



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

JAMES M. KLEIN, derivatively on
behalf of WILDHORSE RESOURCE
DEVELOPMENT CORPORATION,

Plaintiff,

v.

JAY C. GRAHAM, ANTHONY BAHR,
RICHARD D. BRANNON, SCOTT
GIESELMAN, DAVID W. HAYES,
TONY R. WEBER, JONATHAN M.
CLARKSON, GRANT E. SIMS, NGP
ENERGY CAPITAL MANAGEMENT,
LLC, and CP VI EAGLE HOLDINGS,
L.P.,

Defendants,

and

WILDHORSE RESOURCE
DEVELOPMENT CORPORATION, a
Delaware corporation,

Nominal Defendant.

C.A. No. 2018-0562-AGB

CONFIDENTIAL FILING

PUBLIC VERSION

Filed August 2, 2018

VERIFIED DERIVATIVE COMPLAINT

Plaintiff James M. Klein ("Plaintiff"), on behalf of nominal defendant WildHorse Resource Development Corporation ("WildHorse" or the "Company"), brings the following Verified Derivative Complaint (the "Complaint") against (a) Jay C. Graham ("Graham"), Anthony Bahr ("Bahr"), Richard D. Brannon

(“Brannon”), Scott Gieselman (“Gieselman”), David W. Hayes (“Hayes”), Tony R. Weber (“Weber”), Jonathan M. Clarkson (“Clarkson”) and Grant E. Sims (“Sims”) (collectively the “Board” or “Director Defendants”) for breaching their fiduciary duties as directors and/or officers of WildHorse; (b) NGP Energy Capital Management, L.L.C. (“NGP ECM”) for breaching its fiduciary duties as the Company’s controlling stockholder; and (c) CP VI Eagle Holdings L.P. (the “Carlyle Investor”), an investment fund managed by an affiliate of The Carlyle Group, L.P. (the “Carlyle Group” and together with the “Carlyle Investor”, “Carlyle”), for unjust enrichment. 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”), as to all other matters.

INTRODUCTION

1. This action arises out of an unlawful scheme designed to unfairly benefit Carlyle, the financial backer, strategic partner and largest investor in WildHorse’s controlling stockholder, NGP ECM (and together with its affiliates, “NGP”).

2. In the spring of 2017, private equity firm NGP held a majority equity

stake in oil and gas company WildHorse. Moreover, a majority of the then eight-member Board consisted of NGP managing directors, Company executives or senior officers of other NGP portfolio companies. Due to the composition of the Board, the Company has expressly conceded in multiple public filings that “*we do not have a majority of independent directors.*”

3. In late March 2017, WildHorse began exploring the potential acquisition of acreage in the Eagle Ford Shale from Anadarko Petroleum Corporation (“Anadarko”) and funds affiliated with Kohlberg Kravis Roberts & Co. L.P. (“KKR”) (the “Anadarko Acquisition”). In connection with the Anadarko Acquisition, which was then anticipated to close in May 2017, WildHorse management and NGP—without the full Board’s knowledge—began negotiating a potential preferred stock offering with private equity firm Carlyle.

4. NGP and the Carlyle Group, however, had—and continue to have—an extremely close and intertwined relationship. Among other things, the Carlyle Group (a) is NGP’s largest investor, owing a 55% revenue interest in NGP ECM with the option to substantially increase its interest; (b) conducts 100% of its North American energy investing through NGP; (c) has jointly raised billions of dollars of capital alongside NGP; (d) jointly pursues investment opportunities alongside NGP;

(e) describes NGP as a Carlyle “subsidiary”; (f) is publicly described by WildHorse as an “affiliate” of NGP; and (g) co-authors articles and jointly hosts podcasts with NGP. Indeed, the Carlyle Group’s relationship with NGP is so substantial that the general public perceives the Carlyle Group to be NGP’s “owner.”

5. As a result of NGP and the Carlyle Group’s relationship, the Board created a special committee of directors (the “Special Committee” or “Committee”) “consisting solely of directors who do not have an interest in the issuance of the Preferred Stock that is different from, or in addition to, the interests of the Company’s stockholders generally, who are independent of any party who may have such an interest, and who are not officers of the Company or affiliated with, or employed by, any member of [the Company’s] controlling stockholder group, to among other things, consider, evaluate, review, negotiate and determine the terms of the Preferred Stock.”¹

6. The Special Committee met for the first time on April 20, 2017. By that time, the Anadarko Acquisition was barreling toward a likely close in approximately three weeks and the Special Committee was pressed for time. As a result of [REDACTED]

¹ See WildHorse Schedule 14C, filed with the U.S. Securities and Exchange Commission (“SEC”) on July 11, 2017 (the “Information Statement”), at 2.

[REDACTED]

[REDACTED] other than a preferred stock offering with Carlyle, providing Carlyle substantial leverage over the Special Committee and NGP.

7. Moreover, WildHorse management and NGP had preempted the Special Committee's opportunity to negotiate by exchanging a preferred stock term sheet with Carlyle *before* the Committee was even formed. The pre-Committee formation term sheet included and thus effectively locked-in what the Committee's financial advisor Evercore Group L.L.C. ("Evercore") labeled as the [REDACTED]

[REDACTED]

[REDACTED]

8. Over the ensuing weeks, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9. On May 10, 2017, WildHorse entered into a purchase and sale

agreement to memorialize the Anadarko Acquisition. Pursuant to that agreement, the Company agreed to pay \$534 million in cash and issue 5.5 million shares of WildHorse common stock valued at \$61 million.

10. That same day, the Company entered into a preferred stock purchase agreement (“PSPA”) with the Carlyle Investor whereby WildHorse agreed to issue and sell to the Carlyle Investor (and the Carlyle Investor agreed to purchase from the Company) 435,000 shares of Series A Perpetual Convertible Preferred Stock (“Preferred Stock”) for \$435 million. Each share of Preferred Stock is convertible into 72 common shares of WildHorse—assuming a 20% premium to the Company’s May 8, 2017 30-trading day volume weighted average price of \$11.57 per share and a 6% dividend—initially representing 31.3 million common shares on a fully-converted basis.

11. The Preferred Stock was issued to the Carlyle Investor on June 30, 2017. Because NGP ECM owned a majority of WildHorse’s outstanding equity, NGP ECM was able to unilaterally approve the Preferred Stock issuance to the Carlyle Investor (the “Preferred Stock Issuance”) via written consent without a vote of the Company’s minority public stockholders.

12. As detailed below, the terms of the Preferred Stock are unfairly generous to the Carlyle Investor, and reflect the unfair and conflicted circumstances

from which they arose. When correcting for certain errors Evercore made with respect to the assumed volatility of WildHorse's stock price, the Carlyle Investor paid the Company \$435 million in cash in exchange for Preferred Stock with a theoretical value of nearly \$595 million, representing a \$160 million (or ~37%) windfall.

13. Plaintiff brings this Action derivatively on behalf of WildHorse to recover for the harm inflicted on the Company by Defendants in connection with the Preferred Stock Issuance.

THE PARTIES

14. Plaintiff is and has been, at all relevant times, a beneficial owner of WildHorse common stock.

15. Defendant Graham has served as WildHorse's Chief Executive Officer ("CEO") and Board Chairman since September 2016. He was a co-founder of WildHorse, and served as co-CEO from June 2013 to January 2016 and President of WildHorse Resources Management Company ("WHRM") since its formation in October 2012 to January 2016. [REDACTED]

[REDACTED]

[REDACTED] For example, in 2017, Graham received total compensation in the amount of \$4.4 million. Graham also served as CEO and as a member of the board of directors

of Memorial Resource Development Corp. (“Memorial Resource”), an NGP portfolio company, from January 2016 until September 2016, when it was acquired by Range Resources Corporation. Graham’s sister-in-law, Erica Casias, is also an employee of WildHorse and has been with the Company since April 2010.²

16. Defendant Bahr has served as the Company’s President and a member of the Board since WildHorse’s formation in August 2016. [REDACTED]

[REDACTED] For example, in 2017, Bahr received total compensation in the amount of \$4.4 million. Bahr was a co-founder and served as co-CEO of WildHorse since WildHorse’s formation in June 2013 and CEO of WHRM since its formation in October 2012. Additionally, Bahr was a co-founder and served as CEO of WildHorse Resources LLC, one of the predecessors to Memorial Resource, since its formation in 2007.

17. Defendant Brannon has been a director of WildHorse since September 2016. From June 2014 through December 12, 2016, Brannon was Chairman and CEO of Esquisto Resources II, LLC and, since 2007, President of certain CH4

² WildHorse Schedule 14A, filed April 2, 2018, at 26.

Energy entities.³ CH4 Energy is a portfolio company of NGP.⁴ According to documents received in response to Plaintiff's Section 220 Demand, Brannon's son (Richard D. Brannon, Jr.) is also employed by CH4 Energy serving as a petroleum engineer.⁵ Brannon's son, Richard D. Brannon, Jr., is also an employee of WildHorse and has been employed by the Company since December 2016.⁶ On June 21, 2018, Brannon tendered his resignation from the Board.

18. Defendant Gieselman has been a director of WildHorse since September 2016. He has also served as a Partner of NGP since April 2007. Gieselman is a member of NGP's "Senior Investment Team."⁷

19. Defendant Hayes has been a director of WildHorse since September 2016. Hayes has been a Partner of NGP since 2008. Hayes is a member of NGP's

³ Energy Transfer Partners, L.P. Richard D. Brannon, Biography, <http://governance.energytransfer.com/phoenix.zhtml?c=193925&p=irol-govBio&ID=254250> (last visited July 24, 2018).

⁴ NGP, Investments, <https://ngpenergycapital.com/investments/> ("NGP is an active investor in . . . Active Portfolio Companies") (last visited July 24, 2018).

⁵ See WH001227. The LinkedIn profile of Richard D. Brannon, Jr. confirms that he has been a Petroleum Engineer for CH4 Energy since March 2013. See Richard Brannon, LinkedIn Profile, <https://www.linkedin.com/in/richard-brannon-0a166035/> (last visited July 24, 2018).

⁶ See *supra* note 4.

⁷ Brian Minnehan, NGP, "Funding the Deal, the Role of Private Equity," Nov. 2017, <https://dapldenver.org/wp-content/uploads/2017/11/2017-FLI-Brian-Minnehan-printed-materials.pdf>, at 11 (last visited July 9, 2018).

“Senior Investment Team.”⁸

20. Defendant Weber has been a director of WildHorse since September 2016. Weber currently serves as Managing Partner and Chairman of the Executive Committee for NGP. Weber joined NGP in December 2003. According to NGP’s website, Weber also chairs the Investment Process Committee, on which he “plays a key role in sourcing and managing NGP’s relationship with its investors” like Carlyle. Like Gieselman and Hayes, Weber is a member of NGP’s “Senior Investment Team.”⁹

21. Defendant Clarkson has been a director of WildHorse since December 2016. He was a member of the Special Committee formed in connection with the Preferred Stock Issuance. From 2011 until April 2017, Clarkson served on the board of directors and as a member of the audit committee of Memorial Production Partners GP LLC, an NGP affiliate.

22. Defendant Sims has been a director of WildHorse since February 2017. Sims was a member of the Special Committee formed in connection with the Preferred Stock Issuance.

⁸ *Id.*

⁹ *Id.*

23. Defendant NGP ECM is an affiliate of NGP. NGP is a family of private equity funds that makes direct equity investments in the energy and natural resource sectors.^{10, 11} As of the May 10, 2017 public announcement of the Preferred Stock Issuance, NGP ECM, through its affiliates WHR Holdings, LLC (“WildHorse Holdings”), Esquisto Holdings, LLC (“Esquisto Holdings”), WHE AcqCo Holdings, LLC (“WHE Holdings”) and NGP XI US Holdings, L.P. (“NGP XI”), beneficially owned approximately 66.5% of WildHorse’s outstanding common stock.¹² As of June 6, 2018, NGP ECM beneficially owned approximately 47.6% of WildHorse’s outstanding common stock.¹³

24. The Carlyle Investor is a Delaware limited partnership and investment fund managed by an affiliate of the Carlyle Group. The Carlyle Group is a global

¹⁰ NGP was founded in 1988 by Kenneth Hersh (“Hersh”), a senior advisor and Deputy Chief Investment Officer of Carlyle’s natural resource division.

¹¹ According to NGP’s website, “[t]he strength of [NGP] lies in establishing relationships with ‘owner-managers’ who see the mutual advantage of *having an active sponsor*, and then financing that management team.” NGP describes itself as having an “investment team [that] offers a depth of experience supporting management team to reach their goals *while generating attractive returns for its investors*.”

¹² See Information Statement at 7.

¹³ WildHorse Company Presentation, June 6, 2018, <http://ir.wildhorserd.com/~media/Files/W/WildHorse-IR/WRD%20Presentation%20June%202018%20vFINAL.pdf> (last visited July 10, 2018).

private equity and alternative asset manager. The Carlyle Group's strategic partnership with NGP entitles the Carlyle Group to 55% of the management fee-related revenue of the NGP entities that serve as advisors to the NGP management fee funds, and an allocation of income related to the carried interest received by such funds' general partners.

25. Nominal Defendant Wildhorse is an independent oil and natural gas company focused on the acquisition, exploitation, development and production of oil, natural gas and natural gas liquids. WildHorse is incorporated in Delaware and has its headquarters at 9805 Katy Freeway, Suite 400, Houston, Texas 77024. WildHorse's stock trades on the New York Stock Exchange under the ticker symbol "WRD".

RELEVANT NON-PARTIES

26. Brian A. Bernasek ("Bernasek") has been a director of WildHorse since June 2017. Bernasek is a Managing Director of the Carlyle Group and is head of the Carlyle Group's Global Industrial and Transportation Team. Bernasek was appointed to the WildHorse Board by the Carlyle Investor pursuant to the Preferred Stock Certificate of Designations, dated June 30, 2017 (the "Certificate of Designations").

27. Martin W. Sumner (“Sumner”) has been a director of WildHorse since June 2017. Sumner is a Managing Director of the Carlyle Group and has been employed by the Carlyle Group since 2003. Sumner was appointed to the WildHorse Board by the Carlyle Investor pursuant to the Certificate of Designations.

28. Stephanie Hildebrandt (“Hildebrandt”) has been a director of WildHorse since December 2017.

29. Defendants Bahr, Clarkson, Gieselman, Graham, Hayes, Sims and Weber, together with relevant non-parties Bernasek, Sumner and Hildebrandt, are referred to herein collectively as the “Demand Board”.

SUBSTANTIVE ALLEGATIONS

I. NGP Controls WildHorse

30. WildHorse (f/k/a WildHorse Resources, LLC) was founded in 2007 by Defendants Graham and Bahr. To support WildHorse’s aggressive growth plans, Graham and Bahr sought capital from NGP.¹⁴

31. On December 14, 2016, NGP took WildHorse public by offering 27.5

¹⁴ Since NGP’s investment, Graham and Bahr have voiced their gratitude to NGP for providing WildHorse the early funding needed to grow the Company, stating that “[w]e were blessed early on with a lot of help from a lot of people . . .” and that “[a] lot of it was being associated with the right people” Kailah Gonzalez, “WildHorse founding partners: entrepreneurs are big-picture thinkers,” Texas A&M

million shares to the public at \$15 per share. The initial public offering (“IPO”) raised approximately \$391.7 million in proceeds for the Company.

32. Following the IPO, NGP maintained majority equity control over WildHorse. NGP beneficially owned 66.5% of WildHorse’s outstanding common stock through July 2017.

33. In light of NGP’s majority equity control, WildHorse repeatedly acknowledged that NGP was the Company’s controlling stockholder. For example, in the Company’s Form 10-Ks filed with the SEC on March 31, 2017 and March 12, 2018 respectively, WildHorse labeled itself a “controlled company.”¹⁵

34. In addition to economic control, NGP maintained Board control over WildHorse. During 2016 through 2017, and as explained more fully in paragraphs 15-20 *supra*, four of the eight directors then-sitting on the Board (Gieselman, Weber,

University Mays Business School, Feb. 19, 2013, <https://mays.tamu.edu/news/2013/02/19/wildhorse-founding-partners-entrepreneurs-are-big-picture-thinkers/> (last visited July 10, 2018).

¹⁵ Documents produced in response to the Section 220 Demand confirm that the Board acknowledged that NGP was the Company’s controlling stockholder leading up to the Preferred Stock Issuance. *See, e.g.,* [REDACTED]

Brannon and Hayes) were Partners of NGP and/or served as senior officers of other NGP portfolio companies. Indeed, throughout WildHorse's existence as a public company, it has expressly stated in multiple public filings that "we do not have a majority of independent directors."¹⁶

35. WildHorse has repeatedly disclosed through public filings that its directors may have interests that are in conflict with the interests of the Company and minority stockholders.

Certain of our directors have significant duties with, and spend significant time serving, entities that may compete with us in seeking acquisitions and business opportunities and, accordingly, may have conflicts of interest in allocating time or pursuing business opportunities.

Certain of our directors, who are responsible for managing the direction of our operations and acquisition activities, hold positions of responsibility with other entities (including NGP-affiliated entities) that are in the business of identifying and acquiring oil and natural gas properties. For example, three of our directors (Messrs. Gieselman, Hayes and Weber) are Partners or Managing Partners of NGP, which is in the business of investing in oil and natural gas companies with independent management teams that seek to acquire oil and natural gas properties, and Mr. Brannon is President of certain NGP portfolio companies. The existing positions held by these directors may give rise to fiduciary or other duties that are in conflict with the duties they owe to us. These directors may become aware of business opportunities that may be appropriate for presentation to us as well as to the other entities with which they are or may become affiliated. Due to these

¹⁶ WildHorse Form 10-K, filed Mar. 12, 2018, at 48; WildHorse Form 10-K, filed Mar. 31, 2017, at 50 (emphasis added).

existing and potential future affiliations, they may present potential business opportunities to other entities prior to presenting them to us, which could cause additional conflicts of interest. *They may also decide that certain opportunities are more appropriate for other entities with which they are affiliated, and as a result, they may elect not to present those opportunities to us. These conflicts may not be resolved in our favor.*¹⁷

* * * *

We have engaged in transactions with our affiliates and expect to do so in the future. The terms of such transactions and the resolution of any conflicts that may arise may not always be in our or our stockholders' best interests.

We have engaged in transactions and expect to continue to engage in transactions with affiliated companies. The resolution of any conflicts that may arise in connection with any related party transactions that we have entered into with NGP, WildHorse Holdings, Esquisto Holdings, Acquisition Co. Holdings or their affiliates, including pricing, duration or other terms of service, may not always be in our or our stockholders' best interests because NGP may have the ability to influence the outcome of these conflicts. For a discussion of potential conflicts, please read “—Certain holders have the ability to direct the voting of a majority of our common stock, and their interests may conflict with those of our other stockholders.”¹⁸

36. Eleven years after NGP's initial investment, WildHorse still maintains

¹⁷ WildHorse Form 10-K, filed Mar. 12, 2018, at 47-48; WildHorse Form 10-K, filed Mar. 31, 2017, at 48-49; *see also* WildHorse Form S-1, filed Nov. 10, 2016, at 44-46 (emphasis added).

¹⁸ WildHorse Form 10-K, filed Mar. 12, 2018, at 50; WildHorse Form 10-K, filed Mar. 31, 2017, at 51 (emphasis added).

a strong relationship with NGP, and WildHorse is considered NGP's largest portfolio company.¹⁹

II. Carlyle Exerts Significant Influence Over NGP

a. The Carlyle Group Is NGP's Largest Investor

37. In December 2012, the Carlyle Group invested \$424 million in NGP ECM in exchange for a 47.5% revenue interest in NGP. The Carlyle Group purchased the revenue interest from Barclays Natural Resource Investments (40%) and NGP management (7.5%) with a combination of cash and the Carlyle Group limited partnership units. During a March 6, 2013 earnings call, Adena Friedman, the Carlyle Group's Chief Financial Officer, described the "revenue interest" as follows:

We own essentially an equity interest in [NGP], but we are getting 47.5% of [NGP's investment] management fees not net of expenses, but straight from the top and we have that going forward.²⁰

¹⁹ WildHorse, Businesswire, "WildHorse Resource Development Corporation Receives Notice of Partial Distribution of WRD Shares," May 14, 2018, <https://www.businesswire.com/news/home/20180514006164/en/WildHorse-Resource-Development-Corporation-Receives-Notice-Partial> (last visited July 10, 2018) ("We are pleased to have the long-term support of NGP, a leading and long-standing energy investor, as WRD continues to represent their largest portfolio company investment," said Jay Graham, Chairman and Chief Executive Officer of WRD.").

²⁰ Citi U.S. Financial Services Conference, Thompson StreetEvents, Mar. 6, 2013.

38. The transaction also bestowed on the Carlyle Group: (i) a right to purchase an additional 7.5% percent revenue interest in NGP; (ii) 7.5% of the carried interest in all future NGP funds; and (iii) options to acquire another 40% interest in carried interest in NGP's flagship fund (NGP Natural Resources X, L.P.) and all future NGP funds.

39. In addition to the \$424 million in cash and the Carlyle Group units paid as transaction consideration, the Carlyle Group also agreed to issue common units separately on February 1, 2018, February 1, 2019 and February 1, 2020 with a value of \$10.0 million per year to an affiliate of NGP. Subsequent to 2020, the Carlyle Group agreed to issue common units on an annual basis with a value not to exceed \$10 million per year based on a prescribed formula, with vesting of the units to occur over a 42-month period.

40. NGP co-founder Hersh described the Carlyle Group's 2012 investment in NGP as follows:

Our current NGP investors will continue to be served tirelessly by NGP's extensive energy expertise, but they will now also benefit from Carlyle's global reach, knowledge of debt financing and capital markets, and its extensive network.... This relationship has tremendous long-term benefits.²¹

²¹ Carlyle Group, News Releases, Dec. 20, 2012, <http://ir.carlyle.com/news-releases/news-release-details/carlyle-group-adds-cornerstone-global-natural->

41. The Carlyle Group's investment was deemed to "cover the revenue streams in all of NGP's current and future funds."²²

42. Between December 2012 and the date of this Complaint, the Carlyle Group has increased its investment in NGP. As disclosed in the Information Statement, the Carlyle Group currently owns a 55% interest in certain gross revenues of NGP ECM.^{23, 24}

43. The Carlyle Group conducts 100% of its North American energy investing through NGP. The Carlyle Group's website states: "NGP—serves as the foundation of our U.S. energy investing business."²⁵

resources (last visited July 18, 2018).

²² Greg Roumeliotis and Ashutosh Pandey, "Carlyle buys into smaller peer in U.S. energy bet," REUTERS, Dec. 20, 2012, <https://www.reuters.com/article/us-carlylegroup-acquisition/carlyle-buys-into-smaller-peer-in-u-s-energy-bet-idUSBRE8BJ0RB20121220> (last visited July 13, 2018).

²³ Information Statement at 11.

²⁴ Carlyle was also given the "option, exercisable by [Carlyle] in 2024, to purchase from ECM Capital, L.P. and its affiliates, for a formulaic purchase price in cash based upon a measure of the earnings of NGP, the remaining equity interests in NGP Management." Carlyle Group Form 10-K, filed Feb 16, 2017, at 207.

²⁵ Carlyle Group, Our Business, Real Assets, <https://www.carlyle.com/our-business/real-assets> (last visited July 18, 2018) (emphasis added).

b. WildHorse Publicly Describes the Carlyle Group As An “Affiliate” Of NGP

44. In WildHorse’s Form 10-Q filed with the SEC on May 10, 2018, the Company lists the Carlyle Group as one of NGP’s “Affiliated Companies,” the same general category in which NGP’s portfolio companies are listed and described as “affiliates” of NGP.²⁶

NGP Affiliated Companies

Carlyle Group, L.P. The Carlyle Group, L.P. and certain of its affiliates indirectly own a 55% interest in certain gross revenues of NGP ECM, which is a limited partner entitled to 47.5% of the carried interest from NGP XI, and is entitled to 40% of the carried interest from NGP X US Holdings (without, in either case, any rights to vote or dispose of either such fund’s direct or indirect interest in us). NGP ECM manages investment funds, including NGP IX US Holdings, L.P. (“NGP IX US Holdings”), NGP X US Holdings and NGP XI, that collectively directly or indirectly through their equity interests in WildHorse Holdings, Esquisio Holdings and Acquisition Co. Holdings own a majority of our outstanding shares of common stock. An affiliate of the Carlyle Group, L.P. purchased 435,000 shares of our preferred stock on June 30, 2017.

NGP ECM. During the three months ended March 31, 2017, we had net disbursements of \$0.1 million related to expense reimbursements associated with their services as directors of WRD. We did not have any related party payments or receipts for the three months ended March 31, 2018.

CH4 Energy. CH4 Energy entities are NGP affiliated companies and Mr. Brannon, one of our directors, is President of these entities. During the three months ended March 31, 2018 we had disbursements of \$0.1 million to certain CH4 Energy entities for office rental and parking payments. During the three months ended March 31, 2017 we had disbursements of \$0.4 million to certain CH4 Energy entities, of which \$0.3 million was a reimbursement of landman services and expenses incurred in 2016 that CH4 Energy entities had paid on our behalf and \$0.1 million was related to office rental and parking payments.

c. The Public Recognizes The Carlyle Group To Be NGP’s “Owner”

45. NGP’s relationship with the Carlyle Group is so well-established that even the general public perceives the Carlyle Group as NGP’s “owner.” For example, significant financial publications have stated:

- “[The Carlyle Group] in 2012 *acquired a controlling stake* in energy-focused private-equity firm NGP and has since raised

²⁶ WildHorse Form 10-Q, filed May 10, 2018, at 28.

several pools of cash to invest in various facets of the industry.”²⁷

- “*Carlyle-Owned NGP Is Said To Scale Back Co-Founder’s Role*”²⁸
- “Investment firms Crestview Partners LP and *NGP, which is owned by Carlyle*, also stand to have big investments in the buyout erased.”²⁹

d. The Carlyle Group’s Co-Founder Considers NGP To Be A Carlyle Subsidiary

46. In an interview given in June 2017 to Bloomberg, David Rubenstein, a co-founder and co-CEO of the Carlyle Group, referred to NGP as “Carlyle’s NGP subsidiary”³⁰:

²⁷ Dana Mattioli and Ryan Dezember, “Halliburton, Baker Hughes in Talks to Sell \$7 Billion of Assets to Carlyle Group,” WALL STREET JOURNAL, April 14, 2016, <https://www.wsj.com/articles/halliburton-baker-hughes-in-talks-to-sell-assets-to-carlyle-group-1460658525> (last visited July 13, 2018) (emphasis added).

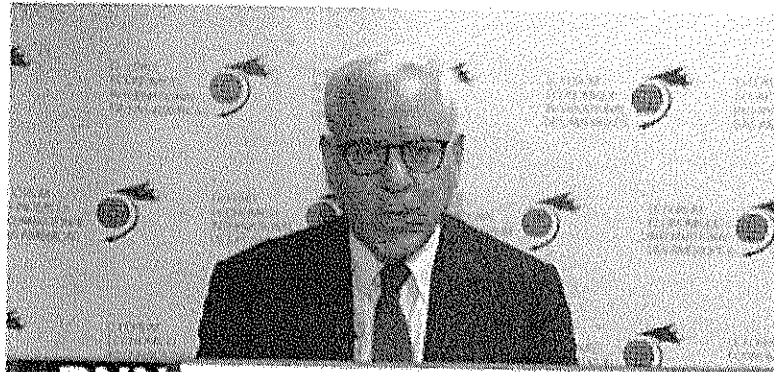
²⁸ Sabrina Willmer, “Carlyle-Owned NGP Is Said to Scale Back Co-Founder’s Role,” BLOOMBERG, Feb. 12, 2014, <https://www.bnnbloomberg.ca/canada-is-an-attractive-place-to-invest-carlyle-group-s-rubenstein-1.778871> (last visited July 13, 2018) (emphasis added).

²⁹ Matt Jarzemsky and Ryan Dezember, “KKR’s Samson Resources Plans Chapter 11 Filing by Mid-September,” WALL STREET JOURNAL, Aug. 14, 2015, <https://www.wsj.com/articles/kkrs-samson-resources-plans-chapter-11-filing-by-mid-september-1439587160> (last visited July 13, 2018).

³⁰ Shane McNeil, “Canada is an ‘attractive’ place to invest: Carlyle Group’s Rubenstein,” BNN BLOOMBERG, Jun. 14, 2017, <https://www.bnnbloomberg.ca/canada-is-an-attractive-place-to-invest-carlyle-group-s-rubenstein-1.778871> (last visited July 13, 2018) (emphasis added).

Canada is an 'attractive' place to invest: Carlyle Group's Rubenstein

By David M. Smith, CIBC A.M. (CIBC)



BNN
EXCLUSIVE

MONTREAL
DAVID RUBENSTEIN
CO-FOUNDER & CO-CEO, THE CARLYLE GROUP

David Rubenstein, 2018

David Rubenstein, 2018

"I think that the plus on the Canadian side is that energy prices are likely to go up," he said. "I think over the next year or so as more deregulatory actions are taken with respect to energy in the United States, I think that will have an impact that is positive for Canada."

Carlyle's NGP subsidiary has long been an investor in Canada's energy sector, according to Rubenstein, and he sees that investment continuing considering where he sees energy prices in the long-term.

47. Another of the Carlyle Group's co-CEOs, Glenn Youngkin ("Youngkin"), commonly refers to NGP's funds as the Carlyle Group's "own" fund in earnings calls with investors: "*Our latest vintage NGP fund* is crossing over \$3 billion in commitments."³¹

³¹ Q1 2018 Carlyle Group Earnings Call, May 1, 2018, <https://finance.yahoo.com/news/edited-transcript-cg-earnings-conference-151840653.html> (last visited July 18, 2018) (emphasis added).

e. NGP's Co-Founder Serves As A Senior Advisor To The Carlyle Group

48. In addition to co-founding NGP, Hersh also serves as a “Senior Advisor” to the Carlyle Group. Hersh also serves as the Carlyle Group’s Deputy Chief Investment Officer for the Carlyle Group’s natural resources division.

49. In a February 2014 interview with Lee Cullum of PBS, Hersh had nothing but praise for the Carlyle Group:

[Lee Cullum]: “The Carlyle Group has put a lot of money into your company. I think they what, bought about 45.7% interest in the revenue with a right to buy. Seven and a half percent more which will make 55%. Then a further, they bought this from Barclays, a further right to buy 40% of future funds and one existing fund. What has this meant for you?”

[Hersh]: “Well, it’s really meant that we have formed a strategic partnership with the Carlyle Group. It’s really one of the classiest, smartest, most complete, global asset management business in the alternative investment space in the world. And it brings to us if we need it, kind of a global footprint whether it be in resources or in transaction support. For them, it provides, we provide them a North American energy investment platform that with their client base can access. For us, we affiliate from a strategic partnership sense with a world class asset management firm that has know how in so many different areas.”³²

³² Lee Cullum Interview With Ken Hersh, PBS, Feb. 7, 2014, <https://www.pbs.org/video/ceo-ken-hersh-ngp-energy-capital-management/> (last visited July 13, 2018) (emphasis added).

f. NGP And Carlyle Jointly Pursue Investment Opportunities

50. Since 2012, NGP and the Carlyle Group have jointly raised billions of dollars in capital. For example, on January 16, 2015, the Carlyle Group announced that NGP and the Carlyle Group “hit its hard cap” with respect to raising funds for NGP XI. In total, the firms raised \$5.325 billion in capital for the NGP XI fund.³³

51. In July 2017, *The Wall Street Journal* reported that NGP and the Carlyle Group were seeking \$5.3 billion in capital for NGP’s newest fund called “NGP Natural Resources XII LP” (“NGP XII”).³⁴ In an August 2, 2017 earnings call, William E. Conway, another Carlyle Group co-founder and co-CEO, confirmed that NGP and Carlyle were in the process of raising funds for NGP XII:

In domestic energy business, *NGP, which is a fabulous business, as you know, we’re raising the XII fund now*. The first 9 funds all reached carry, we expect that’ll happen to X and XI as well. And hopefully it will continue for the future.³⁵

³³ The Carlyle Group, “NGP Energy Capital Management Closes \$5.325 Billion Private Equity Fund at its Hard Cap,” Jan. 15, 2015, <https://www.carlyle.com/media-room/news-release-archive/ngp-energy-capital-management-closes-5325-billion-private-equity> (last visited July 13, 2018).

³⁴ Dawn Lin, “NGP Seeks \$5.3 Billion for New Pursuits in Energy Patch,” WALL STREET JOURNAL, July 10, 2017, <https://www.wsj.com/articles/ngp-seeks-5-3-billion-for-new-pursuits-in-energy-patch-1499684400> (last visited July 13, 2018).

³⁵ Q2 2018 Carlyle Group Earnings Call, Aug. 2, 2018, <http://ir.carlyle.com/static-files/d0dd9a90-ac1e-49cd-a43a-d7f34d2b8360> (last visited July 18, 2018) (emphasis added).

52. According to the Carlyle Group's Form 10-Q filed with the SEC on May 1, 2018, NGP and the Carlyle Group have already raised \$2.895 billion for NGP XII and are still continuing their fundraising efforts.³⁶

53. On November 21, 2014, Gieselman (of NGP), John Foster (another NGP managing director) and the Carlyle Group's Jessica Brennan made a pitch to the New Hampshire Retirement System to persuade it to invest in NGP XI.³⁷

54. In total, as disclosed in the Carlyle Group's Form 10-K filed with the SEC on February 15, 2018, the Carlyle Group has invested and raised billions in total capital commitments with NGP and its affiliate funds.³⁸

Our Family of Funds

The following chart presents the name (acronym), total capital commitments (in the case of our carry funds, structured credit funds, and the NGP management fee funds), assets under management (in the case of structured products), gross assets (in the case of our business development companies) and vintage year of the active funds in each of our segments, as of December 31, 2017. We present total capital commitments (as opposed to assets under management) for our closed-end investment funds because we believe this metric provides the most useful information regarding the relative size and scale of such funds. In the case of our products which are open-ended and accordingly do not have permanent committed capital, we generally believe the most useful metric regarding relative size and scale is assets under management.

³⁶ Carlyle Group Form 10-Q, filed May 1, 2018, at 103.

³⁷ New Hampshire Retirement System, "Independent Investment Committee Meeting, Public Minutes," Nov. 21, 2014, <https://www.nhrs.org/docs/default-source/independent-investment-committee/independent-investment-committee-minutes---november-2014.pdf?sfvrsn=12> (last visited July 13, 2018).

³⁸ Carlyle Group Form 10-K, filed Feb. 15, 2018, at 13.

Real Assets		
Real Estate Carry Funds		
Carlyle Realty Partners (U.S.)		
CRP VIII	\$5.0 bn	2017
CRP VII	\$4.2 bn	2014
CRP VI	\$2.3 bn	2011
CRP V	\$3.0 bn	2006
CRP IV	\$950 mm	2005
CRP III	\$564 mm	2001
Carlyle Europe Real Estate Partners		
CER	€99 mm	2017
CEREP III	€2.2 bn	2007
Carlyle Asia Real Estate Partners		
CCR	\$120 mm	2016
CAREP II	\$486 mm	2008
Core Plus Real Estate (U.S.)		
CPI	\$1.1 bn	2016
Natural Resources Funds		
Infrastructure Carry Fund		
CGIOF	\$756 mm	2017
CIP I	\$1.1 bn	2006
Power Carry Funds		
CPP II	\$1.5 bn	2014
CPOCP	\$478 mm	2013
International Energy Carry Fund		
IECF I	\$2.5 bn	2013
NGP Energy Carry Funds		
NGP XII	\$2.8 bn	2017
NGP XI	\$5.3 bn	2014
NGP X	\$3.6 bn	2012
NGP Agribusiness Carry Fund		
NGP GAP	\$402 mm	2014
NGP Management Fee Funds		
Various	\$7.2 bn	2004-2008
Legacy Energy Carry Funds		
Carlyle/Riverstone Global Energy		
Energy IV	\$6.0 bn	2008
Energy III	\$3.8 bn	2005
Energy II	\$1.1 bn	2003
Carlyle/Riverstone Renewable Energy		
Renew II	\$3.4 bn	2008

55. In addition to raising capital together for NGP's funds, NGP and the Carlyle Group created funds to foster co-investment opportunities. For example, in October 2014, NGP and the Carlyle Group created "Carlyle NGP Agribusiness

Coinvestment LP,” a fund to invest in agribusinesses. According to SEC filings, NGP and the Carlyle Group raised \$11.38 million (as of October 3, 2014).³⁹

56. In the same month, NGP and the Carlyle Group formed another fund called “NGP XI Coinvestment, LP.” The Form D filed with the SEC on October 6, 2014, uses a “care of” address of “The Carlyle Group, Suite 220 South 1001 Pennsylvania Avenue, N.W.” The filing indicates that as of October 3, 2014, NGP and the Carlyle Group had raised \$215.3 million in capital.⁴⁰

g. NGP And The Carlyle Group Publish Articles And Host Joint Podcasts

57. NGP and the Carlyle Group repeatedly portray themselves as a united front with respect to investing in the energy sector. The Carlyle Group and NGP jointly author articles in the “Carlyle Comment” as well as host joint podcasts.

- “Opportunity in Recovery: Experts Share Their Perspectives on the Energy Outlook”⁴¹
- “Oil Market Commentary: Where the Past Is—and Is Not—Prologue”⁴²

³⁹ Carlyle NGP Agribusiness Coinvestment, LP Form D Filed Oct. 6, 2014, .

⁴⁰ NGP XI Coinvestment, LP Form D, filed Oct. 6, 2014.

⁴¹ The Carlyle Group, “Opportunity in Recovery: Experts Share Their Perspectives on the Energy Outlook,” CARLYLE COMMENT, Mar. 6, 2017, https://www.carlyle.com/sites/default/files/market_commentary/CarlyleComment_Energy_Mar2017_FINAL.pdf (last visited July 13, 2018).

⁴² The Carlyle Group, “Oil Market Commentary: Where the Past Is—and Is Not—

- “The Carlyle Group Releases Latest in Valucast Podcast Series – ‘The Upside of Down: The Impact Of Falling Energy Prices’”⁴³
- “The Carlyle Group Releases Latest in Valucast Audio Podcast – Panel Discussion on Global Energy Markets and Investment Climate”⁴⁴
- “The Carlyle Group Releases Latest in Valucast Podcast Series – Global Energy: What’s Hot & What’s Not – Parts I & II”⁴⁵

Prologue,” January 11, 2017,

[https://www.carlyle.com/sites/default/files/2017-](https://www.carlyle.com/sites/default/files/2017-10/OilMarketCommentary_Jan2017_FINAL.pdf)

[10/OilMarketCommentary_Jan2017_FINAL.pdf](https://www.carlyle.com/sites/default/files/2017-10/OilMarketCommentary_Jan2017_FINAL.pdf) (last visited July 13, 2018).

⁴³ The Carlyle Group, “The Carlyle Group Releases Latest in Valucast Podcast Series,” Dec. 9, 2014, <https://www.carlyle.com/media-room/news-release-archive/carlyle-group-releases-latest-valucast-podcast-series-3> (last visited July 13, 2018).

⁴⁴ The Carlyle Group, “The Carlyle Group Releases Latest in Valucast Audio Podcast Series,” Sept. 24, 2013, <http://ir.carlyle.com/news-releases/news-release-details/carlyle-group-releases-latest-valucast-audio-podcast-series> (last visited July 13, 2018).

⁴⁵ The Carlyle Group, “The Carlyle Group Releases Latest in Valucast Podcast Series,” Sept. 3, 2014, <https://ngpenergycapital.com/the-carlyle-group-releases-latest-in-valucast-podcast-series/> (last visited July 13, 2018).

III. With The Terms Of The Anadarko Acquisition Nearly Complete, WildHorse Management Seeks Financing From Carlyle Without The Full Board's Knowledge

58. In late March 2017, WildHorse entered into an auction to acquire acreage located in the Eagle Ford Shale from Anadarko and KKR.

59. [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

60. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

61.

[REDACTED]

[REDACTED]

[REDACTED]

62. To raise capital in connection with WildHorse's potential acquisition of Anadarko, WildHorse management and NGP—without the knowledge or approval of the full Board—immediately looked to Carlyle. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

63. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

64. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

65. With a proposed transaction timeline in place and without the supervision of independent advisors or a committee of independent directors,

negotiations between NGP, WildHorse management and Carlyle continued. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

IV. Due To NGP's Close Relationship With The Carlyle Group, The NGP-Controlled Board Forms A Special Committee

66. With the material terms to the Preferred Stock Issuance already locked-in and the Anadarko Acquisition barreling forward, the Board belatedly formed a Special Committee comprised of two WildHorse directors—Clarkson and Sims.

67. According to the Information Statement, the Special Committee was formed because a majority of the Board was not independent and/or disinterested from NGP and/or the Carlyle Group:

INTEREST OF CERTAIN PERSONS IN THE ACTION TAKEN

The Carlyle Group, L.P. and certain of its affiliates indirectly own a 55% interest in certain gross revenues of NGP ECM, is a limited partner, and is entitled to 47.5% of the carried interest from, NGP XI, and is entitled to 40% of the carried interest from NGP X US Holdings, L.P. ("NGP X US Holdings") (without, in either case, any rights to vote or dispose of either such fund's direct or indirect interest in us). NGP ECM manages investment funds, including NGP IX US Holdings, L.P. ("NGP IX US Holdings"), NGP X US Holdings and NGP XI, that collectively directly or indirectly through their equity interests in WildHorse Holdings, Esquisto Holdings and Acquisition Co. Holdings own a majority of our outstanding shares of common stock. See "Security Ownership of Certain Beneficial Owners and Management."

As a result of this relationship with NGP ECM and the Company, the board of directors of the Company established the Special Committee consisting solely of directors who do not have an interest in the issuance of the Preferred Stock that is different from, or in addition to, the interests of the Company's stockholders generally, who are independent of any party who may have such an interest, and who are not officers of the Company or affiliated with, or employed by, any member of our controlling stockholder group, to among other things, consider, evaluate, review, negotiate and determine the terms of the Preferred Stock. The Special Committee recommended the approval by our board of directors of the issuance of the Preferred Stock to the Carlyle Investor. In consideration of the recommendation of the Special Committee, our board of directors approved the issuance of the Preferred Stock and the related actions.

Other than as described above, no person who has been an officer or director of the Company since January 1, 2017, nor any associate of such person, has any substantial interest by security holding or otherwise in the issuance of the shares of common stock underlying the shares of the Preferred Stock.

* * * *

Why did the board of directors of the Company form the Special Committee to consider, negotiate and determine the terms of the Preferred Stock?

The board of directors of the Company established the Special Committee, consisting solely of directors who do not have an interest in the issuance of the Preferred Stock that is different from, or in addition to, the interests of the Company's stockholders generally, who are independent of any party who may have such an interest, and who are not officers of the Company or affiliated with, or employed by, any member of our controlling stockholder group, to among other things, consider, evaluate, review, negotiate and determine the terms of the Preferred Stock. The Special Committee was formed in contemplation of the potential issuance of the Preferred Stock to the Carlyle Investor. The Carlyle Group, L.P. and certain of its affiliates indirectly own a non-controlling revenue interest in NGP ECM, which manages investment funds that indirectly own a majority of our outstanding common stock. Please read "Interest of Certain Persons in the Action Taken."

(Information Statement at 11, 7).

68. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

47

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

69.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

70.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

71.

[REDACTED]

72.

[REDACTED]

V. The Special Committee Is Hamstrung By Its Narrow Mandate And An Unreasonably Short Timeline To Finalize The Preferred Stock Issuance With Carlyle

73.

[REDACTED]

74.

[REDACTED]

[REDACTED]

75. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

VI. Despite Being Repeatedly Told By Its Banker That The Preferred Stock Is Being Issued To Carlyle Too Cheaply, The Special Committee Fails To Negotiate Improved Primary Economic Terms

76. [REDACTED]

[REDACTED]

[REDACTED]

77.

[REDACTED]

78.

[REDACTED]

[REDACTED]

79.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

80.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

81.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

82.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

83.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

84.

[REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

85.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

86.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

87. [REDACTED]

[REDACTED]

88. On July 11, 2017, WildHorse filed the Information Statement, which disclosed that NGP ECM used its majority equity control to unilaterally approve the Preferred Stock Issuance via written consent in lieu of a special meeting of stockholders.

VII. The Terms Of The PSPA Unfairly Favor The Carlyle Investor To WildHorse's Detriment

89. Using the KYNEX Convertible Model, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

90. [REDACTED]

[REDACTED]

[REDACTED] Indeed, according to the Company's own Information Statement, WildHorse used an assumed volatility range of 57% to 64% to value certain WildHorse incentive units as of March 31, 2017—just months prior to the Preferred Stock Issuance.⁴⁹

91. [REDACTED]

[REDACTED]

[REDACTED]

⁴⁹ WildHorse Schedule 14C, filed July 11, 2017, at 38.

[REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

92. In connection with the Preferred Stock Issuance, the Carlyle Investor paid the Company \$435 million in cash and received Preferred Stock with a theoretical value of nearly \$595 million.⁵² Thus, the terms of the Preferred Stock are unfairly favorable to the Carlyle Investor, which unjustly receives a \$160 million (or ~37%) windfall at the direct expense of the Company and its public stockholders.

DERIVATIVE ALLEGATIONS

93. 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 NGP ECM.

94. Plaintiff has owned shares of WildHorse stock continuously during the period of misconduct described herein and continues to hold shares of WildHorse stock.

95. Plaintiff will adequately and fairly represent the interests of WildHorse in enforcing and prosecuting the Company's rights and has retained counsel competent and experienced in stockholder derivative litigation.

⁵² \$18.99 per share x 31.3 million common shares = \$594.39 million

**A MAJORITY OF THE DEMAND BOARD LACKS INDEPENDENCE
FROM NGP AND/OR CARLYLE**

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

97. Plaintiff has not made a demand on WildHorse's current ten-member Demand Board⁵³ to investigate or initiate the claims asserted herein because demand is excused as futile.

98. Such demand would be futile and useless and is thereby excused because a majority of the Demand Board is either interested in the Preferred Stock Issuance and/or lacks independence from NGP and/or the Carlyle Group.

99. Neither **Bernasek** nor **Sumner** could disinterestedly and independently consider a demand to initiate the claims alleged herein because (a) they are managing directors of the Carlyle Group, (b) the Carlyle Investor and the Carlyle Group were the primary beneficiaries of the unfair Preferred Stock Issuance, and (c) pursuing the claims alleged herein would jeopardize the sweetheart deal that Carlyle obtained in the Preferred Stock Issuance and subject Carlyle and its affiliate NGP to substantial financial liability.

⁵³ As alleged *supra* in paragraph 29, the ten-member Demand Board consists of Defendants Bahr, Clarkson, Gieselman, Graham, Hayes, Sims and Weber, as well the relevant non-party directors Bernasek, Sumner and Hildebrandt.

100. **Gieselman, Hayes and Weber** cannot disinterestedly and independently consider a demand to initiate the claims alleged herein because (a) they are each NGP Partners, (b) the Carlyle Group is NGP's strategic partner and largest investor, and (c) pursuing the claims alleged herein would impair NGP's and their own relationship and financial future with the Carlyle Group.

101. **Graham and Bahr** cannot disinterestedly and independently consider a demand to initiate the claims alleged herein because they are senior WildHorse executives who relied on NGP's financial backing to found WildHorse, and they continue to rely on NGP's support for their livelihood. Taking actions antithetical to NGP's interests, including agreeing to prosecute the claims alleged herein, would jeopardize Graham and Bahr's lucrative employment with WildHorse.⁵⁴

102. As explained above in paragraphs 15-22, 100-101, because of **Gieselman, Hayes, Weber, Graham and Bahr's** disabling conflicts, they were each excluded from the Special Committee, which "consist[ed] solely of directors who do not have an interest in the issuance of the Preferred Stock that is different from, or in addition to, the interests of the Company's stockholders generally, who are independent of any party who may have such an interest, and who are not officers

⁵⁴ Graham and Bahr each received approximately \$4.4 million in compensation in 2017.

of the Company or affiliated with, or employed by, any member of our controlling stockholder group, to among other things, consider, evaluate, review, negotiate and determine the terms of the Preferred Stock.”⁵⁵

COUNT I

DERIVATIVE CLAIM FOR BREACH OF FIDUCIARY DUTY AGAINST THE DIRECTOR DEFENDANTS

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

104. By virtue of their positions as directors and/or officers of WildHorse, the Director Defendants owed fiduciary duties of care, loyalty and good faith to WildHorse and its stockholders. In contemplating, formulating, and approving the unfair Preferred Stock Issuance, the Director Defendants breached their fiduciary duties owed to the Company.

105. The Director Defendants did not exercise independence in approving the PSPA, which unfairly enriched the Carlyle Investor and the Carlyle Group—NGP ECM’s largest investor—at the expense of WildHorse and its public stockholders, whose shares have been and will be diluted and devalued.

⁵⁵ Information Statement at 11.

106. As a direct and proximate result of the foregoing breaches of fiduciary duty, WildHorse has sustained damages, as alleged herein.

COUNT II

DERIVATIVE CLAIM FOR BREACH OF FIDUCIARY DUTY AGAINST NGP ECM AS CONTROLLING STOCKHOLDER

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

108. As explained herein, NGP ECM—together with its affiliates—is WildHorse’s controlling stockholder. As such, NGP ECM and its affiliates owed the Company the utmost fiduciary duties of due care, good faith and loyalty.

109. For its own unique and selfish reasons, NGP ECM exploited its control over the Company and the Board to orchestrate the unfair Preferred Stock Issuance.

110. As a result of NGP ECM’s breaches of fiduciary duty, the Company has been harmed as a result of unfair terms of the PSPA.

COUNT III

DERIVATIVE CLAIM FOR UNJUST ENRICHMENT AGAINST THE CARLYLE INVESTOR

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

112. As detailed herein, the Preferred Stock Issuance is unfairly favorable to the Carlyle Investor to the detriment of the Company and its public stockholders, and is the product of breaches of fiduciary duty by the Director Defendants and NGP ECM.

113. Under these circumstances, it would be unconscionable to permit the Carlyle Investor to retain the improper financial benefits received pursuant to the Preferred Stock Issuance.

RELIEF REQUESTED

WHEREFORE, Plaintiff demands judgment as follows:

- A. Finding the Director Defendants liable for breaching their fiduciary duties owed to the Company;
- B. Finding that NGP ECM breached its fiduciary duties in its capacity as the controlling stockholder of WildHorse;
- C. Finding that the Carlyle Investor has been unjustly enriched as a result of the Preferred Stock Issuance;
- D. Finding that demand on the Demand Board is excused as futile;
- E. Awarding WildHorse damages it sustained as a result of the misconduct alleged herein in an amount which may be proven at trial, together with interest thereon;

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

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

Dated: July 30, 2018

ANDREWS & SPRINGER LLC

OF COUNSEL:

**FRIEDMAN OSTER &
TEJTEL PLLC**

Jeremy S. Friedman
Spencer Oster
David F.E. Tejtrel
240 East 79th Street, Suite A
New York, NY 10075
(888) 529-1108

By: /s/ Peter B. Andrews

Peter B. Andrews (#4623)

Craig J. Springer (#5529)

David Sborz (#6203)

3801 Kennett Pike

Building C, Suite 305

Wilmington, DE 19807

(302) 504-4957

Counsel for Plaintiff