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Case No. 2020-0418-MTZ

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

VRAJESHKUMAR PATEL, individually and on behalf of all others similarly situated, and derivatively on behalf of Nominal Defendant TALOS ENERGY INC.,

Plaintiff,

v.

TIMOTHY S. DUNCAN, NEAL P. GOLDMAN, CHRISTINE HOMMES, JOHN "BRAD" JUNEAU, DONALD R. KENDALL, JR., RAJEN MAHAGAOKAR, CHARLES M. SLEDGE, ROBERT M. TICHIO, JAMES M. TRIMBLE, OLIVIA C. WASSENAAR, RIVERSTONE HOLDINGS, LLC, APOLLO GLOBAL MANAGEMENT, INC. and GUGGENHEIM SECURITIES, LLC,

Defendants,

-and-

TALOS ENERGY INC.,

Nominal Defendant.

C.A. No. 2020-0418-MTZ

RIVERSTONE HOLDINGS, LLC'S OPENING BRIEF IN SUPPORT OF ITS MOTION TO DISMISS THE VERIFIED STOCKHOLDER **DERIVATIVE AND CLASS ACTION COMPLAINT**

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Defendant Riverstone Holdings, LLC ("Riverstone") respectfully submits this memorandum in support of its motion to dismiss the Verified Stockholder Derivative and Class Action Complaint (the "Complaint" or "Compl.") of Plaintiff Vrajeshkumar Patel ("Plaintiff") pursuant to Delaware Court of Chancery Rule 12(b)(6). For the reasons stated below, the Complaint should be dismissed in its entirety as to Riverstone.

PRELIMINARY STATEMENT

Plaintiff's core theory is that as part of an apparently unspoken and unwritten *quid pro quo*, Riverstone and Apollo Global Management, Inc. ("Apollo"), two alleged minority stockholders of Talos Energy Inc. ("Talos" or the "Company"), breached purported fiduciary duties by orchestrating the Company's overpayment for energy-related assets (the "Assets") from certain Riverstone fund affiliates. According to the Complaint, Riverstone and Apollo managed to pull off the scheme despite the complete recusal of both of Riverstone's board designees from the entire process.

As a threshold matter, Riverstone is demonstrably not itself a Talos stockholder, let alone a controlling shareholder, and therefore could not independently owe fiduciary duties to the Company or Talos public stockholders. But even had the Complaint named as defendants the Riverstone funds that actually own Talos stock, the far-fetched conspiracy to form a manipulative "control group"

with Apollo is devoid of any detail—the "who, when, what, where, or how" behind the contrived scheme—and the purported *quid pro quo* "why" of any such agreement is economically illogical on its face. Plaintiff's claims fail as a matter of law and should be dismissed for at least three primary reasons.[1]

First, Riverstone itself does not own the 27.5% stake in Talos that Plaintiff seeks to aggregate with Apollo's holdings—Riverstone's legally distinct affiliates do. Because Plaintiff has not pled any basis to conflate Riverstone and those affiliates, the control-based claims against Riverstone fail on that basis alone.

Second, the Complaint is devoid of well-pled facts sufficient to sustain a reasonable inference that Riverstone (let alone any affiliate of Riverstone) and Apollo conspired to orchestrate the supposedly overpriced acquisition of the Assets by Talos's independent and well-advised directors. Absent facts establishing that Riverstone and Apollo actually formed a control group, neither they nor their affiliates owed fiduciary duties to Talos or its public stockholders. Despite Plaintiff's access to a § 220 production from Talos, there are no allegations whatsoever of an actual agreement between Riverstone and Apollo to act as a "control group" with respect to this transaction (or otherwise). And the

[1] The claims against Riverstone fail for the additional reasons set forth in the dismissal motion and opening brief filed concurrently by the Talos Defendants, which Riverstone hereby adopts and incorporates by reference.

circumstantial facts Plaintiff relies on to suggest coordination fall well short of demonstrating the sort of "blood pact" that Delaware law requires.

Undeterred, Plaintiff concocts a fantastical and economically irrational *quid pro quo* scheme whereby Apollo supported Talos's alleged overpayment for the Assets as "payback," because Riverstone supposedly had "let" Talos overpay for certain Apollo assets in 2018. But the Complaint does not even attempt to detail Riverstone's involvement in the 2018 transaction—let alone provide well-pled allegations suggesting Riverstone facilitated that deal or did anything to somehow lock in the future "quo" for the supposed "quid." Moreover, although Plaintiff fails to specify the purported windfall to Apollo in the 2018 deal, the allegation that Talos overpaid for the Assets by *hundreds of millions* of dollars in 2020 would appear to make Apollo a net loser in Plaintiff's fantasy—only further underscoring the financial absurdity of Plaintiff's baseless theory.

Third, Plaintiff's unjust enrichment claim is premised upon the same underlying conduct of alleged control, and therefore falls with the fiduciary duty claims. It also fails for the independent reason that an express contract governs Talos's purchase of the Assets.

For these reasons, Riverstone respectfully requests that Plaintiff's Complaint be dismissed as to Riverstone for failure to state a claim.

FACTUAL ALLEGATIONS[2]

A. Talos, Riverstone, and Apollo

Riverstone is a leading private markets asset management firm focused on energy, power, and infrastructure investments. Compl. ¶ 21; *see also* Riverstone Holdings LLC, *About*, https://www.riverstonellc.com/en/about (last visited July 31, 2020).[3] Riverstone conducts private equity and credit investments in the exploration and production, midstream, oilfield services, power, and renewable sectors of the global energy industry. *See id.* Riverstone has over 120 employees in offices in New York, London, Houston, Mexico City, and Amsterdam, and has committed approximately $41 billion to more than 195 investments in eleven countries throughout North America, Latin America, Europe, Africa, Australia, and Asia. *Id.*

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[2] These facts are drawn from the Complaint and documents incorporated therein, including documents produced in response to Plaintiff's demand to inspect books and records under 8 Del. C. § 220, or are otherwise matters of which the Court may take judicial notice. *See Wal-Mart Stores, Inc. v. AIG Life Ins. Co.*, 860 A.2d 312, 320 (Del. 2004) (confirming the court may consider documents "incorporated by reference" or "integral" to the complaint (citation omitted)); D.R.E. 201(b)(2) (court may judicially notice facts that are "not subject to reasonable dispute" because they "[c]an be accurately and readily determined from sources whose accuracy cannot reasonably be questioned"); *Amalgamated Bank v. Yahoo! Inc.*, 132 A.3d 752, 797 (Del. Ch. 2016) (considering entire documents produced in response to a § 220 demand, and not just the portions "cherry-picked" by the plaintiff), *abrogated on other grounds by Tiger v. Boast Apparel*, 214 A.3d 933 (Del. 2019).

[3] The Court may take judicial notice of information posted on official company websites. *See Sandys v. Pincus*, 152 A.3d 124, 129 n.16 (Del. 2016); *Bucks Cty. Emps. Ret. Fund v. CBS Corp.*, 2019 WL 6311106, at *4 (Del. Ch. Nov. 25, 2019).

Riverstone investment funds acquired a minority stake in Talos on May 10, 2018, when Talos was formed as the result of a business combination (the "Combination") between non-parties Stone Energy Corporation and Talos Energy LLC ("Old Talos")—an entity that Plaintiff alleges was controlled by affiliates of Riverstone and Apollo. Compl. ¶¶ 12–13. At all times relevant to the Complaint, Riverstone affiliates Talos Energy Equityco LLC ("Riverstone Equityco") and Riverstone Talos Energy Debtco LLC ("Riverstone Debtco" and, together with Riverstone Equityco, the "Riverstone Funds"),[4] and Apollo affiliates AP Talos Energy, LLC and AP Talos Energy Debtco, LLC (the "Apollo Funds"), owned approximately 27.5% and 35.4% of the Company's stock, respectively. *Id.* ¶ 14.

Contemporaneous with the Combination in May 2018, the Riverstone and Apollo Funds entered into the Stockholders' Agreement with Talos. *Id.* ¶ 16; Hymes Decl. Ex. 6, Stockholders' Agreement at TAL0000583.[5] That agreement affords the

[4] Riverstone is the sole shareholder of Riverstone Energy GP V Corp, which is the managing member of Riverstone Energy GP V, LLC, which is the general partner of Riverstone Energy Partners V, L.P., which is the general partner of Riverstone Global Energy and Power Fund V (FT), L.P., which is the general partner of Riverstone V Talos Holdings, L.P., which is the managing member of Riverstone Equityco and the sole manager of Riverstone Debtco. *See* Talos Energy Inc., Schedule 14A Proxy Statement at 52–53 (Apr. 8, 2020), https://www.sec.gov/Archives/edgar/data/1724965/000119312520100842/d846550ddef14a.htm.

[5] For efficiency, Riverstone cites herein to exhibits attached to the Transmittal Declaration of Justin T. Hymes ("Hymes Decl.") filed concurrently in connection with the Talos Defendants' opening brief.

Riverstone and Apollo Funds with certain rights as significant minority investors, but equally important is what rights the Agreement does not confer and how it constrains them in significant respects. *See* Compl. ¶¶ 16, 18–19; Hymes Decl. Ex. 6, Stockholders' Agreement at TAL0000583–584.

- The Agreement entitles the Riverstone Funds and Apollo Funds each to nominate two of the Company's ten directors, so long as they individually own at least 15% of Talos's stock; to collectively nominate two additional Board members ("one of which shall qualify as an Independent Director and the other of whom shall either be the Chief Executive Officer of the Company or shall also qualify as an Independent Director"), so long as the Riverstone Funds and Apollo Funds together own at least 50% of the stock; and to receive confidential information about the Company from any directors nominated by each. Compl. ¶¶ 16, 18–19; Hymes Decl. Ex. 6, Stockholders' Agreement at TAL0000591–592, TAL0000596.
- The Stockholders' Agreement commits the Riverstone Funds and Apollo Funds to vote in favor of appointing their own and each other's respective Board nominees. Compl. ¶ 17; Hymes Decl. Ex. 6, Stockholders' Agreement at TAL0000595. But the Riverstone Funds and Apollo Funds are otherwise free to vote their stock in their unilateral discretion and in furtherance of their respective self-interests.

- The Stockholders' Agreement also does not provide the Riverstone Funds or Apollo Funds with any other unilateral rights that would allow them to exert control over Talos or each other; for example, the Riverstone Funds have no veto power that they could use to coerce Talos, its Board, or its other stockholders.
- The Stockholders' Agreement imposes stringent prophylactic self-disabling provisions, including a prohibition on Talos effecting any transaction in which the Riverstone Funds or Apollo Funds have a direct or indirect material interest (other than an interest as a Talos stockholder proportionate to their Company stock ownership), and prohibiting the Riverstone Funds and Apollo Funds from causing the Company to enter into such "related party transactions" unless approved by a majority of disinterested directors or the Audit Committee. Hymes Decl. Ex. 6, Stockholders' Agreement at TAL0000587, TAL0000595. The Agreement also subjects the Riverstone Funds and Apollo Funds to a lockup provision prohibiting either group from transferring Talos shares to any other individuals or entities until May 2019, as well as a standstill provision in effect through May 2020. *Id.* at TAL0000597–598.

B. The Transaction: Talos Acquires the Assets

The Complaint challenges Talos's strategic asset acquisition from two Riverstone affiliates: Castex Energy 2014, LLC ("Castex") and ILX Holdings, LLC ("ILX Holdings").[6] Compl. ¶ 59. In 2014, Riverstone affiliates Riverstone Global Energy and Power Fund V and Riverstone Energy Limited made an equity commitment of up to $200 million to Castex, a joint venture exploring energy opportunities in the Gulf of Mexico. *See id.* ILX Holdings was established in a series of oil and gas exploration and production partnerships focused on the deepwater Gulf of Mexico, beginning in 2010. *See id.*

Seeking to increase the Company's scale and diversity, in spring 2019 the Talos Board began considering potential target assets to acquire. *See* Hymes Decl. Ex. 8, April 17, 2019 Board Meeting Minutes at TAL0001244–1245; Hymes Decl. Ex. 10, May 6, 2019 Board Meeting Minutes at TAL0001248–1250. On December 10, 2019, Talos announced it had entered into agreements to acquire U.S. Gulf of Mexico producing assets, prospects, and acreage (the "Assets") from Castex, ILX Holdings, and Castex Energy 2016, LP (the "Sellers" and the "Transaction"). Compl. ¶ 59. Under the terms of the agreements, the Sellers would receive $385

[6] For background, three different ILX entities sold assets to Talos in this transaction: ILX Holdings, LLC, ILX Holdings II, LLC and ILX Holdings III, LLC.

million in cash plus 11 million shares of Talos common stock, for total consideration allegedly valued at $635 million. *Id.* ¶¶ 60, 98.[7]

Given Riverstone's affiliation with the Sellers, the Transaction was subject to the related party process prescribed by the Stockholders' Agreement and Bylaws. While named as defendants, the directors affiliated with Riverstone—Robert Tichio and Rajen Mahagaokar, both designated by the Riverstone Funds, and Olivia Wassenaar, who held a personal interest in certain Riverstone affiliates—all recused themselves from not just the Board's final vote, but also discussions and deliberations about the Transaction. *Id.* ¶ 65.[8] The remaining disinterested directors had the complete ability to decline the Transaction, in which the Sellers—as Riverstone affiliates—stood opposite Talos and the Apollo Funds. And the Board held at least seven meetings to evaluate the Transaction—with the benefit of robust

[7] The additional shares acquired in the Transaction are not alleged to have altered in any way Riverstone's limited rights and constraints under the Stockholders' Agreement.

[8] *See also* Hymes Decl. Ex. 8, Apr. 17, 2019 Board Meeting Minutes at TAL0001244; Hymes Decl. Ex. 9, Apr. 25, 2019 Board Meeting Minutes at TAL0001246; Hymes Decl. Ex. 10, May 6, 2019 Board Meeting Minutes at TAL0001251; Hymes Decl. Ex. 11, Oct. 4, 2019 Board Meeting Minutes at TAL0000002; Hymes Decl. Ex. 12, Oct. 22, 2019 Board Meeting Minutes at TAL0000579; Hymes Decl. Ex. 13, Oct. 29, 2019 Board Meeting Minutes at TAL0000005; Hymes Decl. Ex. 14, Dec. 6, 2019 Board Meeting Minutes at TAL0000009; Hymes Decl. Ex. 15, Feb. 19, 2020 Board Meeting Minutes at TAL0001307.

advice provided by Guggenheim Securities, LLC ("Guggenheim")—before the Company's independent, disinterested directors voted to approve the Transaction. Hymes Decl. Ex. 14, Dec. 6, 2019 Board Meeting Minutes at TAL0000011; Compl. ¶ 65.[9]

Not only did Talos's interested directors properly recuse themselves, but the remaining, disinterested Board members insisted on pressing for the full suite of Assets despite Riverstone's proposal at one point to narrow the scope of the sale. Hymes Decl. Ex. 10, May 6, 2019 Board Meeting Minutes at TAL0001251. The Complaint nonetheless attempts to taint the participating directors as well as the ensuing economically neutral shift in consideration structure from 11 million shares of common stock to 110,000 shares of Series A Convertible Preferred Stock, which converted into 11 million shares of common stock after twenty days. Compl. ¶¶ 67–68. Yet the Complaint does not allege that Riverstone (or the Riverstone Funds) requested the restructured consideration.

The Complaint also makes no mention of the fact that the Transaction was well received by investors, with the Company's closing stock price rising a full

[9] *See* Hymes Decl. Ex. 8, Apr. 17, 2019 Board Meeting Minutes at TAL0001244; Hymes Decl. Ex. 9, Apr. 25, 2019 Board Meeting Minutes at TAL0001246; Hymes Decl. Ex. 10, May 6, 2019 Board Meeting Minutes at TAL0001248; Hymes Decl. Ex. 11, Oct. 4, 2019 Board Meeting Minutes at TAL0000001; Hymes Decl. Ex. 12, Oct. 22, 2019 Board Meeting Minutes at TAL0000576; Hymes Decl. Ex. 13, Oct. 29, 2019 Board Meeting Minutes at TAL0000005; Hymes Decl. Ex. 14, Dec. 6, 2019 Board Meeting Minutes at TAL0000009.

dollar—from $25.40 to $26.40—within a day of the December 10, 2019 announcement, and steadily increasing over the ensuing several weeks before declining along with other energy stocks amidst the COVID-19 pandemic. *See* Talos Energy Inc., https://www.marketwatch.com/investing/stock/talo (last visited July 27, 2020).[10] The Transaction closed on February 28, 2020. Compl. ¶ 74.

C. Plaintiff's Complaint and the "Quid Pro Quo" Theory

Plaintiff filed this lawsuit on May 29, 2020, purporting to assert claims both directly and derivatively, based on his contention that the Transaction was "unfair" and caused the Company to pay "a $200 million premium" for the Assets. *Id.* ¶ 99. His Complaint asserts three claims against Riverstone: direct and derivative claims for breach of fiduciary duty and a derivative claim for unjust enrichment (Counts II, V, and VII). Plaintiff also asserts a direct and derivative claim for breach of fiduciary duty against the Director Defendants (Counts I and IV); a direct and derivative claim

[10] "This Court 'may take notice of' . . . a company's 'share price.'" *Howland v. Kumar*, 2019 WL 2479738, at *2 n.9 (Del. Ch. June 13, 2019) (quoting *Cty. of York Emps. Ret. Plan v. Merrill Lynch & Co.*, 2008 WL 4824053, at *7 (Del. Ch. Oct. 28, 2008)). Market commentators also applauded the Transaction as "allow[ing] Talos to strengthen its position in the U.S. Gulf of Mexico and diversify its portfolio beyond its core Green Canyon and Mississippi Canyon area," and "provid[ing] a strong inventory of opportunities for [the Company's] traditional Infrastructure-led developments in the Miocene and also an entry point into high-impact Paleogene discoveries and acreage." Carolyn Davis, *Talos Wades into GOM Again, Spends $640M for Package of E&P Prospects*, Nat. Gas Intel. (Dec. 12, 2019), https://www.naturalgasintel.com/talos-wades-into-gom-again-spends-640m-for-package-of-ep-prospects/ (quoting Wood Mackenzie Analyst Mfon Usoro).

for breach of fiduciary duty against Apollo (Counts II and V); and a direct and derivative claim for aiding and abetting breach of fiduciary duty against Guggenheim (Counts III and VI).

Plaintiff's claims against Riverstone rest on the theory that Riverstone and Apollo collectively controlled Talos and forced the Company's acquisition of the Assets at an inflated price. *Id.* ¶¶ 170–71. To that end, Plaintiff asserts that Riverstone and Apollo have "longtime ties and have invested in the same companies together for years." *Id.* ¶ 2. Despite the firms' twenty years of contemporaneous existence, however, the Complaint alleges merely that two former Riverstone employees have moved to Apollo since 2010, *id.* ¶ 36, and that the firms crossed paths on four prior transactions: (1) the formation of Old Talos in 2012, (2) the buyout of EP Energy Corp. ("EP Energy") in 2013, (3) the Combination in 2018, and (4) the acquisition by Talos of Whistler Energy II, LLC ("Whistler") from Apollo in 2018, *id.* ¶¶ 12–13, 15, 37–38, 43, 55. Of these transactions, only the EP Energy buyout was unrelated to Talos—and Riverstone was just one of several co-investors with Apollo in that transaction. *See* EP Energy Corp., Registration Statement (Form S-1) at 9 (Sept. 4, 2013), https://www.sec.gov/Archives/edgar/data/1584952/000104746913008853/a2216487zs-1.htm.

Plaintiff speculates that Talos's Whistler acquisition marked the first half of a "quid pro quo." Compl. ¶ 43. In that transaction, which closed in August 2018,

Talos acquired Whistler out of Chapter 11 bankruptcy for $52.3 million and the release of $46 million of cash collateral securing Whistler's surety bonds. *Id.* ¶ 55. This consideration, combined with the $35 million Apollo received from Whistler's bankruptcy, allegedly enabled Apollo to recoup most of its $135 million investment in Whistler, thereby avoiding a potential loss. *Id.* Plaintiff fails to specify the exact amount by which Talos supposedly overpaid, but the Complaint suggests that Apollo received, at most, a 66% "premium" for its assets—*i.e.*, $34.5 million (based on the $52.3 million purchase price), representing a net "windfall" to Apollo of no more than $22.3 million (accounting for the fact that Apollo itself would have funded 35.4% of any such overpayment, commensurate with its affiliates' proportionate Talos ownership). *Id.* ¶ 56. The Complaint does not allege any facts to suggest that Riverstone directly or indirectly supported or coordinated with Apollo to force the Whistler acquisition. Instead, Plaintiff asserts only generically that Riverstone "agreed to let Talos bail out Apollo from [its] Whistler" investment. *Id.* ¶ 58.

ARGUMENT

A motion to dismiss under Court of Chancery Rule 12(b)(6) should be granted when the plaintiff's claims give rise to no "reasonably conceivable set of circumstances susceptible to proof" that entitle it to recovery. *Sheldon v. Pinto Tech. Ventures, L.P.*, 220 A.3d 245, 251 n.16 (Del. 2019) (quoting *Savor, Inc. v. FMR Corp.*, 812 A.2d 894, 897 (Del. 2002)). Although the Court should "accept all well-

pleaded factual allegations in the Complaint as true" and "draw all reasonable inferences in favor of the plaintiff," it need not accept "conclusory allegations unsupported by specific facts or . . . draw unreasonable inferences" in the plaintiff's favor. *In re Volcano Corp. S'holder Litig.*, 143 A.3d 727, 737 (Del. Ch. 2016) (internal quotation marks and citations omitted). By the same token, the Court "is not required to accept every strained interpretation of the allegations proposed by the plaintiff," and should draw only those "reasonable inferences that logically flow from the face of the complaint." *Malpiede v. Townson*, 780 A.2d 1075, 1083 (Del. 2001). "Moreover, a claim may be dismissed if allegations in the complaint or in the exhibits incorporated into the complaint effectively negate the claim as a matter of law." *Id.*

I. PLAINTIFF HAS SUED THE WRONG PARTY

As a threshold matter, Plaintiff has incorrectly named Riverstone as a defendant in this action. The Complaint alleges that Riverstone owned a minority share of Talos stock and collectively "controlled the Company" with Apollo. *See* Compl. ¶¶ 14–15. But the Riverstone Funds—and not Riverstone—owned Talos stock at the time of the challenged transaction. *See* Hymes Decl. Ex. 1, Talos Energy Inc., Schedule 14A Proxy Statement at 52 n.1 (Apr. 8, 2020). Plaintiff's Complaint therefore requires the Court to treat Riverstone and its legally distinct affiliates as a single enterprise. The Court should reject that invitation.

"Delaware public policy does not lightly disregard the separate legal existence of corporations," *Doberstein v. G-P Indus., Inc.*, 2015 WL 6606484, at *4 (Del. Ch. Oct. 30, 2015), and "[p]ersuading a Delaware court to disregard the corporate entity is a difficult task," *Wallace ex rel. Cencom Cable Income Partners II, L.P. v. Wood*, 752 A.2d 1175, 1183 (Del. Ch. 1999). As relevant here, a court may disregard the legal distinction only where an entity exercises "complete domination and control . . . to the point that [the entity's affiliate] no longer has legal or independent significance of its own." *PR Acquisitions, LLC v. Midland Funding LLC*, 2018 WL 2041521, at *15 (Del. Ch. Apr. 30, 2018). "Effectively," the separation between the various entities "must be a sham and exist for no other purpose than as a vehicle for fraud." *Yu v. GSM Nation, LLC*, 2017 WL 2889515, at *3 (Del. Ch. July 7, 2017) (quoting *Wallace*, 752 A.2d at 1184).

Plaintiff does not even attempt to make such a showing here, and has simply sued the wrong entity.[11] Indeed, the Complaint makes no mention at all of the Riverstone Funds that actually own Talos's stock. This Court should therefore "decline" Plaintiff's implicit "invitation to disregard the corporate form," and dismiss Plaintiff's claims as to Riverstone on that basis. *Janus Capital Grp., Inc. v.*

[11] Plaintiff does not remedy—and instead only magnifies—this error by apparently attempting to shoehorn into this action as a defendant each and every one of Riverstone's legally distinct affiliates. *See* Compl. ¶ 21 (defining "the term 'Riverstone'" as "refer[ring] to Riverstone Holdings, LLC *and its affiliates*" (emphasis added)).

First Derivative Traders, 564 U.S. 135, 145–46 (2011) (refusing to "disregard the corporate form" where it was "undisputed that the corporate formalities were observed"). But even if Plaintiff had named the proper Riverstone affiliates as defendants in this case, Plaintiff's claims would fail on the merits and should be dismissed for that independent reason as well.[12]

II. PLAINTIFF FAILS TO STATE A CLAIM FOR BREACH OF FIDUCIARY DUTY BECAUSE RIVERSTONE WAS NOT A CONTROLLING STOCKHOLDER

Under Delaware law, "controlling stockholders are fiduciaries of their corporations' minority stockholders." *eBay Domestic Holdings, Inc. v. Newmark*, 16 A.3d 1, 26 (Del. Ch. 2010) (citation omitted). Conversely, "a stockholder that owns less than half of a corporation's shares will generally not be deemed to be a controlling stockholder, with concomitant fiduciary responsibilities." *Weinstein Enters., Inc. v. Orloff*, 870 A.2d 499, 507 (Del. 2005). Control exists only when a stockholder "(1) owns more than 50% of the voting power of a corporation or (2) owns less than 50% of the voting power of the corporation but exercises control over the business affairs of the corporation." *Sheldon*, 220 A.3d at 251 (internal quotation marks and citation omitted). The latter standard is "not an easy one to

[12] For the avoidance of confusion, Riverstone refers in the balance of its argument to "Riverstone" generically, as that term is used in the Complaint, without distinguishing between Riverstone and the Riverstone Funds—but does so without waiving its argument that Riverstone is not a proper defendant in this action. Riverstone similarly refers to "Apollo" instead of the Apollo Funds.

satisfy," *In re PNB Holding Co. S'holders Litig.*, 2006 WL 2403999, at *9 (Del. Ch. Aug. 18, 2006), and requires "well-pled facts showing that the minority stockholder 'exercised actual domination and control over . . . [the] directors,'" *In re Morton's Rest. Grp. S'holders Litig.*, 74 A.3d 656, 664–65 (Del. Ch. 2013) (citation omitted).

In other rare cases, a combination of minority stockholders can collectively form a "control group." *Sheldon*, 220 A.3d at 251 (citing *In re Crimson Expl. Inc. S'holder Litig.*, 2014 WL 5449419, at *15 (Del. Ch. Oct. 24, 2014); *Frank v. Elgamal*, 2012 WL 1096090, at *8 (Del. Ch. Mar. 30, 2012)). In such exceptional situations, although each individual stockholder cannot exert control over the business, "the control group is accorded controlling shareholder status, and, therefore, its members owe fiduciary duties to their fellow shareholders." *Dubroff v. Wren Holdings, LLC*, 2009 WL 1478697, at *3 (Del. Ch. May 22, 2009). Proving a control group, while "not impossible," is "rarely a successful endeavor." *In re Nine Sys. Corp. S'holders Litig.*, 2014 WL 4383127, at *24 (Del. Ch. Sept. 4, 2014), *aff'd sub nom. Fuchs v. Wren Holdings, LLC*, 129 A.3d 882 (Del. 2015); *In re Nine Sys. Corp. S'holders Litig.*, 2013 WL 771897, at *6 (Del. Ch. Feb. 28, 2013).

Plaintiff fails to adequately plead that Riverstone was a controlling stockholder under either theory. As a threshold matter, Plaintiff does not and cannot allege that Riverstone was an *individual* controller. There is no dispute that, at the time of the Transaction, Riverstone held only 27.5% of the Company's voting

shares. Compl. ¶ 14. Such a "minority blockholder is not considered to be a controlling stockholder unless it exercises 'such formidable voting and managerial power that [it], as a practical matter, [is] no differently situated than if [it] had majority voting control.'" *Morton's Rest. Grp.*, 74 A.3d at 664–65 (quoting *PNB Holding*, 2006 WL 2403999, at *9). Here, Plaintiff has not even attempted to allege facts showing Riverstone independently exercised actual control over Talos's corporate decision-making.[13]

Plaintiff instead theorizes that Riverstone and Apollo *collectively* exercised control. Compl. ¶ 22. To sustain its pleading burden, however, Plaintiff must allege actual facts supporting a reasonable inference that Riverstone and Apollo were "connected in some legally significant way—e.g., by contract, common ownership, agreement, or other arrangement—to work together toward a shared goal." *Sheldon*, 220 A.3d at 251–52 (internal quotation marks omitted) (quoting *Crimson*, 2014 WL 5449419, at *15). "To show a 'legally significant' connection, [Plaintiff] must allege that there was more than a 'mere concurrence of self-interest among'

[13] For example, Plaintiff does not allege (nor could he) that Riverstone dominated the Company's disinterested directors through a pattern of threats and intimidation, *New Jersey Carpenters Pension Fund v. infoGROUP, Inc.*, 2011 WL 4825888, at *7, 11 (Del. Ch. Oct. 6, 2011), by using its position as a significant stockholder to threaten a hostile takeover, *Kahn v. Lynch Commc'n Sys., Inc.*, 638 A.2d 1110, 1114–15 (Del. 1994), or by possessing a combination of stock voting power and embedded managerial authority that enabled it to control the Company as a practical matter, *In re Cysive, Inc. S'holder Litig.*, 836 A.2d 531, 552–53 (Del. Ch. 2003).

[Riverstone and Apollo]." *Id.* at 252 (quoting *Carr v. New Enter. Assocs. Inc.*, 2018 WL 1472336, at *10 (Del. Ch. Mar. 26, 2018)). "Rather, 'there must be some indication of an actual agreement,' although it need not be formal or written." *Id.* (quoting *Crimson*, 2014 WL 5449419, at *15). Courts have described this requisite connection as a "blood pact." *Dubroff*, 2009 WL 1478697, at *3 n.23; *Zimmerman v. Crothall*, 62 A.3d 676, 700 (Del. Ch. 2013); *Feldman v. Cutaia*, 956 A.2d 644, 657 (Del. Ch. 2007), *aff'd,* 951 A2d 727 (Del. 2008). If, however, Riverstone and Apollo each "had the right" to "act in [its] own self-interest as a stockholder," they did not form a control group. *PNB Holding*, 2006 WL 2403999, at *10.

Plaintiff has not come close to meeting his heavy pleading burden. On the contrary, the Complaint itself affirmatively demonstrates that Riverstone, Apollo, and Talos's independent and disinterested directors observed appropriate protocols in the Transaction and Riverstone did not attempt to influence or control the Talos Board. The Riverstone-appointed directors and an Apollo-appointed director who was a former Riverstone employee were recused from all discussion of and voting on the Transaction. Compl. ¶ 65.[14] Moreover, Riverstone responded to the Company's initial offer by proposing to shrink the available assets, resulting in *Talos*

[14] *See supra* at 9, n.8. Plaintiff alleges that a Riverstone representative, Andrew Wilson, did not rescue himself from discussions of the transaction, Compl. ¶ 65, but Plaintiff does not explain why Wilson's presence at those discussions binds Riverstone and Apollo together as an alleged control group, *see van der Fluit v. Yates*, 2017 WL 5953514, at *6 (Del. Ch. Nov. 30, 2017).

pushing for the full scope that the Company ultimately purchased. Hymes Decl. Ex. 10, May 6, 2019 Board Meeting Minutes at TAL0001251. In the same vein, the Complaint alleges no facts to suggest that Riverstone had any involvement in requesting or pushing for the modified consideration structure of preferred instead of common stock. These facts undercut any inference that the Board was not in complete control and free from undue influence from Riverstone. And although the Complaint makes vague reference to purported "ties" between Apollo and Guggenheim, Compl. ¶ 82—the well-regarded financial advisor that performed a detailed analysis of the Transaction's fairness—Plaintiff has not alleged any facts suggesting a prior business relationship between Guggenheim and Riverstone.

In the face of this unfavorable reality, all Plaintiff has left are vague allegations that are entirely conclusory and speculative, and which do not "indicat[e] . . . an actual agreement" between Riverstone and Apollo. *Silverberg v. Padda*, 2019 WL 4566909, at *6 (Del. Ch. Sept. 19, 2019) (quoting *Crimson*, 2014 WL 5449419, at *15). It is undisputed that they stood on opposite sides of the Transaction, with Apollo as a 35.4% Talos stockholder and Riverstone as Talos's counterparty. The parties' Stockholders' Agreement did not require Apollo to vote in favor of the Transaction, and Plaintiff does not allege any other voting agreement between Riverstone and Apollo regarding the Transaction. *Feldman*, 956 A.2d at 657–58 (no reasonable inference of a control group can be drawn "absent [evidence

of] a voting agreement among the group" or a "blood pact to act together"). And nothing in the Complaint indicates Riverstone had any control over Apollo regarding the Transaction, or that Apollo did not otherwise have complete, unfettered discretion to vote its shares in pursuit of its economic self-interest. *See Sheldon*, 220 A.3d at 254; *Crimson*, 2014 WL 5449419, at *15; *PNB Holding*, 2006 WL 2403999, at *10.

Plaintiff instead attempts to cobble together the missing "blood pact" between Riverstone and Apollo based on: (1) their purported history of "business and professional ties going back years," including employees who moved from Riverstone to Apollo and past transactions involving both entities; (2) the fact that the Stockholders' Agreement permitted Riverstone and Apollo collectively to nominate up to six of the Company's ten Board members; and (3) a conclusory assertion that Apollo supported the Transaction as part of a "quid pro quo" stemming from Riverstone's supposed support of Talos's Whistler acquisition, which purportedly "bailed out" Apollo two years earlier. Compl. ¶¶ 16–19, 35–58. None of those theories comes close to establishing a "legally significant" connection. *Sheldon*, 220 A.3d at 252.

A. Riverstone and Apollo's Supposed Historical Ties Do Not Demonstrate That They Functioned As a Control Group for the Transaction

To find a control group based in part on historical ties, Plaintiff must point to *extensive entanglement* between Riverstone and Apollo. The mere fact that

stockholders may previously have been "loosely connected" is not enough. *Sheldon*, 220 A.3d at 250. Rather, only "a long, well-documented history of coordinated investments"—showing that the parties have "operated in tandem"—will suffice. *Id.* Yet even as large private equity firms, Plaintiff can only allege that Apollo and Riverstone crossed paths on a single transaction other than Talos—as members of a broader investment group pertaining to EP Energy.

Several recent cases underscore the infirmity of such limited connections. In *In re Hansen Medical, Inc. Stockholders Litigation*, 2018 WL 3025525 (Del. Ch. June 18, 2018), the plaintiffs adequately pled facts sufficient to infer the existence of a control group based on a twenty-one-year "history of cooperation and coordination" that included at least seven joint investments. *Id.* at *7. The plaintiffs there also emphasized that the alleged controllers had explicitly held themselves out as a "group" in historical SEC filings, entered into express voting agreements, and held an exclusive right to participate in the private placement that made them the subject company's largest stockholders. *Id.* (finding that a host of "factors, when viewed together in light of the Controller Defendants' twenty-one year coordinated investing history, ma[de] it reasonably conceivable that the Controller Defendants functioned as a control group during the Merger"). Similarly, in *Garfield v. BlackRock Mortgage Ventures, LLC*, 2019 WL 7168004 (Del. Ch. Dec. 20, 2019), the plaintiff alleged that the defendants shared a ten-year history of co-investment in

the company they founded together. *Id.* at *9. And like the investors in *Hansen*, the defendants were referred to in public filings as "Sponsor Members," "strategic investors," and "strategic partners." *Id.*

This case stands in stark contrast. Plaintiff has not alleged any such multi-year history of extensive and continuous coordination between Riverstone and Apollo. The Complaint also does not allege that Riverstone and Apollo ever held themselves out as a cooperative group of investors.[15] *See Sheldon*, 220 A.3d at 255 (affirming finding of no control where complaint did not allege that stockholders "held themselves out as a group of investors or that they reported as such to the SEC"). Instead of a lengthy history of coordination, the Complaint alleges only that two former Riverstone members accepted positions with Apollo over the past decade, with one of those individuals, non-party Gregory Beard, purportedly helping to facilitate the transaction by which Riverstone and Apollo gained control of Old Talos. Compl. ¶¶ 36–37. But the unremarkable overlapping of a couple employees hardly shows that the firms were beholden to each other for purposes of controlling Talos generally or directing the outcome of the Transaction specifically. Nor does

[15] The Complaint notes that a September 2018 registration statement disclosed that Talos was "controlled by Apollo Funds and Riverstone Funds." Compl. ¶ 171. But that disclosure merely reflected the fact that those two groups of entities, in combination, held more than half of the Company's outstanding shares. It in no way suggested that Riverstone and Apollo acted in concert to control Talos's decision-making or otherwise held themselves out as coordinated investment partners.

the allegation that a single individual who happened to work for Riverstone and Apollo at different times, and who was involved in a mutually beneficial transaction in the past, reasonably suggest that Riverstone and Apollo coordinated their Talos investment vision for all purposes moving forward. *See van der Fluit*, 2017 WL 5953514, at *6 (finding plaintiff did not sufficiently allege that co-founders of company exercised control as minority stakeholders when the complaint alleged no facts about their working relationship or showing that they voted together or operated the company in unison).

The Complaint also does not explain how Riverstone and Apollo's past participation in the acquisitions of Old Talos, Talos, and EP Energy compel an inference of an ongoing cooperative and coordinated strategy of investing together for their mutual benefit. Rather, the allegations indicate merely that Riverstone and Apollo have periodically participated in the same prior transactions. But that Riverstone and Apollo have "crossed paths in a few" previous investments is irrelevant to whether they operated as a monolithic vehicle or colluded with respect to the Transaction and insufficient to overcome the reasonable inference that each acts in its own economic self-interest. *Sheldon*, 220 A.3d at 255 (rejecting control group theory based on alleged common investment history).

B. Plaintiff Does Not Identify Any Transaction-Specific Ties To Support A Reasonable Inference that Riverstone and Apollo Acted in Concert

Transaction-specific ties may also be an indicia of a control group where, for instance, stockholders agree to vote their shares collectively in favor of a given transaction, *see Hansen*, 2018 WL 3030808, at *7; *Frank*, 2012 WL 1096090, at *8, or negotiate with management together "as a collective unit," *BlackRock*, 2019 WL 7168004, at *10 (finding that defendants' "voting power, concurrence of interests, historical ties, and transaction-specific coordination" supported "a reasonably conceivable inference that the alleged group had more than a 'mere concurrence of self-interest' and an 'actual agreement' to work together in connection with the" relevant transaction).

No such connections are alleged here. The Complaint does not allege, for instance, the existence of any agreement requiring Riverstone and Apollo to vote in favor of the Transaction. And as parties on opposite sides of the Transaction, Riverstone and Apollo plainly did not negotiate its terms as a collective unit. In fact, the Complaint does not allege that *either* firm had any involvement whatsoever in negotiating the Transaction on behalf of Talos. Instead, Plaintiff is left to suggest that the utterly benign Stockholders' Agreement somehow tied the firms together for purposes of the Transaction. As a matter of settled law, it did not.

To start, Riverstone's and Apollo's rights collectively to appoint up to six out of Talos's ten directors under the Agreement "do[] not, without more, establish

actual domination or control"—and "[t]o hold otherwise would have a chilling effect on transactions that depend on a particular shareholder being able to appoint representatives to an investee's board of directors." *Sheldon*, 220 A.3d at 253 (internal citation and quotation marks omitted); *see also In re KKR Fin. Holdings LLC S'holder Litig.*, 101 A.3d 980, 996 (Del. Ch. 2014) ("It is well-settled Delaware law that a director's independence is not compromised simply by virtue of being nominated to a board by an interested stockholder."), *aff'd sub nom. Corwin v. KKR Fin. Holdings LLC*, 125 A.3d 304 (Del. 2015); *Frank v. Elgamal*, 2014 WL 957550, at *22 (Del. Ch. Mar. 10, 2014) ("Merely because a director is nominated and elected by a large or controlling stockholder does not mean that he is necessarily beholden to his initial sponsor."), *order enforced*, 2014 WL 1008456 (Del. Ch. Mar. 14, 2014). In any event, the Talos directors that Riverstone did nominate undisputedly recused themselves from involvement in the Transaction. *See supra* at 9 n.8.

Moreover, the Stockholders' Agreement governed only the general appointment of directors to the Talos Board, and was wholly unrelated to the Transaction except insofar as it imposed restrictive measures governing approval of any related party transaction. *See Sheldon*, 220 A.3d at 253; Hymes Decl. Ex. 6, Stockholders' Agreement at TAL0000591–592, TAL0000595–596. "To survive a motion to dismiss," a plaintiff "must allege facts demonstrating actual control with regard to the particular transaction that is being challenged." *In re KKR*, 101 A.3d

at 991 (internal quotation marks and citation omitted). Yet here, the Agreement "contains no voting, decision-making, or other agreements that bear on the transaction" at issue. *van der Fluit*, 2017 WL 5953514, at *6. The Agreement did not provide Riverstone individually, nor Riverstone and Apollo collectively, with any rights to control the actions of any Talos directors. Nor did the Agreement vest Riverstone or Apollo with any unique rights to negotiate transactions involving the Company. *Cf. In re Hansen*, 2018 WL 3030808, at *7.

C. Plaintiff's Quid Pro Quo Theory to Create a Concurrence of Interests Is Unsupported and Irrational

Unable to point to any direct indicia that Riverstone and Apollo functioned as a control group for purposes of the Transaction, Plaintiff resorts to a conspiracy theory—positing that Riverstone "agreed" Talos would overpay Apollo for Whistler in 2018, and that Apollo "returned the 'favor'" by causing "Talos to buy assets from Riverstone at an inflated price" two years later. Compl. ¶ 5. Plaintiff characterizes the 2018 Whistler transaction as being "at the heart of the *quid pro quo* which gave rise to" the Transaction. *Id.* ¶ 43. But his imaginative hypothesis suffers fatal flaws.

First, Plaintiff's theory rests on pure conjecture. The Complaint does not allege any facts showing that Riverstone controlled Talos's approval of the Whistler acquisition, and Plaintiff's theory that Riverstone "let" Talos "bail out" Apollo is entirely conclusory. The Complaint also lacks any allegations evidencing an actual commitment between Riverstone and Apollo to support each other's unilateral

interests in the two transactions—suggesting only that Apollo "rewarded" Riverstone "with its own sweetheart deal" long after the firms supposedly conspired to accomplish the Whistler purchase. *Id.* ¶ 58. It lacks any indication of who reached this supposed accord, when they did so, or any details at all of the purported agreement. Such a naked assertion of "an unspoken quid pro quo," without concrete allegations that Riverstone and Apollo were "connected in a legally significant way relating to voting, decision-making, or other agreements that bear on the transaction at issue," fails to support a reasonable inference of a control group. *Silverberg*, 2019 WL 4566909, at *7 (internal quotation marks and citation omitted).

Silverberg is instructive. The plaintiffs, holders of common stock, asserted that various compositions of the board breached their fiduciary duties by approving several rounds of corporate financing that diluted the value of the plaintiffs' stock, ultimately resulting in the common stockholders receiving no consideration when the board sold the company's assets to a third party. *Id.* at *1, 5. Specifically, the plaintiffs alleged that certain defendants "shared an unspoken quid pro quo" whereby each of their board representatives approved current offerings in consideration for past or future support. *Id.* at *7. But the Court rejected that pleading tactic, finding that the plaintiffs' allegations could not sustain a reasonable inference of control and "improperly conflate[d] acts of consensus with the act of forming a group." *Id.* So too here. Plaintiff vaguely alleges only that Riverstone

and Apollo approved the 2018 and 2020 acquisitions—but does not point to any "legally significant" link between the firms in connection with either transaction. *Id.* at *9 ("A trial court is not . . . required to accept as true conclusory allegations without specific supporting factual allegations." (internal quotation marks and citation omitted)).

Second, Plaintiff's wink-and-a-nod assumption is also economically irrational. It requires the inference that Riverstone and Apollo acted in concert to help Apollo avoid a relatively small loss in 2018, only for Apollo to subsidize a different (and allegedly much larger) loss as a Talos stockholder in 2020. From Apollo's perspective, this ploy would make sense only if Apollo could be assured that the loss it avoided on the Whistler transaction (the "quid") would exceed its loss on the future Transaction (the "quo"). Yet the Complaint fails to explain how the supposed scheme served Apollo's financial interests at all. On the contrary, the allegations suggest Apollo—as a 35.4% stockholder—would have lost substantially more money by causing Talos to "overpay[] for the Riverstone Assets by hundreds of millions of dollars" than it purportedly avoided in connection with the roughly $52-million Whistler sale. Compl. ¶¶ 147; *see also id.* ¶ 118 ("[T]he Challenged

Transaction overvalued the Riverstone Assets by approximately 50%").[16] And, of course, Riverstone itself—already owning 27.5% of Talos's shares—would similarly have subsidized any overpayment for the Assets.

Such an "illogical and counterintuitive" theory should be rejected. *See Brehm v. Eisner*, 746 A.2d 244, 257 (Del. 2000). In *Brehm*, for example, the plaintiff asserted—based on "conclusory allegations"—that the company's chairman and CEO sought to award a company executive a large severance package because it would supposedly "maximize [his] own compensation package." *Id.* The Supreme Court agreed with this Court's conclusion that these allegations were "illogical and counterintuitive." *Id.* Specifically, the Court found that "caus[ing] the Company to issue millions of additional options unnecessarily and at considerable cost" would not have been "in [the CEO's] economic interest" because doing so would "dilute the value of [his] own very substantial holdings." *Id.* "Accordingly, no reasonable doubt [could] exist as to [the CEO's] disinterest." *Id.* at 258. The same conclusion is required in this case. Plaintiff's theory that Apollo willingly and knowingly supported an overpayment to Riverstone in the Transaction is contrary to its

[16] Indeed, Apollo's share of the $200 million "premium" Plaintiff alleges Talos lost in connection with the Transaction would be nearly $71 million. Plaintiff would need to plead facts showing that the loss Apollo purportedly avoided on the Whistler transaction was at least that amount—accounting for the fact that Apollo's share of any alleged overpayment by Talos would similarly be roughly 35% in that instance as well. Plaintiff fails to do so.

economic interest because it would dilute the value of Apollo's 35% stake in Talos. Thus Plaintiff cannot create a reasonable doubt that Apollo is disinterested in the approval of the Transaction. This Court need not accept the similarly "unreasonable inferences" Plaintiff advocates, which are contrary to the actual facts alleged. *Volcano Corp.*, 143 A.3d at 737; *see also Morton's Rest. Grp.*, 74 A.3d at 660 (holding that the court should only "accept those reasonable inferences that flow 'logically' from the non-conclusory facts pled in the Complaint" (citation omitted)).

Stripped of Plaintiff's conclusory gloss, the facts pled in the Complaint simply do not support a reasonable inference that Riverstone and Apollo functioned as a control group. Accordingly, Plaintiff has not established that Riverstone owed fiduciary duties to Talos or its fellow stockholders in connection with the Transaction. And because Riverstone cannot have breached duties it did not owe, Plaintiff's fiduciary duty claims against Riverstone must be dismissed.

III. PLAINTIFF FAILS TO STATE A CLAIM FOR UNJUST ENRICHMENT

Plaintiff's unjust enrichment claim against Riverstone fails for two additional reasons. ***First***, an express contract governed the relationship between Talos and Riverstone's affiliates as to the Assets—the Transaction Agreement. *See, e.g.*,

Hymes Decl. Ex. 18, Castex Purchase & Sale Agreement at TAL0000869.[17] "When the complaint alleges an express, enforceable contract that controls the parties' relationship . . . a claim for unjust enrichment will be dismissed." *Bakerman v. Sidney Frank Importing Co.*, 2006 WL 3927242, at *18 (Del. Ch. Oct. 10, 2006) (citation omitted).

Second, Plaintiff's unjust enrichment claim fails because it relies on the same flawed factual premise as his deficient fiduciary duty claims. Where an "unjust enrichment claim depends perforce on the breach of fiduciary duty claim," the Court should treat the two claims "in the same manner when resolving a motion to dismiss." *Gamco Asset Mgmt. Inc. v. iHeartMedia Inc.*, 2016 WL 6892802, at *19 (Del. Ch. Nov. 29, 2016) (dismissing related unjust enrichment and fiduciary duty claims), *aff'd*, 172 A.3d 884 (Del. 2017); *see also Frank*, 2014 WL 957550, at *31 ("The Court frequently treats duplicative fiduciary duty and unjust enrichment claims in the same manner when resolving a motion to dismiss.").

Plaintiff's unjust enrichment claim turns on the theory that Riverstone benefitted financially by acting in violation of its fiduciary duties. Compl. ¶ 203

[17] Moreover, Riverstone affiliates—not Riverstone—were signatories to the Transaction Agreement, and therefore Riverstone is not a proper defendant with respect to Plaintiff's unjust enrichment claim. *See supra* at 5,8–9, 14; *Agspring Holdco, LLC v. NGP X US Holdings, L.P.*, 2020 WL 4355555, at *23 (Del. Ch. July 30, 2020) (confirming that where a contract "govern[s] the relationship between" parties, unjust enrichment cannot be used to extend liability to an entity that "is not a party to" that agreement).

("[T]he Challenged Transaction is unfair to the Company and is the product of breaches of fiduciary duty by the Director Defendants and the Controllers."). Because Plaintiff has failed to allege facts showing that Riverstone breached a fiduciary duty it did not owe, he cannot demonstrate that Riverstone was unjustly enriched. His claim must therefore be dismissed. *See Monroe Cty. Emps.' Ret. Sys. v. Carlson*, 2010 WL 2376890, at *2 (Del. Ch. June 7, 2010) (dismissing unjust enrichment claim that "depend[ed] on the success of [a dismissed] breach of fiduciary duty claim").

CONCLUSION

For the reasons set forth above, Riverstone respectfully requests that the Court dismiss the Complaint with prejudice.

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