SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION

John and Ultima Morgan, TGHI II LLC, Prime Overseas Investments and Enterprises Ltd., and Techview Investments Ltd.,

Plaintiffs,

-against-

Surterra Holdings Inc. dba Parallel, SH Parent Inc., PE Fund LP, WWJr. Enterprises Inc., William "Beau" Wrigley, Jr., Talladega LP, Talladega, Inc., and Acquiom Agency Services LLC,

Defendants.

Index No.: 651041/2022

SUMMONS

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the second amended complaint in this action and to serve a copy of your answer on Plaintiff's attorney within 20 days after the service of this summons, exclusive of the date of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York).

TAKE NOTICE THAT should you fail to answer, a judgement will be taken against you by default for the relief demanded in the complaint and any additional interest the Court deems applicable.

Plaintiffs designate New York County as the place of trial. Venue is proper in this Court pursuant to CPLR §§ 501 and 503. The Commercial Division of New York County has jurisdiction because Plaintiffs have incurred or face damages in excess of the $500,000 monetary threshold required for jurisdiction in the Commercial Division of New York County, and because Plaintiffs

seek a declaratory judgment in connection with breach of contract actions. 22 NYCRR § 202.70(b)(1).

Dated: April 12, 2022
New York, New York

QUINN EMANUEL URQUHART & SULLIVAN, LLP

By: */s/ Susheel Kirpalani*
Michael B. Carlinsky
(michaelcarlinsky@quinnemanuel.com)
Susheel Kirpalani
(susheelkirpalani@quinnemanuel.com)
Jianjian Ye
(jianjianye@quinnemanuel.com)

51 Madison Avenue, 22nd Floor
New York, New York 10010
(212) 849-7000

Attorneys for Plaintiffs

TO:

Surterra Holdings Inc.
55 Ivan Allen Blvd. Jr. NW, 9th Floor
Atlanta, Georgia 30308

SH Parent Inc.
55 Ivan Allen Blvd. Jr. NW, 9th Floor
Atlanta, Georgia 30308

PE Fund LP
101 N. Clematis, Suite 200
West Palm Beach, Florida 33401

WWJr. Enterprises Inc.
101 N. Clematis, Suite 200
West Palm Beach, Florida 33401

William "Beau" Wrigley Jr.
101 N. Clematis, Suite 200
West Palm Beach, Florida 33401

Talladega LP
c/o Luna N. Barrington
Weil, Gotshal & Manges LLP
767 5th Ave, New York, NY 10153

Talladega, Inc.
c/o Luna N. Barrington
Weil, Gotshal & Manges LLP
767 5th Ave, New York, NY 10153

Acquiom Agency Services LLC
150 South Fifth Street, Suite 2600
Minneapolis, MN 55402

SUPREME COURT OF THE STATE OF NEW YORK
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John and Ultima Morgan, TGHI II LLC, Prime Overseas Investments and Enterprises Ltd., and Techview Investments Ltd., Plaintiffs, -against- Surterra Holdings Inc. dba Parallel, SH Parent Inc., PE Fund LP, WWJr. Enterprises Inc., William "Beau" Wrigley, Jr., Talladega LP, Talladega, Inc., and Acquiom Agency Services LLC, Defendants.	Index No.: 651041/2022 **SECOND AMENDED COMPLAINT** Redacted version of NYSCEF Doc. No. 93

Plaintiffs John and Ultima Morgan, TGHI II LLC, Prime Overseas Investments and Enterprises Ltd., and Techview Investments Ltd. ("**Techview**"),[1] by and through their attorneys, Quinn Emanuel Urquhart & Sullivan, LLP, for their Complaint against Defendants Surterra Holdings Inc. dba Parallel ("**Parallel**"), SH Parent Inc. ("**Parent**", together with Parallel, the "**Company**"), PE Fund LP ("**PE Fund**"), WWJr. Enterprises Inc. ("**WWJR Enterprises**"), William "Beau" Wrigley, Jr. ("**Wrigley**"), Talladega LP, Talladega, Inc., and Acquiom Agency Services LLC ("**Acquiom**") allege as follows[2]:

[1] Capitalized terms, unless otherwise defined, shall have the meanings provided in the Note Purchase Agreement.

[2] The purpose of this Second Amended Complaint, in accordance with a stipulation of the original parties, is to add Acquiom as a Defendant, as the purported successor Collateral Agent (as defined below), and to remove GLAS Americas LLC, as the predecessor Collateral Agent. The substantive allegations generally describing the anticipated transaction in the original complaint remains described in such terms in this Second Amended Complaint. The anticipated transaction was purportedly consummated, however, by Defendants on March 14, 2022, and Plaintiffs assert that the transaction as consummated is consistent with the substantive allegations and theories of liability hereunder.

PRELIMINARY STATEMENT

1. By this action, Plaintiffs, senior secured lenders to the Company, seek to prevent a self-dealing scheme by the controlling shareholder (who is also the Company's largest senior secured creditor). The scheme must be declared invalid and enjoined because it would violate the express contractual benefits and protections of Plaintiffs' loans, including through loss of collateral and prohibited transfers.

2. The Company was at all relevant times controlled by Wrigley, "the scion of the all-American chewing gum fortune synonymous with the city of Chicago."[3] While Wrigley held positions as CEO, Chairman, and controlling stockholder of this new venture—which he touted "can be bigger than the Wrigley company"[4]—the Company issued a [redacted] Senior Note (defined below) to PE Fund, an investment vehicle owned and controlled by Wrigley. PE Fund's Senior Note is one of a series of Senior Notes issued by the Company. All of the Senior Notes are governed by a Note Purchase Agreement (defined below) and the related agreements (the "**Note Documents**").[5]

3. The Note Purchase Agreement protects holders of Senior Notes (the senior-most secured debt of the Company) by prohibiting the Company from incurring additional debt or granting additional liens. As is typical, an amendment to the Note Purchase Agreement requires the consent of a requisite majority of Noteholders (defined below), or as to some material matters, all Noteholders. In this case, however, the term "Required Holders" was defined as Wrigley's PE

[3] *Billionaire Beau Wrigley to Expand Cannabis Company to Illinois*, Forbes, April 6, 2021 *available at* https://www.forbes.com/sites/willyakowicz/2021/04/06/billionaire-beau-wrigley-to-expand-cannabis-company-to-illinois/?sh=589280eef407.

[4] *Id.*

[5] The Note Documents include, among other things, the Note Purchase Agreement, dated October 16, 2018 (as amended solely to the extent permitted), and the "Collateral Documents," as defined in the Note Purchase Agreement. NPA Schedule A (Defined Terms) at 10.

Fund. In other words, if the Company wanted to modify certain non-economic terms of the Note Purchase Agreement, waive a non-monetary default or alter or eliminate other provisions, it could, under certain conditions and with certain exceptions, do so with just the consent of the Company's affiliate—PE Fund. Among the exceptions, the Company must obtain written consent of all Noteholders if its purported amendment affects their payment priority, including by re-ordering the priority of liens on the collateral protecting the investment.

4. In 2018, alongside PE Fund's purchase of a Senior Note, a group of unaffiliated third-party investors, including Plaintiffs, purchased the other Senior Notes as the Company raised a total of [redacted] of debt financing. Plaintiffs collectively purchased [redacted] of the Senior Notes, signed a requisite "Joinder," and thereby became party to the Note Documents that describe and protect the liens securing the investment.

5. Plaintiffs agreed to provide financing to the Company on the terms set forth in the Note Documents because of the advertised alignment of interest at the time between PE Fund, as "lead investor" in Senior Notes, and minority holders. This relationship between PE Fund, as the majority holder of the Senior Notes, and Plaintiffs, as minority holders, created expectations of trust and honesty in all dealings. Unfortunately, Plaintiffs and other minority holders received the opposite when Wrigley and his management team later revealed through their actions that Wrigley would direct PE Fund to exercise its purported rights as the "Required Holders" for his own benefit as controlling shareholder, and blur the line between borrower and lender whenever it suited him.

6. Throughout 2021, Wrigley had been grooming the Company to be acquired by a special purpose acquisition company or "SPAC." Unbeknownst to Plaintiffs, the Company was experiencing financial distress throughout the year and was unable to meet its debt obligations as they came due. To cover up this reality and conceal it from minority Noteholders, in June 2021,

Wrigley caused the Company to breach the Note Purchase Agreement by secretly issuing a new note to his investment vehicle PE Fund. Upon information and belief, this transaction was concealed not only because it breached the Note Purchase Agreement, but also because Wrigley did not wish to reveal that the Company had missed its projections so badly that it could not pay a debt Wrigley had just secretly negotiated a few months earlier. This need for secrecy was exacerbated because Wrigley was simultaneously planning to refinance [redacted] of other debt, all the while trying to close a SPAC transaction so he could access the public markets to cash out his controlling stock interest.

7. After the truth of the Company's financial stress and associated defaults emerged,[6] Wrigley began planning a three-step scheme to erase the effects of his misdeeds and use his control over the Company (in multiple capacities) to thwart the rights of minority Noteholders including Plaintiffs. The Company, for its part, had no leadership in place to resist Wrigley's grip until the story was already written. What's worse is that the Company has even agreed to engage in a pay-to-play amendment process, on information and belief, required by PE Fund and its new loan-to-own partner, Talladega LP.

8. *First*, although the specific maneuvers being contemplated were unclear to Plaintiffs and other minority Noteholders until after the definitive documents were signed on March 14, 2022, Wrigley directly or through his lieutenants was instructing PE Fund and the Company—both under his control—to "negotiate" a cover-up of the very defaults that PE Fund

[6] The Senior Notes are currently in default. Plaintiffs TGHI II LLC, Prime Overseas Investments and Enterprises Ltd., and Techview have accelerated their Senior Notes to demand immediate payment with penalties on April 1, 2022. Plaintiffs John and Ultima Morgan have accelerated their Senior Note on April 4, 2022. Under the Note Purchase Agreement, Plaintiffs are presently entitled to the entire amount of principal with prepayment premium, overdue interest, at the default rate, the consideration provided for consents to amend the NPA (if not invalidated hereunder), and all fees and expenses incurred in connection with the default, enforcement of rights, and ensuing workout.

itself caused. *Second*, the Company and PE Fund intend to rely on PE Fund's purported power as the "Required Holders" to amend the Note Documents, in order to shred Plaintiffs' own bargained-for lender protections—namely, the explicit promises not to incur new debt, grant new liens, or transact with affiliates. Wrigley's final step with the Company (along with their new ally, Talladega LP) was to create a new tranche of Super Senior Notes (defined below) to be senior to the first-lien Senior Notes governed by the Note Purchase Agreement. Defendants hope through this scheme to engineer that the Super Senior Notes would be supported by the very same collateral already securing the Senior Notes, but rank higher in priority, thereby altering the priority of liens on the collateral provided under the Collateral Documents.[7]

9. To implement Wrigley's scheme, the Company will claim—incredibly and falsely—that it can rely on PE Fund's voting power as the "Required Holders" to (i) waive the Noteholders' rights and remedies arising from PE Fund's own prior prohibited loan, and (ii) give consent to the Company issuing up to [redacted] of new "Super Senior Notes" the holders of which (PE Fund and Talladega LP) would jump ahead of the Noteholders. In other words, the Company would attempt to erase PE Fund's misdeeds and then subordinate Plaintiffs' defaulted first-lien debt. The Note Documents do not permit Wrigley's purported scheme, nor do they permit the Company to conspire with PE Fund to further line Wrigley's pockets at the expense of innocent Senior Noteholders. Defendants' scheme to take advantage of the Company's precarious financial position (which Wrigley caused while serving as CEO and insider lender) and abuse their vice-like grip on the Company is invalid and must be enjoined because it violates the unambiguous text of the relevant Note Documents. To the extent Defendants attempt to orchestrate these maneuvers

[7] Collateral Documents include, among other things, the Intercreditor Agreement, the Guarantee and Collateral Agreement and the Collateral Agency Agreement. NPA Schedule A (Defined Terms) at 3.

in an end-run around the relevant Note Documents that expressly prohibit it, the scheme would of course violate the implied covenant of good faith and fair dealing.

10. First, the purported amendment is unlawful and invalid because Plaintiffs do not give their consent to be subordinated in the line of repayment. Prior to revealing the executed versions of the Super Senior Note Documents (as defined below) and the Note Purchase Agreement Consent and Forbearance (as defined below), it was opaque what specific steps were being contemplated to try to strip away the Senior Notes' first-lien protections.[8] But in any case the Company would have to amend the Collateral Documents to affect the priority of the liens securing the Senior Notes. Based on the role each of the relevant documents plays, such maneuver would require an amendment to the "Collateral Agency Agreement"—a critical "Note Document" governing the rights in the collateral held by Acquiom—the purported successor Collateral Agent to GLAS Americas, LLC ("**GLAS**")—as agent for all holders of the Senior Notes. Any such amendment would be impermissible because Plaintiffs' written consent—and the consent of all other Noteholders—is expressly required as to any amendment to the Collateral Agency Agreement. Moreover, any amendment to other Collateral Documents that would affect the priority of liens on the collateral also expressly require the written consent of every Noteholder. Put simply, the Company and PE Fund have no right to amend the Collateral Agency Agreement or other Collateral Documents without Plaintiffs' consent—which Plaintiffs have not given.

11. And in the event that the Company and PE Fund try to accomplish indirectly what the Collateral Agency Agreement unambiguously prohibits, and to engineer subordination of the

[8] The Company did not even tell holders of Senior Notes (a patent violation of the unambiguous amendment provisions of the NPA) what proposed amendments were being considered until ***after*** the transaction closed. *See* NPA § 17.2 (Solicitation of Holders of Notes) (requiring "sufficient information, sufficiently far in advance of the date a decision is required, to enable such holder to make an informed and considered decision with respect to any proposed amendment, waiver or consent").

Senior Notes' first lien by amending only the Note Purchase Agreement (and ignoring the Collateral Documents), they cannot do so. The Note Documents as a whole undeniably demonstrate that the essence of Plaintiffs' bargained-for benefit was first priority in repayment, and nothing in the Note Documents even hint that Plaintiffs' loans could one day be subordinated to some future secured loan against their will—just the opposite. The purported amendment deprives Plaintiffs of their bargained-for benefits and hence must be invalid either because the amendment violates the express text of the Collateral Agency Agreement, or because the implied covenant in all the related documents prevent undoing the Collateral Agency Agreement's quintessential promise.[9]

12. The Note Purchase Agreement also provides that any change to the time of the payment of principal must be consented to by all Noteholders. The purported amendment—by allowing some other indebtedness to be paid before the Senior Notes—changes the time of the payment on the Senior Notes from first-in-time to second-in-time. This change does not have the written consent from Plaintiffs and is not binding against them.

13. Second, the purported waiver by PE Fund of outstanding defaults is unlawful and invalid because it violates the implied covenant of good faith and fair dealing. While the Note Purchase Agreement allows PE Fund in certain instances to waive unspecified breaches of the Note Purchase Agreement, such discretion cannot be exercised in a manner that rewards PE Fund to the detriment of other contractual parties. The purported waiver here would allow the Company and PE Fund to enter into improper and secret insider transactions and then waive the resulting defaults when the transactions are exposed. For PE Fund to use its purported consent power in

[9] To the extent that Defendants take the position that the Note Purchase Agreement is all that was required to be amended and was silent on the subject of payment or lien priority, that gap would similarly be filled via the implied covenant of good faith and fair dealing, which the purported amendment would clearly violate in light of how the Note Documents work together to protect the Senior Notes.

this way puts PE Fund in a directly adverse relationship with the non-insider Noteholders, and turns all common sense principles of fair dealing on their head. Furthermore, the Company's position that it can engage in admittedly impermissible transactions with an affiliate, and then turn around and have the same affiliate waive the ensuing breach makes a mockery of the Note Purchase Agreement as an arm's-length commercial relationship and is inconsistent with the implied covenant of good faith and fair dealing. Taken to its logical extreme, invocation of PE Fund's voting control to permit PE Fund's own prohibited transactions renders the covenant against affiliate transactions mere surplusage. Thus, any purported waiver should be deemed void.

14. Third, as any waiver and amendment would be invalid, the Note Purchase Agreement governs and remains in effect. As a result, no additional secured debt is permissible under the Note Purchase Agreement because it would directly violate express covenants prohibiting the incurrence of more indebtedness or granting of new liens. To the extent PE Fund and Talladega LP decide to move forward with their illicit plan, they must be enjoined from doing so or, at a minimum, they do so at their own peril to having the transaction unwound.

15. In the alternative, to the extent the Court finds that PE Fund could validly consent to the Company's proposed transaction, the transaction still breaches the Note Purchase Agreement's anti-pay-to-play solicitation provisions. The NPA unambiguously prohibits the payment of any kind of consideration "as an inducement" to procuring a consent to waive or amend the Senior Notes. As described further below, PE Fund is being paid enormous consideration to induce it to give consent. Upon information and belief, PE Fund and the Company will blame the junior lender (Talladega LP) for making such extortionate demands in exchange for its consent to permit more debt. But the contractual analysis vis-à-vis PE Fund and minority Noteholders under

the NPA remains clear: the remuneration given to PE Fund must be concurrently paid to each holder of a Senior Note even if such holder did not consent to such waiver or amendment.

16. Plaintiffs, through this action, seek among other relief (i) a declaration that any attempted amendment or waiver, and the issuance of Super Senior Notes, would be void, (ii) an injunction preventing the proposed transactions, and (iii) an award of damages, costs, and attorneys' fees, collectively for breach of contract, tortious interference, breach of fiduciary duty, and voidable transactions.

THE PARTIES

Plaintiffs

17. Plaintiffs John and Ultima Morgan are residents of Florida. They hold a [redacted] Senior Note.

18. Plaintiff TGHI II LLC is a Delaware limited liability company. It holds a [redacted] Senior Note.

19. Plaintiff Prime Overseas Investments and Enterprises Ltd. is a Cyprus registered company. It holds a [redacted] Senior Note.

20. Plaintiff Techview is a British Virgin Islands ("**BVI**") registered company. Techview holds a [redacted] Senior Note.

Defendants

21. Defendant Parallel, a Delaware corporation, is a holding company that focuses on the development, production, and sale of cannabis products, oils, and extracts through subsidiaries. Its principal place of business is Georgia.

22. Defendant SH Parent Inc., a Delaware corporation, is Parallel's parent company. Its principal place of business is Georgia.

23. Defendant PE Fund, a Delaware limited partnership, is a holder of a Senior Note with [redacted] in original principal amount. PE Fund is an investment vehicle within Wrigley's family office empire. It is directly or indirectly controlled by Wrigley, and is under common ownership with other Wrigley-controlled entities.

24. Defendant WWJR Enterprises, a Delaware corporation, is the general partner of PE Fund. WWJR Enterprises is named for Wrigley's initials and is controlled by Wrigley.

25. Defendant William "Beau" Wrigley, Jr. is the Chairman and CEO of WWJR Enterprises and has controlled PE Fund during all relevant times. Wrigley had initially invested in the Company in 2017 and assumed day-to-day operations as Chairman and CEO in late 2018. Wrigley resigned as CEO effective November 19, 2021 after disclosure of the defaults under the Note Purchase Agreement described herein and continues to serve as Chairman of the Company.

26. Defendant Talladega LP, a Canadian company, holds approximately a [redacted] Junior Note (defined below).

27. Defendant Talladega, Inc., a Canadian company, is Talladega LP's general partner.

28. Defendant Acquiom is a Colorado limited liability company, with its principal place of business in Colorado. Acquiom purports to be the Collateral Agent on behalf of the Noteholders under the Note Documents, including the Note Purchase Agreement. Acquiom purportedly succeeded GLAS as the Collateral Agent pursuant to a Successor Agent Agreement dated as of March 14, 2022 ("**Successor Agent Agreement**"), thus assuming all duties and obligations as the Collateral Agent under the Collateral Agency Agreement. Ex. J (Successor Agent Agreement).

JURISDICTION

29. This Court has jurisdiction over this proceeding pursuant to CPLR §§ 301 and 302 because Defendants transact business in the State of New York.

30. The Court also has jurisdiction over the Company pursuant to Section 21.8 of the Note Purchase Agreement, under which it irrevocably submits to the jurisdiction of this Court over any suit, action, or proceeding arising out of or relating to the Note Purchase Agreement, the Notes, the Collateral Documents, or any other Note Document.

31. The Court also has jurisdiction over the Company, PE Fund, and Acquiom pursuant to Section 19.1 of the Collateral Agency Agreement and the Successor Agent Agreement under which they submit to the jurisdiction of this Court over any legal action or proceeding with respect to or arising out of the Collateral Agency Agreement or any other Collateral Document.

32. The Court also has jurisdiction over Talladega LP pursuant to Section 12.13 of the Junior Credit Agreement, under which it submits to the jurisdiction of this Court over any action or proceeding relating to the Junior Credit Agreement.

33. This Court also has jurisdiction over Defendants WWJR Enterprises, Wrigley, Talladega LP, and Talladega, Inc. pursuant to CPLR § 302 because they committed a tortious act in the State of New York and/or committed a tortious act causing injury to person or property in the State of New York.

VENUE

34. Venue properly lies in New York County pursuant to CLPR § 501 and Section 21.8 of the Note Purchase Agreement, under which the Company consented to venue in New York County.

35. Venue properly lies in New York County pursuant to CLPR § 501 and Section 19.1 of the Collateral Agency Agreement and the Successor Agent Agreement under which the Company, PE Fund, and Acquiom consented to venue in New York County.

36. Venue properly lies in New York County pursuant to CPLR § 503 because a substantial part of the events or omissions giving rise to the claims occurred in New York County.

FACTUAL BACKGROUND

I. Wrigley Controls The Company During All Relevant Times.

37. The cannabis business, recently legalized in a number of markets, is an inherently risky business. Due to the volatile nature of the cannabis business, investors like Techview who may be willing to lend money to companies in this space tend to seek robust security protections for their loans in case the business falters.

38. The Company focuses on the development, production and sale of medical cannabis oils and extracts through its subsidiaries. It was founded in 2014 by R. Jake Bergmann ("**Bergmann**") and Wes Van Dyk.

39. Wrigley, the chewing gum company heir, had been the CEO of Wm. Wrigley Jr. Company until its 2008 sale to Mars Inc. for $23 billion. Before getting into the cannabis business, Wrigley ran his own venture and private equity firm, Wynchwood Asset Management LLC.

40. In 2017, Wrigley made an initial investment in the Company.

41. In August 2018, Wrigley led a [redacted] Series C direct equity investment in the Company. Concurrent with his investment in the Company, Wrigley became Chairman of the Board of Directors, replaced founder Bergmann as CEO, and assumed day-to-day control of the Company.

42. During all relevant times, Wrigley controlled both the Company and his various investment vehicles including PE Fund and WWJR Enterprises. He acquired his personal stake in the Company, and ultimately assumed his leadership position over it, by funding the Company through these various investment vehicles that he controls. These investment vehicles are Wrigley's alter egos; and are the instrumentalities through which Wrigley has invested in and controlled the Company.

II. Wrigley Loaded The Company With Excessive Debt.

43. Ever since Wrigley took over the leadership of the Company, the Company has incurred substantial debts. The Company's current capital structure consists of multiple tranches of debts with different priorities.

44. The most senior tranche in the Company's capital structure is [redacted] in [redacted] Senior Notes due October 16, 2028 (each, a "**Senior Note**" and, collectively, the "**Senior Notes,**" the holders of which, the "**Noteholders**").

45. The Senior Notes were issued pursuant to, and governed by, a Note Purchase Agreement, by and among the Company and holders of the Senior Notes, dated October 16, 2018 (as amended solely to the extent permitted, the "**Note Purchase Agreement**" or "**NPA**"). Ex. A (Note Purchase Agreement).

46. The Senior Notes are secured by first priority liens on and security interests in substantially all assets of the Company and each of its direct and indirect subsidiaries, pursuant to Section 3.01 of a Guarantee and Collateral Agreement dated October 16, 2018 (the "**Collateral Agreement**"). Ex. B (Collateral Agreement).

47. The parties to the Note Purchase Agreement also entered into a Collateral Agency Agreement on October 16, 2018, that sets forth the priorities for the application of any proceeds of the Collateral and various other matters with respect to their rights in and with respect to the Collateral (the "**Collateral Agency Agreement**"). Ex. C (Collateral Agency Agreement).

48. Wrigley or those working at his direction marketed the Senior Notes by touting their attractive returns and first-priority security coverage. Indeed, the marketing materials emphasized that the "[t]he value of [Parallel]'s [redacted] when added to [redacted] of the Company, create a valuable collateral package with [redacted] Ex. D (Senior Notes Marketing Presentation) at 22 (emphasis added). The term sheet

also stressed that the Senior Notes "will be secured by **first priority liens** on and security interests in substantially all assets of the Company and each of its direct and indirect subsidiaries." Ex. E (Senior Notes Term Sheet) at 2. The term sheet also emphasized that PE Fund would serve as the anchor or "lead" investor in the debt offering. *Id.* at 1.

49. Wrigley limited the subscription of Senior Notes to a privately-assembled group of known individuals and institutions. For example, Techview's investment in Senior Notes stemmed out of personal relationship between a Techview employee and Wrigley's loyal lieutenant, James "Jay" Holmes, who at the time served as a board member and an officer of the Company, as well as an employee of one or more of Wrigley's investment vehicles.

50. PE Fund holds a Senior Note in the principal amount of [redacted] Plaintiffs collectively hold Senior Notes in the principal amount of [redacted] (exclusive of overdue interest, default interest, penalties, and reimbursable expenses). Upon information and belief, approximately [redacted] other entities hold the remaining outstanding Senior Notes, in the aggregate principal amount of approximately [redacted].

51. The Senior Notes are not freely transferable, and may be transferred only to affiliates of the original holder. NPA § 13.2 (last sentence).

52. The next in line in the Company's capital structure is [redacted] in junior notes (each, a "**Junior Note**" and, collectively, the "**Junior Notes**") issued to Talladega LP pursuant to that certain Credit Agreement dated as of May 7, 2021 (the "**Junior Credit Agreement**").

53. The Junior Notes accrue interest of [redacted] substantially higher than the [redacted] interest on the Senior Notes, reflecting the riskier nature of the Junior Notes given their second-in-line position for repayment in an event of default.

54. The rights and obligations of Senior Note holders vis-a-vis Junior Note holders are further set out in an Intercreditor Agreement dated as of May 7, 2021 (the "**Intercreditor Agreement**"). Ex. F (Intercreditor Agreement).

55. Pursuant to the Intercreditor Agreement, the Senior Notes have priority over the Junior Notes in an event of default—the Company has to pay Senior Note holders in full before it pays Junior Note holders anything. Intercreditor Agreement § 2 (Priority of Junior Indebtedness and Senior Indebtedness).[10]

56. Ranked behind the Senior Notes and Junior Notes is approximately [redacted] worth of additional debt.[11]

III. Wrigley Runs The Company Into The Ground While Hiding Multiple Defaults.

57. Wrigley not only loaded the Company up with substantial debts, but also engaged in self-dealing transactions which were unfair to the Company, and in which Wrigley (or his lieutenants) sat on both sides of the negotiation.

58. The self-dealing transactions between the Company and Wrigley's affiliates have been rampant. For example, between January and May of 2021, the Company issued a series of convertible promissory notes (the "**GH Notes**") currently accrued with interest to about [redacted] to a Wrigley-controlled investment vehicle—Green Health Endeavors. Designed to be a quick insider payday, the GH Notes accrue interest of [redacted] with a prepayment penalty of [redacted] (inclusive of all interest) if repaid prior to maturity date of May 1, 2021. If Wrigley chooses to

[10] The Senior Notes' lien on the Company's assets are senior to the Junior Notes' lien, except that they are *pari passu* on the NETA Collateral (as defined in the Intercreditor Agreement). Intercreditor Agreement § 2(b).

[11] The Company allegedly owes [redacted] in Subordinated Promissory Notes to another Wrigley-controlled investment vehicle—Green Health Endeavors, [redacted] in Subordinated Promissory Note (including [redacted] to PE Fund, and $18 million to former owner Bergmann as part of a confidential settlement the Company could not afford. There may also be up to $107 million of consideration owed for the Company's acquisition of a company known as Windy City. Plaintiffs reserve all rights to challenge the fairness and enforceability of any of the foregoing obligations.

convert the GH Notes into preferred stock of the Company, the conversion would occur on sweetheart terms: The amount of "debt" represented by the GH Notes would be multiplied by [redacted] (so, Wrigley's original investment of [redacted], which became [redacted] with accumulated "interest," would then be "deemed" to be [redacted] upon the conversion). This inflated amount would then be converted into preferred stock with the senior-most liquidation preference in the Company.

59. Upon information and belief, the Company did not conduct any arm's length negotiation for the financing terms of the GH Notes, nor did the Company explore any other financing options available. Furthermore, upon information and belief, the GH Notes were issued in January 2021 but were not approved by the disinterested directors and shareholders.[12] This sweetheart deal was unfair to the Company and serves as a paradigm of how Wrigley abused his control over the Company for his own financial gain. On information and belief, Wrigley's own employee, James "Jay" Holmes, negotiated the terms of the GH Notes on behalf of Green Health Endeavors while simultaneously sitting on the board and serving as an officer of the Company, in both roles reporting directly to Wrigley as his boss.

60. Not only did Wrigley engage in these unfair self-dealings while as CEO, he also repeatedly botched his own projections, ultimately ruining the Company's credibility and chance of going public as planned in late 2021. On February 22, 2021, the Company had announced that it planned to go public by merging with Ceres Acquisition Corp., a special purpose acquisition

[12] Parent called a special meeting of stockholders for May 21, 2021 purportedly to approve the GH Notes which were by then in payment default. It is unclear if the disinterested directors and/or stockholders ever approved the GH Notes at the May 21, 2021 meeting or if the meeting was even held. In any event, any such approval would be invalid given the lack of adequate disclosure and the coercive nature of the request after the debts were already in default and the lender—Green Health Endeavors—threatened to terminate a forbearance if approval was not granted.

corporation or SPAC.[13] After numerous failed efforts to keep the deal alive, on September 30, 2021, the deal was called off due to investors' concerns in "Parallel's ability to deliver on lofty financial projections it provided in February."[14]

61. In addition to self-dealing transactions and mismanagement throughout 2021, Wrigley also caused the Company to directly breach the Note Purchase Agreement in at least the following ways.

a. Incurrence of Prohibited Indebtedness—GH Notes. Section 10.1 of the Note Purchase Agreement prohibits the Company from incurring any other Indebtedness except those enumerated therein. NPA § 10.1. Indebtedness, as defined in the Note Purchase Agreement, includes "liabilities for borrowed money." NPA Schedule A (Defined Terms) at 7. The GH Notes, as discussed above, are Indebtedness that do not qualify for any exceptions under Section 10.1. Therefore, the issuance of the GH Notes violates the Note Purchase Agreement.

b. Incurrence of Prohibited Indebtedness—June 2021 Transaction. On June 30, 2021, Wrigley caused the Company to borrow money from PE Fund by issuing [redacted] (really [redacted]) in Subordinated Promissory Note (the "**June 2021 Transaction**"). Upon information and belief, the proceeds from the June 2021 Transaction were used to pay the settlement amount due to the Company's former owner, Bergmann, in connection with an appraisal proceeding.

[13] New Cannabis Ventures, *Wrigley-Led Cannabis MSO Parallel to Go Public Via SPAC Valued at $1.9 Billion*, https://www.newcannabisventures.com/wrigley-led-cannabis-mso-parallel-to-go-public-via-spac-valued-at-1-9-billion/ (Feb. 22, 2021).

[14] Reuters, *Scooter Braun's SPAC, Beau Wrigley's pot firm Parallel call off merger*, https://www.reuters.com/article/parallel-m-a-ceres-acqsn/pot-producer-parallel-scraps-near-2-billion-blank-check-merger-idUSKBN2GQ2F6 (Sept. 30, 2021).

Bergmann v. Surterra Holdings, Inc., C.A. No. 2019-0828-PAF (Del. Ch.). The June 2021 Transaction directly violates Section 10.1 of the Note Purchase Agreement because the note issued to PE Fund is a prohibited Indebtedness and does not qualify as one of the exceptions thereunder.

c. Prohibited Affiliate Transaction—GH Notes. Section 10.2 of the Note Purchase Agreement prohibits the Company from entering into transactions with any Affiliates, with limited exceptions. NPA § 10.2. "Affiliate" of the Company, as defined in the Note Purchase Agreement, includes any entity that "is under common control" as the Company. Green Health Endeavors is an Affiliate of the Company because Wrigley controlled both entities at all relevant times. Upon information and belief, the GH Notes do not fall into any of the enumerated exceptions under Section 10.2. Therefore, the issuance of GH Notes is an Affiliated Transaction prohibited under the Note Purchase Agreement.

d. Prohibited Affiliate Transaction—June 2021 Transaction. PE Fund is an Affiliate of the Company because Wrigley controlled both companies at all relevant times. Upon information and belief, the June 2021 Transaction does not fall into any of the enumerated exceptions under Section 10.2. Therefore, the June 2021 Transaction is an Affiliated Transaction prohibited under the Note Purchase Agreement.

e. Failure to Deliver Officer's Certificate. Section 7.1(b) of the Note Purchase Agreement provides that the Company must deliver to the Noteholders its quarterly statement with certification by a Senior Financial Officer. However,

the Company, under Wrigley's management, failed to provide such certificate accompanying the third quarter 2021 financial statement.

f. Failure to Notice Event of Default. Section 7.1(c) of the Note Purchase Agreement provides that the Company must deliver a written notice specifying the nature and period of existence of any Event of Default, promptly and within 5 days of learning of the applicable Default or Event of Default. However, the Company, despite being aware of the various Events of Default including those described above, failed to provide any written notice regarding the same to the Noteholders.

g. Breach of Junior Credit Agreement. Section 9.11 of the Note Purchase Agreement provides that the "More Favorable Provisions" of the Junior Credit Agreement "shall automatically be deemed to be incorporated into [the Note Purchase Agreement]." NPA § 9.11(a). The More Favorable Provisions include those "covenants that are more restrictive on the Company or any of the other Obligors than [the Note Purchase Agreement]." *Id.* The Company, under Wrigley's management, breached various covenants and provisions in the Junior Credit Agreement, including (i) the failure of the Company to pay amounts due in respect of the Junior Credit Agreement on September 30, 2021, (ii) the failure of the Company to satisfy the Debt Service Coverage Ratio required under Section 9.03(a) of the Junior Credit Agreement for the third quarter 2021, and (iii) the failure of the Company to maintain the Consolidated Adjusted EBITDA for the Consolidated Companies under Section 9.05(a)(ii) of the Junior Credit Agreement for the third quarter 2021. Because these financial

covenants are automatically incorporated into the Note Purchase Agreement by operation of Section 9.11 thereof, the Company's covenant breaches also constitute Events of Default under the Note Purchase Agreement.[15]

IV. Wrigley Attempts To Salvage His Reputation And Enrich Himself At The Expense Of Other Creditors By Waiving Defaults And Subordinating Senior Notes.

62. On November 15, 2021, the Company and PE Fund had a phone call on which PE Fund purportedly first learned about the various Events of Default that existed at the Company. Upon information and belief, Wrigley also attended this phone call. On the very next day, November 16, 2021, Wrigley resigned as the Company's CEO effective November 19, 2021, but he remained as the Chairman of the Company's Board of Directors.

63. On November 29, 2021, PE Fund served a Notice of Events of Default (the "**First Lien Notice**") to the Company on account of the Company's failure to provide written notice to PE Fund of the existence of various defaults or what actions the Company was taking with respect thereto. PE Fund of course omitted to mention in the First Lien Notice that PE Fund had itself directly caused multiple Events of Default.

64. On December 16, 2021, the administrative agent under the Junior Credit Agreement served the Junior Lien Notice. The Junior Lien Notice exposed that the Company had failed to make payments on account of Junior Credit Agreement obligations as they came due on September 30, 2021, among numerous other defaults. Included among the Junior Lien Notice was the revelation that the Company had engaged in the June 2021 Transaction with PE Fund, itself a breach of both the NPA and the Junior Credit Agreement.

[15] On December 16, 2021, the Company received a Notice of Default, Election of Default Rate and Reservation of Rights to the Company (the "**Junior Lien Notice**") from Talladega LP, in its capacity as Administrative Agent and Collateral Agent for the Junior Note holders. The Junior Lien Notice listed 11 Defaults or Events of Defaults under the Junior Credit Agreement then known to the Junior Note holders.

65. In the wake of receiving these notices of default, the Company and PE Fund quickly concocted a scheme to brush them aside by working behind the scenes, without the consent of minority holders of the Senior Notes, such as Plaintiffs (the "**Scheme**"). Although the Scheme has remained opaque as Plaintiffs and other minority holders have been expressing objections informally, its three main components have not changed.

66. *First*, the Company is attempting to use PE Fund's position as the "Required Holders" under the Note Purchase Agreement to purportedly waive outstanding Events of Default, including ones that PE Fund itself caused. On December 8, 2021, the Company circulated a request for Consent and Waiver by PE Fund (the "**Request for Waiver**"), in its capacity as the Required Holders under the Note Purchase Agreement, of no fewer than eight defaults that occurred during Wrigley's tenure at the Company, including the default caused by PE Fund in the June 2021 Transaction. Section 4 of the Request for Waiver provided that it would become effective "upon the Required Holder's receipt of this [request for waiver], in form and substance satisfactory to the Required Holder, duly executed by [Parallel], [the Company], and the Required Holder." Ex. G (Request for Waiver).

67. *Second*, PE Fund has announced its intent to amend the Note Documents to permit the Company to incur additional debt and liens that would rank *senior* to the Senior Notes. As of the date of this Complaint, it is unclear what specific maneuvers are being taken to try to subordinate the Liens protection the Senior Notes, but the purported amendment would undoubtedly modify the prohibitions on the Company that were the bargained-for protections for Plaintiffs' investment.

68. *Third*, if steps one and two succeed, the Company intends to enter into some type of "super senior" loan agreement and, pursuant to that agreement, issue "super senior" notes to PE

Fund and Talladega LP for as much as [redacted] (the "**Super Senior Notes**"). The Super Senior Notes would be virtually risk-free because they would be repaid first (ahead of more than [redacted] of debt and a similar amount of equity capital), mature in as little as four months, and grant the holders total control over disposition of the Collateral. The Super Senior Notes would nevertheless carry an exorbitant interest of [redacted] (compared with [redacted] for the outstanding Senior Notes and [redacted] for last summer's Junior Note) [redacted] On top of the usurious terms, in exchange for granting the Company their consents to waive defaults, subordinate their liens, and incur more debts, PE Fund and Talladega LP would also be awarded other massive fees.[16] In a paradigm of lender overreaching, PE Fund and Talladega LP demanded that the Company pay them these exorbitant amounts simply by virtue of their power to control the vote over the amendment process and dictate terms as onerous to the Company as they choose by virtue of their control.

69. If the Scheme were permitted, the Super Senior Notes would be secured by the same collateral that secure Plaintiffs' Senior Notes without Plaintiffs' consent. And if the Company defaulted in the future, it would repay these new Super Senior Notes before paying Plaintiffs.

[16] Upon information and belief, the Company intends to issue up to [redacted] worth of Super Senior Notes, maturing in four months to six months. PE Fund and Talladega LP would provide [redacted] upfront and then potentially [redacted] in each of months five and six. The Super Senior Notes would be stated to accrue [redacted] interest. But PE Fund and Talladega LP would also be entitled to [redacted]. The Company would also agree to pay PE Fund and Talladega LP a gratuitous helping of [redacted]. On top of all of this value, the Company plans to pay millions of dollars to pay PE Fund and Talladega LP's professional advisors for concocting the Scheme. The total package of consideration being paid to PE Fund and Talladega LP is [redacted] of the amount of funding actually given. Clearly, the excess consideration over a reasonable interest rate for this super-senior debt (which should be less than the [redacted] coupon on the Senior Notes by virtue of enjoying the lowest risk) represents the Company's pay-to-play price for obtaining the amendments, consents, and waivers themselves.

70. The Scheme would be enormously beneficial to Wrigley, PE Fund, and Talladega LP. The Super Senior Notes would allow them to enrich themselves with consent fees, and invest in and take control of the highest point in the capital structure, which is currently held by Plaintiffs and other Noteholders. Upon information and belief, the Company would have no ability to refinance the Super Senior Notes with fairer alternatives and avoid paying extortionate interest and fees.

71. While PE Fund may be able to do as it wishes with respect to its own Senior Notes, including agreeing to subordinate them, it cannot be permitted to use its status as Required Holders to wipe away its sins committed against minority Noteholders and facilitate a lucrative new "loan-to-own" type investment on their backs.

72. Nor may the Company pay the consideration being given to PE Fund without providing it to all other Senior Noteholders. Plaintiffs anticipate that the Company will assert it has attempted to comply with the Note Purchase Agreement by offering Senior Noteholders the 'opportunity to participate' in the Super Senior Notes. The Company cannot escape the strict requirements of the Note Purchase Agreement by this sleight of hand. Section 17.2(b) of the Note Purchase Agreement requires that when remuneration is paid to one Senior Noteholder to induce it grant a consent, waiver, or amendment, the remuneration must be concurrently paid to every Senior Noteholder.[17] This is an ironclad promise that what the Company proposes to do here—bribe a powerful Senior Noteholder to obtain consent to a waiver or amendment—will never

[17] Section 17.2(b) of the Note Purchase Agreement provides that "[t]he Company will not directly or indirectly pay or cause to be paid, any remuneration, whether by way of supplemental or additional interest, fee or otherwise, or grant any security or provide other credit support, to any [Senior Noteholder] as consideration for or as an inducement to the entering into by such [Senior Noteholder] of any waiver or amendment of any of the terms and provisions [of the Note Purchase Agreement] or any other Note Document or any Note unless such renumeration is concurrently paid, or security is currently granted or other credit support concurrently provided, on the same terms, ratably to each [Senior Noteholder] *even if such [Senior Noteholder] did not consent to such waiver or amendment*." (emphasis added).

happen. No amount of mental gymnastics over how an 'offer to participate' is being made available to others can save the violation of Section 17.2(b). The Company and PE Fund cannot self-servingly conflate the distinct features of the Scheme simply because it is how they intend to package it. The Scheme has three steps—to obtain a waiver, to obtain a consent to borrow more money, and the actual borrowing of money. The Company cannot credibly suggest that the entire package of consideration being given to PE Fund and Talladega LP is tied to the reasonable risk associated with the advancement of new money on a super-senior basis—the rate of return on that loan would be virtually incalculable on the usury scale. The Company also cannot establish it marketed the opportunity to invest money on a super-senior basis from third parties and set the price accordingly. The reality of the transaction is that PE Fund and Talladega LP set the price based on what it would cost to obtain *their agreement to vote* to amend the Note Purchase Agreement and Junior Credit Agreement, respectively. As such, all Senior Noteholders must receive the same value regardless of how or whether they vote.

73. Plaintiffs anticipate that the Company will doubtlessly assert the new Super Senior Notes are necessary to create a "bridge" to a value-maximizing sale to a third party. Plaintiffs submit, however, that the real purpose of subordinating the outstanding Senior Notes is to gain control of disposition over the Company's assets and, ultimately, to foreclose and take ownership of those assets due to the Company's inability to find a suitor—a crisis caused by Wrigley/PE Fund's own misdeeds. In that sense, the Scheme is a paradigmatic "loan-to-own" scheme developed by a corporate insider—who is not only the largest existing secured creditor, but also the controlling shareholder—to take the Company at a fire sale, while leaving all innocent third parties holding the bag without any recourse.

74. The Scheme is immediately detrimental to Plaintiff. It further burdens the Company's weak balance sheet with even more debt, pushing the Company closer to further default and even insolvency, while transferring away the critical control associated with "first lien" rights to others. Indeed, the Scheme effectively changes the essential nature of the Senior Notes from the most secure place in the capital structure to junior debt, without Plaintiffs' consent. While the Company may wish to take the gamble of borrowing more money in search of a buyer, Plaintiffs' rights under their Senior Notes will be substantially diminished, if not eviscerated, if that gamble fails.

75. The Note Purchase Agreement explicitly forbids the Company from incurring any indebtedness or granting any liens unless one of the enumerated exceptions is satisfied. NPA §§ 10.1, 10.7. These covenants ensure the Noteholders' first-in-line position to get paid in an event of default. If not stopped, the Scheme would violate these critical safeguards.

76. PE Fund has certain ability in administering the rights of others under the Note Purchase Agreement by virtue of its status as "Required Holders." As a consequence, and by soliciting others to invest alongside him, Wrigley owed a duty to minority Noteholders not to prefer or exploit PE Fund's interests over theirs, and to act with candor and integrity at all times.

77. At the time the rights of the "Required Holders" were conferred by signing the Note Purchase Agreement, Plaintiffs were unaware that PE Fund would or could lawfully use its position or closeness to the Company, while both were dominated by Wrigley, to breach the Note Purchase Agreement by entering into impermissible loans with sweetheart terms. Having shown his true colors through his behavior in connection with the GH Notes and June 2021 Transaction, it would violate all sense of good faith and fair dealing to permit Wrigley (or any entity owned and controlled by him, like PE Fund) to make any decisions for or adverse to the interests of Senior

Noteholders in the future. Any trust given to PE Fund by Senior Noteholders has been wholly violated by PE Fund's willful acts that caused the Company to breach the Note Purchase Agreement.

78. By signing as General Partner of PE Fund, WWJR Enterprises has aided and abetted PE Fund's conduct and knowingly caused the Company to breach its obligations under the Note Documents, while being fully aware of the Company's contractual commitments to Plaintiff.

79. Upon information and belief, Talladega LP is aiding and abetting the Scheme and knowingly causing the Company to breach its obligations under the Note Documents, while being fully aware of the Company's contractual commitments to Plaintiffs.

80. By signing as General Partner of Talladega LP, Talladega, Inc. has aided and abetted Talladega LP's conduct and knowingly caused the Company to breach its obligations under the Note Documents, while being fully aware of the Company's contractual commitments to Plaintiff.

81. On March 14, 2022, Acquiom purportedly succeeded GLAS as the Collateral Agent pursuant to a Successor Agent Agreement dated as of March 14, 2022. Ex. J (Successor Agent Agreement). As the purported successor Collateral Agent, Acquiom participated in the Scheme that impermissibly subordinated Plaintiffs' first lien under their Senior Notes by executing, among other things, (i) a Bridge Credit Agreement dated as of March 14, 2022 (the "**Bridge Credit Agreement**"), Ex. K; (ii) a Guarantee and Collateral Agreement dated as of March 14, 2022 (the "**New Guarantee and Collateral Agreement**"), Ex. L; and (iii) a purported new Intercreditor Agreement dated as of March 14, 2022 (the "**New Intercreditor Agreement**"), Ex. M (the Bridge Credit Agreement, New Guarantee and Collateral Agreement, and New Intercreditor Agreement, collectively, the "**Super Senior Note Documents**"). Upon information and belief, Acquiom also

aided and abetted the Company and PE Fund in entering into a Limited Waiver, Forbearance, and Sixth Amendment to Note Purchase Agreement dated as of March 14, 2022 (the "**Note Purchase Agreement Consent and Forbearance**"), which was referenced in the Bridge Credit Agreement. Ex. N (Note Purchase Agreement Consent and Forbearance).

82. Upon information and belief, PE Fund replaced GLAS with Acquiom because Acquiom was willing to turn a blind eye towards PE Fund's flagrant violations of the Note Documents.

83. At all relevant times, Defendants understood and believed that the Note Documents were not intended to permit, and did not permit, the Scheme.

84. Upon learning about the Company's intention to effectuate this Scheme, Techview promptly objected to it by sending a letter to the Company, PE Fund, and Wrigley on January 30, 2022. Ex. H (Jan. 30, 2022 Ltr. from M. Carlinsky to J. Whitcomb). Techview explicitly warned that PE Fund would be legally disabled and disqualified from carrying out the Scheme because the Scheme is a clear violation of the rights of minority Noteholders. Techview specifically demanded the Company, PE Fund, and Wrigley to refrain from proceeding with this illicit Scheme.

85. On February 7, 2022, the Company's counsel responded to Techview's letter. Instead of addressing Techview's legitimate concerns with the Scheme, the Company vaguely stated that it would act "in the best interests of the Company … and in accordance with applicable fiduciary duties and other obligations." Ex. I (Feb. 7, 2022 Ltr. from D. Rappaport to S. Kirpalani).

86. Wrigley or PE Fund never responded to Techview's letter.

V. The Waiver, Amendment, And Issuance Of Super Senior Note Are Invalid and Unenforceable.

87. The Scheme is designed to erase the effects of Wrigley's misdeeds and enrich himself at the expense of minority lenders including Plaintiffs. The Scheme effectively deprives

the minority Noteholders of the central benefit that they bargained for—first-in-line repayment priority over all other existing or future creditors. Each of the three steps of this Scheme is invalid and unenforceable, because this Scheme violates the unambiguous text of the Note Documents.

88. Moreover, although the Company heretofore has been hiding what specific maneuvers are being contemplated (until afterwards) to try to strip away the minority Noteholders' contractual protections, any amendment to the Note Documents to allow the incurrence of the Super Senior Note would be invalid because Plaintiffs do not give their consent to surrender their priority.

89. The holder of the Lien under the Notes Documents is not PE Fund, but Acquiom, in its purported capacity as the Collateral Agent for the benefit of all Noteholders. Moreover, pursuant to the Collateral Documents, Acquiom was granted a first lien that it holds for the benefit of the Noteholders. Collateral Agreement § 3.01; Intercreditor Agreement §§ 2.1; 2.2(a).

90. Article 13 of the Collateral Agency Agreement is explicit that no amendment to the Collateral Agency Agreement itself is effective without the consent of each of the Noteholders. It also provides that no amendment to any of the other Collateral Documents "affecting the priority of the Lien" may be effective without the written consent of all Noteholders. The amendment contemplated would require an amendment to the Collateral Agency Agreement, and require amendments to other Collateral Documents affecting "the priority of the Lien on … the Collateral." It would thus require written consent from all Noteholders including Plaintiffs to be effective. Plaintiffs do not give their consent. Thus, any purported amendment would clearly be invalid on its face.

91. To the extent that the Company tries to accomplish indirectly what the Collateral Agency Agreement clearly prohibits directly, and to engineer the subordination through amending

only the Note Purchase Agreement but not other Collateral Documents, they cannot do so because the Note Purchase Agreement also prohibits such purported amendment.

92. Indeed, the Note Documents as a whole undeniably demonstrate that the essence of Plaintiffs' bargained-for benefit was first priority in repayment, and nothing in the Note Documents even hint that Plaintiffs' loans could one day be subordinated to some future secured loan against their will. Indeed, the Note Purchase Agreement makes economic sense only if lenders like Plaintiffs were comfortable that their investment in this risky venture would be protected with a first lien on the collateral package in an event of default. It was the fruit of the contract that Plaintiffs bargained for, and also what Defendants purport to take away with the purported amendment. Therefore, the purported amendment is invalid.

93. Moreover, the newly proposed financing under the Scheme would require the Collateral Agent to take actions in direct breach of the Note Documents. Indeed, multiple articles in the Collateral Agency Agreement treat the Noteholders' first-in-time priority security interest as a sacred right that cannot be interfered with. *See, e.g.*, Collateral Agency Agreement Article 9.1 ("No Secured Party shall contest the … priority … or have put aside this Agreement, any lien or security interest granted to the Collateral Agent pursuant to any Note Document"); Article 11 (no authorization to the Collateral Agent to consent to a priming transaction in insolvency proceedings, but only to continued use of Collateral); Article 13 (no amendment "affecting the priority of the Lien on all or substantially all of the Collateral" is effective "without the written consent of all Secured Parties"). Even more fatal to the Scheme is the fact that their purported amendment would certainly violate the provision regarding the distribution of proceeds in the Collateral Agency Agreement. Collateral Agency Agreement Article 4.1 ("Notwithstanding … the Note Documents, all proceeds of the Collateral held or received by the Collateral Agent …

after the occurrence of an Enforcement Event … shall be … distributed as follows … [listing order of distribution].”). The purported Scheme would violate the Note Documents by changing the order of distribution mandated under the Collateral Agency Agreement.

94. Finally, Section 17.1(b) of the Note Purchase Agreement provides that “the written consent of each Purchaser and the holder of each Note at the time outstanding” is required to “change the … time of any … payment of principal.” NPA § 17.1(b). Plaintiffs, as a Senior Noteholders, have the first-in-time right to receive payment of principal upon the Company’s default. The purported amendment—by allowing incurrence of indebtedness more senior to Senior Note—changes the time of payment on the Senior Note from first-in-time to second-in-time. This change does not have the written consent from Plaintiffs and is not binding against them.

95. To the extent that Defendants argue that it did not touch the Collateral Documents in order to implement the Scheme, and that the Note Purchase Agreement does not itself expressly prohibit the proposed amendment, at best that would be suggesting the Note Purchase Agreement is silent on the subject. While Plaintiffs assert that the express terms do prohibit the amendment, any such argument by Defendants would nevertheless fail. Given the clear textual support prohibiting the Scheme in the related (and most relevant) operative documents, any alleged gap in the Note Purchase Agreement must be filled with the implied covenant of good faith and fair dealing, which the purported amendment would clearly violate.

96. PE Fund’s purported waiver of outstanding defaults is unlawful and invalid because it violates the implied covenant of good faith and fair dealing. Section 17 of the Note Purchase Agreement does not allow the PE Fund to act in a manner that benefits PE Fund to the detriment of other parties to the Note Purchase Agreement. The purported waiver here would allow the Company and PE Fund to enter into prohibited insider transactions that violate the Note Purchase

Agreement and then waive any default caused by their conduct—conduct that not only was never contemplated by the Note Purchase Agreement, but also shocks the conscience of any participants in the syndicated lending market. Indeed, to the extent there is a gap in the document on how to resolve an issue never contemplated, the indicia in the contract prohibiting transactions with affiliates could only suggest that such gap must be filled by requiring a vote by the unaffiliated (majority of the minority) Noteholders in order to waive such a default. *See* NPA § 10.2. Thus, PE Fund's self-serving waiver for its own interests must be deemed void.

97. With the amendment and waiver invalid, the Note Purchase Agreement governs and remains in effect. As a result, any issuance of additional secured debt—including the Super Senior Note—would clearly violate the Note Purchase Agreement because it does not allow any incurrence of more indebtedness or granting of new liens. NPA §§ 10.1, 10.7.

98. In addition to the abovementioned substantive violations of the Note Purchase Agreement, the Company has also breached the Noteholders' unambiguous rights under Section 17.2 of the Note Purchase Agreement. Section 17.2 provides that, before voting on any proposed amendment, the Company must provide each Senior Notes holder "with sufficient information, sufficiently far in advance of the date a decision is required, to enable such holder to make an informed and considered decision with respect to any proposed amendment, waiver or consent in respect to any of the provisions hereof or of the Notes or any other Note Document." NPA §17.2(a). This language makes clear that PE Fund, as the Required Holders, cannot ignore the interests of the Senior Noteholders, but rather acts on their behalf and for their benefit, including with regard to their interests. Despite this express language, the Company has sandbagged Plaintiffs by withholding information concerning its Scheme, including the purported amendments, for months.

99. Upon information and belief, the Company intends to send a notice of the purported amendments after the fact. However, the belated notice would not afford Plaintiffs sufficient time or information to enable them to "make an informed and considered decision with respect to" the amendments. NPA § 17.2(a). The purported amendments would be presented to minority lenders as a fait accompli, violating the express language of Section 17.2(a) of the Note Purchase Agreement.

100. In another flagrant violation of the solicitation provisions of the Note Purchase Agreement, as described above, the Company has not concurrently paid all Senior Noteholders the consideration given to PE Fund to induce their vote for waivers, consents, and amendments. NPA § 17.2(b).

CAUSES OF ACTION

FIRST CAUSE OF ACTION:
Declaratory Judgment

(On Behalf of Plaintiffs Against The Company, PE Fund, And Acquiom)

101. Plaintiffs incorporate the preceding paragraphs.

102. The Note Documents include, among other things, the Note Purchase Agreement, the Collateral Agreement, the Intercreditor Agreement, and the Collateral Agency Agreement.

103. Plaintiff, the Company, and PE Fund are parties to the Note Documents.

104. Acquiom is the purported Collateral Agent under the Note Documents.

105. The Note Documents are valid and enforceable contracts.

106. Plaintiffs have performed all their obligations under the Note Documents.

107. Acquiom currently holds the Lien for the benefit of the Noteholders. Guarantee and Collateral Agreement § 3.01. The Lien has priority over all other interests in the Collateral. Acquiom was purportedly appointed to hold the Lien in order to protect all Noteholders equally

pursuant to the Collateral Agency Agreement. That agreement "set[] forth the priorities for the application of any proceeds of the Collateral … and various other matters with respect to their rights in and with respect to the Collateral." Collateral Agency Agreement at 1 (RECITALS).

108. Article 4 of the Collateral Agency Agreement provides that all proceeds of Collateral must be delivered to the Collateral Agent, and then distributed in accordance with a strict waterfall of priorities. Those priorities make abundantly clear that Noteholders must be paid before the Company could have access to the residual proceeds to satisfy other creditors or shareholders.

109. Article 13 of the Collateral Agency Agreement makes it clear that no amendment to the Collateral Agency Agreement itself is effective without the consent of each of the Noteholders.

110. Article 13 of the Collateral Agency Agreement also provides that no amendment to any of the other Collateral Documents "affecting the priority of the Lien" may be effective without the written consent of all Noteholders.

111. Through the Super Senior Note Documents, the Company and PE Fund purportedly removed the protections of the Collateral Agency Agreement and other Collateral Documents in a manner that would affect "the priority of the Lien on … the Collateral." Collateral Agency Agreement § 13. Such amendment requires written consent from all Noteholders including Plaintiffs to be effective. Plaintiffs do not give their consent. Thus, the purported amendment is invalid.

112. In addition, Section 17.1(b) of the Note Purchase Agreement provides that "the written consent of each Purchaser and the holder of each Note at the time outstanding" is required to "change the … time of any … payment of principal." NPA § 17.1(b).

113. Under the Note Purchase Agreement, Plaintiffs are first-in-time to receive payment of principal if the Company defaults.

114. The purported amendment—by allowing incurrence of indebtedness more senior to Senior Note—would change the time of the payment on the Senior Note from first-in-time to second-in-time.

115. To the extent that the Company tries to accomplish indirectly what the Collateral Agency Agreement clearly prohibits directly, and to engineer the subordination by amending only the Note Purchase Agreement and not touching the Collateral Documents, they cannot do so because the Note Purchase Agreement also prohibits such possible amendment.

116. The Note Documents as a whole undeniably demonstrate that the essence of Plaintiff's bargained-for benefit was first priority in repayment, hence the Note Documents never contemplated let alone allow Plaintiffs' loan to be subordinated to some future secured loan against its will. PE Fund's exercise of discretion—if allowed to proceed—would clearly be in bad faith, because it would destroy Plaintiffs' essential bargained-for benefit—priority in repayment. To the extent that Defendants argue that the Note Purchase Agreement is silent on the permissibility of this amendment, that gap would be filled via the implied covenant of good faith and fair dealing, which the purported amendment would clearly violate.

117. Under Section 17.1(b) of the Note Purchase Agreement, therefore, the purported amendment is not valid unless Plaintiffs have provided their written consent. Plaintiffs do not provide their consent.

118. Plaintiffs seeks a declaration that the Scheme would violate the Note Documents including the Note Purchase Agreement and Collateral Agency Agreement, if the Scheme is pursued further; to the extent the Scheme is consummated, it is void as to Plaintiffs.

119. Plaintiffs would be irreparably harmed by the Scheme.

120. Plaintiffs seek to preliminarily and permanently enjoin the Scheme.

121. Alternatively, Plaintiffs seek damages in an amount to be determined at trial.

SECOND CAUSE OF ACTION:
Breach of the Implied Covenant of Good Faith and Fair Dealing

(On Behalf of Plaintiffs Against PE Fund)

122. Plaintiffs incorporate the preceding paragraphs.

123. Every contract contains an implied covenant of good faith and fair dealing, which forbids a party to the contract from acting in bad faith, or arbitrarily, or irrationally in exercising the discretion afforded to it under the contract. It also forbids one party from depriving the other of the fruit of the parties' bargain.

124. Section 17.1 of the Note Purchase Agreement, to the extent it purportedly affords PE Fund discretion to waive unspecified breaches of the contract, nevertheless requires compliance with the implied covenant.

125. PE Fund's purported exercise of its discretion in waiving the Company's defaults is plainly in bad faith, arbitrary, and irrational; it also deprives the Senior Noteholders of the fruits of the bargain. Thus, it violates the implied covenant. PE Fund purports to grant the waiver only to erase the default caused by its own misdeeds, rather than protecting the interest of Noteholders. Moreover, the purported waiver would damage the minority Noteholders by forfeiting their right to seek remedies without their consent.

126. The purported waiver ostensibly would allow the Company and PE Fund to enter into prohibited insider transactions that violate the Note Purchase Agreement and then allow themselves to waive any default caused by violation. The Note Purchase Agreement has no contemplation of how PE Fund could waive an Event of Default that it caused—that scenario is

not provided for at all in the contract—but the implied covenant would clearly be violated by such conduct. Indeed, the indicia in the contract prohibiting transactions with affiliates suggests that holders would be protected from such transactions. To the extent that Defendants argue that a gap exists in the Note Purchase Agreement, this gap on what requisite vote is required to waive defaults caused by PE Fund should be filled by requiring a vote by the unaffiliated (majority of the minority) Noteholders. *See* NPA § 10.2. Thus, PE Fund's unilateral waiver for its own interests pursuant to the Note Purchase Agreement Consent and Forbearance in a manner antithetical to Plaintiffs is void.

127. PE Fund's purported waiver would irreparably harm Plaintiffs.

128. Plaintiffs seek to invalidate and enjoin PE Fund's waiver.

129. Alternatively, Plaintiffs seek damages in an amount to be determined at trial.

THIRD CAUSE OF ACTION:
Breach of Contract

(On Behalf of Plaintiffs Against the Company, PE Fund, And Acquiom)

130. Plaintiffs incorporates the preceding paragraphs.

131. Plaintiffs, the Company, and PE Fund are parties to the Note Purchase Agreement.

132. Acquiom is the purported Collateral Agent under the Note Purchase Agreement.

133. The Note Purchase Agreement is a valid and enforceable contract.

134. Plaintiffs have performed all their obligations under the Note Purchase Agreement.

135. Section 10.1 of the Note Purchase Agreement prohibits the Company from incurring new Indebtedness unless one of the enumerated exceptions is met.

136. Section 10.7 of the Note Purchase Agreement prohibits the Company from granting new Liens except Permitted Liens.

137. The incurrence of Super Senior Notes would not qualify for any exceptions under Sections 10.1 and 10.7. It therefore would breach both Sections 10.1 and 10.7.

138. The incurrence of Super Senior Notes would damage Plaintiff.

139. Plaintiffs seeks a declaration that the purported issuance of Super Senior Notes would be a breach of the Note Purchase Agreement and is accordingly void.

140. Plaintiffs would be irreparably harmed by the purported issuance of Super Senior Notes.

141. Plaintiffs seek to preliminarily and permanently enjoin the issuance of the Super Senior Notes in a manner that would provide a priority lien or other right to payment above the Senior Notes' Lien.

142. Alternatively, Plaintiffs seek damages in an amount to be determined at trial.

FOURTH CAUSE OF ACTION:
Breach of Contract

(On Behalf of Plaintiffs Against the Company)

143. Plaintiffs incorporate the preceding paragraphs.

144. Plaintiffs, the Company, and PE Fund are parties to the Note Purchase Agreement.

145. Acquiom is the purported Collateral Agent under the Note Purchase Agreement.

146. The Note Purchase Agreement is a valid and enforceable contract.

147. Plaintiffs have performed all its obligations under the Note Purchase Agreement.

148. Section 17.2 of the Note Purchase Agreement requires the Company to provide each Senior Notes holder "with sufficient information, sufficiently far in advance of the date a decision is required, to enable such holder to make an informed and considered decision with respect to any proposed amendment, waiver or consent in respect to any of the provisions hereof or of the Notes or any other Note Document." NPA § 17.2.

149. The Company purports to amend the Note Purchase Agreement and other Note Documents to effectuate the Scheme.

150. Upon information and belief, the Company has been contemplating and crafting the Scheme as early as December 2021 when the Company's extensive defaults were first revealed.

151. The Company has failed to provide any detailed written information concerning its Scheme, including the purported amendments, to Plaintiffs, let alone involving it in the process for at least three months.

152. The Company's conduct violates Section 17.2(a) of the Note Purchase Agreement.

153. The Company's conduct damages Plaintiffs.

154. Plaintiffs seek a declaration that the Company's conduct is a breach of the Note Purchase Agreement, and any consent, amendment, or and/or waiver obtained as a result of this breach is void.

155. Alternatively, Plaintiffs seek damages in an amount to be determined at trial.

FIFTH CAUSE OF ACTION:
Breach of Contract

(On Behalf of Plaintiffs Against The Company, PE Fund, And Acquiom)

156. Plaintiffs incorporate the preceding paragraphs.

157. The Note Purchase Agreement is a valid and enforceable contract.

158. Plaintiffs have performed all their obligations under the Note Purchase Agreement.

159. Upon information and belief, as part of the Scheme, the Company entered into one or more consents, waivers, and/or amendments of the Note Purchase Agreement and/or other Note Documents with PE Fund, in order to obtain financing through the issuance of the Super Senior Notes and otherwise facilitate the Scheme.

160. Upon information and belief, as an inducement to PE Fund entering into such consents, waivers, and/or amendments, the Company is paying valuable consideration to PE Fund.

161. Upon information and belief, the Company is not paying such remuneration to each Senior Noteholder. As a result, any such waiver or amendment would fail to comply with Section 17.2(b) of the Note Purchase Agreement, and be ineffective as to the Company, PE Fund, Acquiom, and the other Senior Noteholders.

162. Plaintiffs seek a declaration that the Scheme would therefor violate the Note Purchase Agreement and is invalid.

163. Alternatively, Plaintiffs seek damages in an amount to be determined at trial.

SIXTH CAUSE OF ACTION:
Tortious Interference with Contract

(On Behalf of Plaintiffs Against Wrigley)

164. Plaintiffs incorporate the preceding paragraphs.

165. The Note Purchase Agreement is a valid and enforceable contract.

166. Wrigley was not party to the Note Purchase Agreement.

167. Wrigley knew of the Note Purchase Agreement because he owns and controls both the Company and PE Fund who are parties to the Note Purchase Agreement.

168. Wrigley intentionally and improperly caused the Company to issue the GH Notes, which breached the Note Purchase Agreement for incurring prohibited Indebtedness and entering into prohibited Affiliate Transactions.

169. Wrigley intentionally and improperly caused the Company to enter into the June 2021 Transaction, which breached the Note Purchase Agreement for incurring prohibited Indebtedness and entering into a prohibited Affiliate Transaction.

170. Wrigley's conduct damaged Plaintiffs.

171. As a result of Wrigley's tortious interference with the Note Purchase Agreement, Plaintiffs suffered damages in an amount to be proven at trial, including punitive damages.

SEVENTH CAUSE OF ACTION:
Tortious Interference with Contract

(On Behalf of Plaintiffs Against Wrigley, WWJR Enterprises, Talladega LP, and Talladega, Inc.)

172. Plaintiffs incorporate the preceding paragraphs.

173. The Note Purchase Agreement is a valid and enforceable contract.

174. Wrigley, WWJR Enterprises, Talladega LP, and Talladega, Inc. were not parties to the Note Purchase Agreement.

175. Wrigley knew of the Note Purchase Agreement because he is the controlling owner of both the Company and PE Fund who are parties to the Note Purchase Agreement.

176. WWJR Enterprises knew of the Note Purchase Agreement because it is the general partner of PE Fund who is a party to the Note Purchase Agreement.

177. Talladega LP knew of the Note Purchase Agreement because it has entered into the Intercreditor Agreement with PE Fund which specifically referenced the Note Purchase Agreement.

178. Talladega, Inc. knew of the Note Purchase Agreement because it is the general partner of Talladega LP who is a party to the Intercreditor Agreement which specifically referenced the Note Purchase Agreement.

179. Wrigley, WWJR Enterprises, Talladega LP, and Talladega, Inc. intentionally and improperly induced the Company and PE Fund to breach the Note Purchase Agreement by concocting and purporting to carry out the Scheme. In doing so, Wrigley, WWJR Enterprises, Talladega LP, and Talladega, Inc. acted with malice, in bad faith, and without justification.

180. Wrigley, WWJR Enterprises, Talladega LP, and Talladega, Inc.'s conduct damaged Plaintiff.

181. As a result of Wrigley, WWJR Enterprises, Talladega LP, and Talladega, Inc.'s tortious interference with the Note Purchase Agreement, Plaintiffs suffered damages in an amount to be proven at trial, including punitive damages.

EIGHTH CAUSE OF ACTION:
Violations of Georgia Uniform Voidable Transaction Act § § 18-2-74, 18-2-77

(On Behalf of Plaintiffs Against all Defendants)

182. Plaintiffs incorporate the preceding paragraphs.

183. Under the Note Purchase Agreement, Plaintiffs are entitled to first lien priority and pro rata payment rights, like other Noteholders. The Scheme purports to strip Plaintiffs of these rights and subordinate Plaintiffs' debt to new Super Senior Notes secured by the same collateral.

184. The Scheme would transfer property to PE Fund and Talladega LP, in the form of liens on the Collateral, giving the holders of those liens priority over Plaintiffs' security interests in the Collateral, which had previously held first priority. Additionally, it would cause the Company to incur new obligations in the form of Super Senior Notes to PE Fund and Talladega LP, impairing the time and prospect for repayment of Plaintiffs' loans. On top of this, upon information and belief, the Company is obligating itself to indemnify other Defendants for their role in the Scheme.

185. The Company purports to make these transfers and incur these obligations with the actual intent to hinder, delay, or defraud Plaintiffs to and for the benefit of PE Fund and Talladega LP.

186. Plaintiff's rights to pro rata payments on its Senior Notes arose prior to the Scheme.

187. The purported transfers and incurrence of obligations reflect many of the badges of fraud set forth in Section 18-2-74(b) of the Georgia Uniform Voidable Transactions Act.

188. The Scheme would include a transfer to an insider. PE Fund and the Company are under the common ownership of Wrigley. Wrigley controls the Company and serves as its Chairman. His investment vehicle, PE Fund, would receive Super Senior Notes and associated liens and consideration in the Scheme. Wrigley effectively stands on both sides of the transaction. He purports to use his power as a corporate insider to favor himself.

189. Therefore, the purported transfers and incurrence of obligations would be made with the actual intent to hinder, delay, or defraud Plaintiff.

190. The Scheme was concealed from Plaintiff, who was not given a fair opportunity to negotiate fair, arm's-length terms for the consent, waiver, and/or the amendment.

191. The Scheme would mark the Company's incursion of a substantial debt—[redacted], plus fees, indemnities, and other valuable consideration granted under duress and as a result of overreaching by lenders exerting control over the Company.

192. The transfers and obligations contemplated by the Scheme constitute a violation of Georgia Uniform Voidable Transactions Act § 18-2-74.

193. Accordingly, pursuant to Georgia Uniform Voidable Transactions Act §§ 18-2-74 and 18-2-77(a), all purported transfers or incurrence of obligations by the Company to the benefit of other Defendants are voidable and should be unwound, if effectuated.

NINTH CAUSE OF ACTION:
Violations of Fiduciary Duty

(On Behalf of Plaintiffs Against PE Fund and Wrigley)

194. Plaintiffs incorporate the preceding paragraphs.

195. Special circumstances can transform co-lenders' business relationship into a fiduciary relationship. A relationship of confidence, trust, or superior knowledge or control may qualify for such "special circumstances."

196. Special circumstances exist among Plaintiffs, Wrigley, and PE Fund.

197. Wrigley and PE Fund are alter egos because Wrigley exercises complete domination and control over PE Fund.

198. Plaintiffs invested in the Senior Notes relying on the trust and confidence in Wrigley. The Note Purchase Agreement contains a key person provision requiring that Wrigley remain CEO and Chairman of the board of directors of the Company. NPA § 10.15.

199. Wrigley and PE Fund control the Senior Noteholder group by virtue of PE Fund's voting power as Required Holders under the Note Purchase Agreement.

200. Wrigley and PE Fund also control the Company because Wrigley is its controlling shareholder, CEO, and Chairman.

201. This relationship between PE Fund, as the majority holder of the Senior Note, and Techview, as a minority holder, created expectations of trust and honesty in all dealings.

202. The special circumstances of the roles of Wrigley and PE Fund in this context transformed the relationship between the parties as co-lenders into a fiduciary relationship.

203. Plaintiffs never waived Wrigley or PE Fund's fiduciary duty owed to Plaintiffs.

204. Alternatively, fiduciary duty exists between parties who entered into a joint venture.

205. Plaintiffs joined Wrigley and PE Fund to provide venture capital to the Company.

206. Plaintiffs supported the Company through purchasing Senior Notes and investing in the Company.

207. Wrigley and PE Fund owed a fiduciary duty to Plaintiffs as a co-venturer.

208. Wrigley and PE Fund breached their fiduciary duty to Plaintiffs because they caused the Company to breach the Note Purchase Agreement.

209. Wrigley and PE Fund breached their fiduciary duty to Plaintiffs because the Scheme purports to diminish or destroy Plaintiffs' interest in the Company by subordinating Plaintiff's Senior Notes.

210. Wrigley and PE Fund breached their fiduciary duty to Plaintiffs because they intentionally withheld information regarding the Scheme and the events leading up to it, thereby concealing their disloyalty from Plaintiffs.

211. PE Fund and Wrigley's conduct damaged Plaintiffs.

212. Plaintiffs seek a declaration that Wrigley and PE Fund are alter egos and that they breached their fiduciary duty to Plaintiffs.

213. Plaintiffs seek damages in an amount to be proven at trial, including punitive damages.

TENTH CAUSE OF ACTION:
Declaratory Judgment

(On Behalf of Plaintiffs Against the Company, PE Fund, and Acquiom)

214. Plaintiffs incorporate the preceding paragraphs.

215. Every contract contains an implied covenant of good faith and fair dealing, which forbids a party to the contract from acting in bad faith, arbitrarily, or irrationally in exercising the discretion afforded to it under the contract.

216. Defendants contend that Section 17.1 of the Note Purchase Agreement purports to afford PE Fund certain discretion, as the "Required Holders," ostensibly to waive unspecified breaches of the contract or make unspecified amendments to the contract.

217. Plaintiffs reject Defendants' position, but nevertheless assert that any such discretionary rights, to the extent they exist, must be exercised consistent with the implied covenant of good faith and fair dealing vis-à-vis other Senior Noteholders.

218. PE Fund has acted in bad faith, arbitrarily, and irrationally in waiving the Company's defaults caused by PE Fund's own actions; hence violating the implied covenant. PE Fund purports to grant the waiver to erase the default caused by its own misdeeds, rather than protecting the interest of other Noteholders. Moreover, the purported waiver would damage the minority Noteholders by forfeiting their right to seek remedies without their consent.

219. PE Fund continues to act in bad faith, arbitrarily, and irrationally in concocting and purporting to carry out the Scheme. PE Fund is well-aware that the Scheme is prohibited under the Note Documents, because it breaches the text of the Note Documents, violates the implied covenant, and destroys the fruit of the contract that Plaintiffs bargained for—priority in repayment. Despite being clearly prohibited by the Note Documents, PE Fund purports to carry out the Scheme by abusing its position as the Required Holders under Section 17.1 of the Note Purchase Agreement.

220. PE Fund has replaced GLAS with a purported successor Collateral Agent, Acquiom, who is willing to turn a blind eye towards PE Fund's flagrant violations of the Note Documents.

221. Allowing PE Fund to proceed as the Required Holders in this manner violates or frustrates the Note Documents, including the implied covenant.

222. PE Fund's conducts damaged Plaintiffs, and would further damage Plaintiffs if the Scheme is allowed to proceed.

223. In light of the above, the implied covenant of good faith and fair dealing requires PE Fund to recuse from approving conflicted transactions as the Required Holders under Section 17.1 of the Note Purchase Agreement, including but not limited to the waiver and the Scheme at issue in this case.

224. Plaintiffs seek a declaration that the Required Holders for any waiver or amendment of the Note Purchase Agreement in which PE Fund has a conflict of interest shall be the majority of amount of Senior Notes not affiliated with PE Fund, the Company, or Wrigley, including but not limited to the waiver and the Scheme at issue in this case.

225. Plaintiffs seek a declaration that any successor Collateral Agent under the Note Purchase Agreement must be selected by the majority of amount of Senior Notes not affiliated with PE Fund, the Company, or Wrigley.

226. Plaintiffs seek to invalidate the actions of Acquiom as the successor Collateral Agent to GLAS, which was orchestrated by the Company and PE Fund, because such actions violate the rights of the Plaintiffs.

227. Plaintiffs seek damages in an amount to be proven at trial, including punitive damages.

Prayer for Relief

WHEREFORE, Plaintiffs pray for relief as follows:

(a) A declaratory judgment that the purported Scheme would violate the Note Documents including the Note Purchase Agreement and Collateral Agency Agreement, if the Scheme is pursued further;

(b) A declaratory judgment that any waiver of defaults and/or amendments entered into by the Company and PE Fund as Required Holder is or are void under the Note Purchase Agreement and/or the other Note Documents;

(c) A declaratory judgment that the purported issuance of Super Senior Notes and its associated liens would be a breach of the Note Documents;

(d) A declaratory judgment that the purported solicitation of consent from PE Fund is a breach of the Note Purchase Agreement;

(e) A declaratory judgment that the Required Holders for any waiver or amendment of the Note Purchase Agreement in which PE Fund has a conflict of interest shall be the majority of amount of Senior Notes not affiliated with PE Fund, the Company, or Wrigley;

(f) A declaratory judgment that Wrigley and PE Fund are alter egos and that they breached their fiduciary duty to Plaintiffs;

(g) Avoidance of all transfers made and obligations incurred by the Company to or for the benefit of Defendants as a result of the consent, waiver, amendment, and issuance of Super Senior Notes;

(h) Preliminary and permanent injunctive relief enjoining Defendants from proceeding with the Scheme;

(i) Money damages and punitive damages in amounts to be determined at trial, together with pre- and post-judgment interest at the maximum rate allowed by law;

(j) Reimbursement from the Company pursuant to Section 15.1 of the Note Purchase Agreement for all costs and expenses, including attorneys' fees in an amount to be determined following trial;

(k) A declaratory judgment that any actions taken by Acquiom as the successor Collateral Agent to GLAS are invalid, and that any successor Collateral Agent under the Note Purchase Agreement may only be selected by the majority of amount of Senior Notes not affiliated with PE Fund, the Company, or Wrigley; and

(l) Any other relief as the Court deems just and proper.

Dated: April 12, 2022
New York, New York

QUINN EMANUEL URQUHART & SULLIVAN, LLP

By: */s/ Susheel Kirpalani*
Michael B. Carlinsky
(michaelcarlinsky@quinnemanuel.com)
Susheel Kirpalani
(susheelkirpalani@quinnemanuel.com)
Jianjian Ye
(jianjianye@quinnemanuel.com)

51 Madison Avenue, 22nd Floor
New York, New York 10010
(212) 849-7000

Attorneys for Plaintiffs