



IN THE COURT OF CHANCERY IN THE STATE OF DELAWARE

IN RE USG CORPORATION
STOCKHOLDER LITIGATION

CONSOLIDATED
C.A. No. 2018-0602-SG

CLASS ACTION

REVISED PUBLIC VERSION
FILED: December 16, 2019

VERIFIED AMENDED CLASS ACTION COMPLAINT

Plaintiffs Kevin D. Anderson and Susan Fitzgerald (“Plaintiffs”), through undersigned counsel, bring this Verified Amended Class Action Complaint on behalf of themselves and the former holders of the common stock of USG Corporation (“USG” or the “Company”) against the former members of the Board of Directors (the “Board” or “Defendants”) of USG for breaching their fiduciary duties in connection with the acquisition of USG (the “Buyout”) by USG’s second largest shareholder, Gebr. Knauf KG (“Gebr. Knauf” and, together, with its affiliated individuals and entities as outlined below, “Knauf”), who – along with USG’s largest shareholder, Berkshire Hathaway Inc. (together with its affiliated individuals and entities as outlined below, “Berkshire” or “Berkshire Hathaway”) – exerted such pressure on the Board to sell that the Board knowingly acquiesced to a sale that it knew undervalued USG on a standalone basis. This action seeks

damages suffered by Plaintiffs and the Class (as defined herein) as a result of Defendants' wrongdoing.

The allegations of this Complaint are based on Plaintiffs' knowledge as to themselves, and on information and belief based upon, among other things, the investigation of counsel and publicly available information, as to all other matters.¹

SUMMARY OF THE ACTION

1. This is a shareholder class action brought by Plaintiffs on behalf of former USG shareholders against the former USG Board for breaches of fiduciary duty and/or other violations of state law arising out of the sale of USG to Knauf by means of an unfair process, for an inadequate price, and without full disclosure of all material information.

2. Up until the Buyout, and through its subsidiaries, USG was a manufacturer and distributor of building materials, most notably drywall and joint compound. USG is perhaps best known as the manufacturer and seller of Sheetrock™ brand drywall and wall products and, at the time of the Buyout, it was

¹ The confidential portions of this Complaint are based on expedited discovery produced, primarily, from Knauf and Berkshire in connection with Plaintiffs' former Section 203 allegations, pursuant to which they argued that Knauf and Berkshire formed an illegal Section 203 group. Notably, the only confidential discovery received from the Board consisted of a handful Board meeting minutes and one, non-value related presentation regarding ways to exit Berkshire from USG's stock, and the Board specifically refused to produce – and this Complaint thus does not have the benefit of – any contemporaneous Board-level valuations or communications.

the largest distributor of wallboard in the United States and the largest manufacturer of gypsum products in North America. Indeed, there is a better than not likelihood that any reader of this Complaint has a USG product in their home.

3. Like USG, Knauf is a German manufacturer of building materials – one that has long had its eye on the crown jewel of American drywall, USG. At the time of the Buyout, Knauf was USG’s second largest shareholder, a stake that it had taken as a long-term beachhead from which to later acquire USG. Berkshire is a holding company that owns subsidiaries engaged in a multitude of businesses and, at the time of the buyout, was USG’s largest shareholder.

4. On June 10, 2018, USG announced that it had entered into an agreement and plan of merger (the “Merger Agreement”) with Knauf and its wholly owned subsidiary, World Cup Acquisition Corporation (“Merger Sub”), pursuant to which Merger Sub would merge with and into the Company, with the Company surviving as a wholly-owned subsidiary of Knauf (previously defined as the “Buyout”).

5. Shareholders voted on and approved the Merger Agreement on September 26, 2018, and the Buyout closed on April 24, 2019. Pursuant to the terms of the Merger Agreement, in the Buyout, USG shareholders received just \$44.00 in cash for each share of USG common stock that they owned (the “Merger Consideration”).

6. When it entered into the Merger Agreement, the Board knew that this Merger Consideration undervalued the Company. Indeed, just four weeks earlier, in early May 2018, the Board internally concluded that the value of USG on an inherent, standalone, going-forward basis was actually \$50 per share. Aware of this fact, the Board repeatedly attempted to fend off and reject Knauf's repeated advances. However, once the Company's largest shareholder, Berkshire Hathaway – through its legendary chairman, Warren Buffett – became personally involved, the Board quickly folded and acquiesced to the Buyout with Knauf.

7. More specifically, the Buyout was the result of the Board's reactionary response to coordinated and sustained pressure exerted by the Company's largest shareholders, Knauf and Berkshire. As a result of this coordinated activity, the Board suffered a stunning loss at its May 9, 2018 annual meeting of stockholders, at which all four of its recommended directors up for election failed to secure the votes they needed to win election. Shortly thereafter, and despite months of publicly and privately fending off Knauf's advances, the Board surrendered to Knauf and Berkshire and agreed to a sale to Knauf that it had both publicly and privately decided was inadequate and not in shareholders' best interests.

8. What is worse, once goaded into the Buyout by Knauf and Berkshire, Defendants failed to disclose to stockholders the true value of the

Company on an inherent, standalone basis and concealed their internal belief that the Merger Consideration significantly undervalued USG. Instead, in order to convince stockholders to vote in favor of the Buyout, on August 23, 2018, Defendants authorized the filing of a materially incomplete and misleading definitive proxy statement (the “Proxy”) with the Securities and Exchange Commission (“SEC”), in violation of their fiduciary duties. Nowhere in the Proxy was the Board’s internal valuation of the Company on an inherent, standalone basis disclosed to shareholders, nor were the Board’s internal misgivings regarding the Buyout and the Merger Consideration. Instead, the Board falsely represented, in contradiction to their own internal determinations and conclusions, that the Buyout and Merger Consideration were fair to shareholders. As a result, when stockholders voted on the Buyout, they were unaware (1) that the Board had internally concluded that USG had a significantly higher value on an inherent, standalone basis than what was being offered in the Buyout and (2) that the Board had internally determined that the Merger Consideration was indeed inadequate and not fair to shareholders, such that the vote on the Buyout was not fully informed.

9. For these reasons and as set forth in detail herein, Plaintiffs seek to recover damages resulting from the Defendants’ violations of their fiduciary duties.

PARTIES

A. Plaintiffs

10. Plaintiffs are, and at all relevant times were, continuous shareholders of USG.

B. Defendants

11. Defendant Steven F. Leer (“Leer”) served as a director of the Company from July 2005 through the close of the Buyout and as the Chairman of the Board at all relevant times.

12. Defendant Jennifer F. Scanlon (“Scanlon”) served as Chief Executive Officer (“CEO”) and President of the Company from November 2016, and as a director from September 2016, through the close of the Buyout.

13. Defendant Jose Armario (“Armario”) served as a director of the Company from January 2007 through the close of the Buyout. Mr. Armario was not re-elected to the Board at the Company’s 2018 annual stockholder meeting, but continued to serve as a holdover director at all relevant times.

14. Defendant William H. Hernandez (“Hernandez”) served as a director of the Company from September 2009 through the close of the Buyout. Mr. Hernandez was not re-elected to the Board at the Company’s 2018 annual stockholder meeting, but continued to serve as a holdover director at all relevant times.

15. Defendant Richard P. Lavin (“Lavin”) served as a director of the Company from November 2009 through the close of the Buyout.

16. Defendant Brian A. Kenney (“Kenney”) served as a director of the Company from February 2011 through the close of the Buyout.

17. Defendant Gretchen R. Haggerty (“Haggerty”) served as a director of the Company from May 2011 through the close of the Buyout. Ms. Haggerty was not re-elected to the Board at the Company’s 2018 annual stockholder meeting, but continued to serve as a holdover director at all relevant times.

18. Defendant Mathew Carter, Jr. (“Carter”) served as a director of the Company from September 2012 through the close of the Buyout.

19. Defendant Thomas A. Burke (“Burke”) served as a director of the Company from September 2013 through the close of the Buyout.

20. Defendants Leer, Scanlon, Armario, Hernandez, Lavin, Kenney, Haggerty, Carter, and Burke formed the Board of Directors of USG at all relevant times and are collectively referred to herein as the “Board” or the “Defendants.”

C. Relevant Non-Parties

21. USG Corporation (previously defined as “USG”) was a Delaware corporation with its principal executive offices located at 550 West Adams Street, Chicago, Illinois 60661.

22. Gebr. Knauf KG (previously defined as “Gebr. Knauf”) (formerly known as Gebr. Knauf Verwaltungsgesellschaft KG) is a limited partnership organized under the laws of the Federal Republic of Germany, with its principal executive offices located at Am Bahnhof 7, 97346 Iphofen, Federal Republic of Germany. Gebr. Knauf is owned and controlled by members of the Knauf family.

23. C&G Verwaltungs GmbH (“C&G”) is a limited liability company organized under the laws of the Federal Republic of Germany with its principal executive offices located at Am Bahnhof 7, 97346 Iphofen, Federal Republic of Germany. C&G is an indirect subsidiary of Gebr. Knauf.

24. World Cup Acquisition Corporation (previously defined as “Merger Sub”) is a Delaware corporation and wholly owned subsidiary of Knauf.

25. Gebr. Knauf, together with its various affiliated individuals and entities, including, but not limited to, Alexander Knauf (“Mr. Knauf”), Manfred Grundke (“Mr. Grundke”), C&G, and Merger Sub, are collectively referred to herein as “Knauf.” According to the Proxy and Knauf’s June 11, 2018 Schedule 13D, Knauf beneficially owned approximately 14,757,258 shares of USG common stock, which represented approximately 10.6% of USG’s common stock issued and outstanding (based on 139,462,508 shares of Company common stock outstanding as of June 7, 2018, per the Merger Agreement) at the time of the execution of the Merger Agreement.

26. Berkshire Hathaway Inc. (“Berkshire Hathaway”) is a Delaware corporation with principle executive offices located at 1440 Kiewit Plaza, Omaha, Nebraska 68131.

27. Berkshire Hathaway Life Insurance Company of Nebraska (“BH Nebraska”) is a Nebraska Corporation with principle executive offices located at 3024 Harney Street, Omaha, Nebraska 68131.

28. Berkshire Hathaway Assurance Corporation (“BH Assurance”) is a New York corporation with principle executive offices located at Marine Air Terminal, LaGuardia Airport, Flushing, New York 11371.

29. National Indemnity Company (“NICO”) is a Nebraska corporation with principal executive offices located at 3024 Harney Street, Omaha, Nebraska 68131. NICO is a direct subsidiary of Berkshire Hathaway and the direct parent company of BH Nebraska and BH Assurance.

30. General Re Life Corporation (“General Re Life”) is a Connecticut corporation with its principle executive offices located at 120 Long Ridge Road, Stamford, Connecticut 06902.

31. General Reinsurance Corporation (“General Reinsurance”) is a Delaware corporation with its principle executive offices located at 120 Long Ridge Road, Stamford, Connecticut 06902. General Reinsurance is an indirect

subsidiary of Berkshire Hathaway and the direct parent company of General Re Life.

32. General Re Corporation (“General Re”) is a Delaware corporation with its principal executive offices located at 120 Long Ridge Road, Stamford, Connecticut 06902. General Re is a direct subsidiary of Berkshire Hathaway and the direct parent company of General Reinsurance.

33. Berkshire Hathaway, together with its various affiliated individuals and entities, including, but not limited to, Mr. Buffett, BH Nebraska, BH Assurance, NICO, General Re Life, General Reinsurance, and General Re, are collectively referred to herein as “Berkshire” or “Berkshire Hathaway.” According to the Proxy and Schedule 13Ds filed with the SEC, Berkshire Hathaway beneficially owned approximately 43,387,980 shares of USG stock, which represented approximately 31.1% of the Company’s outstanding common stock, at the time of the execution of the Merger Agreement.

THE DEFENDANTS’ FIDUCIARY DUTIES

34. By reason of the Defendants’ positions with the Company as officers and/or directors, they were in a fiduciary relationship with Plaintiff and the other public shareholders of USG and owed them a duty of care, loyalty, good faith, candor, and independence.

35. By virtue of their positions as directors and/or officers of USG, the

Defendants, at all relevant times, had the power to control and influence USG, did control and influence USG, and caused USG to engage in the practices complained of herein.

36. To diligently comply with their fiduciary duties, the Defendants were prohibited from taking any action that: (a) adversely affected the value provided to the Company's stockholders; (b) favored themselves or discouraged or inhibited alternative offers to purchase control of the corporation or its assets; (c) adversely affected their duty to search and secure the best value reasonably available under the circumstances for the Company's stockholders; (d) would provide the Defendants with preferential treatment at the expense of, or separate from, the public stockholders; and/or (e) contractually prohibited the Defendants from complying with or carrying out their fiduciary duties.

37. In accordance with their duties of loyalty and good faith, the Defendants were obligated to refrain from: (a) participating in any transaction where the Defendants' loyalties were divided; (b) participating in any transaction where the Defendants received, or were entitled to receive, a personal financial benefit not equally shared by the public stockholders of the corporation; and/or (c) unjustly enriching themselves at the expense or to the detriment of the public stockholders.

38. Plaintiffs allege herein that the Defendants, separately and together,

in connection with the Buyout, knowingly or recklessly violated their fiduciary duties, including their duties of loyalty, good faith, candor, and independence owed to the Company.

CLASS ACTION ALLEGATIONS

39. Plaintiffs bring this action on their own behalf and as a class action pursuant to Court of Chancery Rule 23, on behalf of all former holders of USG common stock who were harmed by Defendants' actions described herein (the "Class"). Excluded from the Class are Defendants; any person, firm, trust, corporation, or other entity related to or affiliated with any Defendants; and Knauf and Berkshire.

40. This action is properly maintainable as a class action because:

a. The Class is so numerous that joinder of all members is impracticable.

As of August 21, 2018, the record date for the shareholder vote, there were approximately 139,748,196 shares of USG common stock issued and outstanding and entitled to vote on the Buyout, owned by numerous stockholders. The actual number of public stockholders of USG will be ascertained through discovery.

b. There are questions of law and fact which are common to the Class and which predominate over any questions affecting only individual members, including *inter alia*, the following:

- i) whether the Defendants breached their fiduciary duties with respect to Plaintiffs and the other members of the Class in connection with the Buyout;
- ii) whether the Defendants breached their fiduciary duty to obtain the best price available for the benefit of Plaintiffs and the other members of the Class in connection with the Buyout;
- iii) whether the Defendants breached their fiduciary duty to disclose fully and fairly all material information within the Board's control in connection with the Buyout; and
- iv) whether Plaintiffs and other members of the Class are entitled to damages as a result of the Defendants' wrongful conduct.

c. Plaintiffs are adequate representatives of the Class, have retained competent counsel experienced in litigation of this nature, and will fairly and adequately protect the interests of the Class.

d. Plaintiffs' claims are typical of the claims of the other members of the Class and Plaintiffs do not have any interests adverse to the Class.

e. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with

respect to individual members of the Class, which would establish incompatible standards of conduct for the party opposing the Class, or adjudications with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

f. Defendants have acted on grounds generally applicable to the Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole.

g. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

SUBSTANTIVE ALLEGATIONS

I. RELEVANT CORPORATE BACKGROUND

A. USG

41. Prior to the Buyout, and through its subsidiaries, USG was a manufacturer and distributor of building materials. The Company's segments include Gypsum, Ceilings, and USG Boral Building Products. The Company produces a range of products for use in new residential, new nonresidential, and residential and nonresidential repair and remodel construction, as well as products used in certain industrial processes.

42. USG is perhaps best known as the manufacturer and seller of Sheetrock© brand drywall and wall products and, at the time of the Buyout, it was the largest distributor of wallboard in the United States and the largest manufacturer of gypsum products in North America. The Company's products are distributed through building materials dealers, home improvement centers and other retailers, specialty wallboard distributors and contractors.

B. KNAUF'S STAKE IN USG

43. Knauf is also a manufacturer of building materials. However, Knauf is predominately an overseas company, and as such required a U.S. presence to achieve their goal of becoming the leading global building products company. Knauf is also a family run company that takes a long view of its business and has long desired a U.S. presence to achieve its goal of becoming the leading global building products company. And it has long viewed USG as a target for that purpose.

44. Knauf initially acquired stock in USG in October 2000, when Knauf International GmbH purchased a little over 4.3 million shares of USG common stock on the open market, and was a stockholder of the Company from that time through the close of the Buyout. From the beginning of its investment in USG, representatives of Knauf have regularly met with the Company's senior management to discuss Knauf's ownership in the Company and opportunities for

various transactions between the two companies. In 2001, Knauf and the Company formed a joint venture (the “Knauf joint venture”) to manufacture and distribute concrete panels throughout Europe and the countries of the former Soviet Union. In early 2007, Knauf began purchasing more USG shares on the open market, and by January 8, 2008, they had amassed a holding of 14,357,928 shares, or, at that time, 14.5% of the Company’s outstanding common stock.

45. In 2008, when USG was exploring an equity offering, Knauf approached the Company about acquiring an additional equity interest in the Company with a path to acquiring a controlling interest in the Company and possibly **eventually acquiring full ownership of the Company**, but Knauf ultimately declined to participate in the equity offering.

46. In 2012, Knauf acquired the Company’s ceilings and surfaces business in Europe for approximately \$80 million. And, in December 2015, Knauf acquired the Company’s 50% interest in the Knauf joint venture for approximately €48 million in cash. Knauf has also previously explored the possibility of closer commercial cooperation between Knauf and the Company, although these discussions did not lead to additional commercial transactions or agreements.

C. BERKSHIRE’S STAKE IN USG

47. Berkshire Hathaway is a holding company that owns subsidiaries engaged in various business activities, including insurance, freight rail

transportation, and utility businesses. The company conducts insurance businesses on both a primary basis and a reinsurance basis, a freight rail transportation business, and a group of utility and energy generation and distribution businesses. In addition, it offers real estate brokerage services; invests in fixed-income and equity instruments; and engages in manufactured housing and finance business, leasing of transportation equipment, and furniture leasing activities. The company also manufactures and distributes a wide range of consumer goods. But what Berkshire is most renowned for is its Chairman and controller, “The Oracle of Omaha,” Warren Buffett.

48. Berkshire Hathaway first acquired an interest in USG in November of 2000 – **about a month after Knauf first acquired its interest** – purchasing 6,500,000 shares on the open market. It was a stockholder from that time through the close of the Buyout.

49. Berkshire held the position relatively quietly until USG needed to undergo Chapter 11 reorganization. In connection therewith, on January 30, 2006, Berkshire Hathaway and USG entered into an Equity Commitment Agreement (the “Equity Commitment Agreement”), a Shareholder’s Agreement (the “Shareholder’s Agreement”) and a Registration Rights Agreement (“Registration Rights Agreement”). Pursuant to the Equity Commitment Agreement, among other things, Berkshire Hathaway agreed to provide a backstop commitment to purchase

up to 45,000,000 unsubscribed shares in a rights offering by USG to its shareholders, and USG agreed to sell up to 45,000,000 unsubscribed shares to Berkshire Hathaway.

50. The rights offering and Berkshire Hathaway's backstop commitment were components of the funding for USG's then-proposed Chapter 11 plan of reorganization and its exit from bankruptcy. In the rights offering, USG issued to the holder of each share of USG common stock one right to purchase one share of USG common stock for a cash purchase price of \$40.00. Berkshire Hathaway agreed to purchase one share of USG common stock for each right that was not exercised in the rights offering, up to a cap of 45,000,000 shares, for a maximum aggregate purchase price of \$1.8 billion. In consideration of Berkshire Hathaway's backstop commitment, upon a final order of approval of the Equity Commitment Agreement by the United States Bankruptcy Court, USG paid to Berkshire Hathaway a non-refundable commitment fee of \$100 million. The purchase and sale of shares of USG common stock pursuant to the Equity Commitment Agreement closed on August 2, 2006.

51. The Shareholder's Agreement provided, among other things, that for a period of seven years following the consummation of USG's rights offering, Berkshire Hathaway would not acquire equity securities of USG if, as a result of such acquisition, Berkshire Hathaway would beneficially own more than 40% of

the voting securities of USG. In addition, Berkshire Hathaway agreed that, during such seven-year period, it would not solicit proxies with respect to securities of USG or submit a proposal or offer involving a merger, acquisition or other extraordinary transaction, subject to certain exceptions. Also, for the same seven-year period, USG agreed to exempt Berkshire Hathaway from USG's existing or future poison pills and that, after the seven-year standstill period ends, during such time that Berkshire Hathaway owns equity securities of USG, Berkshire Hathaway would be exempted from any USG poison pill, except that such poison pill may require that Berkshire Hathaway does not acquire (although it may continue to hold) beneficial ownership of more than 50% of the voting securities of USG. Under the Registration Rights Agreement, USG granted Berkshire Hathaway registration rights with respect to its shares of USG common stock.

52. The Equity Commitment Agreement closed on August 2, 2006, resulting in Berkshire Hathaway acquiring beneficial ownership of another 6,969,274 shares of USG common stock. Immediately following the closing of the Equity Commitment – the very same day – Berkshire Hathaway began bolstering its USG position through large open market purchases. Over the next two months, from August 2, 2006 through October 4, 2006, Berkshire Hathaway acquired 3,602,918 additional USG shares raising its total holdings to 17,072,192 shares, or

19% of the Company's outstanding common stock. From late 2006 to early 2009, Berkshire Hathaway entered into another dormant ownership period.

53. During the 2008 financial crisis, USG was hit hard, along with the rest of the housing sector. Accordingly, the Company ran short on liquidity and required a capital infusion. On November 21, 2008, with USG in the throes of the U.S. housing market crisis, Berkshire Hathaway and USG entered into a Securities Purchase Agreement (the "Securities Purchase Agreement"), pursuant to which Berkshire Hathaway agreed to purchase certain 10% Contingent Convertible Senior Notes due 2018 (the "Notes") in an aggregate principal amount of \$300 million, and USG agreed to sell Notes in an aggregate principal amount of \$300 million dollars, for an aggregate purchase price of \$300 million. On November 26, 2008, BH Nebraska purchased \$160 million aggregate principal amount of the Notes, BH Assurance purchased \$90 million aggregate principal amount of the Notes, and General Re Life purchased \$50 million aggregate principal amount of the Notes.

54. Following stockholder approval of the issuance of shares of USG common stock upon conversion of the Notes at a special meeting of the USG stockholders held on February 9, 2009, the Notes became convertible into USG common stock at the option of Berkshire Hathaway at any time prior to the final maturity date of the Notes, unless the Notes were earlier repurchased or redeemed

by USG. The Notes were convertible into common stock at an initial conversion price of \$11.40 per share.

55. On December 9, 2013, Berkshire Hathaway acquired a total of 21,388,597 shares of USG common stock in the aggregate upon their election to convert into USG common stock the Notes held by them in the aggregate principal amount of \$243,830,00. On April 14, 2014, Berkshire Hathaway reported that it had received a total of 4,927,192 shares of USG common stock in the aggregate in connection with their election to convert into USG common stock the remaining Notes held by them in the aggregate principal amount of \$56,170,000, which Notes had been called for redemption by USG. By April 11, 2014, all of the Berkshire Hathaway entities had converted all of the Notes to stock at the conversion price of \$11.40. This raised Berkshire Hathaway's position in USG by an additional 26,315,789 shares, bringing their total beneficial ownership to 43,387,980 shares, or 30.4% of USG's outstanding common stock. By April 2014, USG's stock price had recovered significantly from the financial crisis and was trading north of \$30 per share. Accordingly, by simply converting their Notes, Berkshire Hathaway had turned quite a significant profit.

56. By the time Knauf began its takeover of USG, Berkshire Hathaway – and Mr. Buffett specifically – was ready to move on from USG. Indeed, on May 6, 2017, at Berkshire Hathaway's annual stockholders meeting, **Mr. Buffett**

characterized Berkshire Hathaway’s investment in USG as “disappointing,” not a “brilliant investment,” and “not one of my great ideas,” but “no disaster.” This would not be the first time USG’s largest shareholder would vocalize his criticism publicly.

57. However, as the Proxy acknowledges and as the Board recognized, “Berkshire Hathaway practically was unable to exit at the market price given its large position.” Proxy at 34. “Berkshire Hathaway was positioned differently than the Company’s other stockholders and would need to take a substantial discount to market to exit its position in the Company’s stock in the absence of a sale of the Company.” Proxy at 36.

58. Whether Knauf decided to pursue a takeover of USG when it did of its own accord or whether it acted then because of Mr. Buffett’s statements is currently unknown, but, as outlined below, once the two parties – who, as the two largest shareholders of USG, were quite familiar with each other – realized that they shared a common interest – acquiring USG for Knauf, seeing USG acquired for Berkshire Hathaway – they began working together. Indeed, as outlined below in greater detail, Berkshire Hathaway would become a willing partner in Knauf’s hostile takeover of USG. By way of example only, and as outlined in much greater depth below:

- a. During the process that resulted in the Buyout, Berkshire Hathaway revealed that, **“beginning many years ago,” executives of Knauf had contacted Berkshire Hathaway to describe Knauf’s potential and conditional interest in a transaction with USG.**
- b. Also during the process, and in furtherance of what would become its hostile takeover of USG, Knauf secretly furnished Berkshire Hathaway with contemporaneous copies of its offer letters to the Board, without informing the Board of this secret engagement.
- c. In response, and as discussed in further detail below, Berkshire Hathaway offered to grant Knauf an option to purchase all of Berkshire’s USG common stock, exercisable only in connection with the consummation of a purchase by Knauf of all of USG’s common stock, at a price of not less than \$42.00 per share – an option proposal that Bloomberg reported signaled Berkshire Hathaway’s desire to exit and sent “a pretty clear signal that Berkshire is in favor of a sale” because “Buffett’s put a price on the table that he’s willing to sell at.”
- d. Privately, Mr. Buffett communicated his support for the Knauf-led Buyout to the Board.
- e. Then, after Knauf began a withhold campaign against the Company’s incumbent directors at the Company’s annual meeting, just two days

before that meeting, a spokesman for Berkshire Hathaway stated publicly that “Berkshire’s present intention is to vote against the four directors proposed by [USG] management.”

f. And, during a May 7, 2018, televised interview with CNBC, Mr. Buffett himself lamented that the Board was not representing *Berkshire Hathaway’s interest* in Knauf’s bid to purchase the Company.

g. As a result of these and other communications and representations, throughout the remainder of the process, Knauf repeatedly represented to shareholders in public filings that it had the full-throated support of Berkshire Hathaway in what would become its hostile takeover of USG.

II. EVENTS LEADING TO THE BUYOUT

59. The Buyout is the result of the Board’s reactionary response to pressure from Knauf and Berkshire Hathaway to force a sale of the Company to Knauf. As noted above and outlined in considerable depth below, Knauf’s and Berkshire’s interests in a sale of USG aligned in or about 2017. More specifically, like USG, Knauf is a manufacturer of building materials. However, Knauf is predominately an overseas company, has long sought a U.S. presence, and has long viewed USG as a target for that purpose. To that end, and unbeknownst to the

Board, Knauf and Berkshire had been having discussions regarding Knauf's interest in acquiring USG for "many years." That interest came to fruition around the same time that Warren Buffett (Berkshire's Chairman) was ready to exit his investment in USG. However, as the Board itself repeatedly recognized, Berkshire was "positioned differently than the Company's other stockholders," was unable to practically exit its USG investment at market price given its large position, and would need to take a discount to exit – short of a whole-company sale. Accordingly, the Buyout served the unique interests of both Knauf (in acquiring a U.S. foothold and its primary U.S. competitor) and Berkshire (in finally exiting its "disappointing" USG investment at a premium that it could not garner in any way other than through a whole-Company sale).

60. These aligned interests manifested in a cooperative (and, at times, coordinated) effort to force a sale of USG. Critically, Knauf and Berkshire had the ability to – and did – take retributive action against the Board. As a result, although the Board repeatedly and consistently determined privately and stated publicly that Knauf's takeover attempts undervalued the Company, were opportunistic, and did not compensate all shareholders for the inherent value of the Company's standalone plan, once confronted with the reality that its two largest shareholders were working to force the Buyout, the Board succumbed.

A. Knauf Approaches USG and Berkshire Regarding an Acquisition and Berkshire and Knauf Begin Secretly Coordinating

61. As noted above, because it is predominantly an overseas manufacturer of building materials, Knauf has long circled USG as a potential acquisition target that would allow it to secure a significant beachhead in the North American manufacturing market. In furtherance of that goal, on December 23, 2016, Knauf announced that it had reached an agreement to acquire a cement and plasterboard business in Mexico. Sensing that the time to acquire USG might finally be right, shortly after this announcement, in early 2017, Knauf was ready to take a shot for USG – and its American market share.

62. To that end, Knauf initiated the events that ultimately led to the Buyout during a meeting on January 25, 2017, when Messrs. Knauf and Grundke (the general partners of Gebr. Knauf) indicated to certain members of USG management, including Defendant Scanlon, that Knauf was looking for ways to partner with the Company.

63. On February 8, 2017, Defendant Scanlon updated the Board regarding the January 25, 2017 meeting with Messrs. Knauf and Grundke and noted – no doubt out of concern – that Knauf may be considering entering the U.S. wallboard market following their acquisition of the wallboard plant in Mexico.

64. In an attempt to buy time, on February 9, 2017, the Board indicated to Knauf that USG would not be in a position to respond to its inquiry until it had completed its pending strategic review process, **which was expected to be**

completed mid-year 2017. (Later, in September 2017, well after the mid-year point of 2017, USG would inform Knauf that it did not see value in a combination.)

65. Knauf, however, had prepared for this rejection and had been busy lining up the support of the only USG shareholder that mattered – Berkshire. Knauf first reached out to Berkshire (through Knauf’s financial advisor, Morgan Stanley Bank AG (“Morgan Stanley”)) regarding its plans in early March 2017 – just after the USG Board put Knauf off and told Knauf that the Company would not be in a position to respond until mid-year. Throughout March, representatives of Morgan Stanley tested the water, discussing Knauf’s inchoate plans with Mr. Combs – Mr. Buffett’s first lieutenant who handled most of the USG negotiations for Berkshire. These discussions quickly made their way to Mr. Buffett himself.

66. Importantly, by mid-May, Knauf walked away from even these early talks with a clear understanding that Berkshire (1) was ready to sell and (2) would do so at or near \$40 per share. Indeed, Knauf was so confident of this support that Mr. Knauf reported it directly to the Knauf family of shareholders:

To: Wallrapp, Julia [REDACTED]
From: Knauf, Alexander
Sent: Fri 5/12/2017 2:30:21 PM

To all members of the Shareholders’ Committee

Dear family,
dear Hubertus,

the investment bank Morgan Stanley has contacted Berkshire Hathaway on our behalf to conduct a non-binding assessment of the situation. Berkshire Hathaway is ready to sell its block of shares. The price per share of +/- 40 USD is considered very attractive.

Kind regards,

Alexander

67. This confidence was not fool hearty. Indeed, this letter was sent just six days after Berkshire's May 6, 2017 annual meeting, at which Mr. Buffett clearly signaled his readiness to sell his USG investment, characterizing it as "disappointing," not a "brilliant investment," and "not one of my great ideas."

68. Having thus already secured Berkshire's 30% support for any takeout over \$40 per share, Knauf then began to consider how to structure such a deal.² Notably, in connection with its evaluation of these potential arrangements, Knauf and its advisors were internally aware of how important it was not to execute a **formal agreement** with Berkshire too soon: "An agreement with Buffett should not be formalized prematurely, since this could otherwise lead to a premature obligation of disclosure (13-D disclosure) for the parties." They were

² At first, Knauf wanted to buy the public shares not held by Knauf and Berkshire and have Berkshire rollover its stock into preferred stock or a debt instrument, but the Knauf family was adverse to debt and Berkshire was uninterested in preferred stock. Ultimately, Knauf decided to simply acquire all public stock not held by Knauf.

also internally already considering how to leverage Buffett's support over the Board:

The question is whether he [Buffett] is also willing to exert pressure on the USG board to make this transaction possible

* * *

Together with Buffett, if he is willing, you should build up a bargaining position with respect to the USG Board. If the USG Board refuses, the Knauf shares and potentially also Buffett shares (up to 40%) would be successively put on the market, which cannot be in the interests of USG shareholders

* * *

. . . with 40%, Knauf would have significant voting power during the next shareholders' meeting.

B. After Berkshire Becomes Impatient and Pushes Knauf to Act, Knauf Makes a Formal Offer to Acquire USG

69. While Knauf internally debated these issues, Berkshire became impatient. On July 26, 2017, Mr. Combs emailed David Dwek (one of the Morgan Stanley bankers advising Knauf) asking, "Whats the update here David?" At first, Mr. Dwek sought to buy time, noting that the "[f]amily [was] convening," to which Mr. Combs again impatiently responded: "I thought you said everything was lined up a month ago??" When Mr. Dwek explained that some members of the family got "jittery about any extra debt," Mr. Combs relayed Berkshire's unhappiness with Knauf's pace:

For one you had indicated all of these hurdles were taken care of and two you have a specific date and told me I'd be in the loop leading up to their earnings release. All of which I relayed to Warren so now this makes whoever dropped the ball on your end look bad.

The day after this terse email exchange, Mr. Dwek suggested that Messrs. Combs and Knauf begin communicating directly, which they did.

70. On September 19, 2017, well after the mid-year point of 2017, USG informed Knauf that, based on its strategic review, USG did not see value in a combination. Proxy, 33. According to the Proxy, “Mr. Knauf expressed disappointment that the Company did not see any synergy value in partnering with an insulation business, but did not make any alternative proposals.” Privately, he fumed.

71. In the wake of this rejection, Knauf began to get more serious – and to emphasize the importance of satisfying Berkshire first, then the Board. For example, in a set of internal correspondence that included a “script” for Morgan Stanley’s forthcoming call with Berkshire, Knauf and its advisors intended to relay to Berkshire that they were “delivering the \$40 per share you have been focused on,” but that, “[a]s a pre-condition [Berkshire] would have to provide general support for the concept.” The script ended with three “Key Questions for [Berkshire],” one of which was: “How can you support us when we approach USG board?” Internally, Mr. Grundke (Knauf’s second general partner) recognized that Berkshire’s support was “decisive” and that Mr. Buffett’s “‘good name’ is going to be very important, because “we both believe that the management of USG will behave rather hostile.”

72. With its ducks more in a row, Morgan Stanley transmitted a Knauf-USG Acquisition Analysis Presentation to Mr. Combs on October 4, 2017. **It assumed a purchase price of just \$40 per share, “based on past discussions.”** The two men spoke the next day and, in a follow up email, Mr. Combs noted that Berkshire, “per Warren,” would prefer to be bought out, “but [is] potentially open to proposed debt instrument pending terms **if it’s the only way to proceed.**” Internally, Morgan Stanley told Knauf that, while Berkshire was not interested in rolling over equity or secured financing, “[t]he good news, however, is that we are almost in economic agreement with [Berkshire], as we know.”

73. Just two days later, Mr. Combs was again fuming that Knauf was not moving fast enough. On October 6, 2017, he emailed a Morgan Stanley representative: “When can I expect the answers to our last conversation?” When the representative responded (four days later) that they didn’t “have a substantive update for you yet,” Mr. Combs responded (ten minutes later) that,

to reiterate what I relayed to David [Dwek], **our amenability is not an unlimited time offer.** It was our understanding that this was their proposal to begin with and that they were ready to move. Given the time they're taking to respond, I cannot guarantee that our amenability will be the same by the time they respond.

Three days later, on October 13, 2017, Knauf reached out directly to Mr. Buffett to schedule a meeting with Messrs. Knauf and Grundke.

74. That meeting took place, in person, in Omaha, between Messrs. Buffett and Combs (for Berkshire) and Messrs. Knauf and Grundke (for Knauf) on October 18, 2017. Notably, Knauf's meeting preparation materials specifically contemplated Mr. Knauf asking Mr. Buffett, "[i]f board/management initially not receptive to our proposal, **do you think there is an escalation path** here that you be supportive of?" Berkshire's meeting notes are even more revealing though, as they confirm that **Berkshire and Knauf agreed on a \$40 price per share** and that Berkshire was already counting its and Knauf's shares together at this early juncture ("87M shs not owned by BRK & Knauf @\$40").

75. And, while Mr. Buffett denied committing to sell at \$40 per share during this meeting, Mr. Knauf contradictorily testified that, after the October 18 meeting, he "knew that Berkshire [] was in principle prepared to sell the shares" and he "knew that Berkshire [] was of the opinion that the price at around \$40 was very fair." Indeed, although Mr. Buffett at first testified that he "d[id]n't think I represented any price" during this meeting, he later remembered, after pressing, that the \$40 figure was indeed discussed. Mr. Knauf, on the other hand, freely admitted that:

- a. He "knew **before** the meeting that Berkshire [] was considering a price at plus minus \$40 as very fair."

- b. “We knew that Berkshire [] was prepared to sell their shares. We knew that Berkshire [] considered a price of plus minus \$40 as fair. We also knew that they were in principle prepared to support us.”
- c. “I knew that Berkshire [] was prepared to sell the shares and I knew that Berkshire [] considered plus/minus \$40 per share as a fair price.”
- d. Knauf “asked for support” from Berkshire to “know whether Berkshire was prepared to sell its shares.”
- e. And, when Knauf sent its Initial Proposal in November 2017, Mr. Knauf “knew that Berkshire [] was prepared to sell the shares.”

76. Other contemporaneous notes, emails, and presentations all establish that Knauf walked away from this October 18, 2017 meeting with the clear understanding that Berkshire would sell to Knauf at \$40 per share. For example:

- a. In an April 9, 2018 internal Knauf internal presentation timeline, it was noted that “WEB signaled basic support for a sale at \$40 on 10/18/17.”
- b. During a December 15, 2017 Board meeting, Defendant Scanlon reported to the Board that Knauf had represented to her that “[Berkshire] supported their [\$40.10] preliminary indication of interest.”

c. And in a May 12, 2017 letter from Mr. Knauf to the Knauf family, he noted that Berkshire “is ready to sell . . . [at] +/-40 USD.”³

77. Finally, and critically, the Proxy does not disclose the occurrence of this critical October 18, 2017 meeting or commitment.

78. After this in-person meeting followed further correspondence and teleconferences between Knauf and Berkshire representatives. Confident in the support – indeed, pressure – it had received from Berkshire, unhappy with the Board’s September 19, 2017 response, and no longer willing to play nice, Knauf tricked USG representatives into a meeting under false pretenses and then ambushed them with the beginning of a hostile takeover. Specifically, on November 29, 2017, Messrs. Knauf and Grundke, this time accompanied by Knauf’s general counsel, met Defendant Scanlon, Matthew Hilzinger (USG’s Chief Financial Officer), and Michelle Warner (USG’s General Counsel) “at the request of Knauf.”

79. According to the Proxy, Knauf had stated that the purpose of the meeting “was to discuss an important stockholder issue.” In reality, Mr. Knauf wanted a captive, in-person audience for the first salvo in his hostile takeover of

³ In light of the sharp contradictions between Mr. Buffett’s testimony and Mr. Knauf’s and the contemporaneous documentary record, Plaintiffs requested that Berkshire make Mr. Combs (who authored or was cited in much of the documentary evidence) available for a short telephonic deposition, but Berkshire declined.

the Company. During the meeting, no “important stockholder issue” was discussed. Instead, Knauf’s representatives informed USG’s representatives of Knauf’s impending intention to make a proposal to acquire the Company in an all-cash transaction. At the conclusion of this meeting, Knauf delivered an indicative and non-binding proposal providing for an acquisition at a cash purchase price of \$40.10 per share (the “Initial Proposal”) – **ten cents above the price at which Knauf privately understood that it would have Berkshire’s support.** Notably, the offer specifically stated that it was not to be disclosed, except to the Board, USG’s advisors, **and Berkshire Hathaway.**

80. The Board was blindsided. Internal Knauf emails even described the Board as “entirely unprepared.” What the Board also did not see coming – what it did not yet know – was that Knauf and Berkshire had been coordinating for months to make this moment happen. Consistent with that coordination, on the same day that Knauf blindsided the Board with its Initial Proposal – but again unbeknownst to the Board – Knauf provided a copy of the Initial Proposal to Berkshire and asked for a follow up call to discuss it, which call occurred that day.

81. Just five days later, Mr. Combs was already impatiently awaiting USG’s response. On December 4, 2017, he called Mr. Wersebe asking if there had been any word from Defendant Scanlon. Two days later, on December 6, 2017, he called Mr. Wersebe again for a “quick debrief,” after which he updated Mr. Buffett

in anticipation of a call between Mr. Buffett and Defendant Scanlon. Just a few days later, having still not heard back from USG, Messrs. Wersebe and Combs again spoke, agreeing that Mr. Combs would share feedback as soon as Defendant Scanlon and Mr. Buffett spoke.

82. In the meantime, as the days ticked by without word from USG, Knauf began to formulate responses to the rejection it knew was imminent. Those responses included the questions: “Have you discussed this with Berkshire Hathaway?” and “Did you discuss with Berkshire that the company is not for sale?” By December 13, 2017, though, Knauf was getting nervous, and Mr. Wersebe suggested to Mr. Combs that Berkshire get involved by calling USG directly. Although Berkshire was not yet ready (at this early juncture, at least) to get directly involved, as it did not want to besmirch its reputation by being seen (at least publicly) as an activist investor, **Mr. Combs specifically “promised [Mr. Wersebe] again the support of [Berkshire].”**

83. Blindsided by Knauf’s surprise offer, it took the Board until December 15, 2017 to meet. Proxy, 34. Already suspecting that Knauf intended to pursue an acquisition with or without the Board’s consent, one of the items on the meeting’s agenda was, according to the Proxy, “the Company’s corporate governance profile and defenses available in the event of a hostile tender offer by Knauf or others.” *Id.* USG’s senior management then presented the Board with an

overview of the Company's history with Knauf, and a discussion followed regarding the relationship of the Company with Knauf and the history of Knauf's investment in the Company. An overview of Knauf's business, its financial position, and its pending acquisition of a ceilings business in Europe and Asia was also discussed. *Id.* Thereafter, management specifically noted to the Board that USG was experiencing positive momentum in the fourth quarter and **specifically expressed confidence in its long-term plan.** *Id.* The Board also received a detailed review of valuation analyses conducted by its bankers.

84. Also discussed was Berkshire's 30% interest in USG. *Id.* **Importantly, although undisclosed in the Proxy, the Board discussed Berkshire's "previously stated desire for an eventual exit" from its USG investment.** The Proxy similarly neglected to mention that **Knauf represented to Defendant Scanlon that "[Berkshire] supported their preliminary indication of interest."** Although management expressed "some skepticism about this statement," they also did not yet know, at this time, that Knauf and Berkshire had been coordinating for months.

85. Although unaware of this fact, the Board did recognize and acknowledge that Berkshire had different interests from USG's other stockholders, noting and discussing "the fact that Berkshire [] practically was unable to exit at the market price given its large position." Proxy, 34. Ultimately, no doubt aware of

the leverage USG's largest shareholders had over them, the Board decided to reach out to Berkshire prior to responding to Knauf to inquire regarding Berkshire Hathaway's interactions with Knauf. *Id.* Notably, hand in hand with this discussion, the Board's legal counsel felt it necessary to remind the Board that its "fiduciary duties ran to all stockholders." *Id.*

86. At the conclusion of the meeting, the Board unanimously determined that Knauf's Initial Proposal was "inadequate and insufficient" – so much so that it did not even "warrant further discussion." *Id.* Notably, in coming to this conclusion, the Board was informed by its own determination of what it considered to be the Company's "intrinsic value." Finally, and again plainly aware that Knauf intended to acquire USG with or without the Board's consent, the Board determined to engage a public relations firm to prepare for any public communications in connection with Knauf's proposal. Proxy, 34. The Board also reviewed the terms of its advisors' proposed engagements, **which included both a defense fee and a transaction fee.**

87. On December 19, 2017, Defendant Scanlon and Ms. Warner had their call with Mr. Buffett, during which Mr. Buffett acknowledged that Berkshire had communicated with Knauf's financial advisors **as recently as that morning.** Proxy, 34-35. **Notably, Mr. Buffett neglected to mention the previous nine months of discussions and coordination, or that he had received Knauf's**

Initial Proposal on the same day that Knauf provided it to USG. He also represented (falsely) that he was not going to take independent action – even though, as outlined below, that is exactly what he later did. During the call, Ms. Scanlon informed Mr. Buffett that the Board had determined that the Initial Proposal “was not in the range of the Corporation’s intrinsic value.” Mr. Buffett nonetheless communicated to Defendant Scanlon his support for an all-cash acquisition and encouraged her to engage with Knauf. Proxy, 34-35. During this call, Defendant Scanlon went out of her way to ensure Mr. Buffett that the Board “had taken Knauf’s proposal seriously” and ensured Mr. Buffett that the Board “would consider any bona fide offer that reflected the Company’s intrinsic value.” She also checked with the Board after her discussion with Mr. Buffett but before responding to Knauf.

88. Prior to this call, Mr. Combs informed Knauf that the call was about to happen. After the call, Mr. Wersebe and Mr. Combs scheduled another call to discuss.

89. On December 20, 2017, USG formally notified Knauf that the Board had determined that Knauf’s Initial Proposal was “wholly inadequate given the Company’s intrinsic value and therefore it was not in the best interest of the Company’s stockholders.” Proxy, 35. Knauf immediately forwarded this rejection to Berkshire.

90. Two days later, on December 22, 2017, Messrs. Knauf and Grundke spoke by phone with Defendant Scanlon and Mr. Hilzinger, during which they confirmed that the Initial Proposal was “insufficient to warrant substantive discussions. . . .” Proxy, 35. Again, immediately, Mr. Knauf emailed Mr. Combs about this call and asked if he wanted to discuss it, which they did.

91. During the call that followed, and according to his own notes regarding the call, Mr. Combs described the Board’s rejection as “absolutely disgusting,” **told Mr. Knauf that Berkshire was “willing to vote against [the] directors,” and further represented that, “if this becomes public & [we] are asked about it [we] will share our opinion.”**⁴ Mr. Knauf understood, after this call, that “BH has stated on 12/23/17, it wants to vote against the board” and reported this call and Berkshire’s ongoing support to Knauf’s takeover team. Apparently, Mr. Buffett was privy to this call.

C. USG’s Stock Hits a 52-Week High and Knauf Hesitates, But Berkshire Pushes It to Make a Second Proposal

92. Then, disaster struck – for Knauf, at least; for Berkshire – a pleasant surprise. In late 2017 and early 2018 – consistent with USG’s management’s note that USG was experiencing positive momentum in the fourth quarter – USG’s price began to organically rise, hitting a 52-week high of \$40.82

⁴ As outlined below, Berkshire ultimately is the one that made it public.

on January 8, 2017. Mr. Wersebe succinctly explained the situation to the Knauf takeover team as follows:

(iii) however, with the share price at current levels our bid is obviously not in the money, and hence our leverage to engage with the target at the initial bid value is practically gone

* * *

(v) furthermore, **in this situation Buffett's hands are tied to support our case effectively, although for him our current bid probably is in the money still as he will not be in a position to monetize his stake at market prices let alone in one clean transaction**

* * *

(ix) to give you an initial sense, with the current momentum in the stock a bid level to get the target to engage would probably have to be north of \$45

93. In light of the Knauf family's aversion to debt, a higher price was a problem. Berkshire, however, recognizing that USG's stock price increase could prompt Knauf to pay even more, remained aggressive. On January 23, 2018, Mr. Combs called Mr. Wersebe, during which he "made clear that [Defendant Scanlon] had not had any further interaction with Buffett, which they clearly disapprove of," and then ran Mr. Wersebe through what **Berkshire saw as Knauf's options**: "(I) increase price[;] (II) **go public**[;] (III) **vote against the board**." In response Mr. Wersebe explained that at that time options (I) and (II) were "not really on the table" for Knauf. **In other words – and to be clear – Knauf obviously did not want to raise its price, but it also did not want to go public. In response, and in**

what is in retrospect one of the first signs that Berkshire was planning to force Knauf to go public – Mr. Wersebe quoted Mr. Combs as telling him that “we will vote against the board.” And, while Berkshire was not yet ready to *publicly* say as much for fear of being seen as an activist investor (a mantle it has long sought to avoid), Mr. Combs did promise to “be vocal” to Defendant Scanlon.

94. Emboldened by Berkshire’s promises of support, on February 8, 2018, Mr. Knauf went over Defendant Scanlon’s head and contacted Defendant Leer, USG’s non-executive Chairman, allegedly because, “as a major stockholder of the Company, Knauf was interested in establishing a relationship with the Chairman of the Board.” Proxy, 35. Mr. Knauf demanded a meeting with Defendant Leer, which would occur on March 12, 2018. *Id.*

95. In the meantime, Knauf and Berkshire kept in touch through their advisors. On February 9, 2018, Messrs. Combs and Wersebe scheduled a call. Consistently unhappy with the pace of Knauf’s movement, on February 27, 2018, Mr. Combs emailed Mr. Knauf directly to set up a call. And, on March 5, 2018, Mr. Knauf emailed Mr. Combs to note that, in the intervening months, Knauf had “planed [sic] further activities and would like to give you an update.” Messrs. Combs, Knauf, and Grundke spoke the next morning, during which call, among other things, Mr. Combs apparently learned about Knauf’s upcoming meeting with USG.

96. Then, on March 8, 2018, USG held its inaugural “Investor Day” presentation, during which it disclosed certain financial projections through the end of its 2020 fiscal year. Proxy, 35. During the presentation, Defendant Scanlon repeatedly touted that USG was a “transformed company . . . [with a] refreshed . . . operating model to ensure that [the Company] fulfill[s] [its] expectations” and that the Company’s “ultimate goal” was to “enhanc[e] shareholder returns.” She further described the Company’s corporate culture as “hold[ing] ourselves accountable to our customers . . . [and] to our shareholders.” Notably, in connection with this presentation and projections, the Board was informed “that the guidance had been thoroughly vetted by management, and that they are numbers that management believes are achievable” and that the “key purpose of the Investor Day is to help investors and analysts understand the long-term value proposition of the Corporation.” Representatives from Knauf and Knauf’s financial advisor, Morgan Stanley Bank AG (“Morgan Stanley”), attended the presentation.

97. On March 12, 2018, Messrs. Knauf and Grundke finally met with Defendants Leer and Scanlon. Proxy, 35. Although the meeting was demanded by Mr. Knauf under the guise of “establishing a relationship with the Chairman” as a “major stockholder,” Messrs. Knauf and Grundke quickly turned to an acquisition, reiterating Knauf’s “determination” to acquire USG, indicating that a revised proposal would be forthcoming, and threatening to approach stockholders directly

through a public acquisition proposal if the Board would not play ball – **an idea, we now know, that was first suggested by Mr. Combs, not Knauf.** Defendants Leer and Scanlon assured Messrs. Knauf and Grundke that the Board would consider the revised proposal consistent with its fiduciary duties to all stockholders. *Id.*

98. Three days later, on March 15, 2018, Knauf delivered a revised takeover proposal to acquire USG for \$42.00 per share (the “Second Proposal”). Proxy, 35. Therein, – indeed, in conclusion – Knauf stated: “As you know, we have been patient and supportive of USG management and have always voted with USG’s management and board, even during challenging times over the years. Should you choose not to engage in good faith discussions with us we may reconsider our behavior.”

99. Consistent with their ongoing coordination, on the same day, unbeknownst to the Board, Mr. Knauf forwarded Mr. Combs his email to Defendant Scanlon including the Second Proposal and asked if he would like to discuss it. That same day, Messrs. Combs and Wersebe spoke regarding Mr. Knauf’s meeting with Defendant Scanlon and the Second Proposal.

100. On March 23, 2018, the Board met to address the Second Proposal. During this meeting, one of USG’s financial advisors noted “the possibility of a change in behavior” by Knauf. It also informed the Board that, since December

2017, there had been an increase in both USG's 52-week high stock price and in the median and highest analyst target stock prices. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The Board also again discussed its thoughts regarding the Company's "intrinsic value."

101. Discussion also again turned to Berkshire, its "investment in the Corporation, its basis in the stock and the challenges it faces with exiting through open market transactions given its shares are not registered and any sales would trigger SEC filing obligations." "As a result," the Board recognized, Berkshire "is positioned differently from all the other shareholders and would need to take a substantial discount to market if it were to sell in the open market or in block trades." In other words, the Board recognized that Berkshire would have to take a discount to "exit its position in the Company's stock in the absence of a sale of the

Company.” Proxy, 36. Notably, hand in hand with this discussion, **the Board also specifically recognized “the fact that they could not substitute the judgment of one shareholder for what they believed to be in the best interest of all shareholders, particularly given the different posture of that one shareholder” – even though that is exactly what they would later do.**

102. Again evidencing the Board’s knowledge that Knauf intended to acquire USG with or without their consent, the Board then discussed “possible actions by Knauf or other stockholders to attempt to acquire the Company for less than its intrinsic value.” Proxy, 36. They also discussed “the possible tactics that [Knauf] might attempt to push for a shareholder vote.” “The possibility of an activist coming into the stock was also discussed, as were possible actions that [Knauf] could take at the annual meeting to vote against the director nominees Possible [Knauf] actions around the first quarter earnings call were also discussed.” At the conclusion of this meeting, the Board unanimously determined that Knauf’s Second Proposal was “wholly inadequate.” Proxy, 36.

D. Berkshire Takes Matters into Its Own Hands and Forces Knauf Public

103. At the \$40 per share price that Berkshire told Knauf it was willing to sell in October 2017, Berkshire stood to make hundreds of millions of dollars on its USG investment (not bad for “disappointing”). But, at the \$42 per share that Knauf was forced to bid in light of USG’s organic stock price increase, Berkshire

stood to gain an additional \$86.75 million. Not one to look a gift horse in the mouth – or to miss an opportunity to unload stock it had long sought to be rid of for \$87 million more than it originally thought it could – Berkshire decided to take matters into its own hands by forcing Knauf’s bid in to the public, which it knew would precipitate a public proxy fight – one that, with Berkshire’s support, would result in a successful sale.

104. To this end, on March 22, 2018, before the Board could even meet to consider Knauf’s Second Proposal, Mr. Combs affirmatively requested a meeting with Mr. Knauf and team on short notice, for the very next day. That meeting took place on March 23, 2018 – the same day as the Board meeting to discuss the Second Proposal – between Messrs. Buffett, Combs, Knauf, Grundke, Dwek, and Wersebe. During that call – at the same time that the Board was unanimously deciding to reject Knauf’s Second Proposal as “wholly inadequate” – Berkshire proposed to grant Knauf an option to purchase all of the shares of the Company’s common stock held by Berkshire and its affiliates at a price of \$42.00 per share – the same price as Knauf’s Second Proposal.⁵

⁵ The terms of the option were as follows: (i) the option would be exercisable only in connection with the consummation of the purchase by Knauf of USG at a price of **not less than \$42.00 per share** within six months; and (ii) the option exercise price payable to Berkshire Hathaway would be the same price paid to USG’s other stockholders by Knauf, less an option purchase price of \$2.00 per share to be paid by Knauf to Berkshire Hathaway upon the grant of the option.

105. Then, two days later, Berkshire delivered its *coup de grace*. On March 25, 2018, Mr. Combs emailed both Messrs. Dwek and Wersebe with a single line, terse, and urgent demand: “I need to speak to one of you today so please send me a cell.” What Mr. Combs was calling to tell these men was that Berkshire would be forcing Knauf and its offer into the public against its will by disclosing the existence of Knauf’s prior proposal, their communication to Berkshire, and that Berkshire had offered Knauf an option to buy its USG stock at just \$42 per share.

106. Knauf panicked. First, it tried to convince Berkshire not to file anything. [REDACTED], noting that “[t]his is clearly coming unforeseen to us,” implored Messrs. Combs and Hamburg (also of Berkshire) whether “there [was] anything we can do to ‘heal’ the legal requirement for you to make a filing.” Mr. Hamburg ignored the question entirely and responded by simply attaching a draft of the disclosure that Berkshire intended to file and noting: “I doubt that there will be any material changes to the attached draft prior to the filing. We expect to submit the filing at 6:00 am eastern time tomorrow morning.”

107. Then, [REDACTED], again noting that the filing “is being forced upon us,” asked if Berkshire would consider editing its proposed filing by omitting a sentence regarding Knauf’s Second Proposal and omitting the words “not less than” before the reference to \$42 per share. Berkshire again refused. Mr. Combs

alleged that he and all other relevant Berkshire representatives were “at an event” and could not talk and that Knauf’s representatives should “discuss with the lawyers.” Exasperated, ██████████ responded that Berkshire’s lawyers “will not take our comments” and begged for “5 minutes.” Mr. Combs again dismissed ██████████ pleas, concluding that, “to the extent you want wording changed you need to speak to [the lawyers].”

108. When all this failed, even Messrs. Knauf and Grundke tried to speak to Mr. Combs, but he refused, again noting that Berkshire’s counsel would be reaching out to Knauf’s counsel instead. Ultimately, Mr. Wersebe could do no more than report to the Knauf group that “Berkshire’s attorneys have indicated that they have checked with their client and that Berkshire is unfortunately unwilling to make the two requested changes.”

109. On the following day, in light of forthcoming disclosure, Messrs. Knauf and Grundke had to send an explanatory letter to the Knauf family shareholders, in which they noted (1) that Berkshire had demanded a last minute meeting, during which Mr. Buffett offered Knauf the option for “his entire package of shares”; (2) two days later, in the evening, Berkshire informed Knauf that it intended to disclose the offer publicly “because of the intention to sell”; (3) that Berkshire **“has already been penalized with fines in the past for violating their reporting obligation”**; (4) that Knauf would now have to file something as well;

and (5) that, as a result, “the interest of Knauf in USG will inevitably become public knowledge,” resulting in media coverage.

110. Resigned to the fate that the process would now become public against their will, Knauf then tried to use Berkshire’s power play to its advantage. First, Mr. Knauf personally called Defendant Scanlon on March 25, 2018 – before the Board could even formally reject Knauf’s Second Proposal – to inform her that Berkshire and Knauf would be amending their Schedule 13D’s to disclose the option and Knauf’s outstanding Second Proposal. Proxy, 36. Then, on March 26, 2018, Knauf began to explore the option offer through its counsel: **“Knauf has asked us to reach out to you to set up a time to discuss the option arrangement proposed by Berkshire.”**

111. On March 26, 2018, Berkshire amended its Schedule 13D to disclose the March 23, 2018 conversation and option offer. Therein, Berkshire revealed (for the first time) that, **“beginning many years ago,” executives of Knauf had contacted Berkshire to describe Knauf’s potential and conditional interest in a transaction with USG** and that Knauf had provided Berkshire with a copy of the Second Proposal. On the same day, Knauf too amended its 13D to disclose the option offer and its Second Proposal. **Absent from both filings was any substantive disclosure of the myriad contacts and year of coordination outlined above that resulted in these filings.**

112. Also on March 26, 2018, the Board formally rejected Knauf's Second Proposal by letter, emphasizing therein that it was rejecting the proposal as "wholly inadequate" because the Board "has been highly focused on the **intrinsic value of our long-term strategic plan** and measuring that against the proposal price." The Board also caused USG to issue a press release on the same day, in which it (a) acknowledged receipt of the proposal; (b) disclosed that the Board had unanimously rejected it; (c) disclosed that the Board had determined that the \$42.00 per share offer "substantially undervalues the Company and is not in the best interest of **all** of USG's shareholders" (emphasis added); and (d) stated that "Knauf's opportunistically timed proposal is **wholly inadequate as it does not reflect USG's intrinsic value**, including the significant opportunities ahead of us **We are confident that the strategy we presented** on March 8, 2018 at our Investor Day **will deliver significantly more value to our shareholders than Knauf's proposal.**"⁶

⁶ Market reaction to these events was swift and resounding. Even Morgan Stanley's own internal summary of research analysts' target bids and commentary noted analysts' expectations that takeout prices were well above the Second Proposal and commentary that the market "expect[s] the deal to get done at a higher price, but was "not surprised to see Berkshire looking for an exit." Similarly, on March 26, 2018, Thompson Research Group noted to clients that, if USG could meet its operating-profit margin goals, USG shares would be valued at \$48 or more, while other analysts opined that Knauf's offer was too low and of a takeout price between \$45-\$52 per share. Knauf's outside public relations firm also kept Knauf abreast of the market's reaction and sentiments, and even summed up

113. On March 29, 2018, the Company filed its 2017 Annual Report with the SEC. Therein, Defendants Leer and Scanlon promoted to shareholders the Company's "strong operational performance," its "strongest balance sheet in many years," and the Company's efforts at "building a great future for its shareholders" and that "shareholders should expect to continue to benefit from the dedication and hard work put forth by [the Company]."

E. Knauf Goes Hostile and the Board Tries to Defend

114. After USG's public rejection, and with the explicit (now public) understanding that Berkshire would support any takeout offer of \$42.00 or greater, Knauf went publicly hostile. And, while both Knauf and Berkshire have insisted that no formal agreement was entered into between Knauf and Berkshire relating to the option, Knauf nonetheless acted as if it were certain that Berkshire would vote its stock in favor of any takeout offer over \$42.00 per share.

115. For example, on April 4, 2018, just five days after USG filed its 2017 annual report and proxy materials for its upcoming 2018 annual meeting,

"Buffett's endorsement" by reference to an article published by the Motley Fool, which provided, in part: "[i]f the greatest investor of all time will sell his stake in USG for \$42 per share, then maybe mere mortals should be happy with that price, too."

Knauf delivered a Section 220 Demand to USG requesting a list of stockholders for the meeting and other information relating to voting at the meeting “for the purpose of communicating with the Company’s stockholders with respect to matters relating to their mutual interests as stockholders, including the solicitation of proxies for the election of directors in connection with the annual meeting.”

Proxy, 37

116. During an April 5, 2018 meeting between the companies’ respective advisors to discuss these increasingly-hostile developments, USG’s advisors “again reiterated that Knauf’s proposed price was not within a range to support . . . engaging in a diligence process with Knauf . . . , and it did not appear that Knauf would be willing to propose a price per share that would be reflective of the Board’s view of the intrinsic value of the Company.” Proxy, 37-38. USG’s advisors further sought to inquire as to “Knauf’s intention” regarding its Section 220 Demand, regarding which Knauf stated that it was “simply intended to preserve Knauf’s options.” *Id.* Notably, Knauf apparently walked away from this meeting with the understanding from the USG Board that, “[w]ith an offer price of USD 45 Knauf is guaranteed access to additional information.”

117. On the same day that Knauf’s financial and legal advisors were delivering these thinly-veiled threats to USG’s advisors, Mr. Buffett was delivering similar thinly-veiled threats directly to Defendant Scanlon. During an April 5, 2018

conversation between the two – held to provide Mr. Buffett with a “confidential update on the engagement with Knauf to date” that was not provided to any other shareholder – Mr. Buffett “encouraged continued engagement with Knauf and communicated his belief that the stockholders of the Company [as opposed to the Board] should decide whether the Company should be sold” and “stated that he thought the stockholders would approve a transaction.” Proxy, 38. Mr. Buffett also confirmed “that his outside legal advisors were engaging with Knauf on the option offer that Berkshire Hathaway had previously made to Knauf” *Id.*

118. On or about April 9, 2018, in an internal presentation regarding its withhold campaign and acquisition strategy, Knauf internally recognized that its Second Proposal was too low, noting that the change in US tax law (which passed between the First and Second Proposals) and acquisition of Ceilings Plus

Since the shareholders' resolution the tax rate in the USA has dropped and Uruguay has initiated a takeover. This increases the shareholder value materially increased USG shareholder

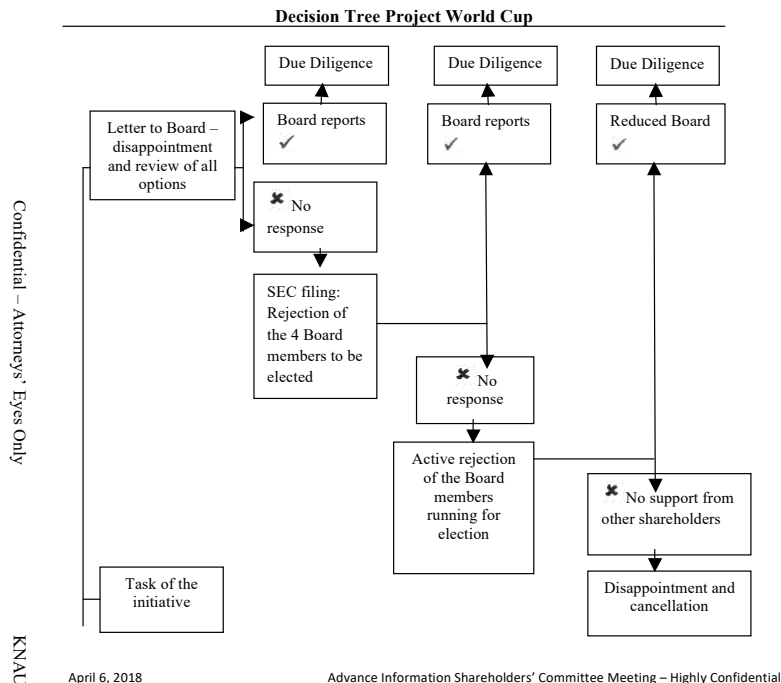
value	Influence Factor	Description	Financial Effect ²⁾ by as
much as \$344M (or	Drop in the corporate tax rate in the USA	<ul style="list-style-type: none"> Reduction in federal tax rate from 35% to 21% led to lower overall tax rate for Uruguay of approx. 25% (previously 35%) Lower taxes lead to higher cash flows and thereby increase the shareholder value of Uruguay New tax reform took effect 1/1/2018 	\$2.70 per EUR 238 million / USD 292 million or USD 2.3 per share
	Acquisition Ceilings Plus	<ul style="list-style-type: none"> Takeover of ceiling specialists Ceilings Plus for USD 52 million (approx. 8x EBITDA) in the form of cash payments It is assumed that a fair price was paid for the company Value increase potential from pending synergy effects 	EUR 42 million / USD 52 million or USD 0.4 per share
		Σ Change to shareholder value compared with Shareholders' Meeting in November 2017:	EUR 281 million / USD 344 million or USD 2.7 per share

1) Calculated based on federal tax rate of 21% now plus tax to be calculated for the state of Illinois of approx. 8%
 2) Calculated based on 127.5 million shares / option at the end of March 2018 (current forecast)

119. Hand in hand, though, Knauf also recognized the significant power it now wielded over the Board with Berkshire's public support:

A shareholders' vote at the Annual General Meeting should make a difference to the Supervisory Board

[logo]



April 6, 2018

Advance Information Shareholders' Committee Meeting – Highly Confidential

Summary

- Knauf has presented an **attractive offer** for the total takeover of Uruguay. **The main shareholder BH has publicly signaled a willingness to sell for this price.**
- Nevertheless, all efforts to enter into negotiations with Uruguay have failed. Uruguay has **extensive defense mechanisms**
- **Without pressure from the shareholders, the board will not be moved to negotiations. BH had stated on December 23, 2017, it wants to vote against the board**
- **At the Annual General Meeting on May 9, 2018, 4 of 10 Board Mandates were assigned. 82% of shareholders with voting rights have participated in the vote for the board in the past three years. For a campaign possibly more. BH and Knauf together have about 40%.**
- **Next step: With a public recommendation to vote against the election of the 4 candidates, the board should be under maximum pressure to enter negotiations with Knauf**

(bolding in original, highlighting added)

120. Finally, in connection with this same presentation, Knauf internally concluded – no doubt as Mr. Buffett well knew – that Berkshire's option offer was worthless and declined to pursue it – especially since it already had Berkshire's public support at \$42 per share without having to pay for it upfront:

The call option offered by Warren Buffett must be approved in advance by the Uruguay Board – it is improbable that this will occur

[logo]

Confidential – Attorneys’ Eyes Only

KNAUF00000350

Technical details	Advantages and disadvantages of the option	
<ul style="list-style-type: none"> Warren Buffett made an offer to the Knauf Group for a call option on the existing shares (43.4 million shares): <ul style="list-style-type: none"> Underlying value of the shares: 40 USD – 1.736 billion USD Option premium per share: 2 USD – 86.8 million USD Duration: 6 months If sale occurs at a higher price than 42 USD per share, this difference must also be paid to Warren Buffett If acquisition is not successful, the premium must be paid nevertheless Given the background of the integrated Poison Pill program at Uruguay, this option offer will come to nothing – the Uruguay Board would have to explicitly approve this call option in advance Approval is viewed as unlikely 	<ul style="list-style-type: none"> ✓ Signal effect ✓ Strategic protection ✗ High costs of acquisition and not exercising the option ✗ Negative attitude towards BH in case option is not acquired 	<ul style="list-style-type: none"> Warren Buffet is considered a very clever investor Clear signal of a fair offer on the market thanks to willingness to sell on the part of Berkshire Hathaway (“BH”) Taking the option protects the acquisition of BH shares against other interested parties for 6 months Shareholder acceptance rate of 80% required (Knauf + BH: ~40%) The option would cost Knauf around 87 million USD If the sale were to fail, this amount would not be paid back Not acquiring the option would be equivalent to rejecting collaboration with BH If the option is not acquired, sale would only take place with a significant surcharge
<p>It is not recommended to accept the option offer – transfer to a conditional purchase agreement must be discussed. No information about the current status may be made public</p>		

April 6, 2018

Advance Information Shareholders’ Committee Meeting – Highly Confidential

7

(bolding in original, highlighting added)

121. On April 10, 2018, no doubt in an attempt to buy time, USG responded to Knauf’s Section 220 Demand by indicating that it did not comply with Delaware law – an unlikely scenario in light of the fact that a Section 220 Demand seeking a shareholder list is relatively straightforward and Knauf was represented by well-respected, able corporate counsel. Proxy, 38. Specifically, as Knauf would later reveal, the Board apparently “rais[ed] technical objections to Knauf’s demand, including questioning the purpose of Knauf’s request and asking for additional evidence that Knauf is a stockholder of the Company.”

122. In response, on the same day, **Knauf issued a press release announcing its intention to solicit proxies from the Company's stockholders against the Company's four director nominees in connection with the 2018 annual meeting of stockholders and filed its preliminary proxy materials in connection with its withhold campaign** (the "withhold campaign"). In the press release, among other things, Knauf specifically acknowledged that it had Berkshire Hathaway's support for any takeover offer over \$42.00 per share:

Berkshire Hathaway, Inc., USG's largest shareholder and beneficial owner of approximately 31% of USG's outstanding shares, first invested in USG in 2000. On March 26, 2018, Berkshire Hathaway disclosed its proposal to grant Knauf an option to purchase all of the shares of USG held by Berkshire Hathaway and its affiliates in connection with the consummation of the purchase by Knauf of all of the outstanding shares of USG at a price of \$42.00 per share. **This could not be a clearer indication that Berkshire Hathaway views our \$42.00 offer price as fair, and that it would be a willing seller at this price.**

Similarly, in its proxy materials, and among other things, Knauf reiterated that Berkshire Hathaway had offered it an option to buy all of its stock at a price of \$42.00 or greater. Knauf also reserved the right to nominate one or more individuals for election as directors.

123. Also on April 10, 2018, the Board issued a brief, reactionary press release responding to Knauf's filings. Therein, Defendant Leer stated, "Knauf's letter mischaracterizes our Board's actions. Our Board has clearly demonstrated

that it is willing to evaluate any opportunity to deliver value to all of our shareholders. . . . The fact is their proposal is wholly inadequate, opportunistic and does not reflect the intrinsic value of the company.” Defendant Scanlon, noting that USG with its Sheetrock® brand is the “crown jewel within North American building products,” assured shareholders of the Company’s efforts and that Knauf “has not indicated any willingness to pay full value to all of our shareholders.” (emphasis added).⁷

124. Two days later, on April 12, 2018, the Board issued a formal letter to shareholders in response to Knauf’s proxy contest urging shareholders to vote for the election of the Company’s four director nominees at the Company’s 2018 annual meeting of stockholders. Therein, and among other things, the Board stated:

This is a misguided attempt to pressure the Board into accepting a proposal from Knauf to purchase USG, that we believe is substantially below our intrinsic value. The Board will not yield to this pressure and is committed to acting in the best interests of all USG stockholders even in the face of Knauf’s campaign.

⁷ Market analysts also understood the opportunistic nature of Knauf’s proposal and withhold campaign. For example, on April 10, 2018, Jefferies provided, “[b]ased on our understanding, Knauf has ~\$2 bil of cash net of debt and \$4 bil of financing secured, so it has more than enough dry powder to raise its offer for USG in the \$45-52 / share range. At that level, we believe USG’s board would have to reconsider after rejecting Knauf’s second offer of \$42/share.” Again, Knauf’s outside public relations firm consistently provided Knauf with the market’s coverage.

The Board is committed to creating value for all our stockholders through the execution of our strategic plan, which we outlined at our recent Investor Day. While the Board has not made the decision to sell the Company, it remains open to the evaluation of any proposal to acquire USG, as it has done with Knauf's proposals. If Knauf, or any other viable bidder, makes a proposal that reflects the Company's intrinsic value, the Board would seek to negotiate an appropriate confidentiality arrangement to allow it to share information with the potential counterparty. The USG Board has declined to share confidential information with Knauf because, in addition to being a competitor, **Knauf's acquisition proposal is not at a value that the Board believes adequately compensates all stockholders.**

To be clear – **Knauf's campaign is designed to undermine the Board's ability to maximize value for all stockholders.**

(emphasis added). The Board's repeated references to "all" stockholders were plain swipes at Berkshire and its diverging interests.

125. In the same press release, the Board further (a) noted that Knauf's Second Proposal was just a 2% premium to the Company's recent 52-week high; (b) reiterated that Knauf's Second Proposal did not reflect the Company's intrinsic value; and (c) stated that the Board "rejected this revised proposal on the basis of USG's intrinsic value, which has been increased by the materially positive impact of the reduction to U.S. corporate tax rates, which had been signed into law after the initial Knauf proposal." The Board also pointed out that the strategic value of USG to Knauf specifically was significant and, again, that Knauf's Second Proposal would not compensate **all** shareholders:

**THE STRATEGIC VALUE OF USG TO KNAUF IS SUBSTANTIAL AND THEY ARE NOT
COMPENSATING ALL STOCKHOLDERS**

Knauf is a private German company which has been in existence for 86 years, with stated net sales in excess of \$8 billion and EBITDA in excess of \$1.6 billion. While Knauf has operations in many regions of the world, it does not have a significant presence in North America and, in particular, the U.S. gypsum market.

- Knauf stands to benefit substantially from a combination with USG, as its proposals reference “compelling strategic logic” and its principals acknowledged its expectation of meaningful synergies for Knauf.
- USG’s #1 market position in North America and industry leading technology, patents and brands, such as our Sheetrock® brand, make us the “crown jewel” of the industry, and we are critical for Knauf to achieve their goal of being the global leader in wallboard.
 - o Indeed, it is this technology and intellectual property portfolio that Boral sought and placed a high value on in the formation in 2014 of our highly successful USG Boral joint venture.

F. Berkshire Strategically Wades Into the Fray, Publicly Supporting Knauf’s Bid and Withhold Campaign, and Knauf Doubles Down

126. Also on April 12, 2018, in what we now know to be a coordinated effort, Berkshire publicly communicated its intent to support Knauf – and its Second Proposal – and to vote against the Board’s nominees. Specifically, in a series of April 12, 2018 articles – entitled “*Warren Buffett To Vote Against USG Board In Support Of Gebr Knauf Takeover,*” “*Buffett Joins USG Shareholder Revolt as Berkshire Seeks Exit,*” and “*Buffett’s Berkshire will oppose USG board nominees after Knauf bid*” – it was widely reported that, in response to an inquiry from a Bloomberg reporter, a spokesperson for Berkshire publicly stated that that “Berkshire’s present intention is to vote against the four directors proposed by management.”

127. Berkshire confirmed the quote in an amended 13D filing later that day. And, in an emailed statement in response, Knauf stated: “Knauf is pleased that Berkshire [] has indicated that it will support our withhold campaign and reinforces that our offer presents and immediate, high-value and cash-certain monetization

opportunity for all USG shareholders.” Bloomberg, *Buffett Joins USG Shareholder Revolt as Berkshire Seeks Exit*, April 12, 2018.

128. **Messrs. Combs’ and Knauf’s contemporaneous email communications strongly suggest that these public statements were coordinated.** Specifically, on the evening of April 11, 2018, Mr. Combs emailed Mr. Knauf to tell him that he had spoken to Berkshire’s counsel and could update Mr. Knauf at his leisure. Early the next morning, Berkshire made its public statement and, just a short time later – **in the same email chain** – **Mr. Combs again emailed Mr. Knauf, this time to inform him that Berkshire had responded that morning to a Bloomberg media request that it would vote against Board and would be making a filing regarding it.**

129. Financial reporters and commentators alike all recognized the import of Berkshire’s public statement and that the Board would have little choice but to capitulate now. For example, the April 12, 2018 *Warren Buffett To Vote Against USG Board In Support Of Gebr Knauf Takeover*” article also noted “Berkshire’s clear support for the Gebr Knauf deal.” The “*Buffett’s Berkshire will oppose USG board nominees after Knauf bid*” article likewise noted that “Berkshire’s offer to sell its roughly 43.4 million USG shares essentially created a pricing floor for any sale,” cited the same Morningstar analyst as noting that “[y]ou don’t usually see this kind of stuff from Berkshire,” and concluded with a note

about USG's defenses against "unwelcome takeovers." Similarly, the April 12, 2018 Bloomberg report, "*Buffett Joins USG Shareholder Revolt as Berkshire Seeks Exit*":

- a. Noted that Berkshire Hathaway's support for the "Knauf-led shareholder revolt . . . signal[ed] Warren Buffett's desire to exit";
- b. Noted that Berkshire Hathaway "has said it would accept that amount [\$42.00] if a sale is approved";
- c. Cited a Longbow Research analysts as noting that Berkshire Hathaway's support "is a pretty decisive response It sends a pretty clear signal that Berkshire is in favor of a sale";
- d. Cited the same analyst as concluding that "Berkshire is on board with Knauf's proposal";
- e. Reported that "[a] deal would untangle Berkshire from what Buffett has called a 'disappointing' investment"; and
- f. Cited a Morningstar analyst as noting that **Berkshire Hathaway's support "complicates it for USG because Buffett's put a price on the table that he's willing to sell at, and USG's apparently not happy with that price."**

130. Knauf too internally recognized the magnitude of Berkshire's public statement, with a Morgan Stanley representative internally telling the Knauf

team that Mr. Buffett “pushed it into the public and now declared his vote against the company; **never does this; speaks volume.**” In short, in case there was any doubt, the Board and Company were now firmly in the midst of both a proxy contest and a hostile takeover by its second largest shareholder, acting with the explicit public support of its largest shareholder.

131. On April 13, 2018, in an article entitled “*Buffett puts USG on its heels,*” one media outlet described the situation as follows:

Berkshire has basically decided to throw its weight behind a hostile takeover . . . Now that Berkshire has joined in, it looks like its “game over” for USG as more than 40% of the vote is now lined up against [USG]. We suppose it could try to play this out a little further by arguing Berkshire just wants out of this position and that doesn’t mean a sale in the low \$40s makes sense for other shareholders. Such resistance seems futile to us and one would think the board’s best move at this point is trying to save face by prying a bump out of Knauf . . . USG has called \$42 “wholly inadequate” and “opportunistic.” With comments like that, it will be hard to swallow \$42 but USG no longer has the leverage it needs to extract much more.⁸

⁸ Knauf and its outside public relations firm understood the leverage that Mr. Buffett, as USG’s largest shareholder, provided, and took efforts to ensure that the public knew it was Mr. Buffett who approached Knauf – and not the other way around – regarding the proposed option. Indeed, on April 12, 2018, Bloomberg TV aired a segment wherein it reported that “the genesis of this is very interesting because it was not actually Knauf who made the offer public . . . they look hostile because it looks like they’ve come out with a public offer but they haven’t. It was Buffett, who actually said originally in the public domain. There was this offer out there, and he thought it was compelling, and he has not come out with a bit more and he thinks it’s the right offer. So I imagine the two sides have talked and I’m sure that Knauf and Buffett are out there trying to convince other people invested in this company . . .” In a separate publication on April 12, 2018, Bloomberg

132. In the interim, Knauf drew up talking points to discuss with Berkshire regarding its option offer. Those talking points reveal that Knauf declined to pursue either the option offer or a potential outright purchase of Berkshire's stock block because Knauf knew that formal entry into either agreement would trigger a requirement for the "board's waiver of the poison pill and transfer restrictions charter provisions and approval under DGCL 203." In light of the fact that USG would likely not approve any such agreement, "in [Knauf's] view . . . it is likely not worth it." Besides, Knauf concluded, Berkshire already "clearly agrees that \$42 is a fair price and has publicly declared to vote against USG's nominees," so Knauf didn't need to spend money on **formally** acquiring Berkshire's shares – it already had them.

133. Instead, Knauf decided to publicly (and freely) play up Berkshire's committed support:

Berkshire Hathaway

- Berkshire Hathaway (largest USG shareholder at ~31%) brought this into the public arena when they filed their 13D granting Knauf a call option at \$42.
- This is a clear indication that Berkshire Hathaway views our \$42 offer price as fair and would be a willing seller at \$42.
- We are pleased that Berkshire Hathaway has publicly indicated its support of our withhold campaign and that it will vote against USG management's nominees at the Annual Meeting.

analysts concluded that "Berkshire's support of Knauf adds to the pressure of USG's board to reconsider its opposition to the potential transaction."

134. Indeed, in response to questions regarding the efficacy of its withhold campaign, Knauf intended to respond that “[i]t certainly helps that Berkshire [] has publicly indicated about the value of our offer” and that “[w]e were clearly not in a place to consider taking a public approach in January. However, between [Berkshire’s] 13D filing, *which brought our offer into the public arena* and USG’s continued refusals to show us more value, we see this as the best path”

135. In these same materials, Knauf devoted almost two full pages to highlighting Berkshire’s support, noting most saliently that Berkshire’s public actions spoke for themselves and that Knauf was already counting Berkshire’s shares with its own:

Berkshire Hathaway

14. Both Knauf and Berkshire Hathaway have been in the stock for nearly 20 years, what is your relationship with them?

- We believe we have a cordial, professional relationship with Berkshire Hathaway.
- As the proxy chronology indicates we have held occasional discussions with Berkshire Hathaway over time. Public actions speak for themselves - they have given clear indication that Berkshire Hathaway views our \$42 offer price as fair and would be a willing seller at \$42.
- We are pleased that Berkshire Hathaway has publicly indicated its support of our withhold campaign and that it will vote against USG management's nominees at the Annual Meeting.
- [We believe Berkshire Hathaway's actions speak to a history of frustration with USG's Board and Management.]

15. What does Berkshire Hathaway think of your offer?

- In our view, Berkshire Hathaway's proposal to grant Knauf an option is a clear indication they believe our \$42.00 offer price is fair, and would be a willing seller at such price.
- We are pleased that Berkshire Hathaway has indicated that it will support our withhold campaign and reinforced that our offer presents an immediate, high-value and cash-certain monetization opportunity for all USG shareholders.

16. When did you begin discussions with Berkshire Hathaway?

As the proxy chronology indicates we have held occasional discussions with Berkshire Hathaway over time.

17. Have they been helping you negotiate?

- No.
- Knauf, USG, and their respective advisors are the only entities that have been involved in negotiations regarding this proposal.
- Berkshire Hathaway is a sophisticated and independent investor.
- We have held separate discussions with Berkshire Hathaway regarding related matters, but they have not been involved nor assisted with our negotiations with USG.

18. Why haven't you responded to their option proposal?

- In our view, Berkshire Hathaway's proposal to grant Knauf an option is a clear indication they believe our \$42.00 offer price is fair, and would be a willing seller at such price.
- However, USG Board approval would be required for Knauf to actually exercise Berkshire Hathaway's option.
- We are pleased that Berkshire Hathaway has indicated that it will support our withhold campaign and reinforced that our offer presents an immediate, high-value and cash-certain monetization opportunity for all USG shareholders.

19. What is the mechanism for purchasing the shares? Is this really an offer that is possible as the option can only be exercised if a transaction is consummated?

- We are currently considering our options.

- We don't think it is fruitful to debate the legal details unless a specific arrangement were to be put in place
- More importantly the proposal of the option in and of itself speaks volumes. In our view, it is a clear indication they believe our \$42.00 offer price is fair, and that they would be a willing seller at such a price.

20. How much does Buffet need to engage with other shareholders for the withhold vote to be influential enough?

- With Berkshire Hathaway withholding, that's more than 40% right there, which makes for quite an uncomfortable situation for the Board and management team.
- We believe that USG shareholders favor substantial, immediate cash-certain value now vs. potential risk inherent in a cyclical industry and with USG's ambitious business plan.
- We are seeking support from our fellow shareholders as a means of sending a clear message to the USG Board to engage immediately in a constructive dialogue regarding our offer.
- Berkshire Hathaway clearly agrees that \$42 is a fair price and has publicly declared to vote against USG's nominees. That is very meaningful to USG shareholders. It should be to the Board too.

21. Do you think Berkshire Hathaway believe the company is worth more? That \$42 is fair but not really full value?

- That is a question for Berkshire Hathaway
- In our view, Berkshire Hathaway's proposal to grant Knauf an option is a clear indication they believe our \$42.00 offer price is fair, and would be a willing seller at such price.
- We believe \$42 a share represents full and fair value relative to intrinsic long-term value through the cycle.
- We are pleased that Berkshire Hathaway has indicated that it will support our withhold campaign and reinforced that our offer presents an immediate, high-value and cash-certain monetization opportunity for all USG shareholders.

22. Do you think Berkshire Hathaway would support an interloper bidding \$43 or more?

- That is a question for Berkshire Hathaway.

(bolding in original; highlighting added).

136. Finally, and perhaps most important, Knauf explained why it didn't feel as though it needed to bother taking Berkshire's option offer – because it already had its shares locked up, at \$42.00 per share:

18. Why haven't you responded to their option proposal?

- In our view, Berkshire Hathaway's proposal to grant Knauf an option is a clear indication they believe our \$42.00 offer price is fair, and would be a willing seller at such price.
- However, USG Board approval would be required for Knauf to actually exercise Berkshire Hathaway's option.
- We are pleased that Berkshire Hathaway has indicated that it will support our withhold campaign and reinforced that our offer presents an immediate, high-value and cash-certain monetization opportunity for all USG shareholders.

137. In the meantime, the Board met on April 16, 2018, to discuss this new reality. During that meeting, representatives of the Board's legal counsel reviewed the Board's legal obligations and also provided an update on the possible outcome of a vote against the director nominees. Proxy, 39.

138. Also on April 16, 2018, Knauf publicly responded to the Board's refusal of its Section 220 demand (calling it a "routine matter") and threatened to file suit. In the same public response, hand in hand, Knauf again touted Berkshire's public support: "As the Board is aware, our offer has received public support from USG's largest shareholder and we remain unwavering in our focus to engage with all fellow shareholders and bring this transaction to fruition." Knauf also continued its secret communications with Berkshire, forwarding this letter directly to Mr. Buffett's office and its investor presentation to Berkshire before it was even filed.

139. On April 17, 2018, Knauf filed several materials with the SEC, including a presentation in which it repeatedly touted Berkshire Hathaway's support for its Second Proposal, noted that "Berkshire Hathaway . . . has offered Knauf an option at \$42 and stated its intention to vote against USG's director nominees," and even devoted an entire page of its presentation to that support:

"Berkshire's present intention is to vote against the four directors proposed by management."

– Berkshire Hathaway, Schedule 13D/A (Apr 12, 2018)

- Berkshire Hathaway is the largest and a long-term shareholder (~31% ⁽¹⁾)
- Berkshire Hathaway publicly filed its offer to Knauf for a call option on Berkshire's shares at \$42, which we believe validates the offer value
- Berkshire Hathaway publicly announced its intention to vote against USG's director nominees

Note: Permission to use quotations throughout this presentation were neither sought nor obtained.
1. As per USG's 2018 Notice of Annual Meeting and Proxy Statement filed on March 29, 2018

April 2018

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140. On the same day, Knauf also issued a press release, in which it stated:

Berkshire Hathaway, a long-term USG shareholder with an approximately 31% ownership stake, has offered Knauf an option at \$42, which Knauf believes validates the value of its offer, and has publicly stated its intention to VOTE AGAINST USG's four director nominees. Berkshire Hathaway disclosed a proposal to grant Knauf an option to purchase all of Berkshire Hathaway's shares in USG, exercisable if Knauf agrees to a transaction to acquire all of the outstanding shares of USG. Additionally, after Knauf initiated its "Withhold" campaign, Berkshire Hathaway publicly stated its intention to vote against USG's director nominees. **Knauf believes that this**

is a clear indication that Berkshire Hathaway views \$42.00 as a reasonable offer price.

(Bold in original, italics added.) In a preliminary proxy filing accompanying these materials, Knauf again touted Berkshire Hathaway's significant holdings, its option offer, and its public support for Knauf's withhold campaign:

Also on March 26, 2018, Berkshire Hathaway, Inc. ("Berkshire"), the Company's largest stockholder beneficially owning approximately 30.96% of the Company's outstanding shares, publicly announced a proposal to grant Knauf an option to purchase all of the shares of the Company held by Berkshire and its affiliates. The option would be exercisable only in connection with the consummation of the purchase by Knauf of all of the outstanding shares of the Company at a price of not less than \$42.00 per share. On April 12, 2018, Berkshire publicly indicated that its present intention is to vote against the four directors proposed by USG.

141. On April 18, 2018, consistent with his ongoing coordination and support, Mr. Buffett held an in-person meeting with Messrs. Knauf and Grundke, apparently in his personal office.

142. On April 20, 2018, Knauf and USG both filed their proxy materials in connection with Knauf's withhold campaign. These materials repeated much of the same material outlined above.

143. Also on or about April 20, 2018, both Knauf and Berkshire spoke (separately, it would appear) with ISS. On the same day, Berkshire received a FINRA letter demanding information about the contacts with Knauf that led to its March 25, 2018 13D filing.

144. On April 23, 2018, Knauf issued another press release. In this one, in a section entitled “BERKSHIRE HATHAWAY PUBLICLY STATED ITS INTENTION TO VOTE AGAINST USG’S NOMINEES,” it stated:

On April 12, 2018, **Berkshire Hathaway**, USG’s largest shareholder with an aggregate ownership of approximately 31% of USG common stock, **publicly stated its intention to vote AGAINST USG’s director nominees at the Company’s upcoming Annual Meeting, demonstrating their support for USG to engage in discussions with us regarding our offer. Rarely does Berkshire Hathaway take such public positions.**

This statement follows Berkshire Hathaway’s validation of the value of our offer in their 13D filing dated March 26, 2018, which disclosed its proposal to grant Knauf an option to purchase all of Berkshire Hathaway’s shares in connection with the consummation of the purchase by Knauf of all of the outstanding shares of USG at a price of \$42 per share. **We believe this is a clear indication that Berkshire Hathaway views our \$42 per share offer favorably.**⁹

⁹ Notably, market analysts recognized the disconnect between Berkshire and other shareholders. For example, on April 23, 2018, a Reuters analyst wrote “[i]nvesting alongside Warren Buffett – as many do – doesn’t necessarily mean sharing in his successes. Consider the bid for [USG.] . . . Knauf is keen to buy it, and [Buffett] has indicated he’s minded to sell its 31 percent stake, even backing Knauf in a campaign targeting USG’s board. **It’s a rational decision on his part and fairly unhelpful for USG’s other investors** . . . All of this makes perfect sense from Buffett’s perspective. Some of his USG shares came below \$12 a piece, and he initially acquired stock back in 2000. It’s rare for investors who follow the Sage of Omaha’s stock-picking to find themselves in a situation where his interests might differ from their own - in part because he tends not to engage with hostile bids. If the USG case encourages them^[SEP] to think for themselves, that may not be a bad thing.” (Emphasis added).

145. One day later, on April 24, 2018, Knauf representatives met with representatives of Shapiro Capital (“Shapiro”), USG’s fifth-largest shareholder, who stated that they would publicly say that they intended to vote against the Board, and Morgan Stanley offered to help facilitate that announcement, which was made that day.

146. Also on April 24, 2018, Morgan Stanley circulated to the internal Knauf takeover team an analysis of Voting Scenarios for the upcoming annual meeting, in which it “**estimate[d] 57% withholds in the base case of just Berkshire and Knauf voting AGAINST out of the large institutions and proxy advisors; 65% withholds if ISS joins us, but we do not gain support of the other large shareholders; and 74% if we get the support of the proxy advisors and large institutions other than Vanguard and Harris.**” **The presentation only assumed that Berkshire would vote with Knauf:**

SUMMARY

	With Company	With Knauf	Shares WITHHOLDING as a % of Shares Voted on Proposal
Scenario 1	<ul style="list-style-type: none"> > ISS > Glass Lewis > Vanguard > Harris Associates > London Company > BlackRock 	<ul style="list-style-type: none"> > Berkshire Hathaway > Knauf Family 	57.04%
Scenario 2	<ul style="list-style-type: none"> > Glass Lewis > Vanguard > Harris Associates > London Company > BlackRock 	<ul style="list-style-type: none"> > ISS > Berkshire Hathaway > Knauf Family 	64.78%
Scenario 3	<ul style="list-style-type: none"> > Vanguard > Harris Associates 	<ul style="list-style-type: none"> > ISS > Glass Lewis > London Company > BlackRock > Berkshire Hathaway > Knauf Family 	74.44%

147. On April 25, 2018, the Board met to consider these events. During this meeting, Defendant Scanlon informed the Board that both Berkshire and Shapiro “had publicly indicated that they would vote against the Corporation's directors at the upcoming annual meeting” and that, “with approximately 45% of shareholders indicating they would vote against the director nominees, it is likely that the Corporation's director nominees would not receive a majority of the votes cast at the annual meeting.” The Board also discussed “expectations from the arbs that were coming into the stock.” The Board further recognized that the upcoming

“2019 annual meeting is likely to be a key turning point.” Finally, the Board considered “providing the Board’s view of value either to [Knauf] or publicly,” but deferred doing so at that time and until other potential acquirers were ruled out.

148. Also on April 25, 2018, the Company issued a press release announcing its first quarter 2018 results and filed its quarterly report in connection with the same. Therein, the Company disclosed, among other points, that the previous quarter had seen a 4% increase on an adjusted basis in net sales year-over-year and that the Company was experiencing its highest US wallboard pricing in 12 years. Defendant Scanlon was quoted, in part, as follows:

“It is encouraging to see increased sales and strategic progress in the first quarter that are necessary to enable us to meet our 2020 financial targets. . . . **This reinforces our confidence in our strategy.** . . . We remain confident in our 2018 outlook for all of our segments and continue to believe that 2019 will be the breakout profit year of our strategy. We undertook significant actions over the last two years which completely transformed our company and laid the foundation for continued improvements in our cost position, profitability, capital structure and portfolio. This is an exciting time for USG because, now, as a pure manufacturer, **we have the opportunity and available capital to focus on growth and shareholder value creation with a balance sheet that supports our plan.**”

(emphasis added).

149. The following day, on April 26, 2018, Knauf issued a press release related to the Company’s first quarter 2018 earnings and reaffirming its proposal to acquire the Company for \$42.00 per share. Therein, Knauf again touted Berkshire Hathaway’s support: “Our withhold campaign continues to garner support. USG

shareholders, including Berkshire Hathaway, have publicly stated their intention to vote against USG's director nominees at the Company's upcoming Annual Meeting in support of our offer."

150. Also on April 26, 2018, the Board filed a letter and presentation to its stockholders. In the presentation, which was entitled "USG Maximizing Value for **All** Shareholders," the Board described Knauf's bid as "significantly undervalu[ing] USG"; noted that Knauf's Second Proposal did not "adequately compensate[] **ALL** shareholders" – another thinly veiled swipe at Berkshire; and reiterated that it rejected the bid "based on USG's intrinsic value." The presentation included the following slides:

Vote FOR USG's Nominees to Support YOUR Board's Ability to Maximize Value



- USG urges stockholders to **vote "FOR" its independent nominees** at the Annual Meeting on May 9th
- **If Knauf wants to buy USG, it should meaningfully improve its offer price** – a vote FOR USG's Board nominees strengthens our negotiating position with Knauf
- USG would sell to Knauf, or any other credible bidder, but **only at an appropriate price**
- USG's Board is accountable to ALL stockholders, but **Knauf's interests are opposed to other stockholders'**
- Do not be misled by **Knauf's misinformation about USG**. The truth is **YOU OWN the industry's crown jewel and they want you to believe otherwise**
- **A vote "FOR" the Board's nominees will protect the value of YOUR investment**

USG's Board is Committed to Acting in the Best Interests of ALL Stockholders

Knauf's Opportunistically Timed Proposal is Inadequate



- USG's Board is committed to **maximizing value for ALL our stockholders**, either by executing our strategy or through any proposal to acquire USG that provides full and fair value
- We have carefully evaluated Knauf's proposals and have **engaged with them multiple times**
- We believe Knauf's proposals are **opportunistically timed, do not reflect USG's intrinsic value** or the **substantial benefits Knauf would receive**, and are not in the best interests of ALL our stockholders
- Knauf is a **competitor**, they know our business, but have not submitted a proposal that we believe is within a reasonable range of **adequately compensating ALL stockholders** – therefore we have not been willing to share confidential information
- **USG is a transformed Company** – we now have a strong foundation and a strategy expected to drive growth in revenue, margins, free cash flow and profitability, which we believe will deliver **meaningfully more value than Knauf's proposal**
- Knauf has made numerous **misstatements about USG**, its prospects and future industry growth

We Believe Knauf's Proposal Significantly Undervalues USG



KNAUF'S PROPOSAL FAILS TO REFLECT:

The intrinsic value of USG

- Knauf's proposal is opportunistically timed to take advantage of short-term weakness in USG's stock, due to our previously disclosed expectations for Q1 2018 and the impact of near-term investments on margins
- Ignores value potential of our strategic plan, recent actions and transformation of business
- Does not reflect material and positive impact of tax reform
- Insufficient premium for control of the North American industry leader

The significant value of USG to Knauf

- Significant strategic and financial benefits to Knauf of industry-defining transaction – articulated in their November 2017 proposal:
 - Technology, intellectual property, brand, and geography, plus significant synergy potential
- Knauf has substantial financial resources available to support a proposal which reflects USG's intrinsic value

KNAUF PAID 1.5-2.0X MORE FOR A RECENT DEAL

IMPLIED TRANSACTION MULTIPLE BASED ON LTM EBITDA



USG VS. AWI EMEA / PACIFIC RIM

USG offers Knauf:

- ✓ Leading market positions in critical N.A. market
- ✓ Higher margins
- ✓ Multiple product platforms (gypsum & ceilings)
- ✓ Strong growth outlook in U.S. construction market
- ✓ Sole ownership of industry leading brands and global IP portfolio

AWI EMEA/Pacific Rim

- ✗
- ✗
- ✗
- ✗
- ✗

Source: Public filings

Note: Based on debt of \$1.089M, cash of \$394M, current securities of \$62M, other equity method investments of \$7M, share in net debt of Boral JV of \$9M and 143,303M diluted shares outstanding.

¹ Based on an 2017 adjusted EBITDA of \$636M.

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We Believe Knauf's Proposal is Opportunistically Timed to Take Advantage of Short Term Stock Price Weakness...



Source: Bloomberg as of 27-Mar-2018

Note: S&P 500 price performance and peer price performance indexed to USG share price as of 01-Nov-2016, when Jennifer Scanlon assumed role as CEO and Steven Leer as Chairman.

¹ Peers include Armstrong World Industries, Continental Building Products, Eagle Materials, Owens Corning, and Saint-Gobain. Calculated as the median across peers.

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...which, Research Analysts Agree, Significantly Undervalues USG



UPSIDE FROM LONG-TERM PLAN

"Progress could unlock considerable value, with a possible pathway into the \$50s over the next few years."

Baird, 8-Mar-2018

"USG unveiled 2020 sales and margin targets, which appear modestly conservative"

Evercore ISI, 8-Mar-2018

"We were encouraged [USG] provided LT guidance for the first time...there appears to be a reasonable path towards margin expansion and strong FCF generation"

Jefferies, 8-Mar-2018

SHORT-TERM STOCK PRICE FLUCTUATIONS

"[We] look past this near-term noise and see today's 2020 outlook as supportive of our positive view on medium to long-term earnings power, supported by a strong balance sheet."

Barclays, 8-Mar-2018

"[USG] Stock price more influenced by near-term events... We expect wallboard price will regain traction in 2Q"

Nomura, 9-Mar-2018

"Wallboard industry trends are generally favorable, albeit a little choppy near term."

Raymond James, 12-Mar-2018

PROPOSAL PRICE

"a range of \$46-\$52/sh is a fair representation of the intrinsic value"

Northcoast, 26-Mar-2018

"[Knauf] has more than enough dry powder to raise its offer for USG in the \$45 - \$52 / share range."

Jefferies, 10-Apr-2018

"We believe Knauf was opportunistic with its bid.... We anticipate that a bid in the high-\$40s to low-\$50s could satisfy the company's Board of Directors."

Barclays, 27-Mar-2018

Source: Wall Street Research

Knauf's Proposal Is Wholly Inadequate And Their "Vote No" Campaign Is Designed To Deliver The Lowest Possible Price



- Knauf's offer of \$42 per share is **not a reasonable starting point for further productive engagement**; if Knauf meaningfully increases its offer price to reflect the intrinsic value of US, our Board is willing to **engage further and provide information**
- Knauf has disregarded the fact that **USG is a transformed company poised to deliver significant value**
- Knauf's campaign is designed to **undermine the Board's ability to maximize value for ALL stockholders**
- USG Board remains open to engaging with Knauf, or any other bidder, **at an appropriate price**
- A vote FOR USG's Board nominees strengthens our negotiating position with Knauf and helps protect the value of your investment

151. In the presentation, the Board also (a) reiterated that it rejected Knauf's \$42.00 Second Proposal "based on USG's intrinsic value[,]" which we believe has increased due to reduction in U.S. corporate tax rates, introduced after initial proposal"; (b) again termed Knauf's Second Proposal "wholly inadequate"; and (c) represented that Knauf's campaign was "designed to deliver the lowest possible price." In the accompanying letter, the Board (a) represented that Knauf's Second Proposal "significantly undervalues" USG; (b) stated that its standalone plan would "deliver greater value than Knauf's proposal"; (c) reiterated the Board's view that Knauf's proposal did not represent the intrinsic value of the Company; and (d) stated that Knauf's withhold campaign was designed "**to undermine YOUR Board's ability to negotiate to maximize value for ALL stockholders**" (emphasis in original). The Board also stated:

Knauf, which is one of your fellow stockholders and is also a competitor to USG, has launched a campaign to encourage you to vote against USG's Board nominees. Knauf is doing this in support of its \$42 per share proposal to acquire USG, which the Board believes **significantly undervalues YOUR company**. Knauf has a vested interest in acquiring your company at the lowest possible price and, instead of making a proposal that fairly values USG, **it is trying to get you to pressure the USG Board into accepting its opportunistic proposal.**

The Board warned shareholders that "Knauf is trying to mislead stockholders about USG" and stated, "**YOU OWN the industry's CROWN JEWEL and it does not make sense to sell below intrinsic value.**" (Emphasis in original). Finally, in the

letter, the Board also included selected media commentary that specifically noted both the undervalued nature of Knauf's Second Proposal and the fact that Berkshire Hathaway's interests were not aligned with those of other stockholders in this case:

WE BELIEVE ANALYSTS AND MEDIA AGREE WITH USG'S VIEW

ANALYST COMMENTARY	MEDIA COMMENTARY
"Progress could unlock considerable value, with a possible pathway into the \$50s over the next few years." — Baird, 8-Mar-2018	"It's rare for investors who follow the Sage of Omaha's stock-picking to find themselves in a situation where his interests might differ from their own – in part because he tends not to engage with hostile bids. If the USG case encourages them to think for themselves, that may not be a bad thing." — <i>Reuters BreakingViews</i> , 23-Apr-2018
"a range of \$46-\$52/sh is a fair representation of the intrinsic value" — <i>Northcoast</i> , 26-Mar-2018	"USG should engage, not cave in, encouraging Knauf to bid higher. Mr. Buffett inspires other investors. But his interests and theirs are not always symmetrical." — <i>Financial Times, Lex</i> , 16-Apr-2018
"[Knauf] has more than enough dry powder to raise its offer for USG in the \$45 - 52 / share range." — <i>Jefferies</i> , 10-Apr-2018	"USG is a very good company, and I think it's undervalued." — <i>Jim Cramer, CNBC</i> , 10-Apr-2018
"We believe Knauf was opportunistic with its bid.... We anticipate that a bid in the high-\$40s to low-\$50s could satisfy the company's Board of Directors." — <i>Barclays</i> , 27-Mar-2018	<ul style="list-style-type: none"> • "One can see how the timing of Knauf's offer may feel opportunistic." • "[since the appointment of Jennifer Scanlon as CEO] USG's stock began to stage a recovery, effectively making its valuation cheaper for bidders such as Knauf." • "But Buffett's support for the Knauf proposal isn't necessarily a good gauge for other USG shareholders." • "Knauf is valuing USG at about 11 times analysts' estimated Ebitda for this year, which is well below the average multiple for U.S. deals of this size during the past five years, as takeover valuations have been on the rise. That's where USG has a point." — <i>Bloomberg Gadfly</i>, 10-Apr-2018

152. In light of the public nature of Knauf's hostile takeover bid, the Company began receiving interest from other potential buyers in April 2018. For example, during April, the Company interfaced with representatives of Company A regarding Company A's potential interest in making a proposal for the Company, but management of Company A indicated that they would assess over the next week whether there was a business case for a potential transaction, later communicating that it was unable to pursue a transaction with USG at that time. Similarly, although Companies C and D indicated during the same time period that

they were “potentially interested in a strategic transaction with the Company, [they] were not in a position to do so at that time.” Meanwhile, the Board found itself crippled by indecision. For example, during an April 25, 2018 meeting to discuss what to do, during which the Board reviewed “the pros and cons of engaging with Knauf or waiting until the Company received further information regarding Company A’s interest,” the Board ultimately declined to make any decision, instead deciding “to discuss further actions at a later date.”

153. On April 30, 2018, Knauf issued yet another press release in which it again touted Berkshire Hathaway’s support, quoting one shareholder advisory firm as noting the “unprecedented public display of disaffection by Berkshire [Hathaway]” and another as noting a “disconnect” between the Board and Berkshire Hathaway.

G. The Board Caves and Quickly Acquiesces, Even As It Internally Values USG on a Standalone Basis Well Above the Merger Consideration

154. By April 30, 2018, the Board finally began to see the writing on the wall. On this date, Defendant Scanlon informed the Board that the last of the few potential competing bidders with whom the Board had attempted to engage as an alternative to a cheap sale to USG had informed USG that it (like the others) was unable or unwilling to pursue a transaction **at that time**. Proxy, 37-40. Defendant Scanlon also informed the Board that both ISS and Glass Lewis had publicly

announced their support for the withhold campaign and that, “[i]n light of these recommendations, and the fact that Berkshire [] and Shapiro have publicly stated that they intend to vote against the directors,” **the Board was facing the likelihood of a majority vote against its four director nominees**. Proxy, 40. The Board began considering the ramifications of, and potential responses to, a hostile takeover offer by Knauf. In the next breath, Defendant Scanlon informed the Board that Knauf’s general counsel had contacted USG’s general counsel to request a meeting and that the two were scheduled to meet later that day. Proxy, 40.

155. With the vultures circling overhead, the Board began the inevitable process of caving to Knauf and Berkshire Hathaway. Specifically, at the conclusion of the April 30, 2018 meeting, in which the Board was informed of the powers aligning against it, and despite its private and public statements to the contrary, the Board authorized Defendant Scanlon to begin negotiations **within a unanimously-agreed range of \$48.00 and \$51.00 per share**. Proxy, 40. **Importantly, prior to determining this negotiating range, the Board held a “detailed discussion” (including with input from its banker and in both general and executive session) of the Board’s business judgment in determining and its view of USG’s intrinsic value, which informed this range.** Notably, though, management specifically recommended against the Board publicly stating its views on USG’s intrinsic value, and the Board determined

not to make such a statement (and it never made such a statement). The Board also concluded that the Second Proposal did not reflect intrinsic value. At the conclusion of the meeting, the Board “urged management, in the interim, to continue to press to get as many votes for the director nominees as possible.”

156. Late on April 30, 2018, Knauf stated its “desire to have assurances regarding the final price that the Board would accept before making a further offer.” Then, in yet another thinly-veiled threat, Knauf’s representative noted that the Board would surely “want resolution prior to the annual meeting of stockholders scheduled for May 9, 2018, to avoid a vote against the Company’s four director nominees.” Proxy, 40.¹⁰ On the next day, May 1, 2018, USG issued a press release announcing the Board’s authorization to begin negotiations with Knauf. *Id.* Later that day, Defendant Scanlon called Mr. Buffett to discuss the public announcement of the commencement of negotiations with Knauf. *Id.*

157. Market analysts noted the Board’s acquiescence and surrender and predicted the cheap sale that would come:

That creaking sound heard in Chicago . . . was USG’s board cracking the door open to a possible sale of the company to [Knauf]. . . . Now facing the possibility of seeing four directors get slammed at next week’s AGM, the USG board has decided to see whether it can

¹⁰ Knauf’s representative stated that Knauf was prepared to move quickly. However, on the very next day, May 2, 2018, Mr. Knauf indicated that Knauf intended to spend several weeks conducting due diligence on the Company’s business before providing a revised proposal.

negotiate its way out of the hole it dug for itself. . . . With [Buffett] saying he is ok with \$42 [per share], we'd be surprised to see Knauf go much higher. TBD is whether USG enters these talks with any intention of saying yes or whether this is just a stunt that allows management to say "we tried." **Our best guess is Knauf will pay a small "obstinence tax" (less than \$2) that allows the board to save face and claim it protected shareholders from a heist.**

(Emphasis added.) A May 1, 2018 Reuters article likewise noted that "USG has finally acknowledged that Warren Buffett crumbled the plasterboard maker's defensive wall With its largest shareholder working in tandem with its suitor, USG had little choice but to open its books."

158. On May 3, 2018, the Board held a meeting, during which it again considered issuing a public statement on intrinsic value, but again never did so. During this meeting, the Board also discussed Knauf's demands that any confidentially agreement contain a brief, 30-day standstill, at most, rather than the twelve-month standstill USG proposed. The Board considered "the reasons [Knauf] was insisting on a shorter standstill period." On May 4, 2018, the Company and Knauf entered into a confidentiality agreement, which had a four-month standstill period. Proxy, 41.

159. Then, on May 7, 2018 – two days before the annual meeting – in a televised interview with CNBC, Mr. Buffett went on air and stated that this may have been the first time in 53 years Buffett/Berkshire have voted against a slate. CNBC, *Warren Buffett finally get closure on one of his rare investing mistakes*

(available at <https://www.cnbc.com/2018/06/11/warren-buffett-gets-closure-on-disappointing-usg-investment.html>). After repeating Berkshire's 30% stake, he commented on his decision and the Board's actions: "we felt that they – they did not represent **our** interest, and we said that we intended to vote against them at the annual meeting [W]e just think that directors are there to represent shareholders. And we do not feel that they were certainly representing **us with a 30% interest.**" *Id.*¹¹

160. On May 8, 2018, Defendant Scanlon, Mr. Hilzinger, and Ms. Warner met with Messrs. Knauf, Grundke, and Schanow to communicate a counterproposal of \$50.00 per share. Proxy, 41.

161. At the May 9, 2018 annual meeting, **approximately 75% of shares voted were cast against each of USG's director nominees.**¹² As a result, Defendants Armario, Haggerty, and Hernandez were not duly re-elected and thus continued to serve only as holdover directors; Dana Cho was not elected to the Board; and the Board voted to reduce its size.

¹¹ In another interview, Mr. Buffett said they he voted against the Board because he "did not think [they] were essentially doing their job," and, referring to the Board's decision to authorize negotiations with Knauf after that vote, was quoted as saying "I think [the Board] responded properly."

¹² For purposes of comparison only, at USG's May 10, 2017 annual meeting, less than 3% of the shares voted were cast against each of USG's director nominees.

162. The Board also met on May 9, 2018 to consider its defeat. During that meeting, **Defendant Scanlon – defeated – noted that USG’s recent performance “further supported management’s belief that it would meet or exceed plan for the year,” but the Board also could not help but recognize “the impact of Warren Buffett’s public comments on some shareholders views of value.”** Defendant Scanlon also noted that there was an “upside in the LRP beyond what was disclosed at Investor Day” and that there was also an “upside potential that was not identified in the LRP,” both of which were provided and/or identified to Knauf, but apparently not to shareholders. Also during this meeting, Defendant Scanlon discussed the decision to propose \$50 per share as USG’s counterproposal, which she noted was based on the DCF valuations performed by the Board’s bankers and which was “within the authority approved by the Board.” Finally, the Board was informed that its D&O premium and/or retention may increase as a result of the ongoing Knauf matter.

163. On May 20, 2018, Berkshire responded to the FINRA inquiry, but in so doing **purposely omitted** the vast majority of its contacts with Knauf. Specifically, while Mr. Combs and team had compiled a **timeline of interactions between Berkshire and Knauf**, Mr. Combs specifically decided **not to report most of them to FINRA.**

164. Emboldened by the Board's defeat, on May 22, 2018, Mr. Knauf rejected the Company's \$50.00 per share counterproposal and indicated that Knauf was willing to increase its proposed price per share to \$43.50. Proxy, 41.¹³ Thereafter, during a May 23, 2018 meeting between Defendants Scanlon and Leer and Messrs. Knauf and Grundke, Mr. Knauf informed Defendants Scanlon and Leer that, if "Knauf and USG [were] not able to reach agreement, Knauf did not intend to stop pursuing an acquisition of USG." **In response, Defendant Scanlon "reiterated" to Messrs. Knauf and Grundke "that the Board believes that the intrinsic value of the Corporation is \$50 a share and that conversations with shareholders led [the Board] to believe that stockholder expectations were closer to the Board's view of value."** Caving by the minute, Defendants Scanlon and Leer nonetheless indicated that they believed that the Board may be willing to support a sale as low as \$47.00 per share. This on the spot drop from \$50.00 per share – **which the Board believed to be USG's actual intrinsic value** – to \$47.00 per share represented an aggregate decrease of more than \$408 million in merger consideration. Mr. Knauf reacted "negative[ly]," reiterating "that this was family money and that there was no room to move from \$43.50 per share, although Mr. Grundke signaled that there could be some additional value."

¹³ Indeed, Mr. Knauf testified that, "[f]or us [*i.e.*, Knauf] it was never relevant what price USG requested or wanted. The one thing which was of importance to me was the question what is the value for me of that company."

165. During a May 24, 2018 Board meeting called to discuss these events and the ongoing negotiations, the Board was informed that Knauf was not assuming any value from synergies and was not engaging with the Board's bankers as would typically be done and that Messrs. Knauf and Grundke did not even consider the \$47 per share counter-offer to be a "formal counter-offer." The Board further noted the "current tone of negotiations" and "concerns regarding certain operations of the Company's UBBP joint venture," and "the risks of Knauf walking away from negotiations and engaging in a hostile acquisition of the Company at \$42.00 per share or lower or pursuing an alternative transaction with another U.S. wallboard competitor." Proxy, 42. Indeed, as noted above, and although undisclosed in the Proxy, Defendant Scanlon reported that **Mr. Knauf personally told her that, "should Knauf and USG not be able to reach agreement, Knauf did not intend to stop pursuing an acquisition of USG."**

166. Also during this meeting, Defendant Scanlon informed the Board that she intended to "reiterate the Board's view of intrinsic value" in upcoming negotiations with Knauf and intended to "ground th[ose] conversations[s] in the Board's view of intrinsic value." In the same breath, though, the Board also acknowledged that \$47 was "a walk away price for Knauf" and worried over "the likely next steps by Knauf and other shareholders [*i.e.*, Berkshire] in the event that the parties are unable to reach terms." During this meeting, the Board also

specifically considered the fact that, while Knauf was limited to making only one public statement during its standstill period, Berkshire was not so limited, and the Board engaged in a discussion of “the potential paths for Berkshire [] to exit USG’s stock, with [a banker] noting that none of them are likely if Berkshire believes a sale of Knauf is possible.” The Board also received a presentation on alternative ways for Berkshire to exit its investment.

167. Defendant Leer also polled the directors during this meeting as to what they felt the “walk-away price should be,” and, while each director expressed their views, those views are curiously not recorded in the Board minutes.

[REDACTED]

[REDACTED], and management informed the Board that “USG’s long range plan is realistic and achievable,” and despite all of its public statements to the contrary, at the conclusion of this meeting, the Board approved the negotiation of a transaction as low as \$44.00 per share – representing another more than \$408 million aggregate decrease and a cumulative aggregate decrease of more than \$908 million in the space of just a few days. Proxy, 42.

168. During the rest of May, the parties engaged in discussions regarding price. As a last ditch effort, the Board also authorized outreach to Company A and four other potential bidders. Like before, though, Company A reaffirmed that it was not in a position **at that time** to engage in an acquisition of the Company, and

each of the other potential bidders indicated that they similarly were unable or unwilling to submit a competing bid for the Company.

169. On May 29, 2018, Mr. Knauf reaffirmed Knauf's \$43.50 per share proposal. Proxy, 43. Internally, Knauf prepared to present the Board with a "best and final" ultimatum of \$44.00 per share. In so doing, it internally planned to leverage Berkshire's continued support. Notably, though, Knauf recognized – again internally – that even its best and final offer was below the Board's internal threshold of \$45 per share ("lowest the Board is willing to do is \$45"). Internally, in preparation for an upcoming discussion with USG management, Knauf's advisors noted that its representatives should "avoid making direct threats" – apparently comfortable that its indirect threats were working.

170. On June 5, 2018, Mr. Knauf delivered by email a revised written proposal, together with a markup of the merger agreement, in which he communicated Knauf's "best and final" offer of \$44.00 per share, consisting of \$43.50 per share in cash at closing of the merger plus \$0.50 per share in a conditional special dividend that the Company would be permitted to pay upon obtaining stockholder approval of adoption of the merger agreement. Proxy, 43. In other words, shareholders would be paying themselves to be acquired by Knauf.

171. On June 6, 2018, following discussion, which included a discussion of Knauf's "perseverance in the current instance" and Mr. Knauf's representation

to Defendant Scanlon that Knauf expected the support of Berkshire Hathaway, the Board determined that it was willing to accept this offer – marking a decrease of more than \$1 billion in what the Board considered fair value for the Company. Proxy, 44. **Notably, in coming to this decision, the Board specifically “discussed whether Knauf would be obligated to vote for the Corporation’s director nominees at the next annual meeting”**¹⁴

172. After making this decision, on June 7, 2018, Defendant Scanlon and Ms. Warner spoke with Mr. Buffett on a confidential basis to inform him that Knauf wanted Berkshire to sign a voting agreement supporting a transaction with the Company and that Knauf’s counsel would be in touch with Berkshire Hathaway’s counsel. Proxy, 44. Mr. Buffett informed her that he supported the deal and, while at first he was hesitant regarding the voting agreement because of the agreement’s 15-month length, after Knauf communicated its “belie[f that] it is very important that Berkshire **continue to demonstrate its support for the transaction** in order to help ensure a successful shareholder vote,” Berkshire ultimately executed the agreement. The terms of the voting agreement were negotiated over the next two days.

¹⁴ The June 6, 2018 meeting minutes also reference a downside case with additional sensitivities run by management, suggesting that the singular set of projections disclosed in the Proxy may not be the only projections considered by the Board.

173. On June 10, 2018, despite all of its public and private statements to the contrary, the Board unanimously approved the Merger Agreement at just \$44.00 per share. Proxy, 44. On the same day, the parties executed the Merger Agreement.

174. On the same day, concurrent with the execution of the Merger Agreement, Berkshire Hathaway entered into a Voting Agreement dated June 10, 2018 with Knauf (the “Voting Agreement”), pursuant to which Berkshire Hathaway agreed to take the following actions, among others, during the term of the Voting Agreement, at the meeting of USG’s stockholders called, convened, and held for the purpose of obtaining the approval of USG’s stockholders for the adoption of the Merger Agreement: (1) with respect to the Merger or the Merger Agreement, to vote (or cause to be voted) all of its shares then beneficially owned in favor of the adoption of the Merger Agreement and the approval of the Merger and the consummation of all of the transactions contemplated thereby; and (2) to vote (or cause to be voted) all of its shares then owned against (i) any action or omission that would result in a breach of any representation, warranty, covenant, agreement or other obligation of Berkshire Hathaway under the Voting Agreement, or (ii) any acquisition proposal, **whether or not a superior proposal**.

175. On the morning of June 11, 2018, USG and Knauf issued a joint press release announcing the Merger Agreement, which provided in pertinent part:

KNAUF AND USG AGREE TO TRANSACTION AT \$44 PER SHARE IN CASH

Provides Knauf with Lasting Presence in North American Wallboard and Ceilings; Enhances USG's Position Worldwide

USG's Headquarters to Remain in Chicago

Iphofen, Germany and Chicago, IL, June 11, 2018 – Gebr. Knauf KG (“Knauf”) and USG Corporation (NYSE: USG) (“USG”) today announced that they have entered into a definitive agreement pursuant to which Knauf will acquire all of the outstanding shares of USG in a transaction valued at approximately \$7.0 billion. Under the terms of the agreement, USG shareholders will receive \$44.00 per share, which consists of \$43.50 per share in cash payable upon closing of the transaction and a \$0.50 per share special dividend that would be paid following shareholder approval of the transaction. The price represents a premium of 31% to USG’s unaffected closing price of \$33.51 and a 36% premium to the \$32.36 average closing price for the preceding 12-month period, both as of March 23, 2018, and a multiple of approximately 11.6x USG’s adjusted EBITDA for the 12 months ended March 31, 2018. The transaction was unanimously approved by USG’s Board of Directors. Berkshire Hathaway has agreed to vote its shares in favor of the transaction. As of June 11, 2018, Berkshire Hathaway and its subsidiaries owns approximately 31% of the issued and outstanding shares of USG.

The combined company results in a global building materials industry leader that will maximize Knauf and USG’s highly complementary businesses, products and global footprint to better meet the needs of both companies’ end-market customers. Following the close of the transaction, USG will continue to be managed locally in the United States, and Knauf intends to maintain USG’s existing corporate headquarters in Chicago as well as its facilities in North America.

Alexander Knauf, General Partner of Knauf, said, “We are excited to enter into an agreement to acquire USG. As a long-term USG shareholder, we greatly admire USG’s strong brands, leading market positions in North American wallboard and ceilings and highly

talented employee base. We look forward to building on USG's strong presence in North America."

"As a family-owned company with a long-term focused business outlook, we believe Knauf is the ideal partner for the business as we intend to make significant investments in USG's operations and its people," added Manfred Grundke, General Partner of Knauf. "Our long-term investments will benefit all of USG's stakeholders, including employees, customers and suppliers."

Jennifer Scanlon, president and chief executive officer of USG, said, "Our Board has worked diligently to evaluate all strategic options to maximize value for our shareholders, and we are pleased to have reached this agreement which provides our shareholders with significant and certain cash value. We believe this transaction will create new opportunities for both companies' customers and will benefit USG's employees who will be part of a truly global building products company. Alexander, Manfred and their team have made clear their high regard for our team, and we are confident that Knauf will help to ensure the long-term success of USG's operations, brands and employees."

The transaction is expected to close in early 2019, subject to customary closing conditions, including regulatory approvals and approval by USG shareholders.

The transaction is not subject to any financing conditions. The transaction will be financed from existing cash and committed debt financing.

Morgan Stanley Bank AG is serving as the exclusive financial advisor to Knauf, and Baker McKenzie LLP, Shearman & Sterling LLP and Freshfields Bruckhaus Deringer are acting as legal counsel to Knauf. J.P. Morgan Securities LLC and Goldman Sachs & Co. LLC are serving as financial advisors to USG, and Jones Day is acting as legal counsel to USG.¹⁵

¹⁵ Of note, Mr. Combs is a director of J.P. Morgan.

H. The Shareholder Vote and the Consummation of the Buyout

176. On June 11, 2018, both Berkshire Hathaway and Knauf amended their respective Form SC 13D/As to disclose the execution of the Voting Agreement and Knauf's concomitant shared voting power with respect to Berkshire Hathaway's USG stock.

177. Also on June 11, 2018, in a CNBC article entitled "*Warren Buffett finally gets closure on one of his rare investing mistakes*," the author began the article with and summarized the entire process with this conclusion: "Warren Buffett is finally getting closure on a long-held investment he recently called disappointing." The article later noted: "In March, Berkshire said in a securities filing it offered its stake in USG to Knauf for \$42 a share."

178. On July 25, 2018, the Company issued a press release announcing its second quarter 2018 results. Therein, the Company disclosed, among other points, that, on a year-over-year basis, net sales were up \$69 million, or 9%, and net income increases \$22 million, or 61%, and diluted EPS increases \$0.17, or 71%.

179. On August 23, 2018, in order to convince USG's stockholders to vote in favor of the Buyout, the Board authorized the filing of Proxy Statement. As outlined herein, the Proxy Statement failed to disclose material information to shareholders, such that the vote was not fully informed.

180. Shareholders voted on and approved the Merger Agreement on September 26, 2018. The Buyout closed on April 24, 2019.

III. THE MERGER WAS THE RESULT OF A CONFLICTED PROCESS

181. The Merger Agreement and the insufficient Merger Consideration were the result of a flawed and conflicted process. Specifically, as outlined above, the process that resulted in the Buyout was prompted by an increasingly hostile bid from Knauf, the Company's second largest shareholder, and supported, vocally, by Berkshire, the Company's largest shareholder, who collectively bullied the Board into a sale of the Company. For their part, the Board acceded to this sale because they had much to lose from a public ouster at the hands of Knauf and Berkshire – and especially Warren Buffett, one of the country's most respected and powerful investors – and little to gain from standing up to them and securing a nominally higher Merger Consideration. And, for their part, Knauf and Berkshire got exactly what they wanted – the acquisition that Knauf wanted and the exit that Berkshire wanted.

A. Knauf

182. Knauf was conflicted because the Buyout provides material personal benefits to Knauf not shared with USG's common stockholders. Specifically, as outlined above, pursuant to the terms of the Merger Agreement, at the time of the consummation of the Buyout, USG became a wholly-owned

subsidiary of Knauf. In this way, the Buyout served Knauf's long desire to acquire USG as a significant beachhead in the North American manufacturing market.

B. Berkshire

183. Berkshire and Mr. Buffett were conflicted because their interests diverged from those of the Company's public, non-insider stockholders. Indeed, as outlined above, members of both the Board and management repeatedly recognized this divergence and that Berkshire's interests were not aligned with those of the Company's other stockholders, noting, repeatedly, in public filings and privately that, among other things:

- a. As a result of Berkshire's "investment in the Corporation [and] its basis in the stock," it would face "challenges . . . with exiting through open market transactions given its shares are not registered and any sales would trigger SEC filing obligations."
- b. "As a result," Berkshire "[wa]s positioned differently from all the other shareholders and would need to take a substantial discount to market if it were to sell in the open market or in block trades."
- c. In other words, Berkshire would have to take a discount to "exit its position in the Company's stock in the absence of a sale of the Company." Proxy, 36.

184. The Board was also well aware that **Berkshire had a “previously stated desire for an eventual exit” from its USG investment.** As noted above, media reports likewise noted Berkshire’s desire to exit its USG investment.

185. Notably, hand in hand with this discussion, the Board also specifically recognized “the fact that they could not substitute the judgment of one shareholder for what they believed to be in the best interest of all shareholders, particularly given the different posture of that one shareholder.” However, that is exactly what they did, as the Board acceded entirely to Berkshire’s desire to exit its investment and the pressure it placed on the Board to accept the Knauf Buyout.

C. The Defendants

186. Finally, the Board acceded to the Knauf-induced and Berkshire-demanded sale to protect their reputations and to avoid a potentially career-ending and reputation-killing proxy fight loss, which could have affected their other business interests, their positions in other companies in which they worked, and their positions on the other boards on which they served. As outlined below, virtually every member of the Board served on multiple boards and/or had significant business interests beyond USG – interests that could be damaged by a public proxy fight loss to Warren Buffett. For example, in addition to USG:

- Defendant Leer currently serves on the boards of the following publicly traded companies: Norfolk Southern Corporation (where he serves as lead director), Parsons Corporation, and Cenovus Energy Incorporated. In addition to the \$336,000.00 paid to Leer by USG in 2018, Leer

received approximately \$746,930.00 in compensation for his service on these other boards. Previously, Leer served as Chairman of Arch Coal, Inc., a publicly traded coal producing company, from April 2006 to April 2014, and served as a director of Arch Coal and its predecessor company from 1992 until April 2014. Leer has also served as a board member of several professional associations and as a member of the Board of Regents of Washington University in St. Louis.

- Defendant Scanlon currently serves on the boards of Norfolk Southern Corporation, a publicly traded transportation company, the National Association of Manufacturers, the Chicago Council on Global Affairs, and SHORE Community Services, Inc. In 2018, Norfolk Southern paid Scanlon approximately \$246,670.00 for her service on the board. Defendant Scanlon is also a member of the Executives' Club of Chicago, the Chicago Network, and the Economic Club of Chicago, all of which are exclusive organizations of business leaders and whose memberships are by invitation only.
- Defendant Armario currently serves on the board of Avon Products, Inc., a publicly traded beauty company, and in January 2019 was named CEO and will serve on the board of Bojangles' Famous Chicken 'n Biscuits following the restaurant chain's go-private acquisition. Armario is also a director of Golden State Foods, one of the largest diversified suppliers to the world's food-service industry, and a member of the President's Council of the University of Miami. Previously, Armario served as a board member for the Chicago Council on Global Affairs, the Council of the Americas, New York, where he served as the Director, and the Ronald McDonald House Charities of Latin America, where he also served as the Director. In addition to the \$200,528.00 paid by USG in 2018, Avon Products, Inc. paid Armario approximately \$206,061.00 for his service.
- Defendant Hernandez currently serves on the board of the following publicly-traded companies: Northrop Grumman Corp. and Albemarle Corp. In addition to the \$222,500.00 paid to Hernandez by USG in 2018, he also received approximately \$572,171.00 in compensation for his service on these other boards. Mr. Hernandez is also a board member of the Three Rivers Chapter of the National Association of Corporate Directors, a nonprofit membership organization for corporate board members. Previously, Hernandez served as a director of the Eastman

Kodak Company and Black Box Corporation.

- Defendant Lavin currently serves on the board of the following publicly-traded companies: ITT, Inc. and Allison Transmission Holdings, Inc. In addition to the \$215,000.00 paid to Lavin by USG in 2018, he also received approximately \$414,995.00 in compensation for his service on these other boards.
- Defendant Haggerty currently serves on the board of the following publicly-traded companies: Johnson Controls International and Teleflex, Inc. In addition to the \$200,028.00 paid to Haggerty by USG in 2018, she also received approximately \$462,728.00 in compensation for her service on these other boards. Haggerty is also a director of the United Way of Southwestern Pennsylvania and the Strategic Investment Fund, a private sector financing resource dedicated to the economic development of Pittsburgh and the surrounding region.
- Defendant Carter serves on the board of NRG Energy, Inc., Jones Lang LaSalle, Inc. (since November. 2018), and in September 2018 was appointed CEO of Aryaka Networks, Inc., where he will also serve on the board of directors. In addition to the \$200,000.00 paid to Carter by USG in 2018, he also received approximately \$506,944 in compensation from NRG Energy, Inc. and Jones Lang LaSalle, Inc.
- Defendants Burke and Kenney, in addition to their service on USG's board, each serve as President and CEO of publicly-traded companies. Defendant Burke is also Chairman of the Racine County Workforce Development Board and a Director of the National Association of Manufacturers, an advocacy group representing small and large companies across all industrial sectors.

187. A public proxy fight loss to Knauf and/or Berkshire – which controlled almost 41.6% of the Company – and the forced removal from the USG Board that would have followed would have placed each of these Defendant's other positions in peril, thereby threatening their very livelihoods. Indeed, **every** Defendant served on the boards of private or publicly-traded companies. A public

ouster from another publicly-traded company's board – especially at the hands of Warren Buffett – would place their qualifications into doubt and would make them less attractive as a board member on the companies for which they already work, as well as for new board positions.

188. Second, the reputational and financial losses that these Defendants would have suffered as a result of a public ouster at the hands of Knauf and/or Berkshire far outweighed any nominal increase in value they may have secured for themselves had they fairly negotiated for USG's non-insider stockholders. That is because the Defendants were not heavily invested in USG. As of August 21, 2018, the non-executive directors of USG held, collectively, only 145,996 shares of USG common stock and just 239,063 Deferred Stock Awards:¹⁶

Name	Stock (#)	Shares of Common	DSUs (#)	Total Value (\$)
Jose Armario		6,534	79,191	\$ 3,732,305
Thomas A. Burke		710	16,614	\$ 753,949
Matthew Carter, Jr.		—	20,219	\$ 879,527
Gretchen R. Haggerty		41,713	—	\$ 1,835,372
William H. Hernandez		17,905	27,360	\$ 1,977,980
Brian A. Kenney		36,659	—	\$ 1,612,996
Richard P. Lavin		36,657	1,146	\$ 1,662,759
Steven F. Leer		5,818	94,533	\$ 4,368,178

Had these Defendants actually secured more value for USG's stockholders, they stood to gain very little for each incremental amount secured. By way of example

¹⁶ At the effective time of the merger, each DSU Award held by non-employee directors was cashed out.

only, for each \$1 of additional consideration secured by these directors from Knauf, they stood to make, collectively, less than \$400,000. By contrast, Knauf would have had to pay an additional \$139,462,508. What is more, the Merger also had the added benefit of providing liquidity and easy money by cashing out their DSUs.

189. In other words, and as is apparent, had the Defendants done what was best for USG's non-insider stockholders and chosen to contradict Knauf and Berkshire and pursue USG's standalone plan, they stood to gain, individually and collectively, very little. However, for that small gain, they risked a near-certain ouster at the hands of Knauf and/or Berkshire – one that could have resulted in them losing their other lucrative employments and board positions. Stated differently, the relatively miniscule amounts that the Defendants stood to gain from defying Knauf and Berkshire and pursuing USG's standalone strategy simply were not material in comparison to the sums the Defendants made in their other employments and as a result of their other board memberships.

190. Finally, Defendant Scanlon also stood to make more than \$36 million in Golden Parachute compensation in connection with the Buyout.

191. In short, the Defendants did what was easiest and financially safest for them and agreed to the Knauf-induced and Berkshire-forced sale to Knauf, which: (1) protected their reputations and other lucrative employment and board

positions while (2) providing them with easy liquidity. Protecting their professional reputations while also receiving that windfall liquidity was, quite simply, a far better option than a public and notorious proxy fight loss to Warren Buffett and the reputational damage that would accompany it. In short, the risk of a public ouster at the hands of Knauf and/or Buffett to the Defendants' personal and financial well-being far outweighed any nominal increase in value they may have secured for themselves had they actually secured fair value for USG's non-insider stockholders.

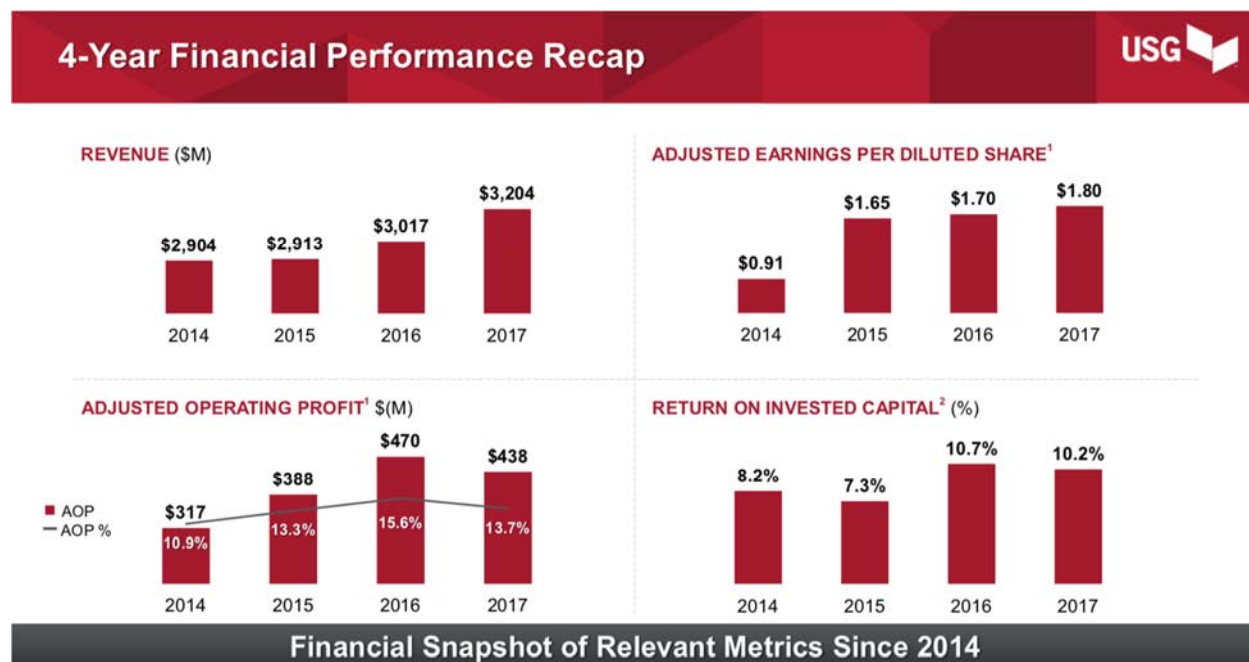
IV. THE MERGER CONSIDERATION UNDERVALUED USG

192. Pursuant to the terms of the Merger Agreement, USG stockholders received \$44.00 in cash for each share of USG common stock that they owned. This consideration was inadequate and undervalued the Company.

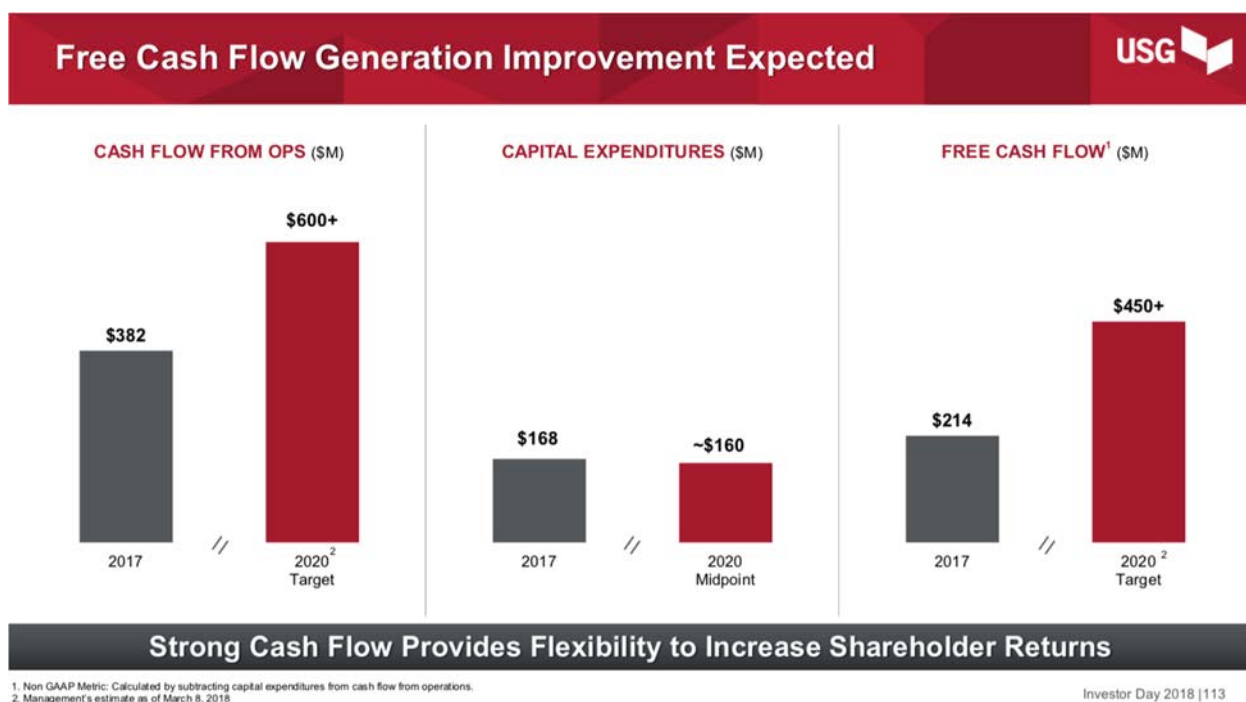
193. *First*, this is perhaps best illustrated by the fact that the Board internally determined that "the intrinsic value of the Corporation is \$50 a share" Indeed, consistent with this determination, on April 30, 2018, the Board authorized Defendant Scanlon to begin negotiations within a range of \$48.00 and \$51.00 per share. Proxy, 40. Importantly, prior to determining this negotiating range, the Board held a discussion of its view of USG's intrinsic value, which informed this range.

194. *Second*, the Merger Consideration is also inconsistent with the Company's own internal projections and financial results. As noted above, during a December 15, 2017 Board meeting, USG management specifically noted to the Board that USG was experiencing positive momentum in the fourth quarter and **specifically expressed confidence in its long-term plan**. Consistent with this positive momentum and confidence, in late 2017 and early 2018, USG's price began to organically rise, hitting a 52-week high of \$40.82 on January 8, 2018.

195. On March 8, 2018, when USG held its inaugural "Investor Day" presentation (which is incorporated herein by reference), it outlined the Company's significant recent financial successes and disclosed the following financial projections through the end of its 2020 fiscal year:



1. Non GAAP Metric - Please refer to Non-GAAP to GAAP Reconciliation Tables in the Appendix.
 2. ROIC is calculated in the following manner: AOP * (1-.32)/(total debt + shareholders' equity). 32% is an estimate of our effective tax rate over the period.



196. Notably, in connection with this presentation and projections, the Board was informed “that the guidance had been thoroughly vetted by management, **and that they are numbers that management believes are achievable.**”

197. On April 25, 2018, the Company issued a press release announcing its first quarter 2018 results and filed its quarterly report in connection with the same. Therein, the Company disclosed, among other points, that the previous quarter had seen a 4% increase on an adjusted basis in net sales year-over-year and that the Company was experiencing its highest US wallboard pricing in 12 years.

198. During a March 23, 2018 Board meeting, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

199. Similarly, during a May 9, 2018 Board meeting that followed the Board's losses at its 2018 annual meeting, **Defendant Scanlon reiterated that USG's recent performance "further supported management's belief that it would meet or exceed plan for the year," but the Board also could not help but recognize "the impact of Warren Buffett's public comments on some shareholders views of value."**

200. Likewise, during a May 24, 2018 Board meeting, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

201. On July 25, 2018, the Company issued a press release announcing its second quarter 2018 results. Therein, the Company disclosed, among other

points, that, on a year-over-year basis, net sales were up \$69 million, or 9%, and net income increases \$22 million, or 61%, and diluted EPA increases \$0.17, or 71%.

202. On October 25, 2018, after the shareholder vote but before the Buyout closed, the Company issued a press release announcing its third quarter 2018 results. Therein, the Company disclosed, among other points, that, on a year-over-year basis, net sales continued to increase, this time by \$56 million, or 7%.

203. Finally, on February 14, 2019, after the shareholder vote but before the Buyout closed, the Company issued a press release announcing its fourth quarter and full year 2018 results. Therein, the Company disclosed, among other points, that, on a year-over-year basis, for the fourth quarter, net income increased \$111 million – or 161% - and, for the full year 2018, net sales increased \$1.43 million, or 4%, net income increased \$108 million, or 123%, and diluted EPS increases \$0.78 per share, or 138%.

V. THE STOCKHOLDER VOTE WAS NOT FULLY INFORMED

204. Directors of Delaware corporations are under a fiduciary duty to disclose fully and fairly all material information within the board's control when it seeks stockholder action. The Board breached this duty by causing a materially incomplete and misleading Proxy to be filed with the SEC on August 23, 2018. As discussed above, the Proxy omitted material information that prevented USG

stockholders from casting an informed vote with respect to the Buyout.

205. Most notably, nowhere in the Proxy was the Board's internal valuation of the Company on an inherent, standalone basis disclosed to shareholders, nor were the Board's internal misgivings regarding the Buyout and the Merger Consideration disclosed. Instead, the Board falsely represented, in contradiction to their own internal determinations and conclusions, that the Buyout and Merger Consideration were fair to shareholders. As a result, when stockholders voted on the Buyout, they were unaware (1) that the Board had internally concluded that USG had a significantly higher value on an inherent, standalone basis than what was being offered in the Buyout and (2) that the Board had internally determined that the Merger Consideration was indeed inadequate and not fair to shareholders, such that the vote on the Buyout was not fully informed.

* * *

206. In sum, the Board conducted a flawed sales process that failed to maximize stockholder value and caused a materially incomplete and misleading Proxy to be filed with the SEC. The Board prevented Plaintiffs and the Class from being adequately compensated for their USG shares, and deprived the Company's stockholders of the ability to cast an adequately informed vote with respect to the Buyout. Accordingly, Plaintiffs seek monetary damages.

CAUSES OF ACTION

COUNT I

(Against the Defendants for Breach of Fiduciary Duties)

207. Plaintiffs repeat and reallege each allegation set forth herein.

208. The Defendants have violated fiduciary duties owed to the public shareholders of USG.

209. By the acts, transactions, and courses of conduct alleged herein, the Defendants have failed to obtain for the public stockholders of USG the highest value available for USG in the marketplace.

210. As alleged herein, the Defendants conducted a process to sell USG that undervalued the Company and vested them with benefits that were not shared equally by USG's public stockholders. In addition, by agreeing to the Buyout, the Defendants capped the price of USG stock at a price that did not adequately reflect the Company's true, inherent, standalone value. Moreover, Defendants failed to sufficiently inform themselves of USG's value, or disregarded the true value of the Company, in an effort to benefit themselves. Furthermore, any alternate acquirer was faced with engaging in discussions with a management team and Board that was committed to the Buyout. Finally, Defendants failed to provide USG's public stockholders with all material information necessary to decide whether to vote their shares in connection with the Buyout.

211. As a result of the actions of Defendants, Plaintiffs and the Class have suffered damages in that they did not receive the highest available value for their equity interest in USG, and they also suffered the injury of an uninformed stockholder vote. Plaintiffs therefore seek damages, including by way of quasi-appraisal, on behalf of themselves and the Class, in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand relief in their favor and in favor of the Class and against Defendants as follows:

A. Declaring that this action is properly maintainable as a Class action and certifying Plaintiffs as the Class representatives and their counsel as Class counsel;

B. Directing the Defendants to account to Plaintiffs and the Class for all damages suffered as a result of the wrongdoing, including pre and post-judgment interest;

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

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

Respectfully submitted,

Dated: December 16, 2019

COOCH AND TAYLOR, P.A.

OF COUNSEL

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