



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

STEPHEN APPEL, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

v.

DAVID J. BERKMAN, STEPHEN J.
CLOOBECK, RICHARD M. DALEY,
FRANKIE SUE DEL PAPA, JEFFREY
W. JONES, DAVID PALMER, HOPE S.
TAITZ, ZACHARY D. WARREN,
ROBERT WOLF, and CENTERVIEW
PARTNERS LLC,

Defendants.

C.A. No. 12844-VCMR

PUBLIC VERSION

FILED October 26, 2016

VERIFIED CLASS ACTION COMPLAINT

Plaintiff Stephen Appel ("Plaintiff"), on behalf of himself and all other similarly situated former stockholders of Diamond Resorts International, Inc. ("Diamond" or the "Company"), brings the following Verified Class Action Complaint (the "Complaint") against (a) certain current and former members of the board of directors of Diamond (the "Diamond Board" or "Board") for breaching their fiduciary duties and (b) Centerview Partners LLC ("Centerview") for aiding and abetting the same. The allegations of the Complaint are based on the knowledge of Plaintiff as to himself, and on information and belief, 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"),¹ as to all other matters.

INTRODUCTION

1. This stockholder class action arises out of the Board's failure to honor their fiduciary duties owed to the Company's public stockholders in connection with an all-cash sale of Diamond (the "Transaction"). After running an ill-timed and conflict-laden transaction process that grossly failed to secure fair value for Diamond's shares, the Board intentionally concealed from Diamond stockholders that [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] The

Board egregiously failed to disclose this critical information to Diamond's

¹ Plaintiff served his Section 220 Demand on the Company on or about August 8, 2016. Diamond produced its first set of documents in response to the Section 220 Demand on August 29, 2016 – 18 days *after* the Tender Offer (as defined below) was initially scheduled to expire and three days before the extended Tender Offer closed. The Company produced its second set of documents in response to the Section 220 Demand on September 8, 2016 – seven days *after* the extended Tender Offer closed.

stockholders, thereby depriving them of their right to make a fully-informed decision as to whether to tender their shares into the Transaction or seek appraisal. Diamond stockholders were forced to make their decision based on materially incomplete information, and received Transaction consideration that [REDACTED]

[REDACTED]

[REDACTED]

2. On June 29, 2016, Diamond announced that the Company and affiliates of private equity firm Apollo Global Management LLC (“Apollo”) had entered into a definitive Agreement and Plan of Merger (the “Merger Agreement”) pursuant to which Apollo agreed to (a) commence a tender offer to acquire Diamond’s outstanding shares for \$30.25 per share (the “Tender Offer”) and (b) effectuate a back-end merger pursuant to 8 *Del. C.* § 251(h) at the same price offered in the Tender Offer (the “Merger,” and together with the Tender Offer, the “Transaction”).

3. The Transaction resulted from a conflicted process plagued by intertwining relationships between Diamond director Hope S. Taitz (“Taitz”), Centerview and Apollo.

4. The Board allowed director Taitz to co-chair a purported “independent” committee that it formed to pursue a sale of the Company (the “Strategic Review Committee” or “Committee”). Taitz, however, had – and

continues to have – significant ties to Apollo. According to Diamond’s public filings, as well as [REDACTED]

[REDACTED], Taitz serves on the boards of twelve Apollo-affiliated companies (at least seven of which are directly owned and controlled by Apollo).

5. Despite Apollo’s status as a “likely transaction counterpart[y]” and the Board’s awareness of Taitz’s significant ties to Apollo, neither the Board nor the Committee ever asked Taitz to resign from the Committee. Rather, Taitz participated in every Committee meeting until June 23, 2016, when Taitz confirmed her conflict by recusing herself. Tellingly, Taitz’s belated recusal occurred on the very same day that Apollo submitted its final bid for Diamond, at which point a sale of the Company to Apollo was largely assured.

6. [REDACTED] [REDACTED]
[REDACTED] [REDACTED]

Centerview has a long and lucrative history of providing investment banking services to Apollo, and therefore had strong incentives not to jeopardize that valuable revenue stream. The Transaction permitted Centerview to further its pre-existing and continuing material relationship with Apollo while simultaneously purporting to represent Diamond and the Committee. For example, Centerview represented Hexion Inc. (“Hexion”), an Apollo portfolio company, in the sale of a

Hexion division *at the same time* it represented the Committee in its evaluation of Apollo's expression of interest in Diamond. [REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

7. Centerview's financial analysis of the Transaction was severely flawed and contained material errors. Correcting for Centerview's errors reveals that Apollo's \$30.25 per share offer significantly undervalued Diamond, rendering the Transaction consideration opportunistic and insufficient.

8. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Specifically, and as noted above and detailed below, [REDACTED]

[REDACTED] [REDACTED] and that [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] Cloobek abstained from the Board vote on the Transaction. Further,

the Committee's willingness to disregard [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Emphasis added).

9. The entire Board was fully aware of [REDACTED]

[REDACTED] Critically, however, rather than disclose [REDACTED]

[REDACTED], the Board instead [REDACTED]

[REDACTED]

[REDACTED] while also leaving stockholders to guess why Cloobek "abstained" from voting on whether to approve the Transaction. Understandably fearing that the influential [REDACTED], the Board concealed them by disseminating a false and misleading Schedule 14D-9 Solicitation/Recommendation Statement (the "14D-9"), filed with the U.S. Securities and Exchange Commission ("SEC") on July 14, 2016. The 14D-9 failed to disclose that [REDACTED] and his reasons for abstaining from voting on whether to approve the Transaction. By knowingly concealing [REDACTED], the Board acted in bad faith and breached its duty of loyalty.

10. The 14D-9 also concealed material information regarding the conflicts that infected the sales process, including Centerview's ongoing relationship with

Apollo (*i.e.*, the Hexion engagement) and director Taitz's conflict of interest. As a result, the 14D-9 omitted material information that would have significantly altered the total mix of information available to stockholders.

11. Through this action, Plaintiff seeks to hold the Diamond Board accountable for its breaches of fiduciary duty and Centerview accountable for aiding and abetting the Board's breaches. Among other remedies, Plaintiff seeks quasi-appraisal damages based on the Company's material misrepresentations and omissions in the 14D-9 and other Tender Offer documents.

THE PARTIES AND RELEVANT NON-PARTIES

12. Plaintiff was a stockholder of Diamond and owned Diamond common stock at all material times alleged in this Complaint.

13. Relevant non-party Diamond is a global leader in the hospitality and vacation ownership industry, with a worldwide resort network of 420 vacation destinations located in 35 countries throughout the world. Diamond common stock was listed on the New York Stock Exchange under the symbol "DRIL." The Company has its principal headquarters at 10600 West Charleston Boulevard, Las Vegas, Nevada 89135.

14. Defendant David J. Berkman ("Berkman") served as a Diamond director from 2013 until September 2, 2016, on which date the Merger was consummated.

15. Defendant Cloobek is Diamond's founder and served as Chairman of the Diamond Board from the Company's inception until the September 2, 2016 consummation of the Merger. As of March 31, 2016, Cloobek was the Company's largest stockholder, beneficially owning 15.1% of the Company's outstanding common stock. As detailed further herein, Defendant Cloobek abstained from the Board vote on whether to recommend that Diamond stockholders tender their shares into the Tender Offer [REDACTED]

[REDACTED]

16. Defendant Richard M. Daley served as a Diamond director from the Company's initial public offering ("IPO") in July 2013 until September 2, 2016.

17. Defendant Frankie Sue Del Papa served as a Diamond director from May 2016 until September 2, 2016.

18. Defendant Jeffrey W. Jones ("Jones") served as a Diamond director from 2015 until September 2, 2016.

19. Defendant David Palmer ("Palmer") has served as the Company's President and Chief Executive Officer ("CEO"), and as a member of the Diamond Board, since the Company's inception in January 2013. Following consummation of the Merger, Palmer continues to serve as the Company's President and CEO and as a member of the Board.

20. Defendant Taitz served as a Diamond director from August 2013 until

September 2, 2016. According to Diamond’s definitive proxy statement filed in connection with the Company’s 2016 annual meeting of stockholders, which was filed on April 15, 2016 (the “2016 Annual Proxy”), Taitz serves as a director at MidCap FinCo Holdings Limited, MidCap FinCo Limited, MidCap Funding I (Ireland) Limited, MidCap FinCo Intermediate Holdings Ltd, Apollo Residential Mortgage, Inc., Athene USA Corporation, Athene Annuity and Life Company, Athene Life Insurance Company of New York, Athene Annuity and Life Assurance Company of New York, Athene Annuity & Life Assurance Company, Athene Life Re Ltd. and Athene Holding Ltd., all of which are affiliates of Apollo.

21. Defendant Zachary D. Warren served as a Diamond director from the Company’s inception in January 2013 until September 2, 2016.

22. Defendant Robert Wolf (“Wolf”) served as a Diamond director from the Company’s IPO in July 2013 until September 2, 2016.

23. The defendants listed in paragraphs 14 through 22 above are collectively referred to herein as the “Board” or the “Director Defendants.”

24. Defendant Centerview is an American investment banking and private equity investment firm. Centerview served as financial advisor to the Strategic Review Committee and the Board in connection with the Transaction.

SUBSTANTIVE ALLEGATIONS

I. Background Of Diamond

25. Diamond is a global hospitality and vacation ownership company. The Company offers timeshares in 420 worldwide vacation destinations.

26. Members of Diamond's timeshare network pay for vacation ownership interests ("VOI") in the form of points. Based on the number of points purchased, members can choose the place and time to stay during their vacation. The Company has two segments: (a) Hospitality and Management Services and (b) VOI Sales.

27. In April 2007, Cloobek founded Diamond Resorts Parent, LLC ("Diamond LLC"), the predecessor to the Company.² From April 2007 through December 2012, Cloobek served as both Chairman and CEO of Diamond LLC. In connection with an IPO of newly-created Diamond on July 19, 2013, each member of Diamond LLC contributed all of their equity interests in Diamond LLC to Diamond in return for shares of common stock of Diamond. Diamond LLC was then merged with and into Diamond. Cloobek remained Diamond's Chairman following the IPO and continued serving in such position until consummation of the Merger.

² Diamond LLC was formed as a Nevada limited liability company to affect the acquisition of time-share company Sunterra Corporation by an investor group led by Cloobek.

II. The Diamond Board Initiates, But Then Abandons, A Strategic Review Process

28. Around the middle of 2015, the Company's stock price was underperforming relative to comparable public companies and there was a growing short interest in the Company's stock. Around that time, the Board embarked on a review of Diamond's strategic alternatives, including a potential sale of the Company.

29. In the spring of 2015, the Diamond Board formed a transaction committee (the "Transaction Committee") to facilitate the review of "various corporate development opportunities."³ (14D-9 at 15).

30. In June 2015, the Transaction Committee engaged Centerview to assist with the committee's review of potential strategic transactions, including potential acquisition opportunities.

31. Over the course of the next several months, the Company entered into non-disclosure agreements and commenced preliminary discussions with certain acquisition targets and potential investors. After the exploration failed to result in a transaction, the Transaction Committee was disbanded in September 2015.

III. Apollo Emerges As A Potential Acquirer

32. On January 12, 2016, David Sambur, an Apollo partner, wrote to

³ The composition of this Transaction Committee was never disclosed by the Company.

Diamond to indicate that Apollo was interested in a potential investment in Diamond's convertible preferred stock.

33. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

34. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 4

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED] (Emphasis added).

36. [REDACTED]

⁴ In its later analyses, Centerview [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Emphasis added). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(*Id.*) (Emphasis added). [REDACTED]

[REDACTED]

[REDACTED], [REDACTED], [REDACTED]

[REDACTED]

IV. The Board Forms A Conflicted Strategic Review Committee

37. On February 22, 2016, the Board met and decided to explore strategic alternatives.⁵ At this meeting, the Board formed the Strategic Review Committee to lead the Company's strategic review process. Interestingly, once the Board decided to form the Committee, [REDACTED] [REDACTED] [REDACTED]

[REDACTED]

The Committee was comprised of Defendants Berkman, Jones, Wolf and Taitz.

[REDACTED]
[REDACTED]

38. According to Diamond’s 14D-9, the Strategic Review Committee was to be “comprised solely of independent directors.” Defendant Taitz, however, had – and continues to have – significant ties to Apollo, which had already expressed interest in Diamond more than a month before the creation of the Strategic Review Committee. According to Diamond’s 2016 Annual Proxy filed with SEC on April 15, 2016, Taitz serves on the boards of no less than twelve Apollo-affiliated companies⁶ (at least seven of which are directly owned and controlled by Apollo).⁷

Additionally, Taitz [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Despite her conflicts, Taitz was appointed “co-chair” of the Committee along with Wolf, even after Apollo made a bid for the Company.

39. Despite her relationship with Apollo and Apollo’s ongoing relationship with Centerview (detailed below), [REDACTED]

⁶ According to the 2016 Annual Proxy, Taitz serves as a director at MidCap FinCo Holdings Limited, MidCap FinCo Limited, MidCap Funding I (Ireland) Limited, MidCap FinCo Intermediate Holdings Ltd, Apollo Residential Mortgage, Inc., Athene USA Corporation, Athene Annuity and Life Company, Athene Life Insurance Company of New York, Athene Annuity and Life Assurance Company of New York, Athene Annuity & Life Assurance Company, Athene Life Re Ltd. and Athene Holding Ltd., all of which are Apollo affiliates.

⁷ See Athene Holding Ltd, Amendment No. 2 to Form S-1 Registration Statement, U.S. Securities and Exchange Commission, filed Sept. 1, 2016.

[REDACTED] [REDACTED].

[REDACTED] Centerview a strong incentive to favor a sale of the Company over any recapitalization or standalone plan. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Thus, Centerview stood to make an additional [REDACTED] if the Company was sold, an incentive payment of *six times* more than what Centerview would receive for actually advising and opining on potential transactions.

40. Two days after the February 22, 2016 Board meeting, the Company publicly disclosed: (i) the formation of the Committee, (ii) the retention of Centerview, and (iii) the Committee's consideration of strategic alternatives for the Company:

Diamond Resorts International Announces Exploration of Strategic Alternatives

February 24, 2016 04:08 PM Eastern Standard Time

LAS VEGAS--(BUSINESS WIRE)--The Board of Directors (the "Board") of Diamond Resorts International, Inc. (NYSE:DRILL) ("the Company") announced today that it has formed a Committee of Independent Directors to explore strategic alternatives to maximize shareholder value. The Committee has retained Centerview Partners LLC as its financial advisor.

David Palmer, President and Chief Executive Officer, Diamond Resorts International, said, "Today we announced our 10th straight quarter of record financial performance and provided financial guidance that indicates another record year in 2016. Yet there continues to be a significant dislocation between the intrinsic value we have built in this business and the market value of our public equity. For this reason, our Board of Directors is initiating a process to explore and evaluate a wide range of strategic alternatives to unlock value for shareholders. As we undertake this process, we will continue our focus on providing exceptional customer service and the execution of our growth initiatives."

There is no assurance that this exploration will result in any strategic alternatives being announced or consummated. The Company does not intend to discuss or disclose further developments during this process unless and until the Board has approved a specific action or otherwise determined that further disclosure is appropriate.

41. On March 9, 2016, the Strategic Review Committee held its first meeting to discuss, among other things, the retention of Gibson Dunn & Crutcher LLP ("Gibson Dunn") as its legal counsel.⁹ Gibson Dunn advised the Committee to "augment" the resolutions governing the Committee's authority to confirm that it "would have the exclusive authority" to negotiate with potential bidders. (14D-9 at 16). In addition, the Committee discussed exploring a strategic alternatives process. During the meeting, the Committee acknowledged and emphasized that

⁹ According to her profile on Gibson Dunn's website, Centerview is a prominent client of Barbara Becker, the lead Gibson Dunn partner advising the Strategic Review Committee. (See <http://www.gibsondunn.com/lawyers/bbecker> last visited October 20, 2016.).

[REDACTED]

[REDACTED] (Emphasis added).

V. Centerview Conceals Its Ongoing Relationship With Apollo, Resulting In The Committee’s Reliance Upon A Conflicted Financial Advisor To Run The Sales Process

42. Despite having already announced publicly on February 24, 2016 that the Committee retained Centerview, the Committee continued discussing Centerview’s retention at the March 9, 2016 meeting. The Committee noted that

[REDACTED]

[REDACTED]. While discussing Centerview’s retention, the Committee observed that “unlike many other investment banks that the strategic review committee had identified as potential candidates,” Centerview was considered “independent.” (14D-9 at 16). In particular, the Strategic Review Committee believed Centerview to be “independent” “based on Centerview’s disclosure of its relationships with *likely potential counterparties, including Apollo . . .*” *Id.* (Emphasis added).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

43. As alleged further below, this was a peculiar determination because

Centerview had *both historic and ongoing* engagements with Apollo portfolio companies at the time the Committee retained Centerview to act as its financial advisor. For example:

- In 2013 and 2014, Centerview was retained by the special committee of the board of directors of Apollo-controlled CEC Entertainment, Inc. (“CEC”) in connection with CEC’s divestiture of four casinos to Caesars Growth Partners LLC.
- In December 2014, Centerview was engaged to advise CEC’s special committee in conjunction with CEC’s merger with Caesars Acquisition Corporation (“CACQ”), another Apollo-controlled company. Since December 2014, the terms of the CEC and CACQ merger have been amended multiple times and, according to Centerview’s website, the engagement remains “pending.”
- In early 2016, Centerview was advising Hexion, an Apollo portfolio company, in connection with the sale of Hexion’s Performance Adhesives, Powder Coatings, Additives & Acrylics Coatings and Monomers business to Synthomer PLC (the “Hexion Asset Sale”). The Hexion Asset Sale was publicly announced on March 21, 2016, and according to Centerview’s website is still currently “pending.”

44. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

45. At the conclusion of the meeting, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

46. At a Board meeting later the same day, [REDACTED] [REDACTED]

[REDACTED] and
further noted that [REDACTED]

[REDACTED] (Emphasis added). Even though Apollo expressed its
interest in Diamond to Centerview in early March, the Board still moved forward
with the process with Taitz serving as co-chair of the Committee.

**VI. The Strategic Review Committee Assesses Each Member's
Independence, But Puzzlingly Keeps Taitz On The Committee**

47. On March 10, 2016, Gibson Dunn held discussions with each member

of the Strategic Review Committee to purportedly assess their independence.

48. One week later, on March 17, 2016, the Strategic Review Committee held a telephonic meeting. At the meeting, the Committee, with the assistance of Gibson Dunn, again assessed each Committee member's independence. Specifically, despite being apprised of Taitz's ties to Apollo and the fact that Apollo already expressed to Centerview its interest in Diamond, the Committee still concluded that [REDACTED]

[REDACTED] Following this assessment, the Committee determined that [REDACTED]

[REDACTED] Taitz, however, never resigned as co-Chair of the Committee, nor did the Board take any action to remove her as co-chair.

49. For the remainder of the process, Centerview and the Committee were the primary conduits between Diamond on the one hand, and Apollo and the remaining interested bidders on the other.

VII. The Sales Process Intensifies

50. On March 28, 2016, Centerview provided the Strategic Review Committee with an update, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

51. [REDACTED] Centerview, on behalf of the Committee, [REDACTED]

[REDACTED]

[REDACTED]

52. From April 25 through April 29, 2016, Centerview received written indications of interest from five parties whose bids ranged from \$23.00 per share to \$33.00 per share. Apollo submitted a written indication of interest with a range of \$28.00 to \$30.00 per share. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

53. On April 27, 2016, Taitz and Wolf held a meeting with Centerview and Gibson Dunn to review the indications of interest Centerview had received to date. At the meeting, Taitz and Wolf determined to review the indications of interest with the full Board present so that Centerview could present its analysis on various strategic and financial alternatives before soliciting final bids from

interested parties.

54. On May 2, 2016, the Board held a telephonic meeting with Gibson Dunn and Centerview to discuss the indications of interest in the Company received to date. During the discussion, Centerview recommended that the Board

[REDACTED] The Board then authorized Centerview to [REDACTED]

[REDACTED]

[REDACTED]

-
-
-
-
-
-
-

[REDACTED]

[REDACTED]

[REDACTED]

-
-
-

[REDACTED]

[REDACTED]

57. On May 23, 2016, the Strategic Review Committee conducted a telephonic meeting with Gibson Dunn and Centerview. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

58. On May 27, 2016, Centerview issued the sales process letter to the prospective bidders and posted a draft merger agreement to the Company's data website. The sales process letter established a June 23, 2016 deadline for the bidders to submit their final bids and a June 17, 2016 deadline for bidders to

submit their final markups to the draft merger agreement.

59. Also, during this time, representatives from Apollo, [REDACTED] [REDACTED] each requested to speak with CEO Palmer about his willingness to remain with the Company post-transaction. Palmer reassured all three potential suitors that he would remain with the Company after the closing of any potential transaction.

60. The prospect of potentially lucrative post-closing employment created a conflict for Palmer. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

¹⁰

VIII. Apollo Submits Its Final Bid And Taitz Coincidentally Recuses Herself From The Final Committee Meetings

61. On June 23, 2016, Apollo and [REDACTED] submitted their final bids of \$30.25 per share and a range of \$27 to \$29 per share, respectively. Apollo and

¹⁰ Notably, Cloobek was particularly influential in the Diamond Boardroom not only as the Company's Chairman, founder and largest stockholder, but also by way of a stockholder agreement with the Company that provided Cloobek the right to, among other things, designate two directors to the Board for so long as he owned at least 10% of Diamond's outstanding common stock.

[REDACTED] also submitted mark ups to the merger agreement and financing commitment papers. [REDACTED] and [REDACTED] communicated that they would not submit final bids.

62. With only Apollo and [REDACTED] remaining for the Committee to consider, and *after* Apollo had submitted its “final” bid to the Committee, Taitz belatedly decided to recuse herself from the remainder of the Committee meetings even though the Committee “revisited” the independence of each Committee member and concluded “that each member remained independent.” Taitz’s belated recusal from the process was effectively an admission that her heavy participation in the process was both conflicted and improper.

63. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

64. On June 24, 2016, following the Committee’s meeting, the Board met to discuss the final bids. [REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED] The Board, including Taitz, authorized Centerview to seek “best and final” offers.

IX. Chairman Cloobek [REDACTED] To No Avail

65. On June 25, 2016, the Committee and Board held joint meetings with Centerview, Gibson Dunn and management. During the meetings, the Committee recommended that the Board authorize Centerview and Gibson Dunn to negotiate a final transaction with Apollo for \$30.25 per share.

66. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Emphasis added).

67. [REDACTED], [REDACTED] the Diamond Board,

including Taitz, supported a sale of the Company to Apollo for \$30.25 per share.¹¹

68. Later that day, Centerview issued its oral opinion to the Committee, concluding that Apollo's \$30.25 per share offer was purportedly "fair," from a financial point of view, to the Company's public stockholders (the "Fairness Opinion"). [REDACTED]

[REDACTED] Had Centerview done so, it would have put the Board on notice to take corrective action including, but not limited to, retaining a second financial advisor to render an independent fairness opinion or reducing Centerview's advisory fee.

69. Notably, Centerview's final DCF analysis derived "implied per share equity value ranges of [Diamond of] approximately (I) \$30.25 to \$45.20 with respect to the Forecasts and (II) \$28.05 to \$42.25 with respect to the sensitivity analysis." (14D-9 at 33). In other words, the \$30.25 per share deal price fell at the very bottom of Centerview's Forecast DCF and close to the bottom of Centerview's sensitivity DCF analysis. Moreover, the \$30.25 deal price was

[REDACTED]

(Emphasis added). Considering Cloobek was the Company's largest stockholder at the time, any reference to "[REDACTED]" would naturally include him.

[REDACTED]

70. Given Centerview's predisposition to a sale of the Company, it is more than coincidence that the DCF range chosen by the Committee's advisor was just wide enough to encompass the underpriced offer. Centerview's motivation was clear, simple and strong: it stood to gain an additional [REDACTED] if Diamond was sold (as opposed to remaining a standalone company).

71. On June 26, 2016, the Diamond Board met to approve the Merger. At the meeting, Centerview issued its oral opinion to the Board that Apollo's \$30.25 per share offer was purportedly "fair," from a financial point of view, to the Company's public stockholders.¹²

72. [REDACTED]

[REDACTED]

[REDACTED]:

[REDACTED]

[REDACTED]. (Emphasis added)

73. [REDACTED] members of the

¹² Centerview's written fairness opinion was dated June 27, 2016.

Board, including conflicted director Taitz, approved the Transaction.

X. Centerview's Flawed Analysis

74. The financial analysis underlying Centerview's Fairness Opinion was fatally flawed and dramatically undervalued Diamond in several ways.

75. *First*, the range of exit EBITDA multiples applied by Centerview was below a range that could be considered reasonable. This fact, however, was concealed by Centerview's flawed analysis.

76. [REDACTED]

[REDACTED]

[REDACTED]

¹³ The implied perpetuity growth rate is calculated by using the equity value derived from the exit multiple approach and then solving for the perpetuity growth rate that would generate the same value under the Gordon Growth method (*i.e.*, since the perpetuity value, terminal year cash flow, and the discount rate are known, one can solve for the perpetuity growth rate in the Gordon Growth equation). Testing the reasonableness of implied perpetuity growth rates from selected exit multiples is generally performed by most practitioners as a necessary step in a valuation analysis.

¹⁴ A DCF analysis is based on determining the present value of all future free cash flow produced by a company. As it is infeasible to project a company's free cash flow indefinitely, a banker uses a terminal value calculation to capture the value of the Company beyond the projection period. There are two generally accepted methods used to calculate a company's terminal value — the exit multiple method and the perpetuity growth method. The exit multiple method calculates the remaining value of a company's free cash flows produced after the projection period on the basis of a multiple of its terminal year EBITDA. By contrast, the perpetuity growth method calculates terminal value by treating a company's terminal year free cash flow as a perpetuity growing at an assumed rate.

[REDACTED]

77. [REDACTED]

[REDACTED]

[REDACTED]

¹⁵ “Adjusted EBITDA” is the Company’s earnings before interest, tax, depreciation and amortization.

¹⁶ “Market Adjusted EBITDA” is the Company’s earnings before interest, tax, depreciation and amortization less vacation interest cost of sales and stock-based compensation.

[REDACTED] (b) a projected rate of nominal economic growth in the U.S. of approximately 4%,¹⁷ and (c) a projected rate of inflation in the U.S. of approximately 2%.¹⁸

79. [REDACTED]

[REDACTED] The unreasonably low exit EBITDA multiples led to an unreasonably low valuation for Diamond under the DCF analysis.

80. Additionally, the peer analysis performed by Centerview further underscores the unreasonableness of the exit multiple range of 4.7x to 7.3x applied by Centerview:

[REDACTED]

81. Had Centerview (a) utilized the perpetuity growth method to derive

¹⁷ Economic projections of Federal Reserve Board members and Federal Reserve Bank presidents under their individual assessments of projected appropriate monetary policy, June 2016, <https://www.federalreserve.gov/monetarypolicy/files/fomcproptab120160615.pdf> (last accessed Oct. 17, 2016).

¹⁸ *Id.*

terminal value in the DCF analysis, as opposed to the exit multiple method, which is generally accepted in the finance community and applied by the Court of Chancery as the appropriate model to use when performing a DCF analysis, [REDACTED]

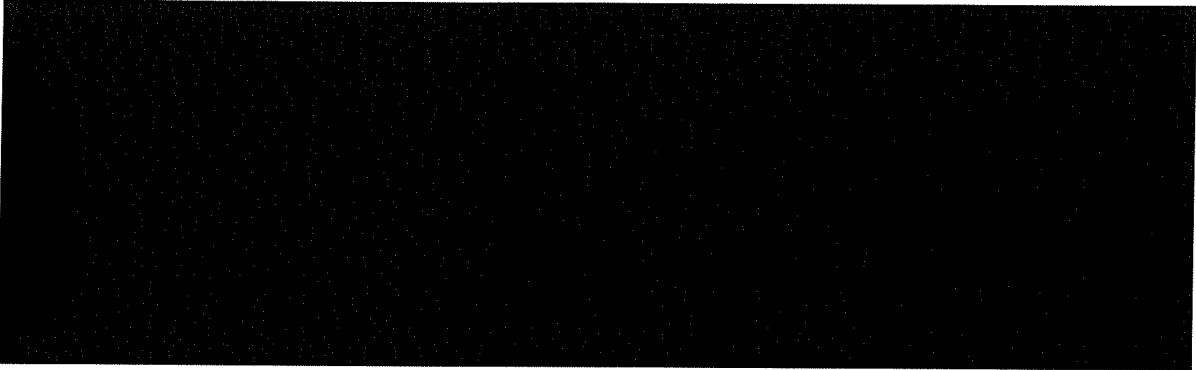
[REDACTED]

[REDACTED] Centerview would have derived a per share value for Diamond of more than [REDACTED] more than the Transaction price).

82. *Second*, Centerview selected unreasonably low multiples for its “Selected Public Company Analysis,” further depressing artificially Diamond’s valuation under this analysis.

83. Centerview identified only three publicly-traded companies that it deemed comparable to Diamond: Wyndham Worldwide Corporation, Interval Leisure Group, Inc., and Marriott Vacations Worldwide Corp.. For these three comparable companies, Centerview calculated a range of multiples from [REDACTED] [REDACTED], as shown in the following chart:

[REDACTED]



84. Despite the significantly higher multiple ranges for Diamond's comparable companies, Centerview nonetheless applied multiples of 5.75x to 7.50x to the Company's projected 2016 EBITDA and 5.25x to 7.00x to the Company's projected 2017 EBITDA. There is no legitimate justification for applying a significantly lower multiple to Diamond than those of the three companies that Centerview identified as comparable.

85. Applying these unreasonably low multiples, Centerview derived implied valuation ranges for Diamond of \$22.60 to \$30.15 and \$23.30 to \$31.95 per share.²⁰

86. The unreasonableness of the multiples applied by Centerview in its "Selected Public Company Analysis" only increased during the period between signing of the Merger Agreement and closing of the Transaction. During this period, the multiples for Diamond's peer group increased as a result of the

²⁰ In calculating these implied valuation ranges for Diamond, Centerview also failed to adjust for the inherent discount for lack of control embedded in the stock prices of the selected comparable companies, further undervaluing the Company.

increasing equity value of the peer companies.

87. As of the close of the Transaction on September 2, 2016, the median 2016 EBITDA multiple of Diamond's peer group increased from 7.7x to 8.1x and the median 2017 EBITDA multiple of Diamond's peer group increased from 7.1x to 7.6x:

	EV / Adj. EBITDA	
	2016E	2017E
Wyndham Worldwide Corporation	7.9x	7.6x
Interval Leisure Group, Inc.	9.2x	7.2x
Marriott Vacations Worldwide Corp.	8.1x	7.6x
Median Multiple	8.1x	7.6x

88. Correcting for Centerview's error by utilizing an 8.1x EV/2016 EBITDA multiple yields an indicated equity value per Diamond share of \$40.26. Correcting for Centerview's error by utilizing a 7.6x EV/2017 EBITDA multiple yields an indicated equity value per Diamond share of \$44.83. In both cases, Diamond's value under a corrected "Selected Public Company Analysis" significantly exceeds the \$30.25 per share deal price.

89. *Third*, Centerview derived a weighted average cost of capital ("WACC")²¹ for Diamond that was unreasonably high, which served to depress

²¹ WACC is the weighted average cost of capital used to derive discount rates to calculate the present value of a company's projected free cash flow and terminal value. The WACC represents the weighted average of the required return on the

Centerview's DCF analysis and the implied equity value range derived therefrom.

90. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

92. [REDACTED]

[REDACTED]

[REDACTED] The reduction in WACC would increase Diamond's value on a DCF basis significantly above the [REDACTED]

invested capital (*i.e.*, debt and equity) in a given company.

22 [REDACTED]

[REDACTED] the yield from the 20-year U.S. Treasury Bond is the risk-free rate applied most frequently by valuation practitioners and the Court of Chancery. [REDACTED]

[REDACTED]

[REDACTED] The proper ERP is the "supply-side" ERP of 6.03%, which is applied by the Court of Chancery and generally accepted among valuation practitioners.

24 [REDACTED]

[REDACTED] Using the 2016 CRSP data from the Duff & Phelps Valuation Yearbook, the proper size premium is 1.63% (0.11% lower).

[REDACTED] value discussed in paragraph 81 above.

93. [REDACTED] updating Centerview's WACC analysis to the closing date of the Transaction would further reduce the WACC and increase the indicated fair value of Diamond shares as interest rates declined and the betas of Diamond's selected peers also declined during the period between when the Merger Agreement was executed and the Transaction closed.

94. In addition to the severe errors committed by Centerview detailed herein, Diamond management also provided Centerview with unreasonable projections that were then utilized by Centerview in its DCF analysis. Management's projections assumed an irrational amount of investments in inventory, which depressed the Company's unlevered free cash flow projections, which in turn depressed the Company's valuation on a DCF basis.

95. Specifically, management's projections assume that cash spend on inventory purchases will [REDACTED]

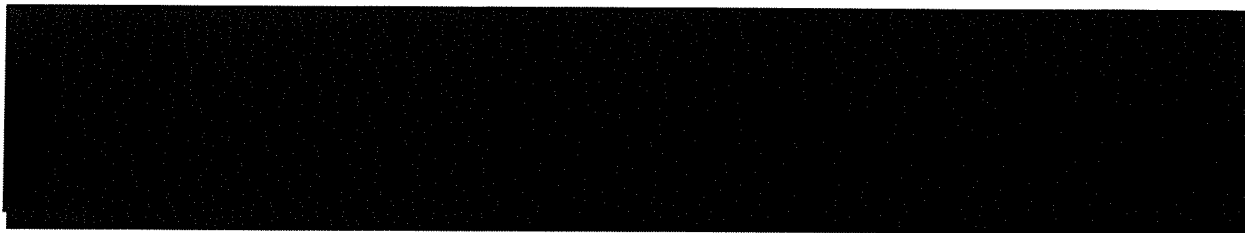
[REDACTED]

[REDACTED]. The table in paragraph 95 below demonstrates that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



96. The following table illustrates the historical and projected inventory cash investment and incremental revenue per investment:²⁶

		Inventory Investment (in millions)	Incremental Revenue Per Dollar Invested (in Actual)
Actual	2011	\$54	\$0.28
	2012	\$79	\$1.74
	2013	\$40	\$5.10
	2014	\$42	\$2.71
	2015	\$97	\$1.07
	Average	\$63	\$2.18
Projected	2016		
	2017		
	2018		
	2019		
	2020		
	Average		

97. Reducing cash spend on inventory to a reasonable level would only

²⁵ Notably, Diamond's



²⁶ The historical data included in this chart is from Diamond's Form 10-K's filed with the SEC on June 21, 2011, July 19, 2013, March 3, 2014, February 26, 2015, and August 8, 2016.

serve to further increase Diamond's valuation on a DCF basis.

98. For all of these reasons, Centerview's financial analysis significantly undervalued the Company and the resulting indications of fair value of the Company's shares.

XI. Diamond And The Director Defendants File A Materially False And Misleading 14D-9

99. In connection with soliciting stockholder support for the Tender Offer, Diamond filed the 14D-9 and certain other Tender Offer documents with the SEC. The 14D-9 and the other Tender Offer documents failed to disclose plainly material information necessary to permit Diamond stockholders to decide on a fully informed basis (a) whether to tender their shares into the Tender Offer and (b) whether to seek appraisal for their shares.

A. Failure To Disclose [REDACTED]

100. As detailed above, [REDACTED]

[REDACTED]

[REDACTED]²⁷ Specifically, [REDACTED]

[REDACTED]

²⁷ The Board minutes detailing (a) [REDACTED]

[REDACTED] were produced on September 8, 2016 – seven days *after* the extended Tender Offer closed.

[REDACTED]

[REDACTED] (Emphasis added).

101. At the June 28, 2016 Board meeting, Cloobek [REDACTED]
[REDACTED] The minutes for the June 28 meeting
state in relevant part that:

[REDACTED]

102. The 14D-9, however, failed to mention Cloobek's [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] This
information was not merely material, but in fact critical to other Diamond
stockholders' assessment of the Transaction because Cloobek was the co-founder
of Diamond and arguably was the person who possessed the most institutional
knowledge as the Company's true value and standalone prospects. Indeed, the
Company's proxy statement for its 2016 annual meeting filed with the SEC on
April 15, 2016 states that:

The Board believes that Mr. Cloobek, as our founder and the former
Chief Executive Officer of Diamond LLC, should continue to serve as
a director because of Mr. *Cloobek's unique understanding of the
opportunities and challenges that we face and his in-depth*

knowledge about our business, including our customers, operations, key business drivers and long-term growth strategies, derived from his 30 years of experience in the vacation ownership industry and his service as our founder and former Chief Executive Officer.

(Emphasis added).

103. Instead of disclosing [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED], the 14D-9 touted the fairness of the \$30.25 deal price and made the misleading partial disclosure that “[t]he board of directors approved the entry into the merger agreement and the consummation of the transactions contemplated thereby. *The Company’s chairman abstained from this vote.*” (14D-9 at 21) (Emphasis added). The 14D-9 failed to disclose that the true reason for Cloobek’s abstention was that (a) [REDACTED] [REDACTED] (b) [REDACTED] [REDACTED] [REDACTED].

104. Particularly after raising the issue of Cloobek’s abstention, it was materially misleading for the 14D-9 to convey that Diamond stockholders would receive a fair price by tendering their shares into the Tender Offer without a simultaneous tempering disclosure that Diamond’s founder, Board Chairman and largest stockholder was [REDACTED] [REDACTED] [REDACTED].

105. It is axiomatic that the fairness of the consideration offered in a

merger or tender offer is material to a stockholder considering whether to vote in favor of the transaction and/or tender shares. These particular omitted facts were material because, if disclosed, they would have alerted Diamond stockholders that

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] That the person who held these views was Diamond's founder, Chairman and largest stockholder would have justifiably imbued them with heightened credibility and import in the minds of stockholders.

106. Besides being materially misleading in its own right, the omitted fact that [REDACTED]

[REDACTED] also rendered other disclosures in the 14D-9 materially false and misleading. For example, the 14D-9 stated that the Board determined "that the merger agreement and the transaction [were] advisable and fair to, and in the best interests of, the Company and its stockholders and [] recommend[ed] that the Company's stockholders accept the tender offer and tender their Shares pursuant to the tender offer." (14D-9 at 15). Although the Board did recommend the merger, the 14D-9 creates the impression that [REDACTED] [REDACTED]

[REDACTED]. That

impression is highly misleading given [REDACTED]. The Board was entirely free in the 14D-9 to attempt to reconcile [REDACTED] with the [REDACTED] recommendation of the remainder of the Board; however, requisite candor mandated disclosure of the fact that [REDACTED]

B. *Failure To Disclose Information Relating to Centerview's Conflict Of Interest*

107. The 14D-9 revealed that Centerview provided various services to Apollo over the two calendar years prior to being retained by the Strategic Review Committee (14D-9 at 34), but did not adequately address the investment bank's potential and actual conflicts of interest. Indeed, other than the then-current engagement of Centerview by the board of directors of Apollo portfolio company CEC, the 14D-9 did not identify any of Centerview's other Apollo engagements or the compensation Centerview had received or would receive in connection therewith. And because [REDACTED]

[REDACTED] that critical information about the incentives of the Strategic Review Committee's sole financial advisor was ultimately omitted from the 14D-9.

108. Also, while the Offer to Purchase mentions a January 2016 overture from Apollo to Diamond expressing interest in a preferred investment in the Company (Offer to Purchase at 27), the 14D-9 does not disclose whether

Centerview, which was engaged by Apollo portfolio companies at the time, solicited this expression of interest without the Board's knowledge and/or permission.

109. The Board's sole investment banker's relationship with the Company's buyer meaningfully informs the financial advisor's incentives and motivations in (i) negotiating and orchestrating the Transaction, and (ii) preparing the related fairness opinion. These facts were therefore plainly material to stockholders' decision whether to tender their shares into the Tender Offer and should have been, but were not, fully disclosed.

C. Failure To Disclose Material Information About The Strategic Review Committee and the Disbanded Transaction Committee

110. The 14D-9 disclosed that Strategic Review Committee co-chair Taitz "served on the boards of entities owned by certain investment funds managed by affiliates of Apollo Global Management, LLC." (14D-9 at 17). The 14D-9 did not, however, disclose (a) how many directorships affiliated with Apollo Taitz has held,²⁸ (b) the duration of her service in those directorships, or (c) the amount of compensation she received from Apollo for her Apollo-affiliated board service. All of this information, obviously known by Taitz herself, was readily available to the remainder of the Board, and could have been disclosed at no additional cost or

²⁸ As noted in footnote 6 herein, according to the 2016 Proxy, Taitz has held no less than twelve directorships affiliated with Apollo.

burden to Defendants or the Company. No such disclosure was made.

111. Because Apollo was involved in the sales process from its early stages, Taitz's participation as the Committee's co-chair was problematic. Other than noting her recusal at the culmination of the process on June 23, 2016, the 14D-9 fails to disclose whether any limitations were imposed on Taitz with respect to communicating with Apollo during the sales process. Because of the partially disclosed professional relationship between Taitz and Apollo, Diamond stockholders would have valued a description of her participation in the decision to sell the Company to Apollo as material to their decision as to whether to tender their Diamond stock into the Tender Offer.

112. The 14D-9 also stated that the Board had earlier formed the Transaction Committee, which was disbanded in September 2015, "to facilitate the review of various corporate development opportunities" (14D-9 at 15). The 14D-9 does not, however, disclose the composition of this committee or its mandate. The 14D-9 does state that after the formation of the Committee, the Company's outside counsel, with longstanding ties to conflicted Centerview, "further advised that the original resolutions forming the strategic review committee *should be augmented* by new resolutions which would provide that the strategic review committee would have the exclusive authority to conduct the process and negotiate with potential bidders." (14D-9 at 17) (Emphasis added). Thus, stockholders were left to guess

what the limited mandate of the disbanded Transaction Committee entailed and whether the abandoned review of “corporate development opportunities” involved reasons or circumstances that were either addressed or ignored in the process leading up to the Transaction.

**XII. After Several Extensions, The Tender Offer Finally Obtains
The Requisite Level Of Stockholder Support**

113. The Tender Offer was originally scheduled to expire on August 10, 2016.

114. By August 9, 2016, however, only 19,499,074 shares of Diamond common stock had been tendered pursuant to the Tender Offer, which represented only approximately 27.96% of the Company’s total outstanding shares of common stock. As a result, Diamond and Apollo agreed to extend the Tender Offer until August 24, 2016.

115. On August 16 and 17, 2016, about one week *after* the original expiration date for the Tender Offer, Cloobek and his affiliates finally tendered all of their shares of Diamond common stock pursuant to the Tender Offer.

116. By August 23, 2016, a total of 41,066,105 shares had been tendered pursuant to the Tender Offer, which represented approximately 58.88% of the then-outstanding shares of Diamond stock. That day, Diamond and Apollo agreed to further extend the Tender Offer period until August 30, 2016.

117. On August 29, 2016, Diamond and Apollo agreed to further extend

the Tender Offer for an additional period of two business days until September 1, 2016. As of that day, 43,586,915 shares of Diamond common stock had been tendered pursuant to the Tender Offer, which represented approximately 62.49% of the total outstanding shares of Diamond common stock.

118. The Tender Offer expired at 5:00 P.M., New York City time, on September 1, 2016 (the “Expiration Time”). As of the Expiration Time, a total of 56,675,355 shares of Diamond common stock had been validly tendered and not withdrawn pursuant to the Tender Offer, representing approximately 81.26% of the Company’s outstanding shares.

119. On September 2, 2016, pursuant to the terms of the governing merger agreement and in accordance with Section 251(h) of the Delaware General Corporation Law, a wholly-owned subsidiary of Apollo merged with and into the Company, with the Company continuing as the surviving corporation. Upon consummation of the Merger, the Company became a wholly-owned subsidiary of Apollo and public trading of the Company’s common stock ceased.

CLASS ACTION ALLEGATIONS

120. Plaintiff brings this action pursuant to Rule 23 of the Rules of the Court of Chancery, individually and on behalf of all other holders of Diamond common stock (except Defendants herein and any persons, firm, trust, corporation or other entity related to or affiliated with them and their successors in interest) who are or will be threatened with injury arising from Defendants' wrongful actions, as more fully described herein (the "Class").

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

122. The Class is so numerous that joinder of all members is impracticable. As of July 13, 2016, there were 69,745,698 shares of Diamond's common stock issued and outstanding. Thus, upon information and belief, there were hundreds – if not thousands – of Diamond stockholders scattered throughout the United States.

123. There are questions of law and fact common to the Class, including, *inter alia*, whether:

- a. The Director Defendants breached their fiduciary duties;
- b. Centerview aided and abetted the Director Defendants' breaches of fiduciary duty; and
- c. Plaintiff and the other members of the Class were injured by the wrongful conduct alleged herein and, if so, what is the proper measure of damages.

124. Plaintiff is committed to prosecuting the action and has retained competent counsel experienced in litigation of this nature. Plaintiff's claims are

typical of the claims of the other members of the Class, and Plaintiff has the same interests as the other members of the Class. Plaintiff is an adequate representative of the Class.

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

COUNT I

DIRECT CLAIM FOR BREACH OF FIDUCIARY DUTY AGAINST THE DIRECTOR DEFENDANTS

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

127. The Director Defendants, as Diamond directors and officers, owe the Class the utmost fiduciary duties of due care, good faith, loyalty and disclosure.

128. The Director Defendants failed to fulfill their fiduciary duties in connection with the Transaction by (a) running an ill-timed and conflict-laden sales process, (b) failing to secure fair value for Diamond's shares, and (c) failing to disclose all material information necessary to allow Diamond stockholders to make

an informed tender and/or appraisal decision.

129. As a result of the Director Defendants' breaches of fiduciary duty, the Class has been harmed by virtue of (a) being deprived of their right to make a fully informed decision whether to tender or seek appraisal, and (b) receiving inadequate Transaction consideration.

130. Plaintiff and the Class have no adequate remedy at law.

COUNT II

DIRECT CLAIM FOR AIDING & ABETTING A BREACH OF FIDUCIARY DUTY AGAINST CENTerview

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

132. Centerview knowingly and purposefully caused the Director Defendants to breach their fiduciary duties in connection with the Transaction.

133. Centerview concealed, or at a minimum misled, the Committee and/or Board concerning the extent of its ongoing relationship with Apollo in order to facilitate a sale of the Company to the private equity fund with which it had extensive business. Thus, Centerview caused the Board to publish the 14D-9 that does not address the full extent of Centerview's *ongoing* investment banking relationship with Apollo.

134. The 14D-9 also does not indicate that Centerview ever revealed its

relationship with Gibson Dunn to the Strategic Review Committee or the Board.

135. Further, as detailed above, Centerview used a flawed financial analysis to justify a sale of the Company at \$30.25 per share, and presented its analysis to the Board as sound and appropriate. The Board then relied on Centerview's flawed financial model and fairness opinion in approving the Transaction.

136. Centerview's selfish and disloyal conduct caused the Board to breach its fiduciary duties, resulting in direct harm to the Class in the form of a materially deficient 14D-9 and inadequate Transaction consideration.

137. Plaintiff and the Class have no adequate remedy at law.

RELIEF REQUESTED

WHEREFORE, Plaintiff demands judgment as follows:

- A. Declaring this action to be a proper class action and certifying Plaintiff as class representative and Plaintiff's counsel as class counsel;
- B. Finding the Director Defendants liable for breaching their fiduciary duties owed to the Class;
- C. Finding Centerview liable for aiding and abetting a breach of fiduciary duty by the Director Defendants;
- D. Granting equitable relief to the Class in the form of quasi-appraisal rights;

E. Entering a monetary judgment with interest in favor of Plaintiff and the Class in at least the amount of the difference between \$30.25 per share and the fair value of the Company's common stock;

F. Awarding Plaintiff the costs and disbursements of this action, including attorneys', accountants', and experts' fees; and

G. Awarding such other and further relief as is just and equitable.

Dated: October 26, 2016

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