UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARK FRASCARELLI and JOHN WHITE, Individually and on Behalf of All Others Similarly Situated

Plaintiffs,

v.

PHYSICIANS REALTY TRUST, JOHN T. THOMAS, TOMMY G. THOMPSON, STANTON D. ANDERSON, MARK A. BAUMGARTNER, ALBERT C. BLACK, JR., PAMELA J. KESSLER, AVA E. LIAS-BOOKER, RICHARD A. WEISS, and WILLIAM E. EBINGER,

Case No. 24-cv-00047-PAE

AMENDED COMPLAINT FOR (I) VIOLATIONS OF SECTIONS 14(a) AND 20(a) OF THE SECURITIES EXCHANGE ACT OF 1934, AND (II) BREACHES OF FIDUCIARY DUTY UNDER MARYLAND STATE LAW

CLASS ACTION

JURY TRIAL DEMANDED

Plaintiffs Mark Frascarelli and John White ("Plaintiffs"), individually and on behalf of all others similarly situated, by the undersigned attorneys, allege as follows based (i) upon personal knowledge with respect to Plaintiffs' own acts, and (ii) upon information and belief as to all other matters based on the investigation conducted by Plaintiffs' attorneys, which included, among other things, a review of relevant U.S. Securities and Exchange Commission ("SEC") filings, and other publicly available information.

NATURE OF THE ACTION

1. This action is brought by Plaintiffs, individually and on behalf of the Class (as defined below), against Physicians Realty Trust ("PRT" or the "Company") and the members of the Company's board of trustees ("Board") for (i) violations of Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78n(a) and § 78t(a), and Securities and Exchange Commission ("SEC") Rule 14a-9 promulgated thereunder, 17 C.F.R. § 240.14a-9(a) ("Rule 14a-9"), and (ii) breaches of fiduciary duty under Maryland state law.

Plaintiffs' claims arise in connection with the solicitation of PRT's public stockholders to vote in favor of a stock-for-stock merger transaction ("Merger") under a merger agreement ("Merger Agreement") pursuant to which PRT will merge with and into an affiliate of Healthpeak Properties, Inc. ("Healthpeak"), and in exchange PRT stockholders will receive 0.674 shares of newly issued Healthpeak common stock for each PRT share held ("Exchange Ratio"). The Exchange Ratio is fixed and will not be adjusted to reflect stock price changes of PRT and Healthpeak prior to the closing of the Merger. As a result of the Merger, Healthpeak and PRT stockholders will own approximately 77% and 23% of the combined company, respectively.

2. On October 30, 2023, PRT and Healthpeak issued a press release announcing the Merger. The press release advised that "BofA Securities and KeyBanc Capital Markets Inc. are serving as *lead financial advisors*" to PRT. The press also advised that BMO Capital Markets Corp. is serving as a financial advisor to PRT.

3. On January 11, 2024, PRT filed a definitive proxy ("Proxy") on Schedule 14A under Section 14(a) of the Exchange Act, to solicit the votes of PRT stockholders to vote in favor the Merger. As the Proxy states, "the Physicians Realty Trust board of trustees is soliciting proxies from its shareholders." The Proxy, however, contains material misrepresentations and omissions, and therefore (i) violates Sections 14(a) and 20(a) of the Exchange Act and Rule 14a-9, and (ii) breaches the Board's fiduciary duties under Maryland law.

4. The Proxy advises that a special meeting ("Special Meeting") of PRT stockholders will be held on February 21, 2024, to vote on the Merger ("Stockholder Vote"). The Proxy further advises PRT stockholders that "[y]our vote is important," and that approval of the Merger "requires the affirmative vote of a majority of the votes entitled to be cast by holders of Physician Realty Trust common shares."

5. The material misrepresentations and omissions in the Proxy must be cured in advance of the Stockholder Vote to enable PRT stockholders to cast informed votes with respect to the Merger. Therefore, Plaintiffs seek to enjoin the Defendants from taking any further steps to consummate the Merger and schedule the Stockholder Vote, until such violations are cured. Alternatively, if the Merger is consummated, Plaintiffs reserve the right to recover damages suffered by Plaintiffs and other PRT stockholders as a result of such violations, and/or seek other appropriate relief.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over the claims asserted herein for violations of Sections 14(a) and 20(a) of the Exchange Act pursuant to Section 27 of the Exchange Act, 15 U.S.C. § 78aa, and 28 U.S.C. § 1331 (federal question jurisdiction). The Court has subject matter jurisdiction over the claims for breach of fiduciary duty under Maryland law under 28 U.S.C. § 1367 (providing supplemental jurisdiction over all other claims that are related to claims in the action within the Court's original jurisdiction).

7. This Court has personal jurisdiction over each of the Defendants because each has sufficient minimum contacts with the United States so as to make the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice. *See Moon Joo Yu v. Premiere Power LLC*, No. 14 CIV. 7588 KPF, 2015 WL 4629495, at *5 (S.D.N.Y. Aug. 4, 2015) (because Exchange Act provides for nationwide service of process, and Defendant resides within the United States, and conducts business within the United States, he should reasonably anticipate being hauled into court in the United States, and Court's exercise of personal jurisdiction over Defendant with respect to Plaintiffs' securities fraud claim is proper); *In re LIBOR-Based Fin. Instruments Antitrust Litig*., No. 11 MDL 2262 NRB, 2015 WL 6243526, at *23 (S.D.N.Y.

Oct. 20, 2015) ("[w]hen the jurisdictional issue flows from a federal statutory grant that authorizes suit under federal-question jurisdiction and nationwide service of process . . . Second Circuit has consistently held that the minimum-contacts test in such circumstances looks to contacts with the entire United States rather than with the forum state.").

8. Venue is proper under 28 U.S.C. § 1391(b) because Defendants transact business in this District. In particular, the Company's common stock trades under the ticker "DOC" on the New York Stock Exchange, which is headquartered in this District, and the false and misleading Proxy was filed with the SEC, which has a regional office in this District. *See Mariash v. Morrill*, 496 F.2d 1138, 1144 (2d Cir. 1974) (venue appropriate in the Southern District of New York where an act or transaction constituting the alleged violation occurred in the Southern District of New York); *United States v. Svoboda*, 347 F.3d 471, 484 n.13 (2d Cir. 2003) (venue in tender offer fraud prosecution appropriate in District).

PARTIES

9. Plaintiff Mark Frascarelli is and has been a stockholder of PRT common stock at all relevant times.

10. Plaintiff John White is and has been a stockholder of PRT common stock at all relevant times.

11. Defendant PRT is a Maryland corporation with its principal executive offices located at 309 N. Water Street, Suite 500, Milwaukee, Wisconsin 53202. PRT develops, owns and manages healthcare properties that are leased to physicians, hospitals, and healthcare delivery systems.

12. Defendant John T. Thomas presently serves as PRT's President and Chief Executive Officer, and has served as a member of the Board at all relevant times.

13. Defendant Tommy G. Thompson presently serves as Chairman of the Board, and has served as a member of the Board at all relevant times.

14. Defendant Stanton D. Anderson has served as a member of the Board at all relevant times.

15. Defendant Mark A. Baumgartner has served as a member of the Board at all relevant times.

16. Defendant Albert C. Black, Jr. has served as a member of the Board at all relevant times.

17. Defendant Pamela J. Kessler has served as a member of the Board at all relevant times.

18. Defendant Ava E. Lias-Booker has served as a member of the Board at all relevant times.

19. Defendant Richard A. Weiss has served as a member of the Board at all relevant times.

20. Defendant William A. Ebinger has served as a member of the Board at all relevant times.

21. Defendants identified in paragraphs 12 to 20 are collectively referred to herein as the "Individual Defendants," and together with PRT, collectively, the "Defendants."

SUBSTANTIVE ALLEGATIONS[1]

Progression of Merger Discussions Between PRT and Healthpeak

22. On July 1, 2023, Defendant Thomas and Scott M. Brinker, the President and CEO of Healthpeak, met in person to explore potential strategic opportunities between the two

[1] Any emphasis in quoted language is added, unless otherwise noted.

companies, including, among other things, the possibility of a business combination. In the months that followed, in consultation with their respective boards and advisors, discussions between Defendant Thomas and Mr. Brinker concerning the terms of a potential combination progressed to negotiation of the Merger Agreement.

23. During the course of the discussions between PRT and Healthpeak, the Board did not authorize its financial advisors to reach out to any alternative potential counterparties.

PRT's Financial Advisors

24. On August 25, 2023, Defendant Thomas contacted representatives of BofA Securities, which had provided various financing services to PRT in the past, to conduct a preliminary financial and strategic analysis of the potential merits of a business combination with Healthpeak based on publicly available information.

25. On September 19, 2023, BofA Securities provided a disclosure memorandum to PRT containing information about BofA Securities' past relationships with Healthpeak.

26. On October 16, 2023, an unnamed member of the Board contacted KeyBanc Capital Markets Inc. ("KeyBanc") and asked KeyBanc to serve as an additional financial advisor in connection with the potential business combination with Healthpeak. PRT engaged KeyBanc because of, among other factors, "its *familiarity* with *both* PRT and Healthpeak."

27. On October 24, 2023, BofA Securities provided an updated disclosure memorandum to PRT providing information about BofA Securities' past relationships with Healthpeak.

28. On October 25, 2023, KeyBanc formally executed its engagement letter to serve as a financial advisor to PRT in connection with the proposed transaction with Healthpeak.

29. On October 26, 2023, during a meeting of the Board, KeyBanc disclosed the nature

and extent of its relationship with Healthpeak, and shared its views regarding the potential transaction with Healthpeak.

30. Later that day, BofA Securities formally executed its engagement letter to serve as a financial advisor to PRT in connection with the proposed transaction with Healthpeak.

31. On October 28, 2023, BofA Securities provided its opinion ("Fairness Opinion") to the Board that the Exchange Ratio was fair to PRT stockholders. Thereafter, the Board approved the Merger and recommended that PRT stockholders approve the Merger.

32. As noted above, on October 30, 2023, PRT and Healthpeak issued a press release announcing the Merger that identified both BofA Securities and KeyBanc as PRT's "lead financial advisors."

The Proxy Contains Material Omissions That Render Statements Therein Misleading

33. Defendants disseminated a false and misleading Proxy to PRT stockholders that makes partial disclosures and omits material information that render statements in the Proxy misleading, and thus deprive Plaintiffs and other PRT stockholders of their right to cast fully informed votes with respect to the Merger.

Material Omissions Concerning (i) the Compensation and Potential Conflicts of KeyBanc, and (ii) the Extent of the Contingent Nature of the Compensation Provided to BofA for its Services in Connection with the Merger

34. Once a company speaks on an issue or topic, there is a duty to tell the whole truth. Consequently, partial disclosure concerning material relationships between a seller's financial advisors and entities on the buy side that omits important details constitutes a material omission.

35. In particular, because of the central role played by financial advisors with respect to the evaluation and negotiation of strategic alternatives, the compensation and potential conflicts of a target's financial advisors are material facts that must be fully disclosed to stockholders before

a vote. That is the case even with respect to financial advisors that have not provided a fairness opinion. Such disclosure must include the amount of such compensation, and whether such compensation is contingent on the consummation of the transaction.

36. Here, the Proxy discloses that PRT retained KeyBanc to serve as a financial advisor with respect to the proposed transaction with Healthpeak. Indeed, the press release announcing the Merger identified KeyBanc as one of PRT's "lead financial advisors" (together with BofA Securities). While KeyBanc did not provide a fairness opinion, it concededly provided advice to the Board regarding the potential transaction with Healthpeak at the Board meeting on October 26, 2023 (and undoubtedly at other points given the characterization of KeyBanc as a "lead financial advisor"). Nevertheless, despite KeyBanc having served as a lead financial advisor to PRT, the Proxy fails to disclose any information whatsoever concerning the amount and nature of the compensation paid by PRT to KeyBanc in connection with the Merger.

37. Additionally, the Proxy advises that (i) PRT retained KeyBanc in part due to KeyBanc's "familiarity" with Healthpeak, and (ii) at a Board meeting on October 26, 2023, KeyBanc disclosed the nature and extent of its relationship with Healthpeak. Yet, despite having partially disclosed that KeyBanc had (and may still have) a business relationship with Healthpeak, the Proxy fails to disclose the nature of the services previously provided and/or concurrently being provided by KeyBanc to Healthpeak, and the compensation paid to KeyBanc for such services. Likewise, there is no disclosure in the Proxy concerning services previously and/or concurrently provided by KeyBanc to PRT, and the compensation paid to KeyBanc for such services.

38. Finally, the Proxy fails to identify the unnamed Board member who approached KeyBanc on October 16, 2023, to serve as a financial advisor.

39. In contrast, the Proxy provides fulsome disclosure concerning potential conflicts arising out of services provided by BofA Securities to both PRT and Healthpeak, and the amount and nature of the compensation paid to BofA Securities for such services:

> In October 2023, prior to the execution of the Merger Agreement, members of Healthpeak management approached representatives of BofA Securities and its affiliates, including Bank of America, N.A., about acting as a lender, administrative agent, joint lead arranger, and bookrunner in connection with a new $500 million term loan, which Healthpeak management contemplated executing in connection with Healthpeak's existing credit facility. BofA Securities informed Physicians Realty Trust of the potential term loan, and advised Physicians Realty Trust of the potential or perceived conflicts of interest that may arise or result from the participation of BofA Securities and/or its affiliates in such term loan and the fees payable to BofA Securities and/or its affiliates in connection therewith. After considering such potential or perceived conflicts of interest, Physicians Realty Trust provided its consent to BofA Securities with respect to its (or its affiliates') participation in the potential term loan. The terms thereof remain subject to discussion among Healthpeak and the applicable other parties thereto, and the foregoing disclosure should not be deemed to constitute a commitment of BofA Securities or any of its affiliates to provide or arrange any potential financing transactions.
>
> * * *
>
> Physicians Realty Trust has agreed to pay BofA Securities for its services in connection with the Company Merger ***an aggregate fee of $18 million, a portion of which was payable in connection with its opinion and a significant portion of which is contingent upon the completion of the transaction***.
>
> * * *
>
> ***Physicians Realty Trust has agreed to pay BofA Securities for its services in connection with the Company Merger an aggregate fee of $18 million, a portion of which was payable in connection with its opinion and a significant portion of which is contingent upon the completion of the transaction***.
>
> BofA Securities and its affiliates in the past have provided, currently are providing, and in the future may provide, investment banking, commercial banking and other financial services to Physicians Realty Trust and certain of its affiliates, and have received or in the future may receive compensation for the rendering of these services, including having acted or acting as documentation agent and lender in a $1.4 billion credit facility for Physicians Realty Trust. BofA Securities and its affiliates also provide certain treasury services to Physicians Realty Trust. ***From November 2021 through October 2023, BofA Securities and its affiliates derived aggregate revenues from Physicians Realty Trust and its affiliates of approximately $1.0 million for investment and corporate banking services.***

> In addition, BofA Securities and its affiliates in the past have provided, currently are providing, and in the future may provide investment banking, commercial banking and other financial services to Healthpeak and certain of its affiliates, and have received or in the future may receive compensation for the rendering of these services, including having acted or acting as (i) a selling group member on a $1.5 billion registered at the-market equity offering program for Healthpeak; (ii) a placement agent on a $2.0 billion commercial paper program; (iii) from 2021 to 2023, as a selling group member on a $1.5 billion registered at-the-market equity offering program for Healthpeak; (iv) in 2023, as joint book-running manager on a $400 million registered senior unsecured notes offering for Healthpeak; and (v) in 2023, as a joint book-running manager on a $350 million registered senior unsecured notes offering for Healthpeak. BofA Securities and its affiliates have acted as administrative agent, joint bookrunner, co-lead arranger and lender on a $500 million term loan facility for Healthpeak, and as administrative agent, joint bookrunner, co-lead arranger, letter of credit lender, and lender on a $3.0 billion revolving credit facility for Healthpeak, and the counterparty on an interest rate swap agreement relating to $250 million aggregate principal amount of the term loan facility. In addition, BofA Securities and its affiliates also may be a lender in a new term loan that Healthpeak expects to enter into, for which services BofA Securities and its affiliates would expect to receive customary fees. BofA Securities and its affiliates are a market maker in Healthpeak, and also provide certain treasury services to Healthpeak. ***From November 2021 through October 2023, BofA Securities and its affiliates derived aggregate revenues from Healthpeak and its affiliates of approximately $10.0 million for investment and corporate banking services.***

40. Additionally, the Proxy identifies Defendant Thomas as the Board member who approached BofA on August 25, 2023, to serve as a financial advisor.

41. Finally, the Proxy discloses that "Physicians Realty Trust has agreed to pay BofA Securities for its services in connection with the Company Merger an aggregate fee of $18 million, a portion of which was payable in connection with its opinion and a ***significant portion*** of which is contingent upon the completion of the transaction." Disclosing only that a "significant portion" of BofA's fee in connection with the Merger is contingent upon consummation of the Merger is insufficient. Instead, the Proxy must quantify the amount of the fee paid to BofA Securities that is contingent.

42. The fulsome disclosures concerning the potential conflicts, and nature and amount of the compensation of BofA Securities (with the one exception noted above), and the complete absence of *any disclosure whatsoever* concerning the potential conflicts, and nature and amount of compensation of KeyBanc—despite both BofA Securities and KeyBanc being identified as lead financial advisors to PRT—is misleading because PRT stockholders have no way of knowing whether KeyBanc's prior and/or concurrent relationships with PRT and Healthpeak were sufficiently consequential in terms of the magnitude of the compensation so as to pose potential conflicts.

43. As such, in advance of the Stockholder Vote, Defendants must disclose (i) the name of the Board member who approached KeyBanc to serve as a financial advisor; (ii) the compensation, if any, payable by PRT to KeyBanc in connection with the Merger, and the percentage of such compensation that is contingent upon the consummation of the Merger; (iii) the nature of the services previously and/or concurrently provided, if any, by KeyBanc to both PRT and Healthpeak within two years of the date of the Proxy, and the aggregate amount of the compensation paid to KeyBanc for such services so that PRT stockholders can contextualize the magnitude of any potential conflict of interest that KeyBanc might have in advising PRT concerning the Merger; and (iv) the percentage of BofA's compensation in connection with the Merger that is contingent upon consummation of the Merger.

Material Omissions Concerning the Compensation and Potential Conflicts of BMO Capital Markets

44. The press release announcing the Merger states that "BofA Securities and KeyBanc Capital Markets Inc. are serving as lead financial advisors, ***BMO Capital Markets Corp. is serving as financial advisor***, and Baker McKenzie is acting as legal advisor to Physicians Realty Trust."

45. There is, however, no disclosure in the Proxy whatsoever concerning the nature of the services provided by BMO Capital Markets Corp. ("BMO") to PRT in connection with the Merger, and the nature and amount of the compensation to be paid to BMO for such services. Nor is there any disclosure concerning any potential conflicts of BMO arising from past and/or concurrent services provided by BMO to PRT and/or Healthpeak. Defendants must disclose such information to PRT stockholders in advance of the Stockholder Vote to avoid misleading PRT stockholders.

CLASS ACTION ALLEGATIONS

46. Plaintiffs bring this class action pursuant to Fed. R. Civ. P. 23 on behalf of a class ("Class") consisting of all individuals and entities that were DOC stockholders of record as of the close of business on January 8, 2024 (the record date in the Proxy) ("Class Period"). Excluded from the Class are: (i) Defendants and members of their immediate families; (ii) the officers and directors of the Company and members of their immediate families; and (iii) any person, firm, trust, corporation, or other entity related to or affiliated with any Defendant.

47. Plaintiffs' claims are properly maintainable as a class action under Rule 23 of the Federal Rules of Civil Procedure.

48. The Class is so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiffs at this time and can only be ascertained through discovery, the Proxy discloses that 238,594,802 DOC common shares were issued and outstanding as of January 8, 2024.

49. Plaintiffs' claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of the federal securities laws, as specified above.

50. Plaintiffs will fairly and adequately protect the interests of the Class, and have no interests antagonistic to or in conflict with those of the Class that Plaintiffs seek to represent. Plaintiffs have retained competent counsel experienced in securities class action litigation of this nature.

51. Questions of law and fact are common to the Class and predominate over questions affecting any individual Class member, including, *inter alia*, whether (i) Defendants have violated Section 14(a) of the Exchange Act and Rule 14a-9 promulgated thereunder; (ii) the Individual Defendants have violated Section 20(a) of the Exchange Act and/or breached their fiduciary duties under Maryland law; and (iii) Plaintiffs and the other members of the Class are entitled to injunctive relief.

52. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Plaintiffs know of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action.

53. Defendants have acted, or refused to act, on grounds generally applicable to the Class as a whole, and are causing injury to the entire Class. Therefore, final injunctive relief on behalf of the Class is appropriate.

CLAIMS FOR RELIEF

COUNT I

Against All Defendants
for Violations of Section 14(a) of the Exchange Act and Rule 14a-9

54. Plaintiffs incorporate and repeat each and every allegation above as if fully set forth herein.

55. SEC Rule 14a-9, 17 C.F.R. §240.14a-9, promulgated pursuant to Section 14(a) of the Exchange Act, provides:

> No solicitation subject to this regulation shall be made by means of any Proxy, form of proxy, notice of meeting or other communication, written or oral, containing any statement which, at the time and in light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading.

56. Defendants disseminated a false and misleading Proxy, which made statements that are false and misleading, and omitted material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading in violation of Section 14(a) of the Exchange Act and Rule 14a-9 promulgated thereunder.

57. By virtue of their positions within the Company, and/or roles in the process of preparing, reviewing, and/or disseminating the Proxy, Defendants were aware of their duty not to make false and misleading statements in the Proxy, and not to omit material facts from the Proxy necessary to make statements made therein—in light of the circumstances under which they were made—not misleading.

58. Yet, as specified above, in violation of Section 14(a) of the Exchange Act and Rule 14a-9, Defendants (i) made untrue statements of material fact in the Proxy, and/or (ii) omitted material facts from the Proxy necessary to make statements therein— in light of the circumstances under which they were made—not misleading, in order to induce PRT stockholders to vote in favor of the Merger. Defendants were at least negligent in filing the Proxy with these material misrepresentations and omissions.

59. The material misrepresentations and omissions in the Proxy specified above are material insofar as a reasonable PRT Stockholder would view disclosure of the omitted facts specified above as significantly altering the "total mix" of information made available to PRT stockholders.

60. Since, according to the Proxy, approval of the Merger by a majority of PRT stockholders is necessary to approve the Merger, the Proxy soliciting the votes of PRT stockholders is an essential link in the accomplishment of the Merger. Thus, causation is established.

61. Plaintiffs and other PRT stockholders have no adequate remedy at law, and are threatened with irreparable harm insofar as Plaintiffs and other PRT stockholders will be deprived of their entitlement to cast fully informed votes with respect to the Merger if such material misrepresentations and omissions are not corrected before the Stockholder Vote. Therefore, injunctive relief is appropriate.

COUNT II

Against the Individual Defendants for Violations of Section 20(a) of the Exchange Act

62. Plaintiffs incorporate and repeat each and every allegation above as if fully set forth herein.

63. The Individual Defendants acted as controlling persons of PRT within the meaning of Section 20(a) of the Exchange Act, as alleged herein. By virtue of their positions as officers and/or directors of PRT, and participation in, and/or awareness of the negotiation of the Merger, and/or intimate knowledge of the contents of the Proxy filed with the SEC in order to solicit the votes of PRT stockholders to vote in favor the Merger, they had the power to influence and control, and did influence and control, directly or indirectly, the decision-making of PRT with respect to the Proxy, including the content and dissemination of the various statements in the Proxy that are materially false and misleading, and the omission of material facts specified above.

64. Each of the Individual Defendants was provided with or had unlimited access to copies of the Proxy and other statements that were false and misleading prior to and/or shortly

after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

65. Each of the Individual Defendants had direct and supervisory involvement in the negotiation and approval of the Merger, and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations alleged herein, and exercised same.

66. By virtue of the foregoing, the Individual Defendants had the ability to exercise control over and did control a person or persons who violated Section 14(a), by their acts and omissions as alleged herein. By virtue of their positions as controlling persons, these Defendants are liable pursuant to Section 20(a) of the Exchange Act.

67. Plaintiffs and other PRT stockholders have no adequate remedy at law, and as a result of the Individual Defendants' violations of Section 20(a) of the Exchange Act, are threatened with irreparable harm by virtue of being deprived of their entitlement to cast fully informed votes with respect to the Merger. Therefore, injunctive relief is appropriate.

COUNT III

Against the Individual Defendants for Breach of Fiduciary Duty Under Maryland Law

68. Plaintiffs incorporate and repeat each and every allegation above as if fully set forth herein.

69. The Individual Defendants, as the directors of a Maryland corporation, owed Plaintiffs and other PRT stockholders fiduciary duties under Maryland law in connection with the Merger.

70. The Individual Defendants breached their fiduciary duties under Maryland law by omitting material facts from the Proxy that were necessary for Plaintiffs and other PRT

stockholders to know in order to cast fully informed votes with respect to the Merger.

71. The facts omitted from the Proxy as detailed above were material because there is a substantial likelihood that a reasonable PRT Stockholder would have viewed disclosure of such facts as having significantly altered the 'total mix' of information made available.

72. As a result of the Individual Defendants' breaches of fiduciary duty, Plaintiffs and other PRT stockholders will be harmed by being deprived of their right to cast fully informed votes with respect to the Merger.

73. Plaintiffs and other PRT stockholders have no adequate remedy at law, and as a result of the Individual Defendants' breaches of fiduciary duty, are threatened with irreparable harm by virtue of being deprived of their entitlement to cast fully informed votes with respect to the Merger. Therefore, injunctive relief is appropriate.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment and relief as follows:

A. Determining that this action is a proper class action under Rule 23 of the Federal Rules of Civil Procedure; appointing Plaintiffs as the Class Plaintiffs; and appointing Plaintiffs' counsel as Class Counsel;

B. Enjoining Defendants and their counsel, employees and all other agents and persons acting in concert with them from proceeding with and holding the Stockholder Vote and consummating the Merger, unless and until Defendants disclose and disseminate to PRT stockholders the material information specified above that has been omitted from the Proxy, and correct any false and misleading statements in the Proxy;

C. Finding Defendants liable for violating Sections 14(a) of the Exchange Act and Rule 14a-9 promulgated thereunder;

D. Finding the Individual Defendants liable for (i) violating Section 20(a) of the Exchange Act, and (ii) breaching their fiduciary duties under Maryland state law;

E. Rescinding, to the extent already implemented, the Merger Agreement or any of the transactions contemplated thereby, or granting Plaintiffs and other PRT stockholders rescissory damages;

F. Directing Defendants to account to Plaintiffs and other PRT stockholders for all damages suffered as a result of their misconduct;

G. Awarding Plaintiffs the costs and disbursements of this action, including reasonable attorneys' fees and expenses; and

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

JURY DEMAND

Plaintiffs demand a trial by jury on all claims and issues so triable.

Dated: January 19, 2024

WOHL & FRUCHTER LLP

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