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Transaction ID 62589729
Case No. 12844-VCMR

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, LOWELL D. KRAFF, and APOLLO MANAGEMENT VIII, L.P., Defendants.	C.A. No. 12844-VCMR REDACTED VERSION-- FILED: October 23, 2018

DEFENDANT DAVID J. BERKMAN'S ANSWER TO VERIFIED AMENDED CLASS ACTION COMPLAINT

Defendant David J. Berkman ("Defendant Berkman"), by and through his undersigned counsel, hereby answers and asserts affirmative defenses to the allegations contained in the Verified Amended Class Action Complaint (the "Complaint") of Plaintiffs Stephen Appel ("Plaintiff"). Unless expressly admitted, all allegations in the Complaint are denied.

1. This stockholder class action arises out of the Individual Defendants' failure to honor their fiduciary duties owed to the Company's public stockholders in connection with an all-cash sale of Diamond to Apollo (the "Transaction"). ■

[redacted] Furthermore, the Board intentionally concealed from Diamond stockholders, among other things, the material objections to the Transaction voiced by Stephen J. Cloobeck ("Cloobeck")—Diamond's founder, Board Chairman and largest stockholder—who on at least two occasions stated to the full Board that he was "disappointed with the price" of the Transaction and that "it was not the right time to sell the Company."

ANSWER: The allegations in paragraph 1 contain Plaintiff's characterization of its claims to which no response is required. To the extent an answer is required, Defendant Berkman denies the allegations in this paragraph.

2. At the beginning of 2016, Diamond was a healthy company with bright prospects. Diamond had just recorded its tenth consecutive quarter of record performance and expected increases in revenues and cash flows throughout 2016. [redacted]

ANSWER: The allegations in paragraph 2 contain Plaintiff's characterization of its claims and no response is required. To the extent an answer is required, Defendant Berkman states that the Diamond Resorts International Schedule 14D-9 Form filed with the Securities and Exchange Commission on July 13, 2016 (the "Schedule 14D-9") is the best evidence of its contents and Defendant Berkman denies all allegations that are inconsistent with the Schedule 14D-9. Defendant Berkman respectfully refers the Court to the Schedule 14D-9 for its full, complete, and accurate contents.

3. Apollo, which had long sought to purchase Diamond, saw an opportunity to acquire the Company for a price well below its true value.

ANSWER: Defendant Berkman is aware that Apollo and Diamond discussed merger or financing related activities prior to the Transaction and otherwise denies the allegations in paragraph 3.

4. [redacted]

ANSWER: Defendant Berkman denies the allegations in paragraph 4, except admits that [redacted]

5. [redacted]

ANSWER: Defendant Berkman denies the allegations in paragraph 5, except admits that the Diamond Board of Directors formed a Strategic Review Committee.

6. Three of the four Committee members—Hope Taitz ("Taitz"), Jeffrey Jones ("Jones") and David Berkman ("Berkman")—were afflicted by insuperable conflicts of interest with Apollo. For example, (i) Taitz was a fiduciary of at least twelve Apollo-affiliated companies [redacted] Despite these conflicts and Apollo's pivotal role in putting Diamond in play, the Committee concluded that none of its members had any "material relationships" with any potential bidders for the Company.

ANSWER: Defendant Berkman denies the allegations in paragraph 6, except admits that, with the advice of counsel, the members of the Strategic Review Committee noted that none of the members of the committee had any material relationships with the likely potential bidders for the company at that stage of the process.

7. Furthermore, the Committee hired longtime Apollo advisor Centerview Partners LLC ("Centerview") as its financial advisor. [redacted]

ANSWER: Defendant Berkman denies the allegations in paragraph 7, except admits that Centerview was hired to serve as a financial adviser to the Strategic Review Committee.

8. Following a sales process engineered by the conflicted Committee to deliver Diamond to Apollo for a less than value-maximizing price, Apollo predictably emerged as the winning bidder to purchase Diamond for $30.25 per share. The fairness opinion that Centerview generated to support the insufficient Transaction price was based on flawed financial analysis and contained several material errors. Correcting for Centerview's obvious errors reveals that Apollo's offer of $30.25 per share significantly undervalued Diamond, underscoring that the Transaction consideration was opportunistic and insufficient.

ANSWER: Defendant Berkman denies the allegations in paragraph 8.

9. Diamond founder, Board Chairman and largest stockholder Cloobeck recognized and protested the unfairness of the Transaction. Specifically, and as noted above and detailed below, Cloobeck declared at two different meetings of the full Board that he was "disappointed with the price" of the Transaction and that "it was not the right time to sell the Company." Cloobeck's concerns were sufficiently severe that he abstained from the Board vote on the Transaction. Nevertheless, the Board approved the Transaction on June 29, 2016.

ANSWER: Defendant Berkman admits that Cloobeck was the Diamond founder, Board Chairman and largest stockholder. Defendant Berkman also admits that the minutes of the June 25 and June 26, 2016 Board meetings contain the quoted language, and that Cloobeck abstained from the Board vote on the Transaction on June 26 and June 28, 2016. Defendant Berkman otherwise denies the allegations in paragraph 9.

10. Given Cloobeck's influence and prominence, the Board feared that his objections might derail the Transaction. Thus, the Board knowingly concealed those objections from stockholders by disseminating a false and misleading Schedule 14D-9 Solicitation/Recommendation Statement (together with all amendments and supplements, the "14D-9"), filed with the U.S. Securities and Exchange Commission ("SEC") on July 14, 2016. The 14D-9 failed to disclose that Cloobeck was opposed to the timing and price of the Transaction, and that

those objections drove his decision to abstain from voting on whether to approve the Transaction. As set forth below, Cloobeck's objections were not the only pieces of material information the Board knowingly concealed from Diamond stockholders.

ANSWER: Defendant Berkman states that the 14D-9 speaks for itself and respectfully refers the Court to the 14D-9 for its full and accurate contents. Defendant Berkman otherwise denies the allegations in paragraph 10.

11. In sharp contrast to the unfair Transaction consideration received by Diamond's public stockholders, Apollo received a massive, billion-dollar plus windfall fully consistent with its contemporaneous recognition that [redacted]

ANSWER: Defendant Berkman denies the allegation that the Transaction consideration received by Diamond's public stockholders was unfair, and otherwise lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 11.

12. Through this action, Plaintiff seeks to hold the Director Defendants and Kraff accountable for their disloyal and bad faith breaches of fiduciary duty, and Apollo accountable for aiding and abetting the Board's breaches. Among other remedies, Plaintiff seeks (i) quasi-appraisal damages and (ii) rescissory damages.

ANSWER: The allegations in paragraph 12 contain legal conclusions to which no response is required. To the extent an answer is required, Defendant Berkman denies the allegations in this paragraph.

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

ANSWER: Defendant Berkman lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 13.

14. Defendant Berkman served as a Diamond director from 2013 until September 2, 2016, on which date the Transaction closed. Berkman served as a member of the transaction committee formed in April 2015 to review various transaction alternatives for Diamond (the "Transaction Committee"), and then as a member of the Strategic Review Committee that was formed in February 2016 and steered Diamond into the Transaction with Apollo.

ANSWER: Defendant Berkman admits the allegations in paragraph 14, except denies that he "steered Diamond into the Transaction with Apollo."

15. Defendant Cloobeck is Diamond's founder and served as Chairman of the Diamond Board from the Company's inception until the September 2, 2016 closing of the Transaction. At all times relevant to the Transaction, Cloobeck was the Company's largest stockholder. As of March 31, 2016, Cloobeck beneficially owned 23.9% of the Company's outstanding common stock.

ANSWER: Defendant Berkman admits the allegations in paragraph 15, and respectfully refers the Court to the Schedule 14D-9 for its full, complete, and accurate contents regarding Mr. Cloobeck's ownership interests in the Company.

16. Defendant Richard M. Daley served as a Diamond director from the Company's IPO in July 2013 until the September 2, 2016 closing of the Transaction.

ANSWER: Defendant Berkman admits the allegations in paragraph 16.

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

ANSWER: Defendant Berkman admits the allegations in paragraph 17.

18. Defendant Jones served as a Diamond director from 2015 until the September 2, 2016 closing of the Transaction. Jones served as a member of the Transaction Committee and then served as a member of the Strategic Review Committee that steered Diamond into the Transaction with Apollo.

ANSWER: Defendant Berkman admits the allegations in paragraph 18, except denies that the Strategic Review Committee "steered Diamond into the Transaction with Apollo."

19. Defendant Palmer served as the Company's President and CEO, and as a member of the Diamond Board, from the Company's inception in January 2013 through the closing of the Transaction. Following the closing, Palmer remained the Company's President, CEO, and a member of the Board until December 31, 2016.[1] [redacted]

ANSWER: Defendant Berkman admits the allegations in paragraph 19.

20. Defendant Taitz served as a Diamond director from August 2013 until the September 2, 2016 closing of the Transaction. Taitz served as a member of the Transaction Committee and then as a member of the Strategic Review Committee that steered Diamond into the Transaction with Apollo. Taitz volunteered for the position of and was appointed as Co-Chair of the Strategic Review Committee.

[1] David F. Palmer, Bloomberg Profile, https://www.bloomberg.com/research/stocks/private/person.asp?personId=1160678&privcapId=356133 (last accessed Aug. 15, 2018).

ANSWER: Defendant Berkman admits the allegations in paragraph 20, except denies that the Strategic Review Committee "steered Diamond into the Transaction with Apollo."

21. Defendant Zachary D. Warren ("Warren") served as a Diamond director from the Company's IPO in January 2013 until the September 2, 2016 closing of the Transaction.

ANSWER: Defendant Berkman admits the allegations in paragraph 21, except notes that the Company's IPO was in July 2013.

22. Defendant Robert Wolf ("Wolf") served as a Diamond director from the Company's IPO in July 2013 until the September 2, 2016 closing of the Transaction. Wolf was appointed Co-Chair of the Strategic Review Committee that steered Diamond into the Transaction with Apollo.

ANSWER: Defendant Berkman admits the allegations in paragraph 22 except denies that the Strategic Review Committee "steered Diamond into the Transaction with Apollo."

23. The defendants listed *supra* at ¶¶ 14 through 22 above are collectively referred to herein as the "Board" or the "Director Defendants."

ANSWER: No response is required.

24. Defendant Kraff served on the board of managers of Diamond's predecessor company from April 2007 until January 2013, when he transitioned to serve as the Vice Chairman of the Diamond Board until his resignation on May 24, 2016. [redacted]

ANSWER: Defendant Berkman lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 24.

25. The defendants listed *supra* at ¶¶ 14 through 24 above are collectively referred to herein as the "Individual Defendants."

ANSWER: No response is required.

26. Relevant non-party Diamond was a publicly-traded global leader in the hospitality and vacation ownership (*i.e.*, timeshare) industry, with a worldwide resort network of over 400 vacation destinations located in dozens of countries throughout the world. Diamond common stock was listed on the New York Stock Exchange under the symbol "DRII." The Company's principal headquarters were located at 10600 West Charleston Boulevard, Las Vegas, Nevada 89135.

ANSWER: Defendant Berkman admits the allegations in paragraph 26 and respectfully refers the Court to the Schedule 14D-9 for its full, complete, and accurate contents.

27. Relevant non-party Centerview is an American investment banking and private equity investment firm founded by Robert Pruzan ("Pruzan") and Blair Effron. Centerview served as financial advisor to the Transaction Committee in 2015, and then served as financial advisor to the Strategic Review Committee and the Board in connection with the Transaction. Centerview, among other things, rendered a fairness opinion advising the Strategic Review Committee, the Board, and Diamond stockholders that the Transaction was purportedly fair from a financial point of view.

ANSWER: Defendant Berkman admits that Centerview rendered a fairness opinion advising that the Transaction was fair from a financial point of view and otherwise lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 27.

28. Relevant non-party Gibson, Dunn & Crutcher LLP ("Gibson Dunn") is a global law firm. In early March 2016, the Strategic Review Committee engaged Gibson Dunn as its legal counsel. Gibson Dunn was responsible for, among other things, drafting the 14D-9 that was disseminated to Diamond stockholders soliciting stockholders to tender their shares of Diamond common stock in the Tender Offer.

ANSWER: Defendant Berkman admits the first two sentences in paragraph 28 and otherwise lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 28.

29. Cloobeck founded Diamond's predecessor company, Diamond Resorts Parent, LLC ("Diamond LLC"), in 2007, after almost 30 years in the resort and hospitality industry.

ANSWER: Defendant Berkman lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 29.

30. From 2007 through December 2012, Cloobeck served as Chairman and CEO of Diamond LLC and grew the company into a global leader in the timeshare industry. Cloobeck hired Palmer and Kraff to assist him with running Diamond LLC. Palmer initially served as President and CFO of Diamond LLC, and eventually transitioned to the role of Diamond CEO in January 2013. Kraff served on Diamond LLC's "board of managers"[2] until he transitioned to serve as the Vice Chairman of the Diamond Board in 2013.

ANSWER: Defendant Berkman lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 30.

31. Diamond LLC conducted an IPO on July 19, 2013. After the IPO and until closing of the Transaction, Cloobeck continued to successfully lead Diamond

[2] Diamond LLC was a "manager-managed" limited liability corporation.

as its Board Chairman, never beneficially owning less than 18% of the Company's outstanding common stock.

ANSWER: Defendant Berkman admits that Diamond LLC conducted an IPO on July 19, 2013, and otherwise lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 27.

32. Diamond repeatedly and publicly touted Cloobeck as the individual possessing the most knowledge about the Company's business and prospects. Diamond's proxy statements filed with the SEC in both 2015 and 2016 stated the following:

> Mr. Cloobeck [has a] unique understanding of the opportunities and challenges that we face and [has an] 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.

ANSWER: Defendant Berkman states that the referenced proxy statements are the best evidence of their contents and Defendant Berkman denies all allegations that are inconsistent with those documents. Defendant Berkman respectfully refers the Court to the referenced proxy statements for their complete and accurate contents.

33. In the spring of 2015, despite strong returns and significant cash flow, Diamond's stock price was underperforming relative to its peers. [redacted]

ANSWER: Defendant Berkman respectfully refers the Court to the Schedule 14D-9 for its full, complete, and accurate contents, and denies all allegations that are inconsistent with that document.

34. In response to the stock's underperformance [redacted] the Board formed the Transaction Committee consisting of Diamond directors Taitz, Jones and Berkman, to facilitate the review of "various corporate development opportunities." (14D-9 at 15).

ANSWER: Defendant Berkman admits that the Board formed the Transaction Committee consisting of Diamond directors Taitz, Jones, and Berkman, and otherwise states that the Schedule 14D-9 is the best evidence of its contents, and Defendant Berkman denies all allegations that are inconsistent with that document. Defendant Berkman respectfully refers the Court to the Schedule 14D-9 for its full, complete, and accurate contents, and denies all allegations that are inconsistent with that document.

35. Apollo had pervasive connections to every member of the Transaction Committee:

ANSWER: Defendant Berkman denies the allegations in paragraph 35.

36. Taitz has been close friends with Apollo co-founders Rowan and Harris for ***over 30 years***. Rowan ('84), Harris ('86) and Taitz ('86) had overlapping undergraduate educations at the Wharton School of the University of Pennsylvania ("Wharton") and then worked together immediately after graduation at investment banking firm Drexel Burnham Lambert, Inc. ("Drexel") until its bankruptcy in 1990. That year, Harris and Rowan co-founded Apollo, and Taitz has been a preferred director of choice to Rowan and Harris ever since. At the time of the Transaction, Taitz served on the boards of at least *twelve* Apollo-

affiliated companies, including the following: (1) Apollo Residential Mortgage, Inc.; (2) Athene Holding Ltd. ("Athene"); (3) Athene Life Re Ltd.; (4) Athene USA Corporation; (5) Athene Annuity and Life Company; (6) Athene Life Insurance Company of New York; (7) Athene Annuity & Life Assurance Company of New York; (8) Athene Annuity & Life Assurance Company; (9) MidCap FinCo Holdings Limited; (10) MidCap FinCo Limited [redacted] (11) MidCap FinCo Holdings Limited, MidCap FinCo Limited, MidCap Funding I (Ireland) Limited; and (12) MidCap FinCo Intermediate Holdings Ltd.

ANSWER: Defendant Berkman lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 36.

37. In exchange for her service on Apollo Residential Mortgage's and Athene's boards alone, Taitz has received more than $2.6 million in aggregate, publicly disclosed compensation since 2011. Notably, of this amount, Taitz received almost $1.5 million from her service on Athene's board from 2015 through 2017 and was the highest paid non-employee director every year:

Apollo Company	2011	2012	2013	2014	2015	2016	2017	Total
Apollo Residential Mortgage, Inc.	$99,338	$199,068	$94,360	$202,498	$250,500	$307,905	N/A	$1,153,669
Athene Holding Ltd.	Not Publicly Disclosed	Not Publicly Disclosed	Not Publicly Disclosed	Not Publicly Disclosed	$227,498	$787,543	$462,509	$1,477,550

ANSWER: Defendant Berkman lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 37.

38. In addition to Taitz's Apollo-affiliated directorships, [redacted] (Id.) Taitz and Rowan also co-founded the Youth Renewal Fund ("YRF") in 1989

while working together at Drexel. Both Taitz and Rowan, who is board chairman, still serve together on YRF's board and regularly participate together in its initiatives. Through YRF, Taitz and Rowan traveled to Israel together in 2011 and 2017. Furthermore, Rowan has made hundreds of thousands of dollars in donations to Pencils of Promise ("POP"), an organization for which Taitz serves as an emeritus board member.[3]

ANSWER: Defendant Berkman lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 38.

39. [redacted]

[3] The Rowan Family Foundation is the philanthropic vehicle of private equity billionaire Marc Rowan and his wife Carolyn. The Rowan Family Foundation gave $50,000+ in donations to POP in 2016 (https://issuu.com/pencilsofpromise/docs/2016_annual-report); $50,000+ in donations to POP in 2015 (https://issuu.com/pencilsofpromise/docs/annual_report_3.16.16_-_final); $100,000+ in donations to POP in 2014 (https://issuu.com/pencilsofpromise/docs/2014-annual_report); $50,000+ in donations to POP in 2013 (https://issuu.com/pencilsofpromise/docs/140822-pop_annual_report_2013); $100,000+ in donations to POP in 2012 (https://pencilsofpromise.attach.io/BkFN4l40); and $10,000+ in donations to POP in 2011 (https://issuu.com/pencilsofpromise/docs/annualreport2011). Each year the Rowans were one of the largest contributors to the charity.

[redacted]

ANSWER: Defendant Berkman lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 39.

40. [redacted]

ANSWER: Defendant Berkman lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 40.

41. Notably, given Taitz's extensive ties to Apollo, on February 24, 2018, she was forced to surrender her "Lead Independent Director" role with Athene when the board of directors determined that "Taitz did not meet the independence requirements of the NYSE listing rules" because of her significant connections to Apollo. (Athene 10-K, filed Feb 26, 2018, at 203).

ANSWER: Defendant Berkman lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 41.

42. [redacted] began his career at Drexel with Taitz and Rowan, and then was hired as one of the first executives at Apollo, where he spent the next [redacted] years.

ANSWER: Defendant Berkman lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 42.

43. [redacted]

ANSWER: Defendant Berkman lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 43.

44. Jones currently serves as a director on the board of ClubCorp, another Apollo-controlled company. Notably, Jones sits on ClubCorp's board with Chris Edson, a member of Apollo's deal team that worked on the Transaction. Apollo appointed Jones to the ClubCorp board in October 2017, immediately after Apollo acquired ClubCorp.

ANSWER: Defendant Berkman lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 44.

45. Like Taitz, Berkman has been close friends with Rowan and Harris for ***over 30 years***. [redacted] Berkman and Harris also attended a birthday party together in December 2017, an event captured in the following photograph:

ANSWER: Defendant Berkman admits the cited documents in paragraph 45 and otherwise denies all allegations that are inconsistent with those documents. Specifically, Defendant Berkman admits [redacted] Defendant Berkman also admits that [redacted] Defendant Berkman admits that [redacted]

46. Apollo exercised its influence over the conflicted Transaction Committee almost immediately. [redacted]

ANSWER: Defendant Berkman denies the allegations in the first two sentences of paragraph 46. Defendant Berkman lacks knowledge or information sufficient to form a belief about the truth of the allegations in the third sentence of paragraph 46.

47. Centerview had substantial historical and ongoing relationships with Apollo portfolio companies at the time of its retention, including:

- In 2013 and 2014, advising the special committee of Apollo-controlled CEC Entertainment Inc. ("CEC") in connection with the divestiture of four casinos;
- An ongoing representation of CEC's special committee in connection with CEC's merger with another Apollo-controlled company; and
- An ongoing engagement advising CEC's special committee on the sale of CEC's mobile gaming business.

ANSWER: Defendant Berkman lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 47.

48. [redacted]

[redacted]

ANSWER: Defendant Berkman lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 48.

49. The Transaction Committee technically disbanded at the end of September 2015, [redacted]

- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]

[redacted]

ANSWER: Defendant Berkman lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 49.

50. [redacted]

ANSWER: Defendant Berkman lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 50.

51. [redacted]

ANSWER: Defendant Berkman admits that [redacted] and states that the referenced documents in paragraph 51 is Centerview's presentation, which are the best evidence of their contents.

52. [redacted]

[redacted]

ANSWER: Defendant Berkman states that the referenced documents in paragraph 52 are the best evidence of their contents.

53. [redacted]

ANSWER: Defendant Berkman states that the referenced documents in paragraph 53 are the best evidence of their contents and Defendant Berkman denies all allegations that are inconsistent with those documents.

54. [redacted] in the Company's fourth quarter 2015 earnings release (the "Q4 2015 Earnings Release") filed with the SEC on February 18, 2016, Diamond announced its "10th Consecutive Quarter of Record Performance," and declared that 2015 was "another record full year, posting a 13% increase in revenue, a 17% increase in Adjusted EBITDA to $374.1 million, and net income of $149.5 million." In the Q4 2015 Earnings Release, Palmer confirmed Diamond's bright prospects for 2016, stating that the Company is "well positioned to continue to post strong revenue, earnings and Free Cash Flow growth."

ANSWER: Defendant Berkman states that the referenced documents in paragraph 54 are the best evidence of their contents and Defendant Berkman denies all allegations that are inconsistent with those documents. Defendant

Berkman respectfully refers the Court to the referenced documents for their full, complete, and accurate contents.

55. Apollo clearly recognized the opportunity presented by Diamond given the then-current disconnect between Diamond's true value and its stock price. Thus, leveraging its loyalists within Diamond's managerial ranks and boardroom, [redacted]

ANSWER: Defendant Berkman lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 55.

56. Despite Diamond's health and prospects, Palmer and Kraff were highly receptive to Apollo's call for the Board to initiate an unnecessary and ill-timed sales process.

ANSWER: Defendant Berkman lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 56.

57. *First*, [redacted]

ANSWER: Defendant Berkman lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 57.

58. [redacted]

ANSWER: Defendant Berkman admits that [redacted] and otherwise lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 58.

59. [redacted]

[4] [redacted]

[redacted]

ANSWER: Defendant Berkman lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 59.

60. [redacted]

ANSWER: Defendant Berkman lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 60.

61. Berkman was also motivated to sell the Company for self-interested reasons. *First*, [redacted]

ANSWER: Defendant Berkman denies the allegations in paragraph 61, except admits that the last sentence includes quoted language that without the added emphasis, which is Plaintiffs, is contained in the referenced document.

62. [redacted]

ANSWER: Defendant Berkman denies the allegations in paragraph 62 that specifically concern Defendant Berkman, and otherwise lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 62.

63. [redacted] on February 24, 2016, the Board formed the Strategic Review Committee to "review strategic alternatives, including a potential sale." (14D-9 at 16). However, the same Apollo-affiliated members from the Transaction Committee (*i.e.*, Taitz, Jones and Berkman), along with Wolf, were appointed to the Committee. [redacted]

ANSWER: Defendant Berkman states that the referenced Schedule 14D-9 in the first sentence of paragraph 63 is the best evidence of its contents and Defendant Berkman denies all allegations that are inconsistent with that document. Defendant Berkman respectfully refers the Court to the Schedule 14D-9 for its full, complete, and accurate contents. Defendant Berkman lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 63.

64. As detailed *supra* at ¶¶ 36 through 45, the Committee had substantial and inescapable ties to Apollo, which was not only the most obvious and likely counterparty to any sale of Diamond, [redacted] Despite the myriad conflicts, on March 17, 2016, the Committee inexplicably concluded that none of its members had any "material relationships" with any of "the likely potential bidders." (14D-9 at 17).

ANSWER: Defendant Berkman denies the allegations in the first sentence of paragraph 64. Defendant Berkman states that the referenced Schedule 14D-9 in the second sentence of paragraph 63 is the best evidence of its contents and Defendant Berkman denies all allegations that are inconsistent with that document. Defendant Berkman respectfully refers the Court to the Schedule 14D-9 for its full, complete, and accurate contents.

65. Furthermore, despite Centerview's longstanding and significant relationships with Apollo, the Committee again retained Centerview as its financial advisor. At the beginning of 2016, Centerview further amplified its conflict by beginning a new engagement representing Hexion Inc. ("Hexion"), an Apollo portfolio company, in connection with a significant asset sale.

ANSWER: Defendant Berkman lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 65.

66. [redacted] Ultimately, Taitz agreed to a compensation structure that gave Centerview a powerful incentive to favor a prompt sale of the Company. [redacted][5]

ANSWER: Defendant Berkman lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 66.

67. From March 2016 through May 2016, the Committee, the Diamond Board and Centerview continued to push the Company toward a sale:

- In March 2016, Centerview contacted several potential bidders and the Company entered into non-disclosure agreements with certain interested parties, including Apollo;

- On April 25, 2016, [redacted] Apollo submitted a written indication of interest with a range of $28.00 to $30.00 per share; and

[5] [redacted]

- On April 27, 2016, Taitz and Wolf met with Centerview and Gibson Dunn to discuss the five bids, and then the full Committee participated in a call the following day with Centerview and Gibson Dunn to do the same.

ANSWER: Defendant Berkman lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 67.

68. [redacted] By all accounts, however, Diamond remained healthy and its future remained bright.

ANSWER: Defendant Berkman denies the allegations in paragraph 68.

69. At a May 2, 2016 Board meeting, [redacted]

ANSWER: Defendant Berkman states that the referenced documents in paragraph 69 are the best evidence of their contents. Defendant Berkman respectfully refers the Court to the referenced documents for their full, complete, and accurate contents.

70. Furthermore, on May 4, 2016, Diamond again announced record results—in its first quarter 2016 earnings release filed with the SEC on that day (the "Q1 2016 Earnings Release") Diamond declared an "11th Consecutive Quarter of Record Performance" in which Diamond's total revenue increased

by 18.4% and its adjusted EBITDA increased by 38.8%. In the Q1 2016 Earnings Release, Palmer again confirmed the Company was healthy with bright prospects, stating:

> Our emphasis on operational excellence, hospitality, and customer satisfaction enabled us to once again deliver strong financial and operational results. I am very pleased with our performance and confident in our full year guidance, which we are reaffirming today.

ANSWER: Defendant Berkman states that the referenced documents in paragraph 70 are the best evidence of their contents and Defendant Berkman denies all allegations that are inconsistent with those documents. Defendant Berkman respectfully refers the Court to the referenced documents for their full, complete, and accurate contents.

71. [redacted]

ANSWER: Defendant Berkman lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 71.

72. After nearly a decade of service to Diamond, Kraff abruptly resigned as Vice-Chairman of Diamond's Board on May 24, 2016. [redacted]

[redacted]

ANSWER: Defendant Berkman lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 72.

73. Despite Kraff's resignation on May 24, 2016, [redacted]

ANSWER: Defendant Berkman lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 73.

74. Furthermore, shortly after Kraff's resignation from Diamond's Board, [redacted]

[redacted]

ANSWER: Defendant Berkman lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 74.

75. The Board never publicly disclosed Kraff's reasons for resigning. Instead, concealing the material facts underlying Kraff's resignation, the Company's 2016 Proxy contained the misleading partial disclosure that "Mr. Kraff has not been nominated for re-election . . . ." [redacted]

ANSWER: Defendant Berkman denies the allegations in paragraph 75.

76. [redacted]

ANSWER: Defendant Berkman lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 76.

77. [redacted]

[redacted]

ANSWER: Defendant Berkman lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 77.

78. Meanwhile, Apollo remained eager to acquire Diamond while its stock price was temporarily depressed. [redacted]

[redacted]

ANSWER: Defendant Berkman lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 78.

79. Others were also looking to personally profit from the Transaction. On June 17, 2016, less than two weeks before the Transaction was publicly announced, [redacted]

[redacted]

ANSWER: Defendant Berkman lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 79.

80. On June 23, 2016, Apollo and [redacted] submitted final bids of $30.25 per Diamond share and a range of $27 to $29 per Diamond share, respectively.[7] Apollo and [redacted] also submitted markups to the Merger Agreement and financing commitment papers.

ANSWER: Defendant Berkman denies the allegations in footnote 7 to paragraph 81, and otherwise states the Schedule 14D-9 is the best evidence of its contents and denies all allegations that are inconsistent with that document. Defendant Berkman respectfully refers the Court to the Schedule 14D-9 for its full, complete, and accurate contents.

81. With only Apollo and [redacted] remaining for the Strategic Review Committee to consider, and ***after*** Apollo had submitted its "final" bid to the Committee, Taitz belatedly recused herself from the remainder of the Committee meetings even though, as it had also done on March 17, 2016, the Committee again purportedly "revisited" the independence of each Committee member and concluded "that each member remained independent." Taitz's belated recusal from

[6] Scoggin's Schedule 13G, filed June 22, 2016, https://www.sec.gov/Archives/edgar/data/1130262/000114036116070581/formsc13g.htm (last accessed Aug. 28, 2018).

[7] [redacted]

the process was effectively an admission that her substantial participation in the process was both conflicted and improper.

ANSWER: Defendant Berkman denies the allegations in paragraph 81, except admits that Strategic Review Committee revisited issues of independence and determined, with the advice of counsel, that each Committee member remained independent at that stage of the process.

82. On June 24, 2016, following the Strategic Review Committee's meeting earlier that day, the Board met to discuss the final bids. Although it was communicated to the Board that Taitz recused herself from the Committee meeting regarding the final bids, Taitz participated in the entire Board meeting. At this meeting, Gibson Dunn told the Board that the Committee was recommending that the full Board authorize Centerview to go back to the remaining bidders and seek "best and final" offers by the following day. The Board, including Taitz, voted to authorize Centerview to do so.[8]

ANSWER: Defendant Berkman states the Schedule 14D-9 is the best evidence of its contents and Defendant Berkman denies all allegations that are inconsistent with that document. Defendant Berkman respectfully refers the Court to the Schedule 14D-9 for its full, complete, and accurate contents.

83. On June 25, 2016, the Strategic Review Committee and Board held joint meetings with Centerview, Gibson Dunn and Diamond management. During the meetings, the conflicted Committee recommended that the Board authorize Centerview and Gibson Dunn to negotiate a transaction with Apollo for a final price of $30.25 per share.

[8] As noted *infra* at ¶¶ 83 through 90 although Taitz resigned from the Committee due to her Apollo conflict, she still participated in and voted with the Board during the four final Board meetings related to the Transaction.

ANSWER: Defendant Berkman admits the allegations in the first sentence of paragraph 83. Defendant Berkman states the Schedule 14D-9 is the best evidence of its contents and Defendant Berkman denies all allegations in the second sentence of paragraph 83 that are inconsistent with that document. Defendant Berkman respectfully refers the Court to the Schedule 14D-9 for its full, complete, and accurate contents.

84. Cloobeck, however, expressed strong opposition to a potential sale of the Company to Apollo at $30.25 per share. [redacted]

ANSWER: Defendant Berkman admits that the [redacted] Board minutes reflect the quoted language without the added emphasis, which is Plaintiffs. Defendant Berkman states that the referenced documents in paragraph 84 are the best evidence of their contents and Defendant Berkman denies all allegations in paragraph 84 that are inconsistent with those documents. Defendant Berkman respectfully refers the Court to the referenced documents for their full, complete, and accurate contents.

85. Disregarding Cloobeck's objections, the remaining members of the Diamond Board, including Taitz, supported a sale of the Company to Apollo for $30.25 per share.

ANSWER: Defendant Berkman denies the allegations in paragraph 85 to the extent that they apply to his own state of mind. Defendant Berkman further states that he lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 85 as they apply to the other members of the Diamond Board.

86. Later that day, Centerview issued its oral opinion to the Committee, concluding, from a financial point of view, that Apollo's $30.25 per share offer was purportedly "fair" to the Company's public stockholders (the "Fairness Opinion"). [redacted] To the extent that any member of the Diamond Board was not already fully aware of Centerview's disabling conflict with respect to Apollo, [redacted] would have eliminated any doubt that the Board needed to take corrective action including, but not limited to, retaining a second financial advisor to render an independent fairness opinion.

ANSWER: Defendant Berkman states the Schedule 14D-9 is the best evidence of its contents and Defendant Berkman denies all allegations in paragraph 86 that are inconsistent with that document. Defendant Berkman respectfully refers the Court to the Schedule 14D-9 for its full, complete, and accurate contents.

87. [redacted]

[redacted]

ANSWER: Defendant Berkman states the Schedule 14D-9 is the best evidence of its contents and Defendant Berkman denies all allegations in the second sentence of paragraph 83 that are inconsistent with that document. Defendant Berkman respectfully refers the Court to the Schedule 14D-9 for its full, complete, and accurate contents.

88. Centerview not only had significant conflicts with Apollo that influenced its approval of the sale, it also had a substantial financial incentive to sell the Company. [redacted]

ANSWER: Defendant Berkman lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 88.

89. On June 26, 2016, the Diamond Board met to approve the Transaction. 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.

ANSWER: Defendant Berkman states the Schedule 14D-9 is the best evidence of its contents and Defendant Berkman denies all allegations in the second sentence of paragraph 88 that are inconsistent with that document.

Defendant Berkman respectfully refers the Court to the Schedule 14D-9 for its full, complete, and accurate contents.

90. Cloobeck was sufficiently disappointed with the Transaction that he deemed it necessary to ***again*** lodge his objections. [redacted] Cloobeck's objections were again ignored, however, as the remaining members of the Board, including conflicted director Taitz despite her purported recusal from the Committee, voted to approve the Transaction.

ANSWER: Defendant Berkman admits that the quoted language appears in the June 26, 2016 Board minutes without the added emphasis, which is Plaintiffs. Defendant Berkman otherwise denies the allegations in paragraph 90.

91. [redacted]

ANSWER: Defendant Berkman lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 88.

92. [redacted]

[redacted]

ANSWER: Defendant Berkman denies the allegations in the first sentence of paragraph 92. Defendant Berkman lacks knowledge or information sufficient to form a belief about the truth of the allegations in the remaining sentences of paragraph 92.

93. [redacted]

[redacted]

[9] In his role at Diamond, Brandt was responsible for the overall supervision of the Company's Financial Planning & Analysis department, handling budgets, forecasting and monthly reporting.

[10] Compared to other counterparties, Apollo was at a significant informational advantage concerning the Company's upside, and not solely due to the myriad Diamond insiders with whom Apollo enjoyed close, symbiotic relationships.

[redacted]

[redacted]

ANSWER: Defendant Berkman lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 93.

94. [redacted]

ANSWER: Defendant Berkman lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 94.

95. As alleged *supra* at ¶¶ 51 through 53, [redacted] Disregarding all of these clear and well-founded warnings, the Board instead relied exclusively on Centerview's flawed financial analysis in approving the Transaction. That analysis dramatically undervalued Diamond in several ways.

ANSWER: Defendant Berkman denies the allegations in paragraph 95.

96. *First*, the range of exit EBITDA multiples used by Centerview to calculate Diamond's terminal value was unreasonably low and depressed Diamond's DCF value. [redacted]

[11] A DCF analysis is based on determining the present value of all future free cash flow produced by a company. As it is unfeasible 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 (*i.e.*, the terminal value). There are two generally accepted methods used to calculate a company's terminal value—the

[redacted]

ANSWER: Defendant Berkman denies the allegations in paragraph 96.

97. [redacted]

Exit Multiple method and the Gordon 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 Gordon Growth method calculates terminal value by treating a company's terminal year free cash flow as a perpetuity growing at an assumed rate.

[12] The implied perpetuity growth rate is calculated by using the terminal 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 a necessary check in a valuation analysis.

[13] "Adjusted EBITDA" is the Company's earnings before interest, tax, depreciation and amortization.

[redacted]

ANSWER: Defendant Berkman denies the allegations in paragraph 97.

98. [redacted]

ANSWER: Defendant Berkman denies the allegations in paragraph 98.

99. [redacted]

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[14] "Market Adjusted EBITDA" is the Company's earnings before interest, tax, depreciation and amortization less vacation interest cost of sales and stock-based compensation.

[15] The implied perpetuity growth rate is dependent on the terminal value. [redacted]

[16] 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/fomcprojtabl20160615.pdf (last accessed August 28, 2018).

[17] *Id.*

[redacted]

ANSWER: Defendant Berkman denies the allegations in paragraph 99.

100. *Second*, Centerview derived a weighted average cost of capital ("WACC")[18] for Diamond that was unreasonably high, which served to further depress Centerview's DCF analysis and the implied equity value range derived therefrom.

ANSWER: Defendant Berkman denies the allegations in paragraph 100.

101. [redacted]

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

[redacted]

[redacted]

ANSWER: Defendant Berkman denies the allegations in paragraph 101.

102. [redacted]

ANSWER: Defendant Berkman denies the allegations in paragraph 102.

103. Furthermore, updating Centerview's WACC analysis to the closing date of the Transaction, September 2, 2016, would further reduce the WACC and increase the indicated fair value of Diamond shares because both the interest rates and the stock volatility of Diamond's selected peers declined during the period between the execution of the Merger Agreement and the closing of the Transaction.

ANSWER: Defendant Berkman denies the allegations in paragraph 103.

104. *Third,* [redacted]

ANSWER: Defendant Berkman denies the allegations in paragraph 104.

105. [redacted]

[redacted]

	[redacted]	
	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]

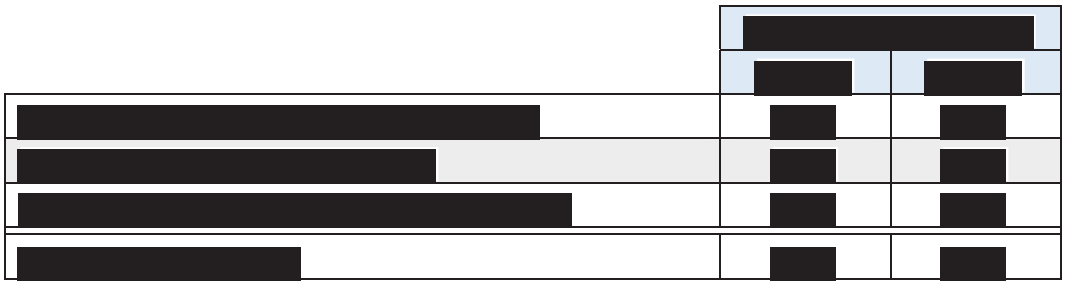
ANSWER: Defendant Berkman denies the allegations in paragraph 105.

106. [redacted]

ANSWER: Defendant Berkman denies the allegations in paragraph 106.

107. [redacted]

[19] 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.



ANSWER: Defendant Berkman denies the allegations in paragraph 107.

108.

ANSWER: Defendant Berkman denies the allegations in paragraph 108.

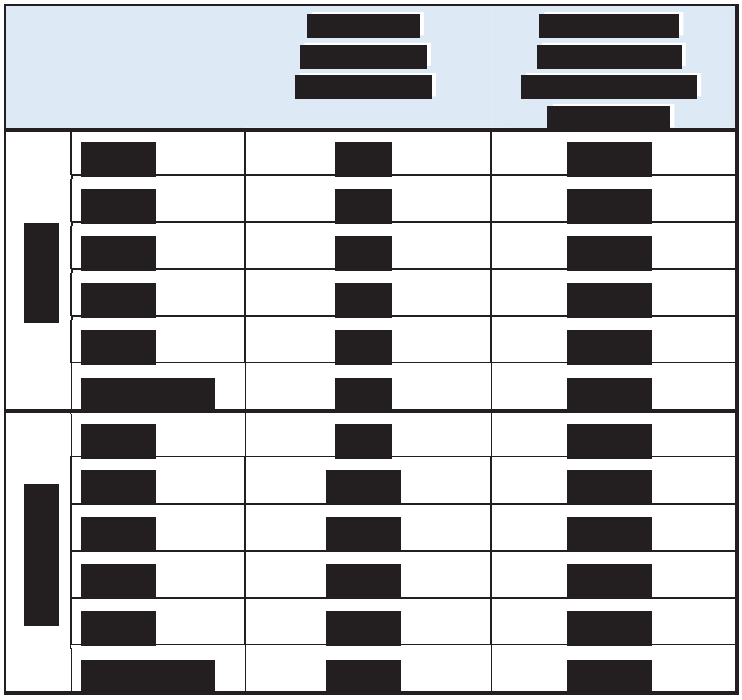
109. *Fourth*,

ANSWER: Defendant Berkman denies the allegations in paragraph 109.

110.

ANSWER: Defendant Berkman denies the allegations in paragraph 110.

111. [redacted]



ANSWER: Defendant Berkman states that the referenced documents in paragraph 111 are the best evidence of their contents and Defendant Berkman denies all allegations that are inconsistent with those documents. Defendant Berkman respectfully refers the Court to the referenced documents for their full, complete, and accurate contents.

112. [redacted]

[20] 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. [redacted]

[redacted]

ANSWER: Defendant Berkman denies the allegations in paragraph 112.

113. Accordingly, reducing cash spend on inventory to a reasonable level would further increase Diamond's valuation on a DCF basis.

ANSWER: Defendant Berkman denies the allegations in paragraph 113.

114. For all of these reasons, Centerview's financial analysis significantly undervalued the Company and rendered false its determination that the Transaction price was fair.

ANSWER: Defendant Berkman denies the allegations in paragraph 114.

115. In the weeks leading up to the August 10, 2016 original expiration date of the Tender Offer, poor stockholder support threatened to scuttle the Transaction by failing to satisfy the one share more than 50% tender condition.

ANSWER: Defendant Berkman denies the allegations in paragraph 115.

116. Indeed, sophisticated Diamond investors understood that the consideration offered by Apollo was woefully inadequate and were reluctant to tender their shares. Specifically, on June 29, 2016, the day that Diamond announced the Transaction, [redacted]

[redacted]

[redacted]

ANSWER: Defendant Berkman denies the allegations in the first sentence of paragraph 116. Defendant Berkman lacks knowledge or information sufficient to form a belief about the truth of the allegations in the remaining sentences of paragraph 116.

117. On August 9, 2016, the Company disclosed that only 19,499,074 shares of Diamond common stock had been tendered into the Tender Offer, which represented only approximately 27.96% of the Company's total outstanding shares of common stock. Because the Tender Offer was scheduled to expire the next day, on August 10, 2016, Diamond and Apollo agreed to extend it until August 24, 2016.

ANSWER: Defendant Berkman admits the allegations in paragraph 117.

118. [redacted]

[redacted]

ANSWER: Defendant Berkman lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 118.

119. On August 16 and 17, 2016, roughly one week ***after*** the original expiration date for the Tender Offer, Cloobeck and his affiliates finally tendered all of their shares of Diamond common stock pursuant to the Tender Offer. Cloobeck's tender of his shares tipped the cumulative sum of total shares tendered to 51.0308%, which was over the 50% threshold required under the Merger Agreement.

ANSWER: Defendant Berkman lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 119.

120. 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 Offer period until August 30, 2016.

ANSWER: Defendant Berkman admits the allegations in paragraph 120.

121. 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.

ANSWER: Defendant Berkman admits the allegations in paragraph 121.

122. [redacted]

ANSWER: Defendant Berkman lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 122.

123. The Tender Offer expired 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.

ANSWER: Defendant Berkman admits the allegations in paragraph 123.

124. [redacted]

ANSWER: Defendant Berkman lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 124.

125. Pursuant to the terms of the Merger Agreement and in accordance with Section 251(h) of the Delaware General Corporation Law, on September 2, 2016 a wholly-owned subsidiary of Apollo merged with and into the Company, with the Company continuing as the surviving corporation. Upon closing of the Transaction, the Company became a wholly-owned subsidiary of Apollo and public trading of the Company's common stock ceased.

ANSWER: Defendant Berkman admits the allegations in paragraph 125.

126. [redacted]

ANSWER: Defendant Berkman admits that [redacted] and otherwise lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 126.

127. [redacted]

ANSWER: Defendant Berkman lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 127.

128. [redacted]

ANSWER: Defendant Berkman lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 128.

129. [redacted]

[21] *See supra* ¶¶ 72-75.

[redacted]

ANSWER: Defendant Berkman lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 129.

130. [redacted]

ANSWER: Defendant Berkman lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 130.

131. Less than two months after the Transaction closed, on October 26, 2016, the board of directors of Apollo affiliate Athene elected Taitz to the role of Lead Independent Director, a newly-created position that elevated Taitz's standing at Athene and entitled her to increased compensation. [redacted].

ANSWER: Defendant Berkman denies the allegations in paragraph 131, except admits that the quoted language without the added emphasis, which is Plaintiff's, is contained in the referenced document.

132. On February 24, 2018, Taitz was forced to surrender her Lead Independent Director role when the Athene board of directors determined that

"Taitz did not meet the independence requirements of the NYSE listing rules" because of her significant connections to Apollo. (Athene 10-K, filed Feb 26, 2018, at 203).

ANSWER: Defendant Berkman lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 132.

133. 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 Board failed to disclose within the 14D-9 and related documents plainly material information necessary to permit Diamond stockholders to decide on a fully-informed basis (i) whether to tender their shares into the Tender Offer and (ii) whether to seek appraisal for their shares.

ANSWER: Defendant Berkman denies the allegations in paragraph 133.

134. As detailed above, Cloobeck expressed his unequivocal disappointment with the Transaction and mismanagement of Diamond at full Board meetings held on June 25, 2016 and June 26, 2016.[22] [redacted]

ANSWER: Defendant Berkman states that the referenced documents in paragraph 134 are minutes of June 25 and June 26, 2016 board meetings, which are

[22] The Board minutes detailing (i) Cloobeck's disappointment with the price and the Company's management and (ii) his view that it was not the right time to sell the Company, were produced to Plaintiff on September 8, 2016—seven days ***after*** the extended Tender Offer closed.

the best evidence of their contents. Defendant Berkman admits that the referenced meeting minutes reflect the quoted language without the added emphasis, which is Plaintiff's and otherwise denies all allegations that are inconsistent with those documents. Defendant Berkman respectfully refers the Court to the referenced documents for their full, complete, and accurate contents.

135. At the June 28, 2016 Board meeting, Cloobeck expressed his continued dissatisfaction by again abstaining. [redacted]

ANSWER: Defendant Berkman states that the referenced documents in paragraph 135 are minutes of the June 28, 2016 board meeting, which are the best evidence of their contents. Defendant Berkman admits that the referenced meeting minutes reflect the quoted language and otherwise denies all allegations that are inconsistent with those documents. Defendant Berkman respectfully refers the Court to the referenced documents for their full, complete, and accurate contents.

136. Yet the Board omitted from the 14D-9 any mention of Cloobeck's (i) disappointment with the $30.25 Transaction price, [redacted] This information was not merely material, but critical to Diamond stockholders' assessment of the Transaction, as Cloobeck was the founder of Diamond and the person who possessed the most institutional knowledge as to the

Company's true value and standalone prospects. Indeed, the Company's 2016 Proxy states that:

> The Board believes that Mr. Cloobeck, as our founder and the former Chief Executive Officer of Diamond LLC, should continue to serve as a director because of ***Mr. Cloobeck'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).

ANSWER: Defendant Berkman denies the allegations in paragraph 136, except states that the referenced 2016 proxy materials are the best evidence of their contents and Defendant Berkman denies all allegations that are inconsistent with those documents. Defendant Berkman respectfully refers the Court to the referenced proxy statements for their full, complete, and accurate contents.

137. Instead of disclosing Cloobeck's strong opposition to the Transaction's terms, the Board touted within the 14D-9 the purported 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). Despite explicitly acknowledging Cloobeck's abstention within the 14D-9, the Board omitted that the reason for his abstention, which he clearly communicated to the full Board on multiple occasions, was that (i) he disapproved of the Transaction and the unfair consideration therefrom, and (ii) he knew it was not the right time to sell the Company.

ANSWER: Defendant Berkman states that the Schedule 14D-9 is the best evidence of its contents, and Defendant Berkman denies all allegations in

paragraph 137 that are inconsistent with that document. Defendant Berkman respectfully refers the Court to the Schedule 14D-9 for its full, complete, and accurate contents, and denies all allegations that are inconsistent with that document.

138. Particularly after raising the issue of Cloobeck's abstention, the Board was required to make a simultaneous tempering disclosure that Diamond's founder, Board Chairman and largest stockholder was "disappointed" with the $30.25 price, believed that it was not the right time to sell the Company and had expressed those concerns to the full Diamond Board on multiple occasions. Without this tempering disclosure, it was materially misleading for the Board to convey within the 14D-9 that the full Board supported the Transaction over any other alternative (including remaining a standalone company) and that Diamond stockholders would receive a fair price by tendering their shares.

ANSWER: The allegations in paragraph 138 contain legal conclusions to which no response is required. To the extent an answer is required, Defendant Berkman denies the allegations in paragraph 138.

139. On February 20, 2018, the Delaware Supreme Court confirmed the materiality of Cloobeck's objections. In doing so, the Supreme Court explained that:

> As in *Gilmartin*, the ***14D-9's representation*** to stockholders that they would "receive a fair price in the merger, ***[was] materially misleading*** without an additional simultaneous, tempering disclosure" that Cloobeck believed that this was "a bad time to sell" and had expressed the reasons for that view to the board.

Appel v. Berkman, 2018 Del. LEXIS 71, at *3, *16 (Del. 2018) (the "Opinion" or "Op.") (quoting *Gilmartin v. Adobe Resources Corp.*, 1992 WL 71510, at *9 (Del. Ch. Apr. 6, 1992)) (emphasis added).

ANSWER: The allegations in paragraph 139 contain legal conclusions to which no response is required. To the extent an answer is required, Defendant Berkman denies the allegations in this paragraph.

140. The Delaware Supreme Court further held that (i) Chairman Cloobeck's "views regarding the wisdom of selling the company were ones that ***reasonable stockholders would have found material*** . . . and ***the failure to disclose them rendered the facts that were disclosed misleadingly incomplete***"; and (ii) stated that it is "difficult [] to understand how the omission was inadvertent," and that Defendants will need to rebut the inference of intentionality **"*[a]fter discovery . . . upon a motion for summary judgment***." (*Id.* at *3, *16) (emphasis added).

ANSWER: The allegations in paragraph 140 contain legal conclusions to which no response is required. To the extent an answer is required, Defendant Berkman denies the allegations in this paragraph.

141. Nor can there be any serious dispute that a pleading-stage inference exists that the Board ***knowingly*** failed to disclose to stockholders Cloobeck's objections to the price and timing of the Transaction and his concerns that Diamond was mismanaged. *First*, there is no dispute that the full Board attended the June 25, 2016 and June 26, 2016 meetings at which Cloobeck explicitly voiced these objections. *Second*, the Delaware Supreme Court has expressed its doubt that the Board's concealment of Cloobeck's objection and concerns of mismanagement was merely accidental:

> CHIEF JUSTICE STRINE: You actually argue like that you should have gotten off on 102(b)(7) grounds, your clients, right?
>
> MR. DiCAMILLO (Defense counsel): Yes.
>
> CHIEF JUSTICE STRINE: Is that because . . . any inference that this was intentional should be attributed to the lawyers?
>
> MR. DiCAMILLO: No. I think in order to overcome 102(b)(7), there has to be a well-pled allegation –

> CHIEF JUSTICE STRINE: Isn't there a common sense that (sic) . . . your clients and their advisors did not [realize], oh, gosh, we forgot to put the founder's reasons for abstaining, which included that it was the wrong time to sell because you had all mismanaged the company? Just missed that one?

Third, counsel for the Director Defendants has conceded to this Court that the Director Defendants were aware of Cloobeck's objections:

> There's an implication that we've argued that the other board members didn't know why Mr. Cloobeck abstained. We never argued that. *Of course the other directors knew why he abstained. He said it at the two board meetings*.

Oral Argument on Director Defendants' Motion to Dismiss, Hearing Transcript at 120:12-16 (emphasis added). *Fourth*, the Director Defendants included within the 14D-9 detailed disclosures regarding other aspects of the meetings at which Cloobeck voiced his objections, yet inexplicably omitted Cloobeck's highly material objections.

ANSWER: The allegations in paragraph 141 contain legal arguments to which no response is required. To the extent an answer is required, Defendant Berkman denies the allegations in this paragraph.

142. As set forth above, [redacted]

ANSWER: Defendant Berkman lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 142.

143. [redacted] Any reasonable stockholder deciding whether to tender or seek appraisal of their Diamond shares would have wanted to know that patently material information. [redacted]

ANSWER: Defendant Berkman denies the allegations in paragraph 143.

144. Nor is there any doubt that the Board ***knowingly*** omitted this material information from the 14D-9. [redacted] Indeed, the Board's decision to launch a sales process despite fully recognizing that Diamond's intrinsic value was meaningfully higher than its then-current share price was otherwise essentially inexplicable.

ANSWER: Defendant Berkman denies the allegations in paragraph 144.

145. The Director Defendants further breached their duty of disclosure by omitting material information concerning the rampant conflicts of interest between Apollo on the one hand and Strategic Review Committee members Taitz, Berkman, and Jones on the other.

ANSWER: Defendant Berkman denies the allegations in paragraph 145.

146. The Board stated within the 14D-9 that on February 22, 2016, the Diamond Board formed "the strategic review committee, comprised ***solely of independent directors*** to lead" a review of strategic alternatives. The 14D-9 also

emphasizes that "none of the members of the [Committee] had any material relationships with the likely potential bidders." However, the documents Defendants have produced to date depict a completely different reality. [redacted]

ANSWER: Defendant Berkman states that the Schedule 14D-9 is the best evidence of its contents, and Defendant Berkman denies all allegations in paragraph 146 that are inconsistent with that document. Defendant Berkman respectfully refers the Court to the Schedule 14D-9 for its full, complete, and accurate contents, and denies all allegations that are inconsistent with that document.

147. Although the Board disclosed within the 14D-9 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 Board omitted, *inter alia*, that (i) Taitz had pre-existing and ongoing personal and professional relationships with Apollo co-founders Rowan and Harris for more than 30 years; (ii) Taitz and Rowan cofounded YRF in 1989, and have continuously served together on its Board for the past 30 years; (iii) [redacted] and (v) Taitz received at least $2.6 million in compensation, and likely far more, from Apollo for her Apollo-affiliated board service since 2011. 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 burden to Defendants or the Company. However, no such disclosure was made.

ANSWER: Defendant Berkman states that the Schedule 14D-9 is the best evidence of its contents, and Defendant Berkman denies all allegations in paragraph 147 that are inconsistent with that document. Defendant Berkman respectfully refers the Court to the Schedule 14D-9 for its full, complete, and accurate contents, and denies all allegations that are inconsistent with that document.

148. The Board also omitted from the 14D-9 material information concerning Berkman's more than 30-year personal and professional relationship with Harris and Rowan. [redacted] Instead of disclosing Berkman's close ties with Rowan and Harris, the Board falsely informed stockholders that Berkman was an "independent director[]" capable of exercising independent judgment in negotiating a sale of the Company to Apollo.

ANSWER: Defendant Berkman states that the Schedule 14D-9 is the best evidence of its contents, and Defendant Berkman denies all allegations in paragraph 148 that are inconsistent with that document. Defendant Berkman respectfully refers the Court to the Schedule 14D-9 for its full, complete, and accurate contents, and denies all allegations that are inconsistent with that document.

149. Similarly, the Board omitted from the 14D-9 material information concerning the long-standing professional relationship between Jones and Apollo,

including Jones' history of serving as a director and/or officer of entities controlled by Apollo and its affiliates. Jones had previously served on the board of directors of Clark Retail Enterprises and Horizon PCS, entities controlled at the time by Apollo and its affiliates. [redacted]

ANSWER: Defendant Berkman states that the Schedule 14D-9 is the best evidence of its contents, and Defendant Berkman denies all allegations in paragraph 149 that are inconsistent with that document. Defendant Berkman respectfully refers the Court to the Schedule 14D-9 for its full, complete, and accurate contents, and denies all allegations that are inconsistent with that document.

150. [redacted] the inclusion of Taitz, Berkman, and Jones on the Strategic Review Committee essentially condemned a fair sales process. The Board compounded that problem by concealing from stockholders the material relationships between Apollo and each of these members of the Strategic Review Committee, who were expected to—but did not—exercise independent judgment concerning a sale of Diamond.

ANSWER: Defendant Berkman denies the allegations in paragraph 150.

151. [redacted]

ANSWER: Defendant Berkman lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 151.

152. The Board was aware of Scoggin's significant share purchase, as Scoggin filed a Form 13G (the "13G") with the SEC on June 22, 2016, reporting that Scoggin's stock ownership had increased to over 8% of the Diamond's total outstanding public shares on June 17, 2016.

ANSWER: Defendant Berkman denies the allegations in paragraph 152 to the extent that they apply to his own state of mind. Defendant Berkman further states that he lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 152 as they apply to other members of the Board. Defendant Berkman states that the referenced 13G is the best evidence of its contents, and denies all allegations in paragraph 152 that are inconsistent with that document.

153. [redacted]

[redacted]

ANSWER: Defendant Berkman lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 153.

154. [redacted] This information would have been material to Diamond stockholders. [redacted]

ANSWER: Defendant Berkman lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 154.

CLASS ACTION ALLEGATIONS

155. 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").

ANSWER: The allegations in paragraph 155 contain legal conclusions to which no response is required. To the extent an answer is required, Defendant Berkman denies the allegations in this paragraph.

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

ANSWER: The allegations in paragraph 156 contain legal conclusions to which no response is required. To the extent an answer is required, Defendant Berkman denies the allegations in this paragraph.

157. 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 thousands of Diamond stockholders scattered throughout the United States.

ANSWER: The allegations in paragraph 157 contain legal conclusions to which no response is required. To the extent an answer is required, Defendant Berkman denies the allegations in this paragraph.

158. Excluded from the Class are shares owned by: (i) any Defendant(s); (ii) officers of Diamond; and (iii) stockholders who exercised their appraisal rights.

ANSWER: The allegations in paragraph 158 contain legal conclusions to which no response is required. To the extent an answer is required, Defendant Berkman denies the allegations in this paragraph.

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

a. The Individual Defendants breached their fiduciary duties;

b. Defendant Apollo 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.

ANSWER: The allegations in paragraph 159 contain legal conclusions to which no response is required. To the extent an answer is required, Defendant Berkman denies the allegations in this paragraph.

160. Plaintiff is committed to prosecuting this 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.

ANSWER: The allegations in paragraph 160 contain legal conclusions to which no response is required. To the extent an answer is required, Defendant Berkman denies the allegations in this paragraph.

161. 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. Such inconsistent or varying adjudications that would establish incompatible standards of conduct for Defendants and/or with respect to individual members of the Class, 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.

ANSWER: The allegations in paragraph 161 contain legal conclusions to which no response is required. To the extent an answer is required, Defendant Berkman denies the allegations in this paragraph.

COUNT I

CLAIM FOR BREACH OF FIDUCIARY DUTY AGAINST THE DIRECTOR DEFENDANTS

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

ANSWER: Defendant Berkman answers paragraph 162, which repeats prior allegations, as set forth above.

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

ANSWER: The allegations in paragraph 163 contain legal conclusions to which no response is required. To the extent an answer is required, Defendant Berkman denies the allegations in this paragraph.

164. The Director Defendants failed to fulfill their fiduciary duties in connection with the Transaction by, among other things, (i) running an ill-timed and conflict-laden sales process, (ii) appointing to the Strategic Review Committee a majority of conflicted directors with close personal and professional ties to Apollo, (iii) failing to secure fair value for Diamond's shares, and (iv) failing to disclose all material information necessary to allow Diamond stockholders to make an informed tender and/or appraisal decision in connection with the Transaction.

ANSWER: The allegations in paragraph 164 contain legal conclusions to which no response is required. To the extent an answer is required, Defendant Berkman denies the allegations in this paragraph.

165. As a result of the Director Defendants' breaches of fiduciary duty, the Class has been harmed by virtue of (i) being deprived of their right to make a fully-

informed decision whether to tender or seek appraisal, and (ii) receiving inadequate Transaction consideration.

ANSWER: The allegations in paragraph 165 contain legal conclusions to which no response is required. To the extent an answer is required, Defendant Berkman denies the allegations in this paragraph.

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

ANSWER: The allegations in paragraph 166 contain legal conclusions to which no response is required. To the extent an answer is required, Defendant Berkman denies the allegations in this paragraph.

COUNT II

CLAIM FOR BREACH OF FIDUCIARY DUTY AGAINST KRAFF

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

ANSWER: Defendant Berkman answers paragraph 167, which repeats prior allegations, as set forth above.

168. Kraff, while serving as a Diamond director from January 2013 until May 24, 2016, owed the Class the utmost fiduciary duties of due care, good faith, loyalty and disclosure.

ANSWER: The allegations in paragraph 168 contain legal conclusions to which no response is required. To the extent an answer is required, Defendant Berkman denies the allegations in this paragraph.

169. Kraff failed to fulfill his fiduciary duties in connection with the Transaction by (i) initiating at Apollo's behest an unnecessary and ill-timed sales process for his own selfish reasons and personal gain, and (ii) participating with the rest of the Board in the ill-timed and conflict-laden sales process which failed to secure fair value for Diamond's shares.

ANSWER: The allegations in paragraph 169 contain legal conclusions to which no response is required. To the extent an answer is required, Defendant Berkman denies the allegations in this paragraph.

170. As a result of Kraff's breaches of fiduciary duty, the Class has been harmed by virtue of receiving inadequate Transaction consideration.

ANSWER: The allegations in paragraph 170 contain legal conclusions to which no response is required. To the extent an answer is required, Defendant Berkman denies the allegations in this paragraph.

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

ANSWER: The allegations in paragraph 171 contain legal conclusions to which no response is required. To the extent an answer is required, Defendant Berkman denies the allegations in this paragraph.

COUNT III

CLAIM FOR AIDING & ABETTING

BREACHES OF FIDUCIARY DUTY AGAINST APOLLO

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

ANSWER: Defendant Berkman answers paragraph 172, which repeats prior allegations, as set forth above.

173. Apollo was aware of the fiduciary duties owed to the Class by each of the Individual Defendants in the context of a sale of the Company.

ANSWER: The allegations in paragraph 173 contain legal conclusions to which no response is required. To the extent an answer is required, Defendant Berkman denies the allegations in this paragraph.

174. Apollo acted with knowledge of, or with reckless disregard to, the Individual Defendants' breaches of their fiduciary duties to the public stockholders of Diamond and otherwise participated in those breaches of fiduciary duties.

ANSWER: The allegations in paragraph 174 contain legal conclusions to which no response is required. To the extent an answer is required, Defendant Berkman denies the allegations in this paragraph.

175. Apollo knowingly rendered substantial assistance in order to effectuate the Individual Defendants' plan to complete the unfair Transaction in breach of their fiduciary duties.

ANSWER: The allegations in paragraph 175 contain legal conclusions to which no response is required. To the extent an answer is required, Defendant Berkman denies the allegations in this paragraph.

176. As a result of such conduct by Apollo, Plaintiff and the other members of the Class have been harmed.

ANSWER: The allegations in paragraph 176 contain legal conclusions to which no response is required. To the extent an answer is required, Defendant Berkman denies the allegations in this paragraph.

IN ANSWER TO PLAINTIFFS' PRAYER FOR RELIEF

Defendant Berkman denies that Plaintiffs are entitled to the relief requested, or to any relief at all.

AFFIRMATIVE AND OTHER DEFENSES

Defendant Berkman reserves the right to amend and/or supplement his answers to the Complaint. Defendant Berkman does not concede that the assertion of such defenses imposes any burden of proof on Defendant with respect thereto.

First Affirmative Defense

Plaintiffs' claims, in whole or in part, fail to state a claim upon which relief may be granted against Defendant Berkman.

Second Affirmative Defense

Plaintiff's putative claims are inadequate to overcome and/or are defeated by the operation of the business judgment rule.

Third Affirmative Defense

Defendant Berkman's alleged conduct in connection with the Transaction was reasonable, in good faith, and based upon independent, legitimate business and economic justifications, with the belief that all such conduct was in the best interests of Diamond and its stockholders.

Fourth Affirmative Defense

Without conceding any argument that the correct standard of review here is entire fairness, the Transaction and any actions taken by Defendant Berkman in connection therewith were entirely fair.

Fifth Affirmative Defense

The Transaction was approved by a disinterested majority of Diamond's directors.

Sixth Affirmative Defense

Plaintiff and the putative Class have not suffered any damages, or their damages are speculative and impossible to ascertain.

Seventh Affirmative Defense

Defendant Berkman is not liable for any damages allegedly suffered by Plaintiff or the putative Class because any such damages were not legally or proximately caused by any acts or omissions of Defendants.

Eighth Affirmative Defense

Some or all of Plaintiff's putative claims are barred by the doctrine of laches.

Ninth Affirmative Defense

Some or all of Plaintiff's putative claims are barred by the doctrines of acquiescence, ratification, estoppel or waiver.

Tenth Affirmative Defense

Plaintiff's putative claims are barred, in whole or in part, by Article Ninth of the Company's Certificate of Incorporation and Section 102(b)(7) of the Delaware General Corporation Law.

Eleventh Affirmative Defense

Pursuant to Section 141(e) of the Delaware General Corporation Law, Plaintiff's putative claims are barred, in whole or in part, by Defendant Berkman's good faith reliance on the records, officers and/or employees of Diamond as well as his good faith reliance on information, opinions, reports, or statements presented by advisors, who were selected with reasonable care, on matters within their professional or expert competence.

Twelfth Affirmative Defense

Defendant Berkman adopts and incorporates by reference any and all other defenses asserted, or to be asserted, by any other defendant to the extent that he may share in such defense.

Additional Defenses Reserved

Defendant hereby gives notice that he may rely on other defenses if and when such defense become known during the course of litigation. Defendant Berkman has insufficient knowledge or information upon which to form a belief as to whether there may be additional affirmative defenses available, and therefore Defendant reserves the right to assert such additional defenses based upon subsequently acquired knowledge or information that becomes available through discovery or otherwise.

RELIEF REQUESTED

WHEREFORE, Defendant Berkman respectfully prays that the Court enter an order:

A. Entering judgment in his favor;

B. Dismissing the Complaint in its entirety with prejudice;

C. Awarding Defendant Berkman reasonable attorneys' fees and costs; and

D. Awarding Defendant Berkman such other relief as the Court may deem necessary and appropriate.

/s/ Raymond J. DiCamillo
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Dated: October 16, 2018