



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: December 4, 2018

**DEFENDANT ZACHARY D. WARREN'S  
ANSWER AND AFFIRMATIVE DEFENSES TO THE  
VERIFIED AMENDED CLASS ACTION COMPLAINT**

Defendant Zachary D. Warren, by and through his undersigned attorneys, upon knowledge as to his own actions and upon information and belief as to all other matters, responds to the Verified Amended Class Action Complaint (the "Complaint") as follows:

**GENERAL DENIAL**

Except as otherwise expressly admitted in this Answer, Mr. Warren denies each and every allegation contained in the Complaint. Mr. Warren states that the headings and sub-headings throughout the Complaint do not constitute well-pleaded

allegations of fact and therefore require no response. To the extent a response is deemed required, the allegations in the headings and sub-headings in the Complaint are denied. To the extent Mr. Warren uses terms in this Answer defined in the Complaint, that use is not an acknowledgement or admission of any characterization Plaintiff may ascribe to the defined terms. Mr. Warren denies that Plaintiff is entitled to any of the relief sought under the heading Relief Requested on pages 72 and 73 of the Complaint. Mr. Warren expressly reserves the right to amend and/or supplement his Answer.

### **RESPONSE TO SPECIFIC ALLEGATIONS**

Incorporating the foregoing, Mr. Warren states as follows in response to the specific allegations set forth in the Complaint:

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").

Furthermore, the Board intentionally concealed from Diamond stockholders, among other things, the material objections to the Transaction voiced by Stephen J. Cloobek ("Cloobek")—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."

**Response To Paragraph 1:** To the extent the allegations in Paragraph 1 state legal conclusions, no response is required, and they are therefore denied. To the extent that the allegations in the third sentence of Paragraph 1 purport to describe

the contents of minutes from meetings of the Board of Directors (the “Board”) of Diamond Resorts International, Inc. (“Diamond” or the “Company”), which speak for themselves, Mr. Warren respectfully refers the Court to those minutes for a true and complete statement of their contents. Otherwise, Mr. Warren denies the allegations in Paragraph 1, except admits that (i) an affiliate of Apollo Global Management LLC (“Apollo”) closed a tender offer to take Diamond private in September 2016 (the “Transaction”); and (ii) Mr. Cloobek founded Diamond, served as the Chairman of Diamond’s Board, and was the largest stockholder of Diamond prior to the Transaction.

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]

**Response To Paragraph 2:** To the extent the allegations in Paragraph 2 purport to describe the contents of financial statements, press releases, or other public filings issued by Diamond, which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 2 and, on that basis, denies them.

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

**Response To Paragraph 3:** Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 3 and, on that basis, denies them.

4.

**Response To Paragraph 4:** Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 4 and, on that basis, denies them, except admits that (i) Diamond did have an initial public offering (“IPO”) in 2013; (ii) David Palmer served as Diamond’s CEO; (iii) Lowell Kraff served on Diamond’s Board until May 2016; and

5. [REDACTED]

**Response To Paragraph 5:** Mr. Warren denies the allegations in Paragraph 5, except admits that in February 2016, Diamond’s Board formed a strategic review committee (the “Strategic Review Committee” or the “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.

**Response To Paragraph 6:** Mr. Warren denies the allegations in the first and third sentences of Paragraph 6, except admits that Robert Wolf, Hope Taitz, Jeffrey Jones, and David Berkman served on the Strategic Review Committee. Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in the second sentence of Paragraph 6 and, on that basis, denies them, except admits that Ms. Taitz served on the boards of certain entities affiliated with Apollo.

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

**Response To Paragraph 7:** Mr. Warren denies the allegations in Paragraph 7, except admits that the Strategic Review Committee retained Centerview Partners LLC (“Centerview”) as its financial advisor.

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.

**Response To Paragraph 8:** Mr. Warren denies the allegations in Paragraph 8, except admits that (i) Apollo submitted the winning bid of \$30.25 per share following a public sales process; and (ii) Centerview reached an opinion that the Transaction was fair to the Company’s stockholders from a financial point of view.

9. Diamond founder, Board Chairman and largest stockholder Cloobek recognized and protested the unfairness of the Transaction. Specifically, and as noted above and detailed below, Cloobek 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.” Cloobek’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.

**Response To Paragraph 9:** To the extent that the allegations in Paragraph 9 purport to describe the contents of minutes from the Company’s Board meetings, which speak for themselves, Mr. Warren respectfully refers the Court to those minutes for a true and complete statement of their contents. Otherwise, Mr. Warren denies the allegations in Paragraph 9, except admits that (i) Mr. Cloobek founded Diamond, served as the Chairman of Diamond’s Board, and was the largest stockholder of Diamond prior to the Transaction; (ii) Mr. Cloobek abstained from the Board’s vote to approve the Transaction; and (iii) the Board voted to approve the Transaction.

10. Given Cloobek’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 Cloobek 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, Cloobek’s objections were not the only pieces of material information the Board knowingly concealed from Diamond stockholders.

**Response To Paragraph 10:** Mr. Warren denies the allegations in Paragraph 10, except admits that in connection with the Transaction, the Company filed a Schedule 14D-9 Solicitation/Recommendation Statement with the SEC on July 14, 2016 (the “Solicitation”). Mr. Warren respectfully refers the Court to the Solicitation for a true and complete statement of its contents.

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]

**Response To Paragraph 11:** To the extent the allegations in Paragraph 11 relate to the views of persons other than Mr. Warren or Diamond, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 11 and, on that basis, denies them. Otherwise, Mr. Warren denies 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.

**Response To Paragraph 12:** To the extent the allegations in Paragraph 12 state legal conclusions, no response is required, and they are therefore denied. Otherwise, Mr. Warren denies the allegations in Paragraph 12.

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

**Response To Paragraph 13:** Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 13 and, on that basis, denies them.



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.

**Response To Paragraph 14:** Mr. Warren denies the allegations in Paragraph 14, except admits that (i) Mr. Berkman was on Diamond’s Board from 2013 until the Transaction closed on September 2, 2016; (ii) Mr. Berkman served on the Transaction Committee formed in Spring 2015; and (iii) Mr. Berkman was a member of the Strategic Review Committee formed in February 2016.

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

**Response To Paragraph 15:** Mr. Warren admits the allegations in Paragraph 15, except lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 15 with respect to Mr. Cloobek’s ownership of Company stock and, on that basis, denies them. To the extent that the allegations in Paragraph 15 purport to describe the contents of public filings disclosing Mr. Cloobek’s beneficial ownership of Company stock on particular dates, which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents.

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.

**Response To Paragraph 16:** Mr. Warren 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.

**Response To Paragraph 17:** Mr. Warren 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.

**Response To Paragraph 18:** Mr. Warren 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.<sup>1</sup>



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

[REDACTED]

**Response To Paragraph 19:** To the extent that the allegations in Paragraph 19 purport to describe the contents of public filings disclosing the beneficial ownership or exercise of call options in Diamond stock, which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 19 and, on that basis, denies them, except admits that (i) Mr. Palmer served as the Company's President and CEO, and as a member of the Diamond Board, from January 2013; [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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.

**Response To Paragraph 20:** Mr. Warren denies the allegations in Paragraph 20, except admits that (i) Ms. Taitz served on Diamond's Board from

August 2013 until September 2, 2016, the date the Transaction closed; (ii) Ms. Taitz was a member of the Transaction Committee formed in 2015; (iii) Ms. Taitz was a member of the Strategic Review Committee until she recused herself from the Committee in June 2016; and (iv) Ms. Taitz served as Co-Chair of the Strategic Review Committee with Robert Wolf, until Ms. Taitz recused herself from the Committee in June 2016.

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.

**Response To Paragraph 21:** Mr. Warren denies the allegations in Paragraph 21, except admits that he served on Diamond’s Board from January 2013 until September 2, 2016, the date the Transaction closed.

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.

**Response To Paragraph 22:** Mr. Warren 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.”

**Response To Paragraph 23:** Mr. Warren states that Paragraph 23 does not constitute well-pleaded allegations of fact and therefore requires no response.

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]

**Response To Paragraph 24:** Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 24, and, on that basis, denies them, except admits that (i) Mr. Kraff served on the Board of Diamond LLC beginning in 2007; (ii) Mr. Kraff served on the Company's Board, in the role of Vice Chairman, from January 2013; (iii) Mr. Kraff did not stand for re-election to the Board at the Company's annual meeting on May 24, 2016; and (iv) entities controlled by Mr. Cloobek, Mr. Palmer, and Mr. Kraff were members of 1818 Partners.

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

**Response To Paragraph 25:** Mr. Warren states that Paragraph 25 does not constitute well-pleaded allegations of fact and therefore requires no response.

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.

**Response To Paragraph 26:** Mr. Warren admits the allegations in Paragraph 26.

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.

**Response To Paragraph 27:** Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 27 and, on that basis, denies them, except admits that (i) Centerview served as the financial advisor to the Transaction Committee in 2015; (ii) the Strategic Review Committee retained Centerview as its financial advisor in March 2016; and (iii) Centerview reached an opinion that the Transaction was fair to the Company’s stockholders from a financial point of view.

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.

**Response To Paragraph 28:** Mr. Warren denies the allegations in Paragraph 28, except admits that (i) Gibson, Dunn & Crutcher LLP (“Gibson Dunn”) is a global law firm; (ii) the Strategic Review Committee engaged Gibson Dunn as its legal advisor in early March 2016; and (iii) in the Solicitation sent to stockholders, which was filed with the SEC on July 14, 2016, the Board recommended that the Company’s stockholders tender their shares.

29. Cloobek founded Diamond’s predecessor company, Diamond Resorts Parent, LLC (“Diamond LLC”), in 2007, after almost 30 years in the resort and hospitality industry.

**Response To Paragraph 29:** Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 29 and, on that basis, denies them, except admits that Mr. Cloobek founded Diamond LLC, Diamond’s predecessor company, in 2007.

30. From 2007 through December 2012, Cloobek served as Chairman and CEO of Diamond LLC and grew the company into a global leader in the timeshare industry. Cloobek 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”<sup>2</sup> until he transitioned to serve as the Vice Chairman of the Diamond Board in 2013.

**Response To Paragraph 30:** Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in

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<sup>2</sup> Diamond LLC was a “manager-managed” limited liability corporation.

Paragraph 30 and, on that basis, denies them, except admits that (i) Mr. Clobeck was the Chairman and CEO of Diamond LLC from 2007 through December 2012; (ii) Mr. Palmer served as President and as CFO of Diamond LLC; (iii) Mr. Palmer served as CEO of the Company from January 2013; (iv) Mr. Kraff served on the Board of Diamond LLC; (v) Mr. Kraff served on the Company's Board beginning in 2013, in the role of Vice Chairman; and (vi) Diamond was a global leader in the vacation ownership industry.

31. Diamond LLC conducted an IPO on July 19, 2013. After the IPO and until closing of the Transaction, Clobeck continued to successfully lead Diamond as its Board Chairman, never beneficially owning less than 18% of the Company's outstanding common stock.

**Response To Paragraph 31:** Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 31 and, on that basis, denies them, except admits that (i) Diamond had an IPO in July 2013; and (ii) Mr. Clobeck was the Chairman of the Board of Diamond from the time of the July 2013 IPO through the closing of the Transaction. To the extent that the allegations in Paragraph 31 purport to describe the contents of public filings disclosing Mr. Clobeck's beneficial ownership of Company stock on particular dates, which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents.



32. Diamond repeatedly and publicly touted Cloobek 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. Cloobek [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.

**Response To Paragraph 32:** To the extent that the allegations in Paragraph 32 purport to describe the contents of Diamond's proxy statements from 2015 and 2016, which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren denies the allegations in Paragraph 32.

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

**Response To Paragraph 33:** To the extent the allegations in Paragraph 33 purport to describe the contents of financial statements, press releases, or other public filings issued by Diamond, which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren lacks knowledge or information sufficient to

form a belief as to the truth or the falsity of the allegations in Paragraph 33 and, on that basis, denies them.

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).

**Response To Paragraph 34:** To the extent the allegations in Paragraph 34 purport to describe the contents of the Solicitation, which speaks for itself, Mr. Warren respectfully refers the Court to that document for a true and complete statement of its contents. Otherwise, Mr. Warren denies the allegations in Paragraph 34, except admits that (i) in the spring of 2015, the Board formed the Transaction Committee to review the Company's strategic alternatives; and (ii) the Transaction Committee was composed of Ms. Taitz, Mr. Jones, and Mr. Berkman.

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

**Response To Paragraph 35:** Mr. Warren 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

(11) MidCap FinCo Holdings Limited, MidCap FinCo Limited, MidCap Funding I (Ireland) Limited; and (12) MidCap FinCo Intermediate Holdings Ltd.

**Response To Paragraph 36:** Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 36 and, on that basis, denies them, except admits that Ms. Taitz served on the boards of certain entities affiliated with Apollo.

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:

<b>Apollo Company</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>Total</b>
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

**Response To Paragraph 37:** To the extent that the allegations in Paragraph 37 purport to describe the contents of public filings issued by Athene Holding Ltd. or Apollo Residential Mortgage, Inc. between the years of 2011 and

2017, which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 37 and, on that basis, denies them.

38. In addition to Taitz's Apollo-affiliated directorships, 



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.<sup>3</sup>

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<sup>3</sup> 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](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](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](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](https://issuu.com/pencilsofpromise/docs/140822-pop_annual_report_2013)); \$100,000+ in donations to POP in 2012 (<https://pencilsofpromise.attach.io/BkFN4I40>); 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.

**Response To Paragraph 38:** To the extent that the allegations in Paragraph 38 purport to describe the contents of particular documents, which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 38 and, on that basis, denies them.

39.



**Response To Paragraph 39:** To the extent that the allegations in Paragraph 39 purport to describe the contents of particular documents, which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. To the extent that the allegations in Paragraph 39 relate to the actions of persons other than Mr. Warren or Diamond, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or

the falsity of the allegations in Paragraph 39 and, on that basis, denies them. Otherwise, Mr. Warren denies the allegations in Paragraph 39.

40. [REDACTED]

**Response To Paragraph 40:** To the extent that the allegations in Paragraph 40 purport to describe the contents of a particular document, which speaks for itself, Mr. Warren respectfully refers the Court to that document for a true and complete statement of its contents. Otherwise, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 40 and, on that basis, denies them.

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).

**Response To Paragraph 41:** To the extent that the allegations in Paragraph 41 purport to describe the contents of the Form 10-K filed by Athene Holding Ltd. with the SEC on February 26, 2018, which speaks for itself, Mr. Warren respectfully refers the Court to that document for a true and complete statement of its contents. Otherwise, Mr. Warren lacks knowledge or information

sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 41 and, on that basis, denies them.

42. [REDACTED]

[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.

**Response To Paragraph 42:** Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 42 and, on that basis, denies them.

43. [REDACTED]

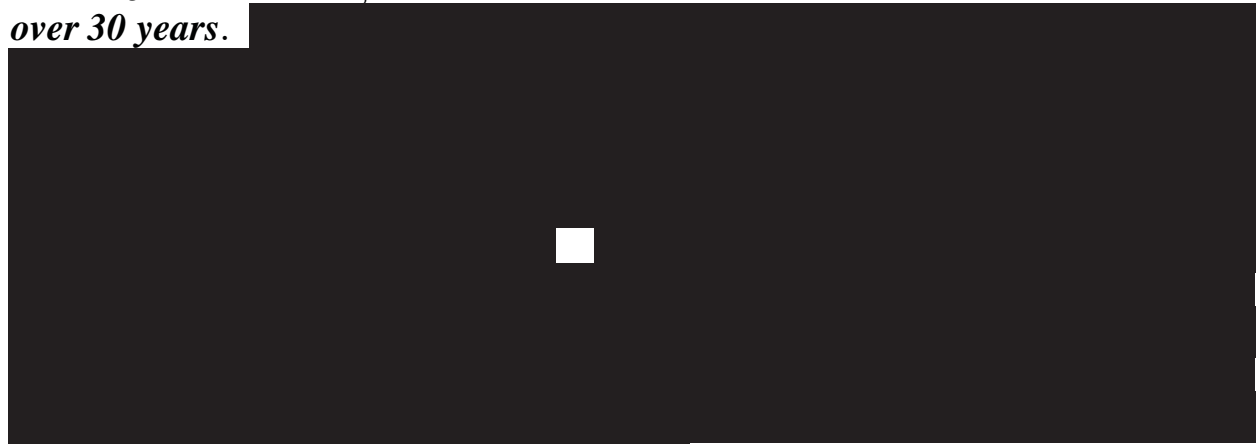
**Response To Paragraph 43:** To the extent that the allegations in Paragraph 43 purport to describe the contents of particular documents, which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. To the extent that the allegations in Paragraph 43 relate to the actions of persons other than Mr. Warren or Diamond, Mr.

Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 43 and, on that basis, denies them. Otherwise, Mr. Warren denies the allegations in Paragraph 43, except admits that (i) Mr. Jones was elected to the Board as an independent director in March 2015; and (ii) Ms. Taitz was the Chair of Diamond's Nominating and Corporate Governance Committee.

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.

**Response To Paragraph 44:** Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 44 and, on that basis, denies them.

45. Like Taitz, Berkman has been close friends with Rowan and Harris for *over 30 years*.



Berkman and Harris also attended a birthday party together in December 2017, an event captured in the following photograph:





**Response To Paragraph 45:** To the extent that the allegations in Paragraph 45 purport to describe the contents of particular documents, which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 45 and, on that basis, denies them.

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



**Response To Paragraph 46:** To the extent that the allegations in Paragraph 46 purport to describe the contents of particular documents, which speak

for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren denies the allegations in Paragraph 46, except admits that Centerview was hired to serve as the financial advisor to the Transaction Committee in 2015.

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.

**Response To Paragraph 47:** Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 47 and, on that basis, denies them.

48.



**Response To Paragraph 48:** To the extent that the allegations in Paragraph 48 purport to describe the contents of particular documents, which speak

for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 48 and, on that basis, denies them, except admits that the Transaction Committee retained Centerview as its financial advisor in June 2015.

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

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Response To Paragraph 49:** To the extent that the allegations in Paragraph 49 purport to describe the contents of [REDACTED] [REDACTED] or other particular documents, which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 49 and, on that basis, denies them, except admits that (i) the Transaction Committee disbanded in September 2015; and (ii) in February 2016, the Board formed the Strategic Review Committee to review the Company's strategic alternatives.

50. [REDACTED]

**Response To Paragraph 50:** To the extent that the allegations in Paragraph 50 purport to describe the contents of a particular document, which speaks for itself, Mr. Warren respectfully refers the Court to that document for a true and complete statement of its contents. Otherwise, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 50 and, on that basis, denies them.

51. [REDACTED]

**Response To Paragraph 51:** To the extent that the allegations in Paragraph 51 purport to describe the contents of [REDACTED] [REDACTED] which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 51 and, on that basis, denies them, except admits that [REDACTED]

52. [REDACTED]

[REDACTED]

**Response To Paragraph 52:** To the extent that the allegations in Paragraph 52 purport to describe the contents of [REDACTED] [REDACTED] which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren denies the allegations in Paragraph 52.

53. [REDACTED]

**Response To Paragraph 53:** To the extent that the allegations in Paragraph 53 purport to describe [REDACTED] [REDACTED] which speak for themselves, Mr. Warren respectfully refers the Court to those materials for true and complete statements of their contents. Otherwise, Mr. Warren denies the allegations in Paragraph 53, except admits that Centerview provided information to the Board on January 26, 2016.

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."

**Response To Paragraph 54:** To the extent the allegations in Paragraph 54 purport to describe the contents of the Company's Q4 2015 Earnings Release or other public filings issued by Diamond, which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren denies the allegations in Paragraph 54.

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]

**Response To Paragraph 55:** Mr. Warren denies 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.

**Response To Paragraph 56:** Mr. Warren denies the allegations in Paragraph 56.

57. *First,*

[REDACTED]

**Response To Paragraph 57:** To the extent that the allegations in Paragraph 57 purport to describe the contents of particular documents, which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 57 and, on that basis, denies them.

58.

[REDACTED]

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4

[REDACTED]



[REDACTED]

**Response To Paragraph 58:** To the extent that the allegations in Paragraph 58 purport to describe the contents of public filings disclosing the beneficial ownership of call options or Company stock, which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 58 and, on that basis, denies them, except admits that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]


59.


[REDACTED]

**Response To Paragraph 59:** To the extent that the allegations in Paragraph 59 purport to describe the contents of particular documents, which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 59 and, on that basis, denies them.

60.   


**Response To Paragraph 60:** To the extent that the allegations in Paragraph 60 purport to describe the contents of particular documents, which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 60 and, on that basis, denies them.

61. Berkman was also motivated to sell the Company for self-interested reasons. 



**Response To Paragraph 61:** To the extent that the allegations in Paragraph 61 purport to describe the contents of particular documents, which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. To the extent that the allegations in Paragraph 61 relate to the views or actions of persons other than Mr. Warren or Diamond, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 61 and, on that basis, denies them. Otherwise, Mr. Warren denies the allegations in Paragraph 61, except admits that the Board formed the Strategic Review Committee on February 22, 2016, and the Company announced that it was exploring strategic alternatives two days later.

62.



[REDACTED]

**Response To Paragraph 62:** To the extent that the allegations in Paragraph 62 purport to describe the contents of particular [REDACTED] documents, which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren denies 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]

**Response To Paragraph 63:** To the extent that the allegations in Paragraph 63 purport to describe the contents of the Solicitation, [REDACTED] [REDACTED] or other particular documents, which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren denies the allegations in Paragraph 63, except admits that (i) on February 22, 2016, the Board

formed the Strategic Review Committee to review the Company's strategic alternatives; (ii) Ms. Taitz, Mr. Jones, Mr. Wolf, and Mr. Berkman served on the Committee; and (iii) Ms. Taitz and Mr. Wolf served as the Committee's Co-Chairs.

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] [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).

**Response To Paragraph 64:** To the extent that the allegations in Paragraph 64 purport to describe the contents of the Solicitation, which speaks for itself, Mr. Warren respectfully refers the Court to that document for a true and complete statement of its contents. Otherwise, Mr. Warren denies the allegations in Paragraph 64.

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.

**Response To Paragraph 65:** Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 65 and, on that basis, denies them, except admits that the Committee retained Centerview as its financial advisor.

66. [REDACTED]

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

[REDACTED]<sup>5</sup>

**Response To Paragraph 66:** To the extent that the allegations in Paragraph 66 purport to describe the contents of [REDACTED] the Solicitation, or other particular documents, which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 66 and, on that basis, denies them, except admits that [REDACTED]

[REDACTED]

[REDACTED]

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

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[REDACTED]<sup>5</sup>

- 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]  
[REDACTED]  
[REDACTED] Apollo submitted a written indication of interest with a range of \$28.00 to \$30.00 per share; and
- 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.

**Response To Paragraph 67:** Mr. Warren denies that the Committee, the Board or Centerview pushed the Company toward a sale. Otherwise, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 67 and, on that basis, denies them, except admits that (i) Centerview was in contact with various interested parties; and (ii) [REDACTED]

[REDACTED]

[REDACTED]

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

**Response To Paragraph 68:** Mr. Warren denies the allegations in Paragraph 68.

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

**Response To Paragraph 69:** To the extent the allegations in Paragraph 69 purport to describe the contents of documents [REDACTED] for the Company’s May 2, 2016 Board meeting, which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren denies the allegations in Paragraph 69, except admits that [REDACTED]

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.

**Response To Paragraph 70:** To the extent the allegations in Paragraph 70 purport to describe the contents of the Company’s Q1 2016 Earnings Release or




other public filings issued by Diamond, which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren denies the allegations in Paragraph 70, except admits that on May 4, 2016, the Company filed with the SEC a press release announcing its financial results for the first quarter of 2016.

71. [REDACTED]

**Response To Paragraph 71:** To the extent that the allegations in Paragraph 71 purport to describe the contents of particular [REDACTED] documents, which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 71 and, on that basis, denies them.

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



**Response To Paragraph 72:** To the extent that the allegations in Paragraph 72 purport to describe the contents of particular documents, which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. To the extent that the allegations in Paragraph 72 relate to the views or actions of persons other than Mr. Warren or Diamond, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 72 and, on that basis, denies them. Otherwise, Mr. Warren denies the allegations in Paragraph 72, except admits that (i) Mr. Kraff served on the Board of Diamond LLC beginning in 2007; (ii) Mr. Kraff served on the Company's Board, in the role of Vice Chairman, from January 2013; and (iii) Mr. Kraff did not stand for re-election to the Board at the Company's annual meeting on May 24, 2016.

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



[REDACTED]

**Response To Paragraph 73:** To the extent that the allegations in Paragraph 73 purport to describe the contents of particular documents, which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. To the extent that the allegations in Paragraph 73 relate to the views or actions of persons other than Mr. Warren or Diamond, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 73 and, on that basis, denies them. Otherwise, Mr. Warren denies the allegations in Paragraph 73, except admits that Mr. Kraff did not stand for re-election to the Board at the Company's annual meeting on May 24, 2016.

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

[REDACTED]

[REDACTED]

[REDACTED]


[REDACTED]


**Response To Paragraph 74:** To the extent that the allegations in Paragraph 74 purport to describe the contents of particular documents, which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 74 and, on that basis, denies them.

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]

**Response To Paragraph 75:** To the extent the allegations in Paragraph 75 state legal conclusions, no response is required, and they are therefore denied. To the extent the allegations in Paragraph 75 purport to describe the contents of the 2016 Proxy Statement, which speaks for itself, Mr. Warren respectfully refers the Court to that document for a true and complete statement of its contents. Otherwise, Mr. Warren denies the allegations in Paragraph 75.


76. [REDACTED]



**Response To Paragraph 76:** To the extent that the allegations in Paragraph 76 purport to describe the contents of particular  documents, which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. To the extent that the allegations in Paragraph 76 relate to the views of persons other than Mr. Warren or Diamond, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 76 and, on that basis, denies them. Otherwise, Mr. Warren denies the allegations in Paragraph 76.

77.



**Response To Paragraph 77:** To the extent that the allegations in Paragraph 77 purport to describe the contents of particular  documents, which

speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 77 and, on that basis, denies them.

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

[REDACTED]

[REDACTED]

**Response To Paragraph 78:** To the extent that the allegations in Paragraph 78 purport to describe the contents of a particular [REDACTED] document, which speaks for itself, Mr. Warren respectfully refers the Court to that document for a true and complete statement of its contents. Otherwise, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 78 and, on that basis, denies them.

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]

**Response To Paragraph 79:** To the extent that the allegations in Paragraph 79 purport to describe the contents of public filings [REDACTED]

[REDACTED] or other particular documents, which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 79 and, on that basis, denies them.

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.<sup>7</sup> Apollo and [REDACTED] also submitted markups to the Merger Agreement and financing commitment papers.

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<sup>6</sup> Scoggin's Schedule 13G, filed June 22, 2016, [https://www.sec.gov/Archives/edgar/data/1130262/000114036116070581/form\\_sc1\\_3g.htm](https://www.sec.gov/Archives/edgar/data/1130262/000114036116070581/form_sc1_3g.htm) (last accessed Aug. 28, 2018).

<sup>7</sup> [REDACTED]

**Response To Paragraph 80:** Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 80 and, on that basis, denies them, except admits that (i) Apollo submitted a final bid of \$30.25 per share; (ii) another bidder, ██████████ submitted a final bid with a range of \$27 to \$29 per share, but noted that it would need additional time to complete its due diligence; and (iii) Apollo and ██████████ submitted markups of the draft merger agreement and other transaction documents.

81. With only Apollo and ██████████ 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 the process was effectively an admission that her substantial participation in the process was both conflicted and improper.

**Response To Paragraph 81:** Mr. Warren denies the allegations in Paragraph 81, except admits that Ms. Taitz decided to recuse herself from the Committee’s deliberations regarding its recommendation to the Board.

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.<sup>8</sup>

**Response To Paragraph 82:** Mr. Warren denies the allegations in Paragraph 82, except admits that (i) it was communicated to the Board that Ms. Taitz had recused herself from the Committee; (ii) Ms. Taitz, in her role as Director, continued to participate in meetings of the Company’s full Board, including on June 24, 2016; and (iii) at the conclusion of its June 24, 2016 meeting, the Board authorized Centerview to seek best and final bids from both remaining bidders.

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.

**Response To Paragraph 83:** Mr. Warren denies the allegations in Paragraph 83, except admits that (i) on June 25, 2016, the Strategic Review Committee and the full Board each held meetings to receive updates from Centerview and Gibson Dunn; (ii) the Company’s senior management was present for the Board meeting; and (iii) during the Board meeting, upon the recommendation of the Strategic Review Committee, the Board authorized Centerview and Gibson

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<sup>8</sup> 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.

Dunn to negotiate a final merger agreement with Apollo at the \$30.25 price per share.

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

[REDACTED]

**Response To Paragraph 84:** To the extent that the allegations in Paragraph 84 purport to describe the contents of [REDACTED] [REDACTED] which speak for themselves, Mr. Warren respectfully refers the Court to those [REDACTED] for a true and complete statement of their contents. Otherwise, Mr. Warren denies the allegations in Paragraph 84.

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

**Response To Paragraph 85:** Mr. Warren denies the allegations in Paragraph 85, except admits that, on June 25, 2016, all Board members except for Mr. Cloobek, who abstained, voted in favor of authorizing Centerview and Gibson Dunn to negotiate a final merger agreement with Apollo at the \$30.25 price per share.

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.

**Response To Paragraph 86:** Mr. Warren denies the allegations in the last sentence of Paragraph 86. Otherwise, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 86 and, on that basis, denies them, except admits that Centerview analyzed the \$30.25 per share cash consideration and reached the opinion that the Transaction was fair to the Company's stockholders from a financial point of view.

87. [REDACTED]

**Response To Paragraph 87:** To the extent the allegations in Paragraph 87 purport to describe the summary of Centerview's financial analysis found in the Solicitation, Centerview's written fairness opinion, dated June 27, 2016, and

attached to the Solicitation as Annex A, or [REDACTED]  
[REDACTED] which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 87 and, on that basis, denies them.

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]  
[REDACTED]

**Response To Paragraph 88:** Mr. Warren denies the allegations in Paragraph 88, except admits that [REDACTED]  
[REDACTED]  
[REDACTED]

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.

**Response To Paragraph 89:** Mr. Warren denies the allegations in Paragraph 89, except admits that (i) on June 26, 2016, the Board held a telephonic meeting; (ii) during this meeting, Centerview reviewed with the Board its financial

analysis of the \$30.25 per share cash consideration and indicated that it had rendered to the Strategic Review Committee an oral opinion that the Transaction was fair to the Company's stockholders from a financial point of view; and (iii) during the June 26, 2016 Board meeting, the Board voted to approve the Transaction.

90. Cloobek was sufficiently disappointed with the Transaction that he deemed it necessary to *again* lodge his objections. [REDACTED]

[REDACTED]

[REDACTED] Cloobek'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.

**Response To Paragraph 90:** To the extent that the allegations in Paragraph 90 purport to describe the contents of [REDACTED] [REDACTED] which speak for themselves, Mr. Warren respectfully refers the Court to those [REDACTED] for a true and complete statement of their contents. Otherwise, Mr. Warren denies the allegations in Paragraph 90, except admits that (i) during the June 26, 2016 Board meeting, Mr. Cloobek abstained from the Board's vote to approve the Transaction; and (ii) all other Board members voted to approve the Transaction.

91. [REDACTED]

**Response To Paragraph 91:** To the extent that the allegations in Paragraph 91 purport to describe the contents of particular documents, which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 91 and, on that basis, denies them.

92. [REDACTED]

**Response To Paragraph 92:** To the extent that the allegations in Paragraph 92 purport to describe [REDACTED] which

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<sup>9</sup> 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.

speaks for itself, Mr. Warren respectfully refers the Court to [REDACTED] [REDACTED] for a true and complete statement of its contents. Otherwise, Mr. Warren denies the allegations in Paragraph 92, except admits that [REDACTED]

[REDACTED]

93. [REDACTED]

**Response To Paragraph 93:** To the extent that the allegations in Paragraph 93 purport to describe [REDACTED] [REDACTED] which speak for themselves, Mr. Warren respectfully refers the Court to [REDACTED] for true and complete

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<sup>10</sup> 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]

statements of their contents. Otherwise, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 93 and, on that basis, denies them.

94. [REDACTED]

**Response To Paragraph 94:** To the extent that the allegations in Paragraph 94 purport to describe the [REDACTED] which speaks for itself, Mr. Warren respectfully refers the Court to [REDACTED] [REDACTED] for a true and complete statement of its contents. Otherwise, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 94 and, on that basis, denies them.

95. As alleged *supra* at ¶¶ 51 through 53, [REDACTED] [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.

**Response To Paragraph 95:** Mr. Warren 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]

**Response To Paragraph 96:** To the extent the allegations in Paragraph 96 purport to describe the summary of Centerview’s financial analysis found in the Solicitation, Centerview’s written fairness opinion, dated June 27, 2016, and attached to the Solicitation as Annex A, or [REDACTED]

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<sup>11</sup> 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 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.

[REDACTED] which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 96 and, on that basis, denies them.

97. [REDACTED]

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<sup>12</sup> 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.

<sup>13</sup> “Adjusted EBITDA” is the Company’s earnings before interest, tax, depreciation and amortization.

<sup>14</sup> “Market Adjusted EBITDA” is the Company’s earnings before interest, tax, depreciation and amortization less vacation interest cost of sales and stock-based compensation.

<sup>15</sup> The implied perpetuity growth rate is dependent on the terminal value. [REDACTED]

[REDACTED]

**Response To Paragraph 97:** To the extent the allegations in Paragraph 97 purport to describe the summary of Centerview’s financial analysis found in the Solicitation, Centerview’s written fairness opinion, dated June 27, 2016, and attached to the Solicitation as Annex A, or [REDACTED] [REDACTED] which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 97 and, on that basis, denies them.

98. [REDACTED]

**Response To Paragraph 98:** To the extent the allegations in Paragraph 98 purport to describe the summary of Centerview’s financial analysis found in the Solicitation, Centerview’s written fairness opinion, dated June 27, 2016, and attached to the Solicitation as Annex A, or [REDACTED] [REDACTED] which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 98 and, on that basis, denies them.

99. [REDACTED]

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<sup>16</sup> Economic projections of Federal Reserve Board members and Federal Reserve Bank presidents under their individual assessments of projected appropriate monetary policy, June 2016, <https://www.federalreserve.gov/monetarypolicy/files/fomcproptab120160615.pdf> (last accessed August 28, 2018).

<sup>17</sup> *Id.*

**Response To Paragraph 99:** To the extent the allegations in Paragraph 99 purport to describe the summary of Centerview’s financial analysis found in the Solicitation, Centerview’s written fairness opinion, dated June 27, 2016, and attached to the Solicitation as Annex A, [REDACTED] [REDACTED] which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 99 and, on that basis, denies them.

100. *Second*, Centerview derived a weighted average cost of capital (“WACC”)<sup>18</sup> for Diamond that was unreasonably high, which served to further depress Centerview’s DCF analysis and the implied equity value range derived therefrom.

**Response To Paragraph 100:** To the extent the allegations in Paragraph 100 purport to describe the summary of Centerview’s financial analysis found in the Solicitation, Centerview’s written fairness opinion, dated June 27, 2016, and attached to the Solicitation as Annex A, or [REDACTED]

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<sup>18</sup> 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] which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 100 and, on that basis, denies them.

101. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Response To Paragraph 101:** To the extent the allegations in Paragraph 101 purport to describe the summary of Centerview’s financial analysis found in the Solicitation, Centerview’s written fairness opinion, dated June 27, 2016, and attached to the Solicitation as Annex A, or [REDACTED] [REDACTED] which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 101 and, on that basis, denies them.

102. [REDACTED]

**Response To Paragraph 102:** To the extent the allegations in Paragraph 102 purport to describe the summary of Centerview’s financial analysis found in the Solicitation, Centerview’s written fairness opinion, dated June 27, 2016, and attached to the Solicitation as Annex A, or [REDACTED] [REDACTED] which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren lacks knowledge or information sufficient to form

a belief as to the truth or the falsity of the allegations in Paragraph 102 and, on that basis, denies them.

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.

**Response To Paragraph 103:** To the extent the allegations in Paragraph 103 purport to describe the summary of Centerview's financial analysis found in the Solicitation, Centerview's written fairness opinion, dated June 27, 2016, and attached to the Solicitation as Annex A, or [REDACTED] [REDACTED] which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 103 and, on that basis, denies them.

104. *Third,* [REDACTED]  
[REDACTED]

**Response To Paragraph 104:** To the extent the allegations in Paragraph 104 purport to describe the summary of Centerview's financial analysis found in the Solicitation, Centerview's written fairness opinion, dated June 27, 2016, and



attached to the Solicitation as Annex A, or [REDACTED]  
[REDACTED] which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 104 and, on that basis, denies them.

105. [REDACTED]  
[REDACTED]  
[REDACTED]

**Response To Paragraph 105:** To the extent the allegations in Paragraph 105 purport to describe the summary of Centerview’s financial analysis found in the Solicitation, Centerview’s written fairness opinion, dated June 27, 2016, and attached to the Solicitation as Annex A, or [REDACTED]  
[REDACTED] which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren lacks knowledge or information sufficient to form

a belief as to the truth or the falsity of the allegations in Paragraph 105 and, on that basis, denies them.

106. [REDACTED]

[REDACTED]  
19

**Response To Paragraph 106:** To the extent the allegations in Paragraph 106 purport to describe the summary of Centerview’s financial analysis found in the Solicitation, Centerview’s written fairness opinion, dated June 27, 2016, and attached to the Solicitation as Annex A, or [REDACTED] [REDACTED] which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 106 and, on that basis, denies them.

107. [REDACTED]

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<sup>19</sup> 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.

[REDACTED]

[REDACTED]

**Response To Paragraph 107:** To the extent the allegations in Paragraph 107 purport to describe the summary of Centerview’s financial analysis found in the Solicitation, Centerview’s written fairness opinion, dated June 27, 2016, and attached to the Solicitation as Annex A, or [REDACTED] [REDACTED] which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 107 and, on that basis, denies them.

108. [REDACTED]

**Response To Paragraph 108:** To the extent the allegations in Paragraph 108 purport to describe the summary of Centerview’s financial analysis found in the Solicitation, Centerview’s written fairness opinion, dated June 27, 2016, and attached to the Solicitation as Annex A, or [REDACTED] [REDACTED] which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 108 and, on that basis, denies them.

109. [REDACTED]

**Response To Paragraph 109:** To the extent the allegations in Paragraph 109 purport to describe the summary of Centerview’s financial analysis found in the Solicitation, Centerview’s written fairness opinion, dated June 27, 2016, and attached to the Solicitation as Annex A, or [REDACTED] [REDACTED] which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their

contents. Otherwise, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 109 and, on that basis, denies them.

110. [REDACTED]

**Response To Paragraph 110:** To the extent that the allegations in Paragraph 110 purport to describe the summary of Centerview’s financial analysis found in the Solicitation, Centerview’s written fairness opinion, dated June 27, 2016, and attached to the Solicitation as Annex A, or [REDACTED] [REDACTED] which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 110 and, on that basis, denies them.

111. [REDACTED]

20

**Response To Paragraph 111:** To the extent that the allegations in Paragraph 111 purport to describe the contents of Diamond's Form 10-Ks, [REDACTED] or other particular documents, which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren lacks knowledge or information sufficient to form a belief

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<sup>20</sup> 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]

as to the truth or the falsity of the allegations in Paragraph 111 and, on that basis, denies them.

112. 

**Response To Paragraph 112:** Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 112 and, on that basis, denies them.

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

**Response To Paragraph 113:** Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 113 and, on that basis, denies them.

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.

**Response To Paragraph 114:** Mr. Warren 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.

**Response To Paragraph 115:** Mr. Warren denies the allegations in Paragraph 115, except admits that the tender offer originally was intended to expire on August 10, 2016.

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]

[REDACTED]

**Response To Paragraph 116:** Mr. Warren denies the allegations in the first sentence of Paragraph 116. Otherwise, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in




Paragraph 116 and, on that basis, denies them. To the extent that the allegations in Paragraph 116 purport to describe the contents of particular documents, which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents.

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.

**Response To Paragraph 117:** To the extent that the allegations in Paragraph 117 purport to describe the contents of an Apollo press release that the Company filed with the SEC on August 9, 2016, or any other public filings, which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 117 and, on that basis, denies them, except admits that (i) on August 9, 2016, the Company filed with the SEC an Apollo press release regarding the tender offer; (ii) the tender offer originally was intended to expire on August 10, 2016; and (iii) the expiration of the tender offer was extended.

118. 



**Response To Paragraph 118:** To the extent that the allegations in Paragraph 118 purport to describe the contents of particular documents, which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 118 and, on that basis, denies them.

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

**Response To Paragraph 119:** To the extent that the allegations in Paragraph 119 purport to describe the contents of a Schedule 13D/A filed with the SEC by Mr. Cloobek and affiliated entities on August 19, 2016, or other public filings relating to Mr. Cloobek's beneficial ownership of Company stock or the tender of shares in connection with the Transaction, which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren lacks knowledge or information

sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 119 and, on that basis, denies them.

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.

**Response To Paragraph 120:** To the extent that the allegations in Paragraph 120 purport to describe the contents of an Apollo press release that the Company filed with the SEC on August 23, 2016, or any other public filings, which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 120 and, on that basis, denies them.

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.

**Response To Paragraph 121:** To the extent that the allegations in Paragraph 121 purport to describe the contents of an Apollo press release that the Company filed with the SEC on August 29, 2016, or any other public filings, which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren lacks

knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 121 and, on that basis, denies them.

122. 

**Response To Paragraph 122:** To the extent that the allegations in Paragraph 122 purport to describe the contents of particular documents, which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 122 and, on that basis, denies them.

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.

**Response To Paragraph 123:** To the extent that the allegations in Paragraph 123 purport to describe the contents of a press release that the Company filed with the SEC on September 2, 2016, or any other public filings, which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren lacks knowledge

or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 123 and, on that basis, denies them.

124.



**Response To Paragraph 124:** To the extent that the allegations in Paragraph 124 purport to describe the contents of particular documents, which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 124 and, on that basis, denies them.

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.

**Response To Paragraph 125:** To the extent the allegations in Paragraph 125 state legal conclusions, no response is required, and they are therefore denied. Otherwise, Mr. Warren lacks knowledge or information sufficient to form a belief

as to the truth or the falsity of the allegations in Paragraph 125 and, on that basis, denies them, except admits that the Transaction closed on September 2, 2016.

126. [REDACTED]

**Response To Paragraph 126:** To the extent that the allegations in Paragraph 126 purport to describe the contents of public filings disclosing the beneficial ownership or exercise of call options in Diamond stock, which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 126 and, on that basis, denies them, except admits that [REDACTED]

127. [REDACTED]

**Response To Paragraph 127:** To the extent that the allegations in Paragraph 127 purport to describe the contents of [REDACTED] [REDACTED] which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren denies the allegations in Paragraph 127.

128. [REDACTED]

**Response To Paragraph 128:** To the extent that the allegations in Paragraph 128 purport to describe the contents of particular documents, which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren denies the allegations in Paragraph 128.

129. [REDACTED]

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<sup>21</sup> See *supra* ¶¶ 72-75.

**Response To Paragraph 129:** To the extent that the allegations in Paragraph 129 purport to describe the contents of particular documents, which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 129 and, on that basis, denies them, except admits that (i) Mr. Kraff had served on the Company's Board, in the role of Vice Chairman, and (ii) Mr. Kraff did not stand for re-election to the Board at the Company's annual meeting on May 24, 2016.

130. 

**Response To Paragraph 130:** To the extent that the allegations in Paragraph 130 purport to describe the contents of particular documents, which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 130 and, on that basis, denies them.



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]

**Response To Paragraph 131:** To the extent that the allegations in Paragraph 131 purport to describe the contents of a particular document, which speaks for itself, Mr. Warren respectfully refers the Court to that document for a true and complete statement of its contents. Otherwise, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 131 and, on that basis, denies them.

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)

**Response To Paragraph 132:** To the extent that the allegations in Paragraph 132 purport to describe the contents of the Form 10-K filed by Athene Holding Ltd. with the SEC on February 26, 2018, which speaks for itself, Mr. Warren respectfully refers the Court to that document for a true and complete statement of its contents. Otherwise, Mr. Warren lacks knowledge or information

sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 132 and, on that basis, denies them.

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.

**Response To Paragraph 133:** To the extent the allegations in Paragraph 133 state legal conclusions, no response is required, and they are therefore denied. Otherwise, Mr. Warren denies the allegations in Paragraph 133, except admits that the Company did file the Solicitation and other materials with the SEC in connection with the Transaction.

134. As detailed above, Cloobek expressed his unequivocal disappointment with the Transaction and mismanagement of Diamond at full Board meetings held on June 25, 2016 and June 26, 2016.<sup>22</sup> [REDACTED]

[REDACTED]

[REDACTED]

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<sup>22</sup> The Board minutes detailing (i) Cloobek'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.

[REDACTED]

**Response To Paragraph 134:** To the extent that the allegations in Paragraph 134 purport to describe the contents of [REDACTED] [REDACTED] which speak for themselves, Mr. Warren respectfully refers the Court to those [REDACTED] for a true and complete statement of their contents. To the extent the allegations in the footnote to Paragraph 134 relate to when Plaintiff received copies of the Board minutes, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 134 and, on that basis, denies them. Otherwise, Mr. Warren denies the allegations in Paragraph 134.

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

[REDACTED]

[REDACTED]

**Response To Paragraph 135:** To the extent that the allegations in Paragraph 135 purport to describe the contents of [REDACTED] [REDACTED] Mr. Warren respectfully

refers the Court to those [REDACTED] for a true and complete statement of their contents.

Otherwise, Mr. Warren denies the allegations in Paragraph 135.

136. Yet the Board omitted from the 14D-9 any mention of Cloobek's (i) disappointment with the \$30.25 Transaction price, [REDACTED]

[REDACTED] This information was not merely material, but critical to Diamond stockholders' assessment of the Transaction, as Cloobek 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. Cloobek, as our founder and the former Chief Executive Officer of Diamond LLC, should continue to serve as a director because of *Mr. Cloobek's unique understanding of the opportunities and challenges that we face and his in-depth knowledge about our business, including our customers, operations, key business drivers and long-term growth strategies, derived from his 30 years of experience in the vacation ownership industry and his service as our founder and former Chief Executive Officer.*

(Emphasis added).

**Response To Paragraph 136:** To the extent the allegations in Paragraph 136 state legal conclusions, no response is required, and they are therefore denied. To the extent that the allegations in Paragraph 136 purport to describe the contents of the Solicitation or Diamond's proxy statement from 2016, which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren denies the allegations in Paragraph 136.

137. Instead of disclosing Cloobek'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 Cloobek'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.

**Response To Paragraph 137:** To the extent the allegations in Paragraph 137 state legal conclusions, no response is required, and they are therefore denied. To the extent the allegations in Paragraph 137 purport to describe the contents of the Solicitation, which speaks for itself, Mr. Warren respectfully refers the Court to that document for a true and complete statement of its contents. Otherwise, Mr. Warren denies the allegations in Paragraph 137.

138. Particularly after raising the issue of Cloobek'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.

**Response To Paragraph 138:** To the extent the allegations in Paragraph 138 state legal conclusions, no response is required, and they are therefore denied. Otherwise, Mr. Warren denies the allegations in Paragraph 138.

139. On February 20, 2018, the Delaware Supreme Court confirmed the materiality of Cloobek’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 Cloobek 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).

**Response To Paragraph 139:** To the extent the allegations in Paragraph 139 state legal conclusions, no response is required, and they are therefore denied. To the extent the allegations in Paragraph 139 purport to describe the contents of the Delaware Supreme Court’s February 20, 2018 decision, which speaks for itself, Mr. Warren respectfully refers the Court to that decision for a true and complete statement of its contents. Otherwise, Mr. Warren denies the allegations in Paragraph 139.

140. The Delaware Supreme Court further held that (i) Chairman Cloobek’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).

**Response To Paragraph 140:** To the extent the allegations in Paragraph 140 state legal conclusions, no response is required, and they are therefore denied. To

the extent the allegations in Paragraph 140 purport to describe the contents of the Delaware Supreme Court's February 20, 2018 decision, which speaks for itself, Mr. Warren respectfully refers the Court to that decision for a true and complete statement of its contents.

141. Nor can there be any serious dispute that a pleading-stage inference exists that the Board *knowingly* failed to disclose to stockholders Cloobek'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 Cloobek explicitly voiced these objections. *Second*, the Delaware Supreme Court has expressed its doubt that the Board's concealment of Cloobek'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 Cloobek's objections:

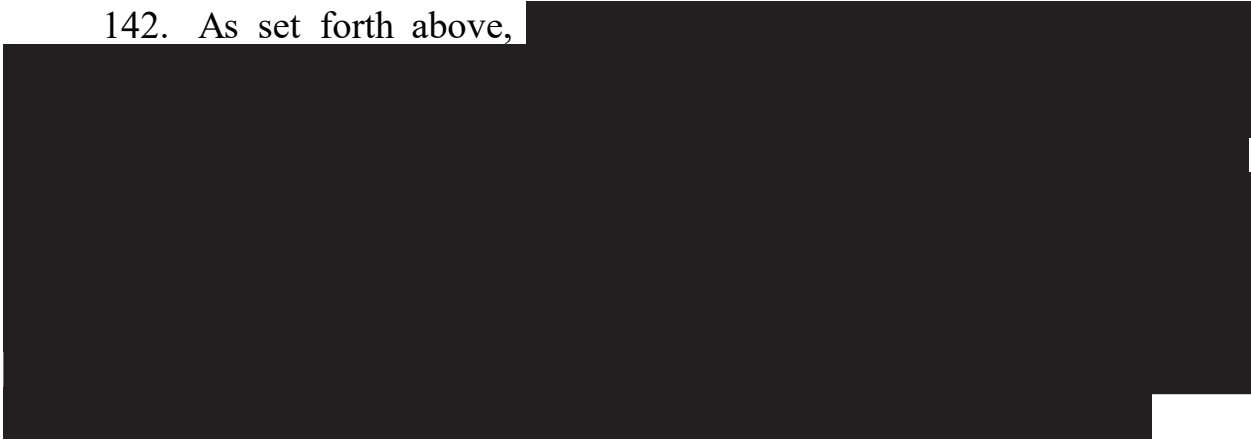
There's an implication that we've argued that the other board members didn't know why Mr. Cloobek abstained. We never argued that. *Of*

*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 Cloobek voiced his objections, yet inexplicably omitted Cloobek's highly material objections.

**Response To Paragraph 141:** To the extent the allegations in Paragraph 141 state legal conclusions, no response is required, and they are therefore denied. To the extent the allegations in Paragraph 141 purport to describe the contents of the Solicitation or the transcripts of oral argument before this Court and the Delaware Supreme Court, which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren denies the allegations in Paragraph 141.

142. As set forth above,



**Response To Paragraph 142:** To the extent that the allegations in Paragraph 142 purport to describe the contents of particular Apollo documents,



which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren denies the allegations in Paragraph 142.

143. [REDACTED]

[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]

**Response To Paragraph 143:** To the extent the allegations in Paragraph 143 state legal conclusions, no response is required, and they are therefore denied. Otherwise, Mr. Warren 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]


[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.

**Response To Paragraph 144:** To the extent the allegations in Paragraph 144 state legal conclusions, no response is required, and they are therefore denied. Otherwise, Mr. Warren 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.

**Response To Paragraph 145:** Mr. Warren states that the allegations in Paragraph 145 constitute legal conclusions to which no response is required. To the extent a response is required, Mr. Warren 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. 



**Response To Paragraph 146:** To the extent the allegations in Paragraph 146 state legal conclusions, no response is required, and they are therefore denied. To the extent the allegations in Paragraph 146 purport to describe the contents of the Solicitation, which speaks for itself, Mr. Warren respectfully refers the Court to that document for a true and complete statement of its contents. Otherwise, Mr. Warren denies the allegations in Paragraph 146.

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.

**Response To Paragraph 147:** To the extent the allegations in Paragraph 147 state legal conclusions, no response is required, and they are therefore denied. To the extent that the allegations in Paragraph 147 purport to describe the contents of the Solicitation, which speaks for itself, Mr. Warren respectfully refers the Court to that document for a true and complete statement of its contents. Otherwise, Mr. Warren denies the allegations in Paragraph 147.

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.

**Response To Paragraph 148:** To the extent the allegations in Paragraph 148 state legal conclusions, no response is required, and they are therefore denied. To the extent that the allegations in Paragraph 148 purport to describe the contents of the Solicitation or other particular documents, which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren denies the allegations in Paragraph 148.

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. 

**Response To Paragraph 149:** To the extent the allegations in Paragraph 149 state legal conclusions, no response is required, and they are therefore denied. To the extent that the allegations in Paragraph 149 purport to describe the contents of the Solicitation, which speaks for itself, Mr. Warren respectfully refers the Court to

that document for a true and complete statement of its contents. To the extent the allegations in Paragraph 149 relate to Mr. Jones' employment history, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 149 and, on that basis, denies them. Otherwise, Mr. Warren denies the allegations in Paragraph 149, except admits that Mr. Jones served on Diamond's Board, the Transaction Committee, and the Strategic Review Committee.

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.

**Response To Paragraph 150:** To the extent the allegations in Paragraph 150 state legal conclusions, no response is required, and they are therefore denied. Otherwise, Mr. Warren denies the allegations in Paragraph 150.

151. [REDACTED]

**Response To Paragraph 151:** Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 151 and, on that basis, denies them.

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.

**Response To Paragraph 152:** Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 152 and, on that basis, denies them, except admits that Scoggin Capital Management II LLC and related entities and persons filed a joint Schedule 13G with the SEC on June 22, 2016 based on their total beneficial ownership of the Company’s stock. To the extent the allegations in Paragraph 152 purport to describe the contents of the Schedule 13G, which speaks for itself, Mr. Warren respectfully refers the Court to that document for a true and complete statement of its contents.

153. 

[REDACTED]

**Response To Paragraph 153:** To the extent that the allegations in Paragraph 153 purport to describe the contents of particular documents, which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 153 and, on that basis, denies them.

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

[REDACTED]

**Response To Paragraph 154:** To the extent the allegations in Paragraph 154 state legal conclusions, no response is required, and they are therefore denied. Otherwise, Mr. Warren denies the allegations in Paragraph 154.

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").

**Response To Paragraph 155:** Mr. Warren states that the allegations in Paragraph 155 constitute legal conclusions to which no response is required. To the extent a response is required, Mr. Warren denies the allegations in Paragraph 155.

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

**Response To Paragraph 156:** Mr. Warren states that the allegations in Paragraph 156 constitute legal conclusions to which no response is required. To the extent a response is required, Mr. Warren denies the allegations in Paragraph 156.

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.

**Response To Paragraph 157:** To the extent the allegations in Paragraph 157 state legal conclusions, no response is required, and they are therefore denied. To the extent that the allegations in Paragraph 157 purport to describe the contents of the Solicitation or other public filings, which speak for themselves, Mr. Warren respectfully refers the Court to those documents for true and complete statements of their contents. Otherwise, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 157 and, on that basis, denies them.

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.



**Response To Paragraph 158:** Mr. Warren states that the allegations in Paragraph 158 constitute legal conclusions to which no response is required. To the extent a response is required, Mr. Warren denies the allegations in Paragraph 158.

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.

**Response To Paragraph 159:** Mr. Warren states that the allegations in Paragraph 159 constitute legal conclusions to which no response is required. To the extent a response is required, Mr. Warren denies the allegations in Paragraph 159.

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.

**Response To Paragraph 160:** Mr. Warren states that the allegations in Paragraph 160 constitute legal conclusions to which no response is required. To the extent a response is required, Mr. Warren denies the allegations in Paragraph 160.

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.

**Response To Paragraph 161:** Mr. Warren states that the allegations in Paragraph 161 constitute legal conclusions to which no response is required. To the extent a response is required, Mr. Warren denies the allegations in Paragraph 161.

### **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.

**Response To Paragraph 162:** Mr. Warren's responses to the allegations contained in the foregoing paragraphs are incorporated by reference as if fully set forth herein.

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

**Response To Paragraph 163:** Mr. Warren states that the allegations in Paragraph 163 constitute legal conclusions to which no response is required. To the extent a response is required, Mr. Warren denies the allegations in Paragraph 163.

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.

**Response To Paragraph 164:** To the extent the allegations in Paragraph 164 state legal conclusions, no response is required, and they are therefore denied. Otherwise, Mr. Warren denies the allegations in Paragraph 164.

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.

**Response To Paragraph 165:** Mr. Warren states that the allegations in Paragraph 165 constitute legal conclusions to which no response is required. To the extent a response is required, Mr. Warren denies the allegations in Paragraph 165.

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

**Response To Paragraph 166:** Mr. Warren states that the allegations in Paragraph 166 constitute legal conclusions to which no response is required. To the extent a response is required, Mr. Warren denies the allegations in Paragraph 166.

## **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.

**Response To Paragraph 167:** Mr. Warren's responses to the allegations contained in the foregoing paragraphs are incorporated by reference as if fully set forth herein.

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.

**Response To Paragraph 168:** Mr. Warren states that the allegations in Paragraph 168 constitute legal conclusions to which no response is required. To the extent a response is required, Mr. Warren denies the allegations in Paragraph 168.

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.

**Response To Paragraph 169:** To the extent the allegations in Paragraph 169 state legal conclusions, no response is required, and they are therefore denied. Otherwise, Mr. Warren denies the allegations in Paragraph 169.

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

**Response To Paragraph 170:** Mr. Warren states that the allegations in Paragraph 170 constitute legal conclusions to which no response is required. To the extent a response is required, Mr. Warren denies the allegations in Paragraph 170.

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

**Response To Paragraph 171:** Mr. Warren states that the allegations in Paragraph 171 constitute legal conclusions to which no response is required. To the extent a response is required, Mr. Warren denies the allegations in Paragraph 171.

**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.

**Response To Paragraph 172:** Mr. Warren's responses to the allegations contained in the foregoing paragraphs are incorporated by reference as if fully set forth herein.

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.

**Response To Paragraph 173:** To the extent the allegations in Paragraph 173 state legal conclusions, no response is required, and they are therefore denied. Otherwise, Mr. Warren lacks knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations in Paragraph 173 and, on that basis, denies them.

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.

**Response To Paragraph 174:** To the extent the allegations in Paragraph 174 state legal conclusions, no response is required, and they are therefore denied. Otherwise, Mr. Warren denies the allegations in Paragraph 174.

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.

**Response To Paragraph 175:** To the extent the allegations in Paragraph 175 state legal conclusions, no response is required, and they are therefore denied. Otherwise, Mr. Warren denies the allegations in Paragraph 175.

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

**Response To Paragraph 176:** To the extent the allegations in Paragraph 176 state legal conclusions, no response is required, and they are therefore denied. Otherwise, Mr. Warren denies the allegations in Paragraph 176.

### **AFFIRMATIVE DEFENSES**

Mr. Warren sets forth the following affirmative and/or other defenses. To the extent that a defense asserted herein as an "Affirmative Defense" is an ordinary defense, Mr. Warren does not intend to, and does not, assume any burden of proof, production, or persuasion that would not apply if such defense were not asserted herein. Mr. Warren also reserves the right to raise any additional defenses not

asserted herein of which he may become aware through discovery or other investigation.

#### **FIRST AFFIRMATIVE DEFENSE**

The Complaint, or some part thereof, fails to state a claim upon which relief may be granted.

#### **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**

Mr. Warren'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 Mr. Warren 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**

Mr. Warren 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 Mr. Warren'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**

Mr. Warren 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.

*/s/ Raymond J. DiCamillo*

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*Lowell Kraff*

Dated: November 27, 2018