Plaintiff's reasonable attorneys' and experts' witness fees and other costs;

G. Awarding FNF the amount of damages it sustained as a result of Defendants' breaches of fiduciary duties to the Company; and

H. Awarding such other and further relief as this Court may deem just and proper.

Dated: August 4, 2020

**BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP**

OF COUNSEL:

Mark Lebovitch
Thomas G. James
Jacqueline Y. Ma

**BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP**

1251 Avenue of the Americas
New York, NY 10020
(212) 554-1400

Robert D. Klausner

**KLAUSNER KAUFMAN JENSEN
& LEVINSON**

7080 Northwest 4th Street
Plantation, FL 33317
(954) 916-1202

/s/ Gregory V. Varallo

Gregory V. Varallo (Bar No. 2242)
500 Delaware Avenue, Suite 901
Wilmington, DE 19801
(302) 364-3601

ANDREWS & SPRINGER LLC

/s/ Craig J. Springer

Jessica Zeldin (Bar No. 3558)
Peter B. Andrews (Bar No. 4623)
Craig J. Springer (Bar No. 5529)
David M. Sborz (Bar No. 6203)
3801 Kennett Pike
Building C, Suite 305
Wilmington, DE 19807
(302) 504-4957

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I, Gregory Varallo, hereby certify that, on August 7, 2020, the foregoing *Public [Redacted] version of the Stockholder Derivative Complaint* was filed and served via File & ServeXpress upon the following counsel of record:

Jessica Zeldin, Esq.
Peter B. Andrews, Esq.
Craig J. Springer, Esq.
David M. Sborz, Esq.
ANDREWS & SPRINGER LLC
3801 Kennett Pike
Building C, Suite 305
Wilmington, DE 19807

/s/ Gregory V. Varallo
Gregory V. Varallo (Bar No. 2242)