UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-20586

In the Matter of

DANIEL B. KAMENSKY,

Respondent.

DANIEL B. KAMENSKY'S RESPONSE IN OPPOSITION TO DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION

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Respondent Daniel B. Kamensky respectfully submits this brief in response to the Division of Enforcement's (the "Division") Motion for Summary Disposition, pursuant to Rule 250 of the Securities and Exchange Commission's (the "Commission" or "SEC") Rules of Practice.

PRELIMINARY STATEMENT

Mr. Kamensky agrees with the Division that summary disposition is appropriate in this matter, but strongly disagrees that imposing an associational bar would be appropriate or would serve the public interest. While the Division relies heavily on Mr. Kamensky's criminal conviction, it fails to grapple with, or even acknowledge, the sentencing court's conclusions that bear on this administrative proceeding. In particular, the court made numerous findings at Mr. Kamensky's sentencing hearing that indicate that the *Steadman* public interest factors weigh heavily against ordering any further sanctions in this case. The court found that Mr. Kamensky's conduct was extremely isolated; that there was no premeditation involved; that Mr. Kamensky recognizes the wrongfulness of his actions; that, in light of the credible assurances Mr. Kamensky has made, he poses no risk of committing future violations; and that his sentence at the lowest end of the Sentencing Guidelines range, which included a term of imprisonment, is sufficient to serve the purpose of specific and general deterrence.

Indeed, a close analysis of the full context and circumstances surrounding Mr. Kamensky's conduct, his recognition of the wrongfulness of his actions, his credible assurances against future violations, and the consequences he has faced demonstrates that a bar is not warranted and would not be in the public interest. First, Mr. Kamensky's conduct, while wrongful, was not sufficiently egregious to weigh in favor of a permanent bar, and was completely isolated in nature. Mr. Kamensky's conduct was limited to a few hours on a single afternoon. Mr. Kamensky has otherwise led an exemplary life, both professionally and personally, as evidenced by the over 100 letters of support written on his behalf and expressly credited by the court at his sentencing.

Second, Mr. Kamensky quickly recognized the wrongfulness of his actions and has taken numerous steps to make amends. Third, any concern that Mr. Kamensky's occupation may present opportunities for future violations is alleviated by the court's judgment that he will not reoffend. This conclusion is further bolstered by unequivocal statements from respected professionals who have worked closely with him over many years, including numerous individuals with knowledge of the events of July 31, 2020, that he poses no risk of further violations. Fourth, Mr. Kamensky's conduct on July 31, 2020 resulted in no harm to the unsecured creditors to whom Mr. Kamensky owed a fiduciary duty. Finally, the Commission's laudable goal of general deterrence has already been served many times over in this case. Mr. Kamensky's criminal sentence, which was specifically tailored to serve general deterrence purposes, is alone sufficient to satisfy this goal. Mr. Kamensky's painful experience has also been widely publicized, putting all those similarly situated on notice that breaches of fiduciary duties in the bankruptcy context can result in severe consequences, including losing their businesses and incarceration, as Mr. Kamensky suffered.

STATEMENT OF FACTS

On February 3, 2021, Mr. Kamensky pled guilty to a one count information charging violation of 18 U.S.C. § 152(6) (bribery and extortion in connection with bankruptcy). *See* Information, *United States v. Kamensky*, No. 21-cr-0067 (DLC) (S.D.N.Y. Feb. 3, 2021), ECF No. 12. On May 7, 2021, Mr. Kamensky was sentenced to six months of imprisonment followed by six months of supervised release under home confinement, and fined $55,000. *See* Judgment, *United States v. Kamensky*, No. 21-cr-0067 (DLC) (S.D.N.Y. May 10, 2021), ECF No. 35. On September 10, 2021, Mr. Kamensky voluntarily agreed to settle the SEC's parallel civil case, agreeing to be permanently enjoined from violating Section 17(a) of the Securities Act of 1933 (the "Securities

Act") with no further penalty or disgorgement.[1] *See Ex. 3 (SEC v. Kamensky Consent)*.[2] On September 21, 2021, Mr. Kamensky was suspended from appearing as an attorney before the Commission pursuant to SEC Rule of Practice 102(e)(2), 17 C.F.R. § 201.102(e)(2), and has agreed not to contest this suspension. *Ex. 4 (Order of Suspension)*.

On the basis of Mr. Kamensky's conviction, the Commission entered an Order Instituting Proceedings pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act"), 15 U.S.C. § 80b-3(f), on September 21, 2021 to determine what, if any, further remedial action would be appropriate and in the public interest. *Daniel B. Kamensky*, Investment Advisers Act Release No. 5869 (Sept. 21, 2021).[3] On October 29, 2021, the Division filed a motion for summary disposition, arguing that Mr. Kamensky should be "permanently barred from association with any investment adviser, broker-dealer, or other industry professionals enumerated in Advisers Act Section 203(f)." Division Br. at 8.[4]

The conduct underlying these prior proceedings, which brings Mr. Kamensky before the Commission today, was limited to a few hours on one day, July 31, 2020, in the course of two phone calls to a trader at Jefferies. The context surrounding these events is important. For years prior, Mr. Kamensky, through his investment firm Marble Ridge Capital LP ("Marble Ridge"), had been pursuing fraudulent conveyance claims against the private equity owners of Neiman Marcus Group LTD LLC ("Neiman Marcus"), who in 2018 had transferred its MyTheresa subsidiary out of the reach of Neiman Marcus's creditors for no consideration. *See* Statement of the Acting United

[1] Pursuant to the consent signed by Mr. Kamensky in connection with the settlement of the civil case, Mr. Kamensky is not required to admit, but may not deny, the allegations in the SEC's civil complaint. *Ex. 3 (SEC v. Kamensky Consent)* ¶ 11.

[2] Citations to documents filed in prior court proceedings are to the versions as filed on the docket in those actions and thus contain redactions required or allowed by the court in those cases. In addition, the undersigned counsel certifies that all additional redactions required by Commission Rule 151(e), 17 C.F.R. § 201.151(e), have likewise been made.

[3] On September 28, 2021, the Commission issued a corrected Order Instituting Proceedings (the "OIP"), adding that the proceeding shall follow the 75-day timeframe specified in SEC Rule of Practice 360(a)(2)(i), 17 C.F.R. § 360(a)(2)(i), and correcting typographical errors. *Ex. 5 (OIP)*.

[4] "Division Br." refers to the Division of Enforcement's Motion for Summary Disposition Against Respondent Daniel B. Kamensky and Memorandum of Law in Support.

States Trustee Pursuant to Court Order Regarding the Conduct of Marble Ridge Capital LP and Dan Kamensky at 5, *In re Neiman Marcus Grp. LTD LLC*, No. 20-32519 (DRJ) (Bankr. S.D. Tex. Aug. 19, 2020), ECF No. 1485 ("U.S. Trustee Statement"). After Neiman Marcus commenced Chapter 11 bankruptcy proceedings, Mr. Kamensky continued those efforts, almost single-handedly, on behalf of and to the benefit of all the unsecured creditors of Neiman Marcus through his representation of Marble Ridge as a member of Neiman Marcus's Unsecured Creditors' Committee (the "Committee"). *See Ex. 6 (Notice of Marble Ridge's Appointment to Committee)*. In late July 2020, the unsecured creditors and Neiman Marcus were engaged in intense, time-pressured negotiations regarding the terms of a settlement of the MyTheresa claims. *See* Courtroom Minutes, *In re Neiman Marcus Grp. LTD LLC*, No. 20-32519 (DRJ) (Bankr. S.D. Tex. July 30, 2020), ECF No. 1399 (granting approval of Debtor's Disclosure Statement and scheduling a hearing for August 3, 2020 "to discuss any remaining issues"). On July 31, 2020, in moments of extreme stress and time pressure, motivated by his intense desire to ensure that his investors (and other unsecured creditors) were not disadvantaged by Neiman Marcus's private equity owners, Mr. Kamensky reacted during his phone calls with Jefferies about their interest in bidding on the assets that were subject to the settlement. *See Ex. 2 (Sentencing Tr.)* 28:20-29:1 ("[T]he pressure of that day has to be understood in the context of something he had been dealing with for literally years . . . He believed he was doing a good thing for Marble Ridge and for other unsecured creditors."). He believed that during the first call with Jefferies—having said things that he should not have said in directing Jefferies not to put in a bid—he had explained the lengthy history and background about the Neiman Marcus bankruptcy and the reasons why Jefferies's last-minute insertion into the process could jeopardize the delicate balance. That is why Mr. Kamensky reacted with shock when he learned that Jefferies believed Mr. Kamensky had threatened them. It was in that state of shock that Mr. Kamensky made his second call to Jefferies, during which, in trying to explain himself

further, he made matters worse.

Ever since those few hours on that day, Mr. Kamensky has taken full responsibility for his wrongful actions and worked to make amends. Acknowledging the gravity of his mistakes, he promptly withdrew from the Committee and encouraged Jefferies to bid, which they did, as did others in the following days. Although doing so would further expose him to civil and criminal liability, he voluntarily testified before the U.S. Trustee in connection with its investigation into the events of July 31, 2020, beginning his testimony by apologizing for his conduct. *See Ex. 7 (D. Kamensky Trustee Tr.)* 6:3-7 ("I want to come right out and say I made a series of mistakes over the course of a few hours during which I was under extreme stress and time pressure that I will never forget and forever regret."); *id.* at 7:17-20 ("I apologize to the Court, to the US Trustee, to the committee, and the professionals who worked so hard to make this case a success."). He settled his personal claims with the Neiman Marcus estate, agreeing to, *inter alia*, never again serve on any official bankruptcy committee, subordinate his interests in the Neiman Marcus bankruptcy to those of other creditors, donate $100,000 to designated charities, and perform 200 hours of community service. *See Ex. 1 (In re Neiman Marcus Order Approving Settlement)*. Mr. Kamensky also made the extremely difficult decision (as evidenced by the close relationship he had with his employees) to close his business, Marble Ridge, appointing independent liquidators to responsibly wind down the fund. And, significantly, he waived indictment and pled guilty to a criminal charge, for which he was sentenced to a term of incarceration and ordered to pay a substantial fine.

Outside of those few hours on July 31, 2020, Mr. Kamensky has lived—and continues to live—a life characterized by integrity, honesty, and kindness for others. As a testament to Mr. Kamensky's character, over 100 individuals from all parts of his life wrote letters of support in connection with his sentencing.[5] His professional colleagues and business rivals alike value him as

[5] The sentencing support letters cited herein are attached as Exhibits 16-48 and 50-51 to this brief. All 103 support letters submitted in connection with Mr. Kamensky's sentencing are attached as exhibits to Mr. Kamensky's sentencing

a trusted and respected member of the professional bankruptcy community. *See, e.g.*, *Ex. 16 (Iyer Ltr.)* at 1 ("I found Dan to be a collaborative problem solver."); *Ex. 17 (Kaufman Ltr.)* at 1-2 ("That we are often on the 'other side of the table' from each other . . . in no way gets in the way of our warm feelings of respect and friendship."). His former employees likewise speak highly of him, for example, calling him a "caring" manager who "fostered a team and family environment." *Ex. 18 (Pearson Ltr.)* at 1; *see also Ex. 19 (Schembri Ltr.)* at 1 ("[Mr. Kamensky] helped to create and cultivate a strong culture of respect, open dialogue, continuous learning, and teamwork."); *Ex. 27 (Caiazzo Ltr.)* at 2 (Mr. Kamensky's former executive assistant describing that she "hope[s] to raise [her son] to be a man like Dan Kamensky. A family man, a great friend to have, someone who always puts others before himself, and the best leader a team could ask for."). In his personal life, Mr. Kamensky is a dedicated friend and family member. *See Ex. 20 (Marino Ltr.)* at 1 ("No matter what Dan was working on or committed to, he was always there to listen, to offer thoughtful advice, to bring judgment to a situation where there were no simple choices."); *Ex. 21 (Castellano Ltr.)* at 1 ("His family was always his first priority above all else."); *Ex. 45 (Blumenfeld & Witman Ltr.)* at 2 ("When family members experience times of trouble and/or struggle, Dan consistently shows up.").

Additionally, those who know Mr. Kamensky speak of his longstanding, meaningful commitment to giving back to the community, not only by providing financial support, but also through his deep, hands-on involvement in projects he is passionate about. *See Ex. 22 (Lieberman Ltr.)* at 1 ("But far beyond simply giving of himself, Dan has inspired countless other members in our community of friends to find joy in supporting causes important to them. He gets others involved and devotes of himself tirelessly."). He has provided critical support to various charitable

memorandum. *See* Sentencing Submission of Defendant Daniel B. Kamensky, *United States v. Kamensky*, No. 21-cr-0067 (DLC) (S.D.N.Y. Feb. 3, 2021), ECF No. 27. The support letters are available at ECF Nos. 27-1 to 27-103, and an exhibit index is included at ECF No. 27-119.

endeavors, including: assisting the Jewish National Fund in establishing a rehabilitation village in Israel for children with severe disabilities, *Ex. 23 (Almog Ltr.)* at 2; lending his time and resources to the Eugune Gasana, Jr. Foundation to build a pediatric hospital in Ghana, *Ex. 24 (Ultsh Ltr.)* at 1; and organizing a 5k walk/run and other fundraisers for Memorial Sloan Kettering Hospital, *Ex. 25 (Harry Mamaysky Ltr.)* at 1, *Ex. 48 (Blumenfeld Kamensky Ltr.*) at 2.

At his sentencing hearing, the Honorable Denise L. Cote agreed with the assessment of Mr. Kamensky's professional and personal communities. She acknowledged that the events of July 31, 2020 were an aberration for Mr. Kamensky and that Mr. Kamensky is not likely to reoffend, concluding that "the conduct in which he engaged was not foreshadowed by the way he had lived the rest of his life." *Ex. 2 (Sentencing Tr.)* 27:22-23. Judge Cote further explained, "I don't find that there is a need here to provide a sentence to the defendant that guards against a repeat of this activity" because "[t]here is little risk . . . that [Mr. Kamensky] will violate the law again," *id.* at 29:25-30:1-5, but nevertheless imposed a sentence that included a term of incarceration expressly to serve the goal of "general deterrence." *Id.* at 29:17. Judge Cote underscored her judgment that Mr. Kamensky is "a good man who has lived a life with an abundance of love, of kindness to others, and generosity." *Id.* at 30:6-7.

ARGUMENT

I. Mr. Kamensky Agrees That Summary Disposition Is Appropriate

Mr. Kamensky agrees with the Division that there is no genuine issue with regard to any material fact and that this matter can be resolved on summary disposition.[6] However, Mr. Kamensky submits that summary disposition should be granted in his favor: no permanent

[6] Pursuant to Rule 250(b) of the Commission's Rules of Practice, in 75-day proceedings such as the instant proceeding, "any party" may move for summary disposition "after a respondent's answer has been filed and documents have been made available to that respondent for inspection and copying pursuant to § 201.230." 17 C.F.R. § 201.250(b). Summary disposition is appropriate when the movant can show "that there is no genuine issue with regard to any material fact and that the movant is entitled to summary disposition as a matter of law." *Id.*

associational bar is warranted, as there is no need for the Commission to impose any additional sanctions in this case. Thus, to the extent necessary, the Commission should consider this response brief as Mr. Kamensky's cross-motion for summary disposition, pursuant to Rule 250(b), 17 C.F.R. § 201.250(b).

II. Legal Standard

The Commission is authorized to impose sanctions against individuals associating with investment advisers only when such sanctions would be "in the public interest." 15 U.S.C. § 80b-3(f). "A collateral bar, however, is the severest of sanctions," *Khaled A. Eldaher*, Initial Decision Release No. 857, 2015 WL 4881988, at *11 (Aug. 17, 2015), *accepted as final at Khaled A. Eldaher*, Exchange Act Release No. 76132, 2015 WL 5935347 (Oct. 13, 2015), and "permanent exclusion from the industry is 'without justification in fact' unless the Commission specifically articulates compelling reasons for such a sanction." *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979) (quoting *American Power & Light Co. v. SEC*, 329 U.S. 90, 112-13 (1946)). Specifically, the Commission considers six factors in determining whether it would serve the public interest to impose the proposed sanction:

> [T]he egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations.

Id. As part of this inquiry, it is relevant whether there is "a reasonable likelihood that a particular violator cannot ever operate in compliance with the law." *Id.* (quoting *American Power & Light Co. v. SEC*, 329 U.S. 90, 112-13 (1946)). Accordingly, the Commission must not make a "conclusive presumption of future wrongdoing on the basis of past misconduct." *Id.* The Commission also takes into account additional considerations, including "the degree of harm to investors and the marketplace resulting from [respondent's] violation." *Marshall E. Melton*,

Investment Advisers Act Release No. 2151, 2003 WL 21729839, at *2 (July 25, 2003). Finally, the Commission considers to what extent imposing the proposed sanction will serve the goal of general deterrence. *See Schield Mgmt. Co.*, Exchange Act Release No. 2477, 2006 WL 231642, at *8 (Jan. 31, 2006) (noting that the Commission considers "the extent to which the sanction will have a deterrent effect").

"[T]he Commission's inquiry into the appropriate sanction to protect the public interest is a flexible one, and no one factor is dispositive." *David Henry Disraeli and Lifeplan Assocs., Inc.*, Exchange Act Release No. 8880, 2007 WL 4481515, at *15 (Dec. 21, 2007). In balancing the various public interest factors in the context of an administrative proceeding brought on the basis of a criminal conviction, the Commission has given significant weight to the court's judgment in the underlying criminal action. *See Maher F. Kara*, Initial Decision Release No. 979, 2016 WL 1019197, at *7 (Mar. 15, 2016) ("In the judgment of the court in *United States v. Kara*, [respondent] is unlikely to reoffend. Thus a permanent bar is unnecessary."), *accepted as final at Maher F. Kara*, Exchange Act Release No. 77731, 2016 WL 1660190 (Apr. 27, 2016); *Mark Megalli*, Initial Decision Release No. 1253, 2018 WL 3199049, at *7 (May 31, 2018) ("On balance, considering the court's finding that Megalli is unlikely to reoffend and that his remorse is sincere, a twelve-month suspension is an appropriate sanction."), *accepted as final at Mark Megalli*, Investment Advisers Act Release No. 5400 (Oct. 7, 2019).

Accordingly, for the reasons explained in detail below, the Commission should grant summary disposition in favor of Mr. Kamensky and decline to order any further sanctions. It would not serve the public interest to impose a permanent associational bar on Mr. Kamensky. However, to the extent the Commission concludes that an additional sanction is warranted, Mr. Kamensky submits that nothing more than a twelve-month suspension would be necessary or appropriate.

III. The *Steadman* Factors Weigh Heavily Against Imposing an Associational Bar Against Mr. Kamensky

A. Mr. Kamensky's conduct was not sufficiently egregious to weigh in favor of a permanent bar, and was an isolated incident, occurring entirely over the course of a few hours on a single day

Mr. Kamensky's conduct, while wrongful, was not sufficiently egregious to weigh in favor of a permanent bar. As Judge Cote concluded, the conduct at issue arose not out of a premeditated scheme or thought-out plan, but rather an absence of careful thought in moments of high pressure and stress—the culmination of a hard-fought, years-long effort to ensure that Marble Ridge and all unsecured creditors were not wrongfully disadvantaged in the Neiman Marcus bankruptcy. *See Ex. 2 (Sentencing Tr.)* 27:9-12 ("there was no evidence of premeditation here"); *id.* at 27:10-11 ("When the unexpected happened . . . [Mr. Kamensky] reacted"); *id.* at 28:19-29:1 ("[O]f course the pressure of that day has to be understood in the context of something he had been dealing with for literally years. . . . He believed he was doing a good thing for Marble Ridge and for other unsecured creditors."). Further, the conduct was extremely isolated, amounting to two phone calls, both a few minutes in length, over the course of a few hours on a single afternoon. *See id.* at 29:2-14 (describing the conduct as limited to two phone calls occurring "in the middle of the afternoon" and "later in the afternoon"). Outside of that one day, Mr. Kamensky has led—and continues to lead—an exemplary life, both professionally and personally. This fact is evidenced by the over 100 letters of support submitted by Mr. Kamensky's colleagues, investors, employees, business rivals, family, friends, and others in connection with his sentencing and credited by Judge Cote. *See id.* at 3:8-13 ("He has been extraordinarily generous with his wealth and with his time. He has given significance [*sic*] assistance to several charitable endeavors and been a loving friend to many. He is deeply devoted to his family. He has many admirers in his profession and has made positive contributions working as a professional in challenging reorganizations.").

Indeed, throughout his approximately two decades in the professional bankruptcy

community, Mr. Kamensky has earned a reputation for integrity. In their letters of support, Mr. Kamensky's business colleagues and professional contacts noted that, while many approach distressed debt investing as a zero-sum game in which parties with conflicting interests compete for value, Mr. Kamensky was always eager to cooperate with, and even actively support, others. Raj Iyer, a former partner and senior portfolio manager at a large asset management firm, explained that "[in] an industry characterized by strong rivalry, I found Dan to be a collaborative problem solver . . . [I] really enjoyed working with Dan[,] who was creative, kind and engaging of the opinions of others." *Ex. 16 (Iyer Ltr.)* at 1. David Pauker, a restructuring professional who worked with Mr. Kamensky on the Lehman Brothers bankruptcy, described him as "an advocate for compromise and creative resolution of complex bankruptcy disputes," explaining that Mr. Kamensky "s[ought] creative means to find common ground and recognize[d] that all parties need[ed] to come away with something of value." *Ex. 26 (Pauker Ltr.)* at 2. Mr. Kamensky's investors showed a particular appreciation for his cooperative approach, with many writing to express their continued confidence in him. *See Ex. 50 (Leffell Sentencing Ltr.)* at 1-2 ("I was a day one investor in his fund. . . . Throughout the entire time he comported himself with honor, fairness, dignity and respect."); *Ex. 51 (Blumgart & Benaim Sentencing Ltr.)* at 3 ("We saw—and see—in Dan an ambitious, hard-working, family man always looking to do what is right and best for his investors and all around him. This was a distinguishing and rather striking side to Dan that we found to be a rare quality in his industry."); *Ex. 33 (Molinaro Ltr.)* at 1 ("I was one of his initial investors and have remained invested with him to this day, never having taken a distribution. I did that because I had total faith in Dan as a true professional.").

Mr. Kamensky's employees at Marble Ridge similarly expressed their appreciation for his collaborative nature, describing him as an effective leader who fostered a team environment. *See Ex. 18 (Pearson Ltr.)* at 1 ("He valued my input and opinion. He challenged me and made me a

better professional."); *Ex. 27 (Caiazzo Ltr.)* at 1 ("[Dan] cared about each and every member of his team at Marble Ridge and our families, which meant the world."); *Ex. 28 (Falcone Ltr.)* at 1 (describing Mr. Kamensky as not only a "boss," but also a "friend, confidant[e] and mentor"). As a testament to the upstanding character Mr. Kamensky exhibits in all aspects of his life, Nicole Caiazzo, Mr. Kamensky's former executive assistant, stated that she "hope[s] to raise [her son] to be a man like Dan Kamensky. A family man, a great friend to have, someone who always puts others before himself, and the best leader a team could ask for." *Ex. 27 (Caiazzo Ltr.)* at 1.

Mr. Kamensky's commitment to collaboration and collegiality extended not just to his colleagues and employees, but also to his counterparties and rivals. Jed Nussbaum, managing partner at a competing fund with a similar investment strategy, described that, while he and Mr. Kamensky "should have been rivals, running funds with similar strategies and competing for capital," they instead forged a friendship. *Ex. 29 (Nussbaum Ltr.)* at 1. In fact, Mr. Kamensky even helped build Mr. Nussbaum's business, providing "invaluable marketing advice" and "frequently suggest[ing] his own limited partners consider investing in [Mr. Nussbaum's fund], at a time when [Mr. Kamensky] was still trying to raise capital and grow [Marble Ridge]." *Id.* Saul Burian, who worked opposite Mr. Kamensky in the Lehman Brothers bankruptcy proceeding, explained that Mr. Kamensky "used his intellect, credibility and integrity to bring creditors together in support of a mutually beneficial global solution" and that "[n]one of this would have happened absent Dan's open and honest approach that built trust across the capital structure." *Ex. 30 (Burian Ltr.)* at 1. Evan Lederman, a former investment firm partner who has worked with Mr. Kamensky extensively, "sometimes on the same side and sometimes against him," expressed gratitude for the "words of encouragement" and "sage career advice" Mr. Kamensky has provided over the years. *Ex. 31 (Lederman Ltr.)* at 1-2. As two Marble Ridge investors put it: "[W]e were often taken aback by how nicely he spoke about his rivals." *Ex. 51 (Blumgart & Benaim Sentencing Ltr.)* at 3.

A recurring theme among the support letters written by those who know Mr. Kamensky professionally is his honesty. *See Ex. 18 (Pearson Ltr.)* at 1 ("The Dan Kamensky I know from my time [as CFO at Marble Ridge] is honest, hardworking, and caring."); *Ex. 31 (Lederman Ltr.)* at 2 ("I have worked with Dan on tons of investments, and I can say on every single one of them he conducted himself with integrity, honesty and reasonableness."); *Ex. 32 (Coes Ltr.)* at 1 (describing Mr. Kamensky's "absolute candor and no-shade honesty" as an "immovable feature" of his character); *Ex. 33 (Molinaro Ltr.)* at 2 (referring to Mr. Kamensky as "smart, honest and hard working"). Mr. Kamensky has consistently demonstrated his respect for his legal and ethical obligations, including his fiduciary duties, notwithstanding the single isolated instance of July 31, 2020. Sam Molinaro, Mr. Kamensky's former colleague, described that, following Mr. Molinaro's appointment to a liquidating trust board of a distressed company, "there was never an instance where Dan attempted to exert any influence over me. He respected my independence at all times and never once asked for me to influence a decision or outcome." *Ex. 33 (Molinaro Ltr.)* at 1; *see also Ex. 51 (Blumgart & Benaim Sentencing Ltr.)* at 3 ("[W]hen responding to our questions about his investment positions . . . Dan was always extremely careful never to disclose information to us which we were not entitled, both ethically and legally, to receive."); *Ex. 34 (Seery Ltr.)* at 2 ("Even in the most contentious of situations . . . his legal, professional and personal ethics were never called into question."); *Ex. 35 (Heimowitz Ltr.)* at 1 ("In all the years I have known Dan, I have neither seen him engage in nor heard of him engaging in conduct remotely comparable [to the events of July 31]. To the contrary, my experience is that Dan strove to act scrupulously and to avoid even the appearance of impropriety."); *Ex. 36 (Kirschner Ltr.)* at 2 (describing Mr. Kamensky as "very sensitive to his fiduciary duties and obligations in the rough and tumble restructuring business"); *Ex. 31 (Lederman Ltr.)* at 2 ("He always played fair.").

Further, Mr. Kamensky's contributions to the restructuring industry stand out because of his

longstanding commitment to improving the bankruptcy process and making it fairer. For example, Mr. Kamensky collaborated with Rich Levin, a respected bankruptcy attorney with leadership positions with the National Bankruptcy Conference and the American College of Bankruptcy, on a project for the American Bankruptcy Institute proposing modernizations to Chapter 11. Mr. Levin appreciated Mr. Kamensky's invaluable contributions to the project, noting that "Dan always worked to develop the best policy solutions, independent of his firms' financial interests." *Ex. 37 (Levin Ltr.)* at 1. Mr. Kamensky also helped develop policies for the Loan Syndication Trading Association ("LSTA"), a self-regulatory financial trade association focused on all aspects of the $1.3 trillion syndicated corporate loan market. LSTA General Counsel Elliot Ganz recalled, as one of many examples, how Mr. Kamensky worked intensely with the LSTA to devise a fairer disclosure rule in bankruptcy cases, which was ultimately approved by the United States Supreme Court to avoid the "weaponizing" of the disclosure requirement. *Ex. 38 (Ganz Ltr.)* at 1. Howard Shams, investment firm CEO and longtime professional contact, described "spen[ding] many hours working with [Mr. Kamensky] on policy applicable to the then-fledgling Bank Loan markets." *Ex. 39 (Shams Ltr.)* at 2. Concerning the events of July 31, 2020, Mr. Shams remarked: "That is what makes this error such an outlier; Dan was the guy who helped codify fair practices." *Id.*

Mr. Kamensky's upstanding character extends to his personal life, where he is a committed friend and a dedicated husband and father. *See Ex. 40 (Citro Ltr.)* at 1 ("[A] few years ago, when I had some personal problems in my life . . . people sent me messages and words of support. Dan however picked up the phone and called me to try and help."); *Ex. 27 (Caiazzo Ltr.)* at 1 ("He is a true family man—proud of his wife and daughter and all of their accomplishments and always wanting to hear the same about yours."). Additionally, Mr. Kamensky has exhibited a deep, lifelong commitment to advancing various charitable causes—motivated not by "recognition," but by a sincere "commitment to giving back, improving lives, and helping others reach their

potential." *Ex. 41 (Kelly Mamaysky Ltr.)* at 1; *see also Ex. 42 (Herz Ltr.)* at 2 ("As the chairman of [the] board of a nonprofit, I am keenly aware how often people turn away from an obligation to support others. Dan is someone who leans into it."). Mr. Kamensky has dedicated not only his financial resources, but also his time and energy, to actively supporting the causes he holds dear. He helped the Jewish National Fund build Aleh Negev, a long-term care village in Israel for individuals with severe disabilities, "provid[ing] the funds to lift the project off the ground," "arrang[ing] fundraising events," and even visiting the village to provide hands-on assistance. *Ex. 23 (Almog Ltr.)* at 2. Additionally, Mr. Kamensky provided critical support for the Eugene Gasana, Jr. Foundation's creation of a pediatric cancer hospital in Ghana. *Ex. 24 (Ultsh Ltr.)* at 1. Closer to home, Mr. Kamensky and his family are active supporters of the Memorial Sloan Kettering Cancer Center, having organized various fundraising events for the hospital, including a 5k walk/run. *See Ex. 25 (Harry Mamaysky Ltr.)* at 1; *Ex. 48 (Blumenfeld Kamensky Ltr.)* at 2.

The circumstances of Mr. Kamensky's offense—for which he has taken active responsibility and which is entirely aberrant in nature—weigh against imposing a permanent bar. Indeed, the Commission has declined to impose a permanent bar in cases involving conduct far more egregious, premediated, and pervasive than that here. *See Megalli*, 2018 WL 3199049, at *3 (imposing a twelve-month suspension where respondent made trades based on insider information between September 2009 and July 2010, during which time he "consciously avoided knowledge concerning the source of the former officer's insider information"); *Kara*, 2016 WL 1019197, at *4 (respondent shared material nonpublic information from 2003 to 2007—even after becoming aware that the tippee was trading on such information—and subsequently made "a number of untruthful statements" to Commission investigators); *Clark T. Blizzard and Rudolph Abel*, Initial Decision Release No. 229, 2003 WL 21362222, at *25 (June 13, 2003) (imposing a ninety-day suspension for aiding, abetting, and causing a violation of the antifraud provisions of the Advisers Act by

failing to disclose investment firm's use of brokerage commissions, which "continued for many months"), *dismissed on other grounds at Clarke T. Blizzard and Rudolph Abel*, Investment Advisers Act Release No. 2253, 2004 WL 1595068 (June 23, 2004); *Joshua D. Mosshart*, Initial Decision Release No. 1408, 2021 WL 517422, at *10 (Feb. 11, 2021) (imposing a twelve-month suspension where respondent operated as an unregistered broker "during a three-year period" and "involv[ing] about twenty-five customers"), *accepted as final at Joshua D. Mosshart*, Investment Advisers Act Release No. 5709 (Mar. 29, 2021). Additionally, the presence of scienter is not dispositive in the determination of whether to issue a permanent bar. *See Kara*, 2016 WL 1019197, at *5, *7 (declining to impose a permanent bar despite a finding that respondent "acted willfully and with an intent to deceive."); *Megalli*, 2018 WL 3199049, at *7 (declining to impose a permanent bar despite a scienter-based insider trading conviction); *John Jantzen*, Initial Decision Release No. 472, 2012 WL 5422022, at *5 (Nov. 6, 2012) (declining to impose a permanent bar despite an insider trading violation "show[ing] a high degree of scienter"), *accepted as final at John Jantzen*, Exchange Act Release No. 68396, 2012 WL 6101866 (Dec. 10, 2012).

In its brief, the Division attempts to recast what occurred over the course of a few hours on a single day as "series" of events. Division Br. at 10. However, this attempt to reframe the truly isolated nature of Mr. Kamensky's conduct belies common sense and the factual record.[7] The Probation Office specifically found that "this offense appears to be an isolated aberrant act." *Ex. 2 (Sentencing Tr.)* 7:24-8:1. Tellingly, the Division cites no precedent, either from federal case law or Commission decisions, to support its argument that an individual's conduct confined to one afternoon may be considered "recurrent." *See* Division Br. at 10. In fact, decisions cited elsewhere

[7] The Division attempts to characterize Mr. Kamensky's conduct as "not isolated." Division Br. at 10. However, this characterization is entirely contradicted by the record and the SEC's own allegations, which unequivocally show that Mr. Kamensky's conduct was limited to a few hours. *See* Compl. ¶¶ 35, 48, *SEC v. Kamensky*, No. 20-cv-7193 (VEC) (S.D.N.Y. Sept. 3, 2020), ECF No. 1. Indeed, Judge Cote found that Mr. Kamensky's improper conduct was confined to two phone calls on July 31, 2020, one "in the middle of the afternoon" and another "later in the afternoon." *Ex. 2 (Sentencing Tr.)* 29:2-14.

in the Division's brief evidence what truly constitutes "recurrent" conduct under the *Steadman* analysis, each of which stands in sharp contrast to this case and serves only to highlight the isolated and highly aberrant nature of Mr. Kamensky's conduct. *See Michael C. Pattison, CPA*, Exchange Act Release No. 3407, 2012 WL 4320146, at *4 (Sept. 20, 2012) (respondent "systematically backdated stock option grants on a regular basis" from at least 2000 to 2006); *John W. Lawton*, Investment Advisers Act Release No. 3513, 2012 WL 6208750, at *3 (Dec. 13, 2021) (respondent "falsely represented Paramount's assets by overstating trading gains" from approximately 2006 to 2009); *Ralph W. LeBlanc*, Exchange Act Release No. 48254, 2003 WL 21755845, at *1-2 (July 30, 2003) (finding material misrepresentations made over the course of years).

Indeed, in the judgment of the court in the criminal case and as evidenced by the over 100 letters of support written on his behalf—describing the reputation he has cultivated over the course of his decades-long career, his dedication to friends and family, and his commitment to giving back to the community—Mr. Kamensky's conduct on July 31, 2020 was truly aberrational and not in any way indicative of how he has lived his life before or after that day. *See Ex. 2 (Sentencing Tr.)* 27:22-23 ("[T]he conduct in which he engaged was not foreshadowed by the way he had lived the rest of his life."). Thus, Mr. Kamensky's conduct was not sufficiently egregious to weigh in favor of a permanent bar. Moreover, the extremely isolated nature of his conduct weighs heavily against the imposition of any further sanctions.

B. Mr. Kamensky quickly recognized the wrongfulness of his actions and has taken numerous steps to make amends, including making multiple sincere assurances, many of which are legally binding, against future violations

Immediately following the events of July 31, 2020, Mr. Kamensky recognized the wrongfulness of his conduct, assuming full responsibility for his actions and taking affirmative steps to make amends. Accordingly, he has provided numerous assurances, including legally binding assurances, against future misconduct, which the sentencing court found to be sincere and

credible. Specifically, Mr. Kamensky has taken the following actions:

First, Mr. Kamensky acknowledged his wrongdoing and resigned from the Committee on August 1, 2020. *See* U.S. Trustee Statement at 24-25. He encouraged Jefferies to place a bid, which it did, as did others in the following days.

Second, Mr. Kamensky cooperated fully with the U.S. Trustee's investigation into the events of July 31, 2020, volunteering to testify in the face of potential exposure to civil and criminal liability—both of which materialized. He began his testimony before the U.S. Trustee by apologizing multiple times for his conduct on that day. *See Ex. 7 (D. Kamensky Trustee Tr.)* 6:3-7, 7:16-20.

Third, as part of a court-approved settlement in the Neiman Marcus bankruptcy, Mr. Kamensky agreed to never again serve on any official bankruptcy committee, to subordinate all of his personal claims in the bankruptcy to those of other creditors, to donate $100,000 to designated charities, and to perform 200 hours of community service. *See Ex. 1 (In re Neiman Marcus Order Approving Settlement)*. He completed well over 200 volunteer hours prior to his surrender date, providing assistance at local food pantries and soup kitchens. In her letter on behalf of Mr. Kamensky in connection with his sentencing, Michelle Singh, director of the Mary Brennan INN Soup Kitchen, reported that during his shifts he "maintain[ed] a positive attitude," "t[ook] on every humble task with enthusiasm," and was "kind and compassionate to those around him." *Ex. 43 (Singh Ltr.)* at 1. As part of his voluntary community service efforts, Mr. Kamensky has also taught at law and business schools—including NYU School of Law, NYU Stern School of Business, Duke University School of Law, Boston College, and the Wharton School of the University of Pennsylvania—imparting on the incoming generation of law and finance leaders the lessons to be taken from the mistakes he made on that day. Professors and students alike have appreciated these lectures as a valuable learning tool, with many remarking on the character Mr.

Kamensky exhibited by candidly discussing his painful experience. *See Ex. 49 (Prof. de Fontenay Email)* at 1 (describing the lecture as "the best way to prepare" students for "these sorts of ethical dilemmas [that] come up in their future careers"); *Ex. 55 (Prof. Hotchkiss Ltr.)* at 1 ("[H]is talk was a unique opportunity for the students to better appreciate the potential conflicts that arise in many business settings."); *Ex. 44 (Prof. Altman Ltr.)* at 1 (describing that Mr. Kamensky's lecture "positively reinforced" his "appreciation of Dan's character, honesty and current state" and that "students and faculty who listened to Dan were genuinely impressed"). Mr. Kamensky taught at numerous law and business schools leading up to his surrender date, and resumed his volunteer teaching shortly following his release to home confinement, remotely and in full compliance with the relevant restrictions.

Fourth, Mr. Kamensky made the difficult decision to close his business, appointing independent managers to close and liquidate Marble Ridge in a responsible manner. Christopher Kennedy, one of the independent managers overseeing the liquidation, wrote that Mr. Kamensky has worked closely with the liquidators throughout the wind down, "providing an unparalleled degree of cooperation, collaboration, and transparency." *Ex. 52 (Kennedy Supplemental Ltr.)* at 2. Mr. Kennedy explained: "The level of support and commitment to investors I have seen from Mr. Kamensky throughout the liquidation process has been exceptional, surpassing what I have typically seen in my experience assisting with fund liquidations." *Id.*

Fifth, on September 10, 2021, Mr. Kamensky reached a settlement with the SEC in the parallel civil case, consenting to an injunction against violations of Section 17(a) of the Securities Act. *See Ex. 3 (SEC v. Kamensky Consent)*.

Finally, and most significantly, on February 3, 2021, Mr. Kamensky pled guilty to a one count violation of 18 U.S.C. § 152(6). *See supra* at 2. On May 7, 2021, he was sentenced to six months' imprisonment followed by six months' home confinement and ordered to pay a $55,000

fine, which he promptly paid. *See supra* at 2.

Speaking at his sentencing hearing, Mr. Kamensky began by once again apologizing and taking full responsibility for his conduct. *Ex. 2 (Sentencing Tr.)* 24:12-13 ("Your Honor, I want to first apologize to everyone affected by the terrible mistakes I made on July 31st."); *id.* at 24:21-22 ("There is no excuse for my behavior and I am deeply regretful and embarrassed for my conduct that day."). Judge Cote "accept[ed]" that "[Mr. Kamensky] is deeply remorseful" and in particular "commend[ed]" him on his efforts to make amends through teaching, noting that "it could be enormously important to law students and young lawyers" to hear Mr. Kamensky's story. *Id.* at 27:21-28:1. Satisfied by the credibility of his assurances against future violations, Judge Cote concluded: "I don't find that there is a need here to provide a sentence to the defendant that guards against a repeat of this activity." *Id.* at 29:25-30:2; *see also id* at 3:14-16 (acknowledging that "[t]he probation department agrees that a non-incarceratory sentence is appropriate in this case").

Further supporting the court's conclusion that Mr. Kamensky has accepted responsibility and made assurances against future violations are the numerous letters from family, friends, and colleagues, describing the regret he has privately expressed to them. *See, e.g.*, *Ex. 46 (Goode Ltr.)* at 1 ("Dan has personally expressed his deep regret for his actions . . . . Dan has acknowledged and accepted his responsibility for his mistakes."); *Ex. 39 (Shams Ltr.)* at 2 ("In my personal conversations with Dan, I find him to be truly penitent and ready to accept the consequences of his actions."). Consistent with his character, Mr. Kamensky has been more concerned about how his conduct has affected those around him than it has himself. *Ex. 47 (Carr Ltr.)* at 1 ("The one thing he kept talking about was how his actions have hurt his family and friends. Not about how it may have hurt him or his career. But, how it was hurting those he cares about."). As his wife Amy reported, since that day, he has been "thoroughly consumed by remorse and regret" and "distraught by the ripple effect of his mistake." *Ex. 48 (Blumenfeld Kamensky Ltr.)* at 6-7.

In its brief, the Division appears to argue that Mr. Kamensky recognized the wrongful nature of his conduct and made assurances against future violations with respect to the criminal action, but "has made no similar effort in matters involving the Commission or the Division" with respect to the SEC's civil action or this administrative proceeding. Division Br. at 12. This characterization is not consistent with the facts. First, it is undisputed that the criminal conviction, the civil action, and the instant administrative proceeding all arose from, as the Commission alleges in the OIP, "substantially the same facts and circumstances." *Ex. 5 (OIP)* ¶ 5. Moreover, the Division's analysis of this *Steadman* factor does not match Commission precedent. *See, e.g.*, *Megalli*, 2018 WL 3199049, at *7 (finding that respondent "affirmatively recognized the wrongful nature of his conduct" in the context of a follow-on administrative proceeding by, *inter alia*, pleading guilty in the underlying criminal proceeding). In any event, Mr. Kamensky likewise agreed to a settlement of the civil litigation with the SEC, saving significant agency resources. *See* Division Br. at 5 n.4; *see also Ex. 3 (SEC v. Kamensky Consent)* ¶ 3 (providing that Mr. Kamensky is "permanently restrain[ed] and enjoin[ed] . . . from violations of Section 17(a) of the Securities Act of 1933"); *Ex. 4 (Order of Suspension)* (suspending Mr. Kamensky from appearing or practicing before the Commission pursuant to Rule 102(e)(2) of the Commission's Rules of Practice, which Mr. Kamensky agreed not to contest). The Division does not articulate why the numerous remedial actions taken by Mr. Kamensky since July 31, 2020 do not constitute sufficient recognition of the wrongfulness of his conduct as it relates to the Commission, nor does it explain what further steps Mr. Kamensky would need to take in order to demonstrate such recognition.[8]

Mr. Kamensky's repeated recognition of the wrongful nature of his conduct and the

[8] Further failing to acknowledge Mr. Kamensky's acceptance of responsibility, the Division cites to an incomplete version of an interview Mr. Kamensky gave to Petition Bankruptcy Blog, attached as Exhibit 11 to the Declaration of Richard Hong in support of the Division's brief. The exhibited version omits Mr. Kamensky's final answer, in which he explains: "This doesn't excuse or minimize my behavior in any way—it was inexcusable—and I take full responsibility for it." He further notes: "I was taught that if you make a mistake, you take responsibility for it and you do your best to make amends. I have done just that, and will pay my debt to society." *Ex. 15 (Petition Interview).*

numerous credible assurances he has provided against future violations weigh heavily in favor of granting summary disposition in his favor.

C. Any concern that Mr. Kamensky's occupation may present opportunities for future violations is alleviated by the fact that Mr. Kamensky does not pose a risk of engaging in future violations

The final *Steadman* factor, "the likelihood that the defendant's occupation will present opportunities for future violations," is not alone dispositive. *See Disraeli*, 2007 WL 4481515, at *15. Indeed, this factor will invariably be satisfied in cases in which the respondent objects to the imposition of a permanent bar. However, any concern here is sufficiently mitigated by the judgment of the court in the criminal case that, based on his sincere remorse and credible assurances against future violations, Mr. Kamensky does not pose a risk of reoffending. Judge Cote's conclusion is further bolstered by the assessment of others with thorough knowledge of the events of July 31, 2020—including representatives of the Committee to which Mr. Kamensky owed a fiduciary duty, the independent liquidators responsible for winding down Marble Ridge, and Mr. Kamensky's investors—that he will not engage in future misconduct.

In addition to considering *opportunities* for future violations, it is also relevant to consider to what extent the respondent *actually poses a risk* of engaging in such future violations. *See Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979) (quoting *American Power & Light Co. v. SEC*, 329 U.S. 90, 112-13 (1946)) (considering whether there is "a reasonable likelihood that a particular violator cannot ever operate in compliance with the law"); *see also Megalli*, 2018 WL 3199049, at *7 (treating its conclusion that respondent is "unlikely to reoffend" an "exigent countervailing consideration[] that weigh[s] in favor of a lesser sanction"); *David J. Montanino*, Initial Decision Release No. 773, 2015 WL 1732106, at *36 (Apr. 16, 2015) ("I find it unlikely that this misconduct will recur. As a result, although Montanino's occupation in the industry would present opportunities for him to commit future violations, this factor does not carry significant

weight in this case."), *accepted as final at David J. Montanino*, Investment Advisers Act Release No. 4098, 2015 WL 3439132 (May 28, 2015). In particular, in declining to impose permanent bars in follow-on administrative proceedings subsequent to criminal convictions, the Commission has found the sentencing judge's assessment of the risk of future violations to carry significant weight. *See Kara*, 2016 WL 1019197, at *7 ("In the judgment of the court in *United States v. Kara*, [respondent] is unlikely to reoffend. Thus a permanent bar is unnecessary."); *Megalli*, 2018 WL 3199049, at *7 ("On balance, considering the court's finding that Megalli is unlikely to reoffend and that his remorse is sincere, a twelve-month suspension is an appropriate sanction.").

It is thus notable that Judge Cote expressed in no uncertain terms her confidence that Mr. Kamensky will not reoffend. *Ex. 2 (Sentencing Tr.)* 30:3-7 ("Individual deterrence is not necessary here. There is little risk . . . that the defendant will violate the law again. I underscore that in my judgment he is a good man who has lived his life with an abundance of love, of kindness to others, and generosity."); *see also id.* at 29:25-30:2 ("I don't find that there is a need here to provide a sentence to the defendant that guards against a repeat of this activity."). This fact is particularly significant, as the Commission has afforded substantial deference to sentencing judges' assessments of the risk of future violations when determining whether a permanent bar would be appropriate. *See Kara*, 2016 WL 1019197, at *7; *Megalli*, 2018 WL 3199049, at *7.

Moreover, other parties with the most thorough knowledge of the events of July 31, 2020 are confident that Mr. Kamensky will not commit future violations. In particular, Mohsin Meghji, financial advisor to the Committee, has submitted a letter to the Commission, expressing his view that imposing "a lifetime ban from the securities industry [would] not protect the integrity of the markets or reduce the risk of injury to investors in the future." *Ex. 53 (Meghji Ltr.)* at 2. Mr. Meghji has a deep understanding of the events of July 31, 2020, having been "the first person to hear of Mr. Kamensky's discussion with Jefferies" as well as having "reported the events to the

Office of the United States Trustee." *Id.* at 1. While Mr. Meghji agrees that the punishment Mr. Kamensky has faced was appropriate, he "do[es] not see how [Mr. Kamensky's] return to the securities industry . . . will pose a risk to the markets or investors." *Id.* at 2. For "more than 12 years," Mr. Meghji has worked with Mr. Kamensky, "both on the same side of the table and as adversaries," and he has observed that Mr. Kamensky "has consistently shown integrity in his dealings." *Id.* at 1; *see also id.* at 2 (describing Mr. Kamensky as "a fundamentally honest and decent person"). Moreover, Mr. Meghji saw firsthand how limited the events of July 31, 2020 were—"a small number of related errors in judgment," resulting not from premeditation, but from "an emotional reaction in the heat of the moment." *Id.* at 2. After the moment had passed, Mr. Meghji observed Mr. Kamensky "willingly admit[] his errors and accept[] full responsibility." *Id.* Even as a representative of the Committee to whom Mr. Kamensky breached his fiduciary duty on that day, Mr. Meghji is confident that Mr. Kamensky does not pose a risk to the securities industry: "I believe that Mr. Kamensky now deserves a chance to redeem himself—and not destruction." *Id.*

Richard Pachulski, who has served as the Committee's lead counsel since May 22, 2020, has also submitted a letter to the Commission, stating: "I don't believe it would be appropriate for the SEC to further punish Mr. Kamensky." *Ex. 54 (Pachulski Ltr.)* at 5. As a restructuring professional who has represented at least 40 creditors' committees in his over 40 years of experience, and as a Committee representative involved in reporting the events of July 31, 2020 to the relevant officials, Mr. Pachulski is uniquely positioned to provide insight into Mr. Kamensky's professional character. *See id.* at 1, 4. Mr. Pachulski wrote that he "can say without equivocation that Mr. Kamensky was an excellent committee member," and believes that Mr. Kamensky's conduct on July 31, 2020 "was a one-time very serious lapse in judgment." *Id.* at 4-5. In his extensive work on the Neiman Marcus bankruptcy, Mr. Pachulski observed that "Mr. Kamensky was instrumental in assisting the [Committee] in receiving the maximum possible recovery for the

Neiman Marcus unsecured creditors." *Id.* at 4. Consistent with what others have reported, Mr. Pachulski described Mr. Kamensky as "contrite" following the events of July 31, 2020. *Id.* at 5 ("Mr. Kamensky apologized to me for his actions, and putting me in the middle of a horrible situation."). Based on his "firm[] belie[f] that Mr. Kamensky brings value to complex situations," Mr. Pachulski expressed that he "would be quite willing to work with Mr. Kamensky in the future." *Id.*

Christopher Kennedy, who has worked closely with Mr. Kamensky and developed a thorough understanding of the circumstances surrounding the events of July 31, 2020 while serving as an independent manager overseeing Marble Ridge's liquidation, has also submitted a letter to the Commission, in which he describes Mr. Kamensky as a "man of integrity." *Ex. 52 (Kennedy Supplemental Ltr.)* at 2. Noting Mr. Kamensky's "unwavering commitment to the Funds' shareholders," Mr. Kennedy explained that the "strong performance" of Marble Ridge during the wind down is due in large part to Mr. Kamensky, who, among other things, "provided complete access to all materials . . . need[ed] to successfully manage the Funds," "invariably provided . . . prompt, accurate, and thorough response[s]" to investor inquiries, and "consistently made himself available for calls with investors" and internal discussions. *Id.* at 1-2. Concerning the events of July 31, 2020, Mr. Kennedy described that he has "witnessed Mr. Kamensky accept responsibility for his conduct on 31 July 2020," not only in private conversations, but also "more broadly in communications with the Funds' investors, where he has openly acknowledged his conduct and taken every action he can to protect his shareholders." *Id.* at 2. While "over 90% of the Funds' positions have been liquidated and returned to investors," the wind down will likely continue into mid-2022, and Mr. Kennedy hopes to continue to take advantage of Mr. Kamensky's "helpful guidance." *Id.* at 1. In an expression of confidence that Mr. Kamensky does not a pose a risk of future misconduct, Mr. Kennedy noted that the liquidators have "found it a pleasure to work with

Mr. Kamensky" and "would readily do so again should the opportunity present itself." *Id.* at 2.

Aware of Mr. Kamensky's character and confident that his conduct on July 31, 2020 was an aberration, many of his former investors have also expressed confidence in his fitness to work in the industry, with some even noting their willingness to invest with him again. *See Ex. 50 (Leffell Supplemental Ltr.)* at 2 ("I would be happy to invest with Dan again."); *Ex. 51 (Blumgart & Benaim Supplemental Ltr.)* at 1 ("Despite the events of last year, we have no regrets that we chose to invest in him and we would do so again. Given his sterling character, we believe that one professional error of his distinguished and honorable career could not possibly have been made with any malice or ill intent."); *id.* at 2 ("We have complete faith in him, and we would be honoured to invest with him again if we are given the opportunity.").

Further underscoring that Mr. Kamensky does not pose a risk of future violations is the fact that after serving part of his sentence at the Otisville Federal Corrections Institution, he was transferred to home confinement, where he is currently serving the remainder of his custodial sentence, as part of the Bureau of Prisons' efforts to reduce prison crowding and keep at-risk inmates safe during the COVID-19 global pandemic. *See Ex. 14 (Bureau of Prisons Memorandum re: Home Confinement)*. Mr. Kamensky was eligible for this early transfer to home confinement based on the correctional institution's judgment that he does not pose an "undue risk" to the community, his low risk of recidivism as calculated by the Department of Justice's Prisoner Assessment Tool Targeting Estimated Risk and Needs ("PATTERN") risk assessment tool, and his heightened risk of contracting severe COVID-19. *See id.* at 2 (identifying criteria for home confinement release during the pandemic). While Mr. Kamensky will serve the entirety of his criminal sentence, ending in June 2022, he will serve the remainder in home confinement.

IV. Mr. Kamensky's Conduct Resulted in No Harm to the Unsecured Creditors of Neiman Marcus

The fact that Mr. Kamensky's conduct, while wrongful, resulted in no economic harm to the

members of the Unsecured Creditors' Committee to whom Mr. Kamensky owed fiduciary duties further supports the conclusion that no further sanction is appropriate. *See Melton*, 2003 WL 21729839, at *2 ("The Commission considers a range of factors . . . including . . . the degree of harm to investors and the marketplace resulting from the violation."). Shortly after July 31, 2020, Jefferies placed a bid on the assets at issue, as did others—Citi, Centerbridge, and Brigade. *See Ex. 12 (Sept. 8, 2020 email from M. Nishida)* ("[Citi] can show a firm bid for a specific size for any claim holder that may look to sell better than GUC Convenience Recovery."); *Ex. 11 (Aug. 7, 2020 email from V. Melwani)* ("[C]ould [Centerbridge] still try to buy it if we wanted? Recognize it would need to be higher then [*sic*] Jefferies just wondering if its [*sic*] already done[.]"); *Ex. 9 (M. Meghji Dep. Tr.)* 58:21-24 (describing that Brigade "[v]erbally" expressed its interest in bidding).

Representatives of the Committee responsible for overseeing the potential sale of the shares at issue reviewed Jefferies's bid and determined that it had too many conditions to make it acceptable. *See Ex. 10 (Aug. 3, 2020 email from M. Meghji)* ("Please see attached analysis on Jefferies proposal from last night. It's not workable as it stands."); *Ex. 9 (M. Meghji Dep. Tr.)* 41:10-11, 41:24 (the offer was "not an offer I could recommend to the committee" and "not worthy of accepting"); *Ex. 8 (M. Meghji Trustee Tr.) 85:11-14* ("It was very complicated. It had a lot of caveats. . . . It was just, you know, frankly not a good proposal."); *Ex. 54 (Pachulski Ltr.)* at 4 (describing Jefferies's bid as "a proposal that would not work under any set of circumstances"). Ultimately, the Committee accepted no bid, concluding that it would be better not to sell the assets at this time, instead holding them in a trust until a later date. *Ex. 9 (M. Meghji Dep. Tr.)* 56:18-57:13 (describing that the MyTheresa Series B shares' value "could be maximized by deferring the monetization of those shares to a later time").

This conclusion is further supported by an expert report, prepared by Marti P. Murray, filed in connection with an adversary proceeding that arose in the Neiman Marcus bankruptcy following

the events of July 31, 2020. Ms. Murray is an economic consultant with an expertise in industry custom and practice for corporate restructurings, distressed debt investing and trading, post-reorganization securities, and business and securities valuation. *See Ex. 13 (Murray Expert Report)*. In the report, Ms. Murray concluded that there was "no evidence that the July 31 Conduct impacted what the Jefferies Group was ultimately willing to bid, or even that it discouraged other potential bidders." *Id.* ¶ 48. Moreover, no offer submitted—by Jefferies or any other entity—was acceptable for reasons that were "wholly unrelated" to Mr. Kamensky's conduct. *Id.* ¶ 30. Finally, the conduct "produced no discernible negative effect on the price" of the relevant assets. *Id.* ¶ 72.

That the bidding for the relevant assets continued regardless of the events of July 31, 2020, that Jefferies's bid was ultimately unacceptable for reasons unrelated to Mr. Kamensky's conduct, and that his conduct did not affect the price of the relevant assets weigh heavily against imposing a permanent bar on Mr. Kamensky. In fact, the Commission has declined to impose a permanent bar even in cases in which there was significant financial harm. *See Megalli*, 2018 WL 3199049, at *7 (quantifying the "direct financial harm" as "$2,034,000 in losses avoided and $648,655 in profits gained" but nevertheless declining to impose a permanent bar). Here, by contrast, there was no direct harm to the creditors to whom Mr. Kamensky owed a fiduciary duty. Thus, imposing any further sanctions against Mr. Kamensky would not be appropriate.

V. The Commission's Goal of General Deterrence Has Already Been Served Multiple Times Over in This Case

In arguing that Mr. Kamensky should be barred for "general deterrence purpose[s]," Division Br. at 13, the Division fails to acknowledge the deterrent effect of Mr. Kamensky's criminal sentence, as well as the other painful, public consequences he has faced. In light of the numerous punishments visited on Mr. Kamensky as a result of his conduct, the goal of general deterrence has already been served multiple times over in this case.

Mr. Kamensky's criminal sentence alone is sufficient to serve the goal of general

deterrence, as Judge Cote devised his sentence *specifically to serve* this purpose. *See Ex. 2 (Sentencing Tr.)* 29:15-17 ("[T]here is a significant need here for both an appropriate punishment for that activity and . . . general deterrence."). Having determined that "[i]ndividual deterrence [was] not necessary here," *id.* at 29:25-30:3, Judge Cote ultimately concluded that a sentence at the lowest end of the Guidelines range would sufficiently maintain creditors' "faith" in the "bankruptcy process as a whole" by deterring others from similar conduct. *Id.* at 29:21-25. Thus, in the judgment of the sentencing court, general deterrence has already been satisfied.

Further, Mr. Kamensky has faced various additional consequences beyond his criminal sentence, as discussed in more detail above, that will more than adequately deter others from committing similar violations: He withdrew from the Committee. He settled his claims with the Neiman Marcus bankruptcy estate, agreeing to never again serve on any official bankruptcy committee, to subordinate all of his personal claims in the bankruptcy to those of other creditors, to make donations to certain charities, and to perform community service. He made the difficult decision to close his business. He settled a civil claim brought by the SEC, consenting to a permanent injunction against violations of Section17(a) of the Securities Act. And, most recently, he was suspended from appearing as an attorney before the Commission pursuant to SEC Rule of Practice 102(e), and agreed not to object to such suspension.

Moreover, Mr. Kamensky's painful experience has played out publicly, putting all who may be in the position to commit similar violations on notice that breaches of fiduciary duties in the bankruptcy context can carry severe consequences. The U.S. Trustee issued a public report regarding the events of July 31, 2020, noting that "effective committees are critical to a robust chapter 11 process" and that "any threats to their integrity and function must be resolved promptly and publicly." *See* U.S. Trustee Statement at 30. Bankruptcy professionals have published articles remarking on the significance of Mr. Kamensky's case and advising creditors' committee members

to expect to face heightened scrutiny going forward. *See, e.g.*, Stephanie Wickouski, *Kamensky Forces More Scrutiny on Committee Process*, Locke Lord (Mar. 1, 2021), https://www.lockelord.com/newsandevents/publications/2021/03/kamensky-forces-more-scrutiny ("*Kamensky* may force the restructuring industry to reexamine the way things are done, elevating the standard of care for professionals representing committees and for committee members."). His experience has even garnered broader attention from national media outlets, making his story a public cautionary tale for all parties with fiduciary duties in the bankruptcy context. *See* Andrew Scurria & Alexander Gladstone, *Hedge Fund Marble Ridge to Close After Scathing Neiman Report*, The Wall Street Journal (Aug. 21, 2020), https://www.wsj.com/articles/hedge-fund-marble-ridge-to-shut-down-11598014779; Gregory Zuckerman & Soma Biswas, *Hedge-Fund Manager Who 'Came Undone' Is Headed to Prison*, The Wall Street Journal (June 12, 2021), https://www.wsj.com/articles/hedge-fund-manager-who-came-undone-is-headed-to-prison-11623490201.

Indeed, the fact that general deterrence has already been served in this case cannot be overcome by the Division's blanket assertion that "imposing permanent industry bars" would "deter others." Division Br. at 14. The multiple, widely publicized punishments visited on Mr. Kamensky as a result of his conduct on July 31, 2020, including a criminal sentence tailored specifically for general deterrence purposes, have alerted all bankruptcy professionals of the sanctity of their fiduciary duties. Thus, general deterrence has been satisfied multiple times over, and any further sanctions would be unnecessary to serve this goal.

CONCLUSION

Mr. Kamensky made serious mistakes during those few hours on July 31, 2020, and, accordingly, he has accepted serious punishment. Based on the judgment of the court in the underlying criminal action, it would not serve the public interest to punish him further. For the

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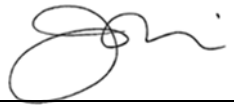
foregoing reasons, Mr. Kamensky respectfully requests that the Commission grant summary disposition in his favor and decline to bar him from association with any investment adviser, broker-dealer, or other industry professionals enumerated in Advisers Act Section 203(f). However, to the extent the Commission decides that an additional sanction is necessary, Mr. Kamensky submits that nothing more than a twelve-month suspension would be appropriate.

Dated: November 29, 2021
New York, New York

Respectfully submitted,

CLEARY GOTTLIEB STEEN & HAMILTON LLP

By: 

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Alexander Janghorbani
One Liberty Plaza
New York, New York 10006
Telephone: (212) 225-2000
Facsimile: (212) 225-3999

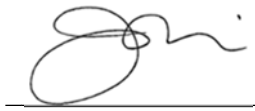
Attorneys for Respondent Daniel B. Kamensky

CERTIFICATE OF SERVICE

In accordance with Rule 150 of the Commission's Rules of Practice, I hereby certify that a true and correct copy of the foregoing motion with attachments was served on the following persons on November 29, 2021, and otherwise sent, by the method indicated:

By e-filing:
Office of the Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-2557

By email:
Alexander M.Vasilescu, Esq., VasilescuA@sec.gov
Richard Hong, Esq., HongR@sec.gov
Joseph P. Ceglio, Esq., CeglioJ@sec.gov
Securities and Exchange Commission
New York Regional Office
200 Vesey Street, Suite 400
New York, New York 10281
Counsel for Division of Enforcement



Joon H. Kim

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-20586

In the Matter of

DANIEL B. KAMENSKY,

Respondent.

RESPONDENT DANIEL B. KAMENSKY'S INDEX OF ATTACHMENTS

Attachment	Description
Ex. 1[1]	Order Granting the Joint Motion of the Reorganized Debtors, the Liquidating GUC Trust, Daniel B. Kamensky, and Marble Ridge Capital LP for Entry of an Order (I) Approving a Settlement Pursuant to Federal Rule of Bankruptcy Procedure 9019 and (II) Granting Related Relief, *In re Neiman Marcus Grp. LTD LLC*, No. 20-32519 (DRJ) (Bankr. S.D. Tex. Dec. 11, 2020)
Ex. 2	Sentencing Transcript, *United States v. Kamensky*, No. 21-cr-0067 (DLC) (S.D.N.Y. May 7, 2021) ("*U.S. v. Kamensky*")
Ex. 3	Final Judgment as to Defendant Daniel B. Kamensky and Consent of Defendant Daniel B. Kamensky, *SEC v. Kamensky*, No. 20-cv-7193 (VEC) (S.D.N.Y. Sept. 10, 2021)
Ex. 4	*Daniel B. Kamensky, Esq.*, Exchange Act Release No. 93090 (Sept. 21, 2021)
Ex. 5	*Daniel B. Kamensky*, Investment Advisers Act Release No. 5869 (Sept. 21, 2021)
Ex. 6	Notice of Appointment of Committee of Unsecured Creditors, *In re Neiman Marcus Grp. LTD LLC*, No. 20-32519 (DRJ) (Bankr. S.D. Tex. May 19, 2020)
Ex. 7	Daniel Kamensky – Excerpt of US Trustee Transcript, dated Aug. 16, 2020

[1] Exhibits from prior court proceedings are the versions as filed on the docket in those actions and thus contain redactions required or allowed by the court in those cases. All additional redactions required to comply with Rule 151(e) of the Securities and Exchange Commission's Rules of Practice, 17 CFR § 201.151(e), have likewise been made.

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Attachment	Description
Ex. 8	Mohsin Meghji – Excerpt of US Trustee Transcript, dated Aug. 14, 2020
Ex. 9	Mohsin Meghji – Excerpt of Deposition Transcript, dated Sept. 22, 2020
Ex. 10	Email from M. Meghji, dated Aug. 3, 2020 (submitted in *U.S. v. Kamensky*)
Ex. 11	Email from V. Melwani, dated Aug. 7, 2020 (submitted in *U.S. v. Kamensky*)
Ex. 12	Email from M. Nishida, dated Sept. 8, 2020 (submitted in *U.S. v. Kamensky*)
Ex. 13	Marti P. Murray – Declaration and Expert Report, dated Sept. 23, 2020
Ex. 14	Dep't of Justice, Federal Bureau of Prisons, Memorandum from Andre Matevousian, Assistant Director, Correctional Programs Division; Sonya D. Thompson, Assistant Director, Reentry Services Division; and Michael D. Smith, Assistant Director, Health Services Division to Chief Executive Officers (Apr. 13, 2021)
Ex. 15	Notice of Appearance – Daniel Kamensky, Former Managing Partner of Marble Ridge Capital., Petition (June 11, 2021)
Ex. 16	Raj Iyer Support Letter (submitted in *U.S. v. Kamensky*)
Ex. 17	Peter Kaufman Support Letter (submitted in *U.S. v. Kamensky*)
Ex. 18	Greg Pearson Support Letter (submitted in *U.S. v. Kamensky*)
Ex. 19	Steve Schembri Support Letter (submitted in *U.S. v. Kamensky*)
Ex. 20	Anthony Marino Support Letter (submitted in *U.S. v. Kamensky*)
Ex. 21	Nick Castellano Support Letter (submitted in *U.S. v. Kamensky*)
Ex. 22	David Lieberman Support Letter (submitted in *U.S. v. Kamensky*)
Ex. 23	Doron Almog Support Letter (submitted in *U.S. v. Kamensky*)
Ex. 24	Michael Ultsh Support Letter (submitted in *U.S. v. Kamensky*)
Ex. 25	Harry Mamaysky Support Letter (submitted in *U.S. v. Kamensky*)
Ex. 26	David Pauker Support Letter (submitted in *U.S. v. Kamensky*)
Ex. 27	Nicole Caiazzo Support Letter (submitted in *U.S. v. Kamensky*)
Ex. 28	John Falcone Support Letter (submitted in *U.S. v. Kamensky*)

Attachment	Description
Ex. 29	Jared Nussbaum Support Letter (submitted in *U.S. v. Kamensky*)
Ex. 30	Saul Burian Support Letter (submitted in *U.S. v. Kamensky*)
Ex. 31	Evan Lederman Support Letter (submitted in *U.S. v. Kamensky*)
Ex. 32	Putnam Coes Support Letter (submitted in *U.S. v. Kamensky*)
Ex. 33	Sam Molinaro Support Letter (submitted in *U.S. v. Kamensky*)
Ex. 34	Jim Seery Support Letter (submitted in *U.S. v. Kamensky*)
Ex. 35	Marc Heimowitz Support Letter (submitted in *U.S. v. Kamensky*)
Ex. 36	Marc Kirschner Support Letter (submitted in *U.S. v. Kamensky*)
Ex. 37	Rich Levin Support Letter (submitted in *U.S. v. Kamensky*)
Ex. 38	Elliot Ganz Support Letter (submitted in *U.S. v. Kamensky*)
Ex. 39	Howard Shams Support Letter (submitted in *U.S. v. Kamensky*)
Ex. 40	Shira Citro Support Letter (submitted in *U.S. v. Kamensky*)
Ex. 41	Kelly Mamaysky Support Letter (submitted in *U.S. v. Kamensky*)
Ex. 42	Adam Herz Support Letter (submitted in *U.S. v. Kamensky*)
Ex. 43	Michelle Singh Support Letter (submitted in *U.S. v. Kamensky*)
Ex. 44	Ed Altman Support Letter (submitted in *U.S. v. Kamensky*)
Ex. 45	Joshua Blumenfeld & Michelle Witman Support Letter (submitted in *U.S. v. Kamensky*)
Ex. 46	Steven Goode Support Letter (submitted in *U.S. v. Kamensky*)
Ex. 47	Alan Carr Support Letter (submitted in *U.S. v. Kamensky*)
Ex. 48	Amy Blumenfeld Kamensky Support Letter (submitted in *U.S. v. Kamensky*) (attachment omitted)
Ex. 49	Email from E. de Fontenay, dated Apr. 14, 2021 (submitted in *U.S. v. Kamensky*)
Ex. 50	Michael Leffell Supplemental Support Letter, dated Nov. 16, 2021, and Michael Leffell Support Letter submitted in *U.S. v. Kamensky*

Attachment	Description
Ex. 51	Steven Blumgart & Michael Benaim Supplemental Support Letter, dated Nov. 18, 2021, and Steven Blumgart & Michael Benaim Support Letter submitted in *U.S. v. Kamensky*
Ex. 52	Christopher Kennedy Supplemental Support Letter, dated Nov. 23, 2021, and Christopher Kennedy Support Letter submitted in *U.S. v. Kamensky*
Ex. 53	Mohsin Meghji Support Letter, dated Nov. 26, 2021
Ex. 54	Richard Pachulski Support Letter, dated Nov. 29, 2021
Ex. 55	Edith Hotchkiss Support Letter, dated Nov. 28, 2021

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Exhibit 1

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	)	Chapter 11
NEIMAN MARCUS GROUP LTD LLC, *et al.*,[1]	)	Case No. 20-32519 (DRJ)
Reorganized Debtors.	)	(Jointly Administered)

ORDER GRANTING THE JOINT MOTION OF THE REORGANIZED DEBTORS, THE LIQUIDATING GUC TRUST, DANIEL B. KAMENSKY, AND MARBLE RIDGE CAPITAL LP FOR ENTRY OF AN ORDER (I) APPROVING A SETTLEMENT PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019 AND (II) GRANTING RELATED RELIEF

(Docket No. 2079)

Upon the joint motion (the "Motion")[2] of the Parties for entry of an order (a) approving the proposed settlement (the "Settlement") among the Reorganized Debtors, Mr. Kamensky, the Manager, and the Trust and (b) granting related relief, all as more fully described in the Motion, the Court finds that: (i) it has jurisdiction over the Motion pursuant to 28 U.S.C. § 1334; (ii) venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409; (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b); (iv) proper and adequate notice of the Motion has been given and no other or further notice is necessary; (v) the relief requested in the Motion is in the best interests of the Reorganized Debtors' estates, their creditors, and other parties in interest; (vi) it may enter a final order consistent with

[1] The Reorganized Debtors in these chapter 11 cases, along with the last four digits of each Reorganized Debtor's federal tax identification number, are: NMG Holding Company, Inc. (5916); Bergdorf Goodman LLC (5530); Bergdorf Graphics, Inc. (9271); Mariposa Intermediate Holdings LLC (5829); NEMA Beverage Corporation (3412); NEMA Beverage Holding Corporation (9264); NEMA Beverage Parent Corporation (9262); NM Bermuda, LLC (2943); NM Financial Services, Inc. (2446); NM Nevada Trust (3700); NMG California Salon LLC (9242); NMG Florida Salon LLC (9269); NMG Global Mobility, Inc. (0664); NMG Notes PropCo LLC (1102); NMG Salon Holdings LLC (5236); NMG Salons LLC (1570); NMG Term Loan PropCo LLC (0786); NMG Texas Salon LLC (0318); NMGP, LLC (1558); and The Neiman Marcus Group LLC (9509). The Reorganized Debtors' service address is: One Marcus Square, 1618 Main Street, Dallas, Texas 75201.

[2] Capitalized terms not defined herein have the meanings given to such terms in the Motion or the Settlement, as applicable.

Article III of the United States Constitution; (vii) the Parties' notice of the Motion and opportunity for a hearing on the Motion were appropriate and no other notice need be provided; and (viii) having reviewed the Motion and having heard the statements in support of the relief requested therein, the legal and factual bases set forth in the Motion establish just cause for the relief granted herein;

IT IS HEREBY ORDERED:

1. Pursuant to Bankruptcy Rule 9019, the Court approves the Settlement attached hereto as **Exhibit A**, subject to the conditions set forth below.

2. The Parties are authorized to enter into, perform, execute, and deliver all documents, and take all actions, necessary to immediately continue and fully implement the Settlement in accordance with the terms, conditions, and agreements set forth or provided for therein, all of which are approved.

3. Mr. Kamensky and the Manager shall pay to the Reorganized Debtors on the Settlement Effective Date cash in the amount of $1,400,000 as reimbursement for the additional fees estimated to have been incurred by the Reorganized Debtors and their stakeholders in connection with Mr. Kamensky's actions and conduct in the Reorganized Debtors' Cases.

4. Neither Mr. Kamensky nor any entities that he presently controls or may become affiliated with or control in the future have or will acquire any equity or debt in the Reorganized Debtors, MYT Ultimate Parent, Inc., or any affiliates thereof or successors thereto, other than through his or its participation in the Plan.

5. In an effort to resolve the pending efforts to seek subordination of his personal interests in the cases, 100% of any claims held by or for the benefit of Mr. Kamensky individually, directly or indirectly, on account of the Cash Pay Notes and/or the PIK Toggle Notes, classified in Class 10 Funded-Debt General Unsecured Claims under the Plan, shall be subordinated and receive

no recovery to the extent such claims are entitled to any distribution from the Liquidating GUC Trust, unless and until all other General Unsecured Claims in Classes 10 and 11 are paid in full.

6. Pursuant to Bankruptcy Rule 9019, the releases set forth in Paragraph 6 of the Settlement are hereby approved.

7. Mr. Kamensky shall by his agreed undertaking and as a self-imposed action to demonstrate restoration of the system contribute an aggregate of $100,000 to one or more charities to be determined in consultation with the Reorganized Debtors, within 90 days of the date of this Order.

8. Mr. Kamensky shall not serve, individually or through any affiliate, on any official committee in any future chapter 11 bankruptcy cases and is hereby enjoined from any such service. This provision is intended to be enforceable in any bankruptcy court or other court of competent jurisdiction with respect to any future chapter 11 case.

9. The U.S. Trustee is authorized and requested to take any action necessary to enforce the injunction prohibiting Mr. Kamensky from serving, individually or through any affiliate, on any official committee in any chapter 11 bankruptcy case.

10. Mr. Kamensky shall attend, within one year from the Settlement Effective Date, 15 hours of substantive continuing legal education covering the topics of bankruptcy and ethics.

11. Mr. Kamensky shall perform, within one year from the Settlement Effective Date, 200 hours of community service in accordance with the Settlement.

12. Mr. Kamensky shall agree under oath, in a declaration filed with the Court, that nothing in the Settlement will serve to cap the amount of loss that might be calculated in any future criminal proceeding.

13. Mr. Kamensky shall file with the Court, on or before December 6, 2021, a certificate under penalty of perjury setting forth the specific details of Mr. Kamensky's compliance with the Settlement. Mr. Kamensky shall attach certified proof of compliance to the certificate.

14. Unless cancelled by the Court following Mr. Kamensky's filing of the certificate of compliance, a hearing is scheduled on December 20, 2021, at 9:00 a.m., prevailing Central Time to ensure Mr. Kamensky's compliance with the terms of the Settlement. Mr. Kamensky shall personally attend the hearing unless excused by the Court.

15. The Parties are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

16. The Court shall retain exclusive jurisdiction over all matters subject to this Order, including disputes arising under this Order, and the construction, interpretation, modification, and enforcement of this Order, and shall retain exclusive jurisdiction to hear and adjudicate any motions related to this Order.

Signed: December 11, 2020.

DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

Settlement Agreement

SETTLEMENT AGREEMENT

This Settlement Agreement, dated as of the last date set forth on the signature blocks below (the "Agreement"), is made by and among Daniel Kamensky, individually, Marble Ridge Capital LP (the "Manager"), the Liquidating GUC Trust (as defined in the Plan) and Mohsin Meghji, in his capacity as trustee of the Liquidating GUC Trust (collectively, the "Trust"), and NMG Holding Company, Inc. (as successor to Neiman Marcus Group LTD LLC) and its nineteen affiliated reorganized debtors listed on **Exhibit A** to this Agreement in the jointly administered cases under case number 20-32519 (together with their successors and assigns, collectively, the "Reorganized Debtors," and together with Mr. Kamensky, the Manager, and the Trust, each a "Party" and collectively, the "Parties").

Recitals

WHEREAS, on May 7, 2020, the Reorganized Debtors filed voluntary petitions for relief pursuant to chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of Texas (the "Court");

WHEREAS, the Reorganized Debtors' cases (collectively, the "Cases") are jointly administered under case number 20-32519;

WHEREAS, on May 19, 2020, the United States Trustee for the Southern District of Texas (the "U.S. Trustee") appointed the statutory committee of unsecured creditors (the "Committee") in the Reorganized Debtors' Cases [Docket No. 455];

WHEREAS, disputes and controversies arose concerning Mr. Kamensky's actions and conduct from and after July 31, 2020 as the Manager's representative on the Committee;

WHEREAS, following such acts and events, Marble Ridge Master Fund LP (the "Master Fund") began winding down its affairs, liquidating its holdings and returning capital to its investors;

WHEREAS, in connection with that wind-down, the Master Fund, through its general partner Marble Ridge Capital GP LLC, appointed Alexander Lawson and Christopher Kennedy of Alvarez & Marsal Cayman Islands Ltd. as joint voluntary liquidators with full, binding authority to act for and on behalf of the Master Fund;

WHEREAS, on August 1, 2020, the Manager on behalf of the Master Fund resigned from the Committee;

WHEREAS, on August 19, 2020, the U.S. Trustee filed a formal report regarding Mr. Kamensky's actions and conduct [Docket No. 1485];

WHEREAS, on August 26, 2020, Reorganized Debtors Mariposa Intermediate Holdings LLC, Neiman Marcus Group LTD LLC, and The Neiman Marcus Group LLC (the "Plaintiffs") filed an adversary proceeding against the Manager and the Master Fund (together, the "Defendants");

WHEREAS, as a consequence of the appointment of Messrs. Lawson and Kennedy as joint voluntary liquidators, the Manager and Mr. Kamensky represent that neither the Manager nor Mr. Kamensky have any further authority to act for or on behalf of the Master Fund with respect to matters related to the Reorganized Debtors;

WHEREAS, on September 4, 2020, the Court confirmed the *Debtors' Third Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code (With Technical Modifications)* [Docket No. 1795] (the "Plan");[1]

WHEREAS, on September 25, 2020, the Effective Date of the Plan occurred, and the Reorganized Debtors emerged from Chapter 11 [Docket No. 1906];

WHEREAS, on the Effective Date of the Plan, Reorganized Debtor Neiman Marcus Group LTD LLC merged into a new entity, NMG Holding Company, Inc.;

WHEREAS, the Parties have engaged in arm's length, good faith discussions with the objective of settling any and all claims and causes of action against Mr. Kamensky arising from Mr. Kamensky's actions and conduct but not resolving the pending adversary proceeding against the Defendants that remains before the Court;

WHEREAS, to avoid any further expenditure of time, effort and money and the uncertainty attendant to litigation, the Parties desire fully and finally to compromise, settle and resolve all claims that could be asserted by the Reorganized Debtors against Mr. Kamensky based on Mr. Kamensky's actions and conduct, upon the terms and conditions set forth herein (the "Settlement"), subject to approval of this Agreement by the Court and satisfaction of the other terms and conditions set forth herein.

Agreement

NOW THEREFORE, the Parties, intending to be legally bound hereby, in consideration for the mutual covenants and promises contained here and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Recitals. The foregoing recitals are incorporated herein by reference and made part of this Agreement.

2. Effective Date. This Agreement shall become effective (the "Settlement Effective Date") and the obligations contained herein shall become binding upon the Parties (subject to all applicable terms and conditions hereof), upon the first date that (i) this Agreement has been executed and delivered by each of the Parties and (ii) the Court has entered an order, in form and substance reasonably acceptable to the Parties, approving the Settlement and this Agreement and authorizing the Reorganized Debtors to enter into and perform their obligations under this Agreement, and such order becomes a final, nonappealable order (the "Approval Order").

3. Reimbursement of Fees. Mr. Kamensky and the Manager will, on the Settlement Effective Date, pay to the Reorganized Debtors cash in the amount of $1,400,000 as

1 Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Plan.

reimbursement for the additional fees estimated to have been incurred by the Reorganized Debtors and their stakeholders in connection with Mr. Kamensky's actions and conduct in the Reorganized Debtors' Cases.

4. Ownership Restrictions. Neither Mr. Kamensky nor any entities that he presently controls or may become affiliated with or control in the future have or will acquire any equity or debt in the Reorganized Debtors, MYT Ultimate Parent, Inc., or any affiliates thereof or successors thereto, other than through his or its participation in the Plan.

5. Subordination of Claims. 100% of any claims held by or for the benefit of Mr. Kamensky individually, directly or indirectly, on account of the Cash Pay Notes and/or the PIK Toggle Notes, classified in Class 10 Funded-Debt General Unsecured Claims under the Plan, shall be subordinated and receive no recovery to the extent such claims are entitled to any distribution from the Liquidating GUC Trust, unless and until all other General Unsecured Claims in Classes 10 and 11 are paid in full.

6. Mutual Releases. Upon the occurrence of the Settlement Effective Date and the payment specified in Paragraph 3, the Reorganized Debtors and the Trust fully and finally remise, release, acquit, and discharge Mr. Kamensky from any and all actions, causes of action, claims, or suits that could be asserted by the Reorganized Debtors or the Trust against Mr. Kamensky based on Mr. Kamensky's actions and conduct in the Reorganized Debtors' Cases. Mr. Kamensky fully and finally remises, releases, acquits, and discharges the Reorganized Debtors and the Trust from any and all actions, causes of action, claims, or suits that could be asserted by Mr. Kamensky against the Reorganized Debtors or the Trust based on Mr. Kamensky's actions and conduct in the Reorganized Debtors' Cases. For the avoidance of doubt, the mutual releases herein shall not release any rights, actions, causes of action, claims, suits, defenses, or responses (in each case, that have not been released pursuant to the Plan or otherwise): (i) by or against any person who is not a Party to this Agreement; (ii) that have been or could be asserted by the Reorganized Debtors in the action styled *Marble Ridge Capital LP et al. v. Neiman Marcus Group, Inc., et al.*, 116th Judicial District Court Dallas County, Texas, Trial Court Cause No. DC-18-18371; (iii) that the Reorganized Debtors or the Trust have asserted or could assert against any entity or person other than Mr. Kamensky based on Mr. Kamensky's actions and conduct in the Reorganized Debtors' Cases, including claims against the Manager and the Master Fund (including those asserted in the Adversary Proceeding); or (iv) that the Manager or the Master Fund have or could have asserted against or relating to any of the Parties hereto or any other person.

7. Charitable Contribution. In recognition of the costs associated with the U.S. Trustee's investigation and report, Mr. Kamensky shall contribute $100,000 to one or more charities to be determined in consultation with the Reorganized Debtors.

8. Prohibition on Bankruptcy Participation. Mr. Kamensky shall not serve, individually or through any affiliate, on any official committee in any future chapter 11 bankruptcy cases, and consents to the entry of an order to this effect. This provision is intended to be enforceable in any bankruptcy court or other court of competent jurisdiction with respect to any future chapter 11 case.

9. CLE Certification. Mr. Kamensky shall attend, within one year from the Settlement Effective Date, fifteen hours of substantive continuing legal education covering the topics of bankruptcy and ethics.

10. Community Service. Mr. Kamensky shall perform, within one year from the Settlement Effective Date, 200 hours of community service, which shall include Mr. Kamensky: (i) preparing educational materials to assist in teaching a New York area law school course having as its focus the ethical and legal obligations arising from bankruptcy cases and the role of committees and persons in connection with the negotiation and structure of a sale or plan, using Mr. Kamensky's circumstances as a basis on which actors in these cases can and should act, using this situation as an example; (ii) assisting business school professor(s) in creating case studies having as their focus the consequences of stress, on decision-making and/or the ethical and legal obligations arising from bankruptcy cases and the role of committees and persons in connection with the negotiation and structure of a sale or plan using Mr. Kamensky's circumstances as a basis on which actors in these cases can and should act using this situation as an example, for use in teaching and other educational settings; (iii) in coordination with the U.S. Trustee, if the U.S. Trustee is willing, using his case study to assist in teaching a continuing education course having as its focus the ethical and legal obligations arising from bankruptcy cases and the role of committees and persons in connection with the negotiation and structure of a sale or plan, using Mr. Kamensky's circumstances as a basis on which actors in these cases can and should act using this situation as an example, and (iv) such other community service as available in his community, including accredited nonprofits and his place of worship.

11. Court Approval. This Agreement, including all of its terms and conditions in their entirety, is subject to approval of the Court.

Other Material Terms and Conditions:

12. The Reorganized Debtors hereby agree and covenant not to, and shall not, seek or pursue any portion of the $1,400,000 in fees paid pursuant to Paragraph 3 of this Agreement as a measure or component of damages in any action, cause of action, claim, or suit against the Manager, including in the Adversary Proceeding. For the avoidance of doubt, this covenant shall serve as an agreed-upon exclusion of a specified category of damages the Reorganized Debtors may seek or pursue against the Manager, but this covenant shall not release any action, cause of action, claim, or suit against the Manager, including those asserted in the Adversary Proceeding. This covenant shall not release, limit, exclude, or otherwise affect any action, cause of action, claim, suit, or amount, category, or type of damages that the Reorganized Debtors have asserted or may assert against the Master Fund.

13. This Agreement is solely and specifically entered into by between the enumerated Parties, and it in no manner binds or affects the rights of any person (including but not limited to the Master Fund) who is not among such enumerated Parties.

14. This Agreement shall in all respects be interpreted, construed, enforced, and governed under the laws of the United States of America. Any disputes hereunder or related in any manner to this Agreement, including, without limitation, any dispute relating to the

interpretation, meaning, or effect on any Parties hereof, will be resolved and must be filed in the Court.

15. This Agreement shall be deemed jointly drafted by the Parties, and the terms and provisions of this Agreement shall not be construed against any Party. Rule 408 of the Federal Rules of Evidence applies to this Settlement, particularly with respect to the validity or amount of a disputed claim.

16. This Agreement shall be binding on the Parties and their respective successors and assigns and shall inure to the benefit of the Parties and each of their successors and assigns.

17. This Agreement may be executed in counterparts and may be delivered electronically to counsel for the Parties. Any copy so executed and delivered, when taken with another executed copy, shall be considered and deemed an original hereof.

18. The Parties and the undersigned, on behalf of the Parties, represent and warrant that they have full power and authority to execute this Agreement on the Parties' behalf.

[*Signature pages follow*]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date and year below.

Dated:

By:
For: Daniel Kamensky, Individually

Dated:

By:
For: Marble Ridge Capital LP

Dated:

By:
For: The Liquidating GUC Trust and Mohsin Meghji, in his capacity as trustee of the Liquidating GUC Trust

Dated:

By:
For: NMG Holding Company, Inc.
Bergdorf Goodman LLC
Bergdorf Graphics, Inc.
Mariposa Intermediate Holdings LLC
NEMA Beverage Corporation
NEMA Beverage Holding Corporation
NEMA Beverage Parent Corporation
NM Bermuda, LLC
NM Financial Services, Inc.
NM Nevada Trust
NMG California Salon LLC
NMG Florida Salon LLC
NMG Global Mobility, Inc.
NMG Notes PropCo LLC
NMG Salon Holdings LLC
NMG Salons LLC
NMG Term Loan PropCo LLC
NMG Texas Salon LLC
NMGP, LLC
The Neiman Marcus Group LLC

EXHIBIT A

Reorganized Debtors

NMG Holding Company, Inc.

Bergdorf Goodman LLC

Bergdorf Graphics, Inc.

Mariposa Intermediate Holdings LLC

NEMA Beverage Corporation

NEMA Beverage Holding Corporation

NEMA Beverage Parent Corporation

NM Bermuda, LLC

NM Financial Services, Inc.

NM Nevada Trust

NMG California Salon LLC

NMG Florida Salon LLC

NMG Global Mobility, Inc.

NMG Notes PropCo LLC

NMG Salon Holdings LLC

NMG Salons LLC

NMG Term Loan PropCo LLC

NMG Texas Salon LLC

NMGP, LLC

The Neiman Marcus Group LLC

Exhibit 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA, New York, N.Y.

v. 21 Cr. 67 (DLC)

DANIEL KAMENSKY,

Defendant.

----------x

May 7, 2021
11:00 a.m.

Before:

HON. DENISE L. COTE,

District Judge

APPEARANCES

AUDREY STRAUSS
United States Attorney for the
Southern District of New York
BY: RICHARD A. COOPER
DANIEL TRACER
Assistant United States Attorneys

CLEARY GOTTLIEB
Attorneys for Defendant
BY: JOON HYUN KIM
-and-
BARNES & THORNBURG, LLP
BY: LAWRENCE GERSCHWER

ALSO PRESENT: FATIMA HAQUE, Special Agent, FBI
ANGELA TASSONE, Special Agent, FBI

(Case called)

THE DEPUTY CLERK: Is the government ready to proceed?

MR. COOPER: Yes. Good morning, your Honor. Richard Cooper and Daniel Tracer for the government, with FBI special agents Fatima Haque and Angela Tassone.

THE DEPUTY CLERK: For the defendant?

MR. KIM: Yes, your Honor. Joon Kim, Cleary Gottlieb Steen & Hamilton on behalf of the defendant Dan Kamensky. I am here with co-counsel Lawrence Gerschwer from Barnes & Thornburg.

THE COURT: Thank you. You may be seated.

Wet me ask you, Mr. Kim, have you and your client both reviewed the presentence report?

MR. KIM: Yes, we have, your Honor.

THE COURT: And have you discussed it with each other?

MR. KIM: Yes, we have.

THE COURT: Do you have any objections to it other than what might be contained in your written sentencing submissions?

MR. KIM: No, your Honor.

THE COURT: Thank you.

The presentence report is made part of the record in this case. It will be placed under seal. If an appeal is taken, counsel on appeal may have access to the sealed report without further application to this Court.

There is a plea agreement in this case with a stipulation with respect to the sentencing guidelines. It agrees that the offense level is 13 and the Criminal History Category is I, with a sentencing guidelines range of 12 to 18 months. The presentence report contains the same calculation. I have reviewed it and adopt it as my own.

Mr. Kamensky has asked for a non-incarceratory sentence. He has been extraordinarily generous with his wealth and with his time. He has given significance assistance to several charitable endeavors and been a loving friend to many. He is deeply devoted to his family. He has many admirers in his profession and has made positive contributions working as a professional in challenging reorganizations including, most prominently, the Lerman bankruptcy. The probation department agrees that an non-incarceratory sentence is appropriate in this case.

The government and the U.S. Trustee ask for a sentence of incarceration within a range of 12 to 18 months. They stress that the bankruptcy system is premised upon transparency and the honesty of fiduciaries. "Without faith in the bankruptcy sale process, it would be difficult to obtain willing buyers to purchase bankruptcy estate assets through the Court-approved option sale process." They argue that if the defendant's actions are not significantly addressed with an appropriate sentence, those actions would "work to destroy the

public's confidence in the important role of official committees in the bankruptcy system."

I have read more than 100 letters submitted on behalf of the defendant; I have reviewed an October 31, 2020 forensic psychiatric evaluation of the defendant; the August 19, 2020 U.S. Trustee report to the Bankruptcy Court in the Southern District of Texas; the April 14th, 2021 letter from the U.S. Trustee; the defendant's voluntary testimony of August 16, 2020. I have listened to the taped July 31st conversation with the Jefferies employee while reading the transcript of that conversation. I have reread the allocution for the defendant's plea and, of course, I have read everything else the parties submitted including their memoranda of law.

The defendant's submissions emphasize his good works, the pandemic, and the risk of incarceration during a pandemic, the way he has lived his life, and what they characterize as the aberration reflected by this criminal behavior.

I will hear from the government.

MR. COOPER: Thank you, your Honor. I will be brief.

I would just like to address two points, the seriousness of the offense and the concept of general deterrence, both of which are touched on in our submission.

First, on the seriousness of the offense, it bears noting that even though, as the defense contends, there was no financial loss, the idea behind the crime here was financial in

nature. The defendant had learned of a competing bid for assets, a bid that was higher than the one that he and his firm had put in, and he faced a situation where he would either lose the opportunity to serve as the cash backstop for bidding on those assets, or he would have to increase his bid and pay more for them. Either way, your Honor, the motive here was financial in nature and was for his firm to obtain valuable assets for a cheaper price. But, even setting that aside, as your Honor noted, there was an intangible harm that was intended and that was done to the process. The crime here threatens the integrity of the bankruptcy process. It doesn't matter that Jefferies ultimately decided to bid or that their bid was not accepted by the creditors' committee. The conduct here puts into question the integrity of players in this process.

In terms of general deterrence, it is a similar idea here. The bankruptcy process, and in particular unsecured creditors' committees like the one that the defendant co-chaired in the Neiman Marcus bankruptcy, their work, although supervised by the Court, largely occurs outside of the direct view of the Court unless issues arise and are presented to the Court and the process relies on the candor and good faith of the participants. There are relatively few prosecutions of the statute that the defendant pled guilty to before your Honor but that's all the more reason to impose a

sentence commensurate with the nature of the crime here. Because there were relatively few opportunities for courts to speak on this issue, it is important that participants in bankruptcy processes understand that if they engage in conduct of this sort, it's not merely a matter of reputational damage or financial harm, but there are additional serious consequences to serve as a deterrent message to those who participate in these processes.

So, with that, unless the Court has particular questions, the government will rest on our submission.

THE COURT: I have no questions. Thank you.

MR. COOPER: Thank you, your Honor.

THE COURT: Before I hear from Mr. Kim I should have noted for the record that we are in the midst of a worldwide pandemic and, as a result, everyone in this courtroom, including myself and the defendant and counsel, are masked and socially distanced.

Mr. Kim, there is a phone in front of you and your client that permits confidential communication, and if at any time you would like an opportunity to have confidential communication with your client, we will make sure that can happen.

Mr. Kim.

MR. KIM: Thank you, your Honor.

Your Honor, before you today for sentencing is Dan

Kamensky, a genuinely good and decent person. He is a deeply devoted husband, a loving father, a caring friend to many, and honest and hard working professional, extremely considerate employer and compassionate and generous member of his community.

Dan has led a worthy life by any measure; he has tried to live it the right way, with integrity, and trying to be good to those around him. Although there is no audio tape of those moments big and small, we do have, and your Honor has read, over 100 letters from family, from friends, business colleagues, employees, competitors even who paint the picture of Dan who sits before you today. And in reading those letters I found that they were describing the person that I got to know as his lawyer -- kind, caring, generous, considerate. But of course he sits here before you today because of his conduct on July 31 of last year, because in moments of extreme panic and stress on that day, he made phone calls that he absolutely should not have made, he said things on those calls that he absolutely should not have said. And he knows that. He accepts responsibility for that and has pled guilty to a felony. But, in sentencing Dan today, your Honor, we ask that you consider the complete person that Dan is, not just his offense.

The probation office recommends three years' probation, reasoning that "this offense appears to be an

isolated aberrant act." And we very much agree with that. The probation office also concludes that the three-year sentence of probation is sufficient taking into account the sentencing factors, and they look to "the need for the sentence to promote respect for the law, provide just punishment, afford adequate deterrence to future criminal conduct, and to protect the public from future crimes, further crimes." And in assessing those they conclude and recommend that a sentence of probation -- three years' probation is sufficient. And we obviously join and agree with the assessment and recommendation.

If I could say a few words about the offense conduct here in the nature of the offense and, in doing so, we absolutely do not intend to minimize the conduct or the impact it has had but we want to talk about what it is and what it is not.

First, the offense was very short-lived. It was two phone calls on one day during a particularly intense period in the midst of the pandemic and at a time of extreme stress and panic while [redacted]. No premeditation, no planning, no scheme, no real thought. In many ways, the offense here was as a result of a lack of thought, a lack of careful consideration or reflection and, in fact, reacting. That is different, as your Honor is aware, from many of the

cases that we see in this court house, criminal fraud cases that generally involve schemes that last for periods of time, individuals who work with others to hatch, engage in fraudulent schemes. That was not this case.

Your Honor asked for earlier this week, and listened to, the audio of the entire call of the second of the calls to Jefferies, and you can hear the panic and desperation in his voice. He had just been told by Marble Ridge's lawyer that Jefferies felt threatened by the earlier call, told Dan that this could be bankruptcy fraud and that he could be going to jail for it. And you hear Dan talk about that, say that I could be going to jail. You hear him trying to understand what happened and try to, in his panicked state, see if there is anything he can do. It is a painful call to listen to. The call starts with: *Do you know what happened?* And ends with: *I'm really sorry.* But, of course, the damage was done. Dan should never have made that call, he should never had said those things that he said, but those are the two calls, within hours of each other, that is the offense conduct.

The other point I'm going to make about the offense is that it did not result in economic harm to the unsecured creditors, the people to whom Dan owed his fiduciary duties.

THE COURT: So, Mr. Kim, that's hard for me to assess. I appreciate that that is your position but that's very hard to assess.

MR. KIM: Yes, your Honor.

The economic harm, in terms of the bidding process, there was an economic harm because the next day Jefferies intended -- sent their intent to bid and then actually did put in their bid.

THE COURT: I know, but this misconduct, this criminal activity became known and was investigated, and everything that happened thereafter happened in the context of this deeply disturbing behavior, and so it's really difficult for me to make a judgment about the impact of that on the entire bidding process.

MR. KIM: Your Honor, it is of course difficult to imagine or know what the parallel world would have looked like if this didn't happen and he hadn't made that call, but what happened was, after that second call, Dan took all the steps that he could to correct himself -- he withdrew from the Committee, with all the issues with that second call he encouraged Jefferies to bid, they actually bid. It turned out that the bid had some of the problems that Dan was afraid about, that it may not be the real bid of the type that the Committee was looking for because, if your Honor will see from the papers, it was the Committee that was encouraging Dan and Marble Ridge to provide this cash backstop offer because they were the ones who actually created that asset for the unsecured creditors. And the Committee professionals recognized that

some of the unsecured creditors, particularly the trade creditors, would not be interested in holding illiquid MyTheresa's shares and rather wants cash. And so they had asked -- the Committee professionals had asked Mr. Kamensky to see if he could put up cash backstop offer so that the settlement could go through. Those were the negotiations that were taking place on that day. And the understanding was that once that cash backstop offer would be incorporated as part of the structure that would be in the disclosure statement that was due that Monday -- so, this call was Friday and then Monday the disclosure statement was due -- the understanding, and certainly Dan's understanding was that structure needed to be in place. But, once that structure was in, then once the disclosure statement was disclosed, other interested parties, like Jefferies or anyone else, could come in and bid and see if they can top it. And that actually is what happened, including after Mr. Kamensky's conduct. The expectation was that once it is publicly filed, interested parties who wanted to bid for those assets would have that option.

So, although your Honor certainly recognizes that you can't know for sure what would happen in a parallel universe where these acts did not happen, but the intent was that the cash backstop offer that the Committee wanted Marble Ridge to provide would be put in place and it needed to be put in place by that Monday. Once it was put in place there would be other

opportunities for other bidders to emerge, which is what they did. So, that is sort of what we mean by the lack of harm and lack of intent to harm. But, in doing so, your Honor, we don't want to minimize the harm that was done to the bankruptcy process. And, we have read Trustee's letter. Any misconduct in a bankruptcy, certainly this one, harms the process, and this is actually something -- and your Honor has seen the letters from his bankruptcy colleagues. This is something that pains Dan as well. He is someone who cares deeply about the bankruptcy process. Bankruptcy is the area that he has worked his entire professional life. He has actually taken steps to try to improve and make it fairer working with people. And so, he recognizes and accepts the harm that he has done to that process.

The government, in their submission, says that Dan only took responsibility after being confronted with the recorded call. That's not correct. Mr. Kamensky, as I said earlier, immediately after July 31 -- he didn't know the call was recorded -- withdrew from the Committee and then willingly and voluntarily cooperated with the Trustee's investigation. He testified under oath, he did not assert his Fifth Amendment rights, and the first thing he did in that testimony was to apologize and recognize his wrongdoing. If I could quote -- and this is before he was confronted with the audio later in the testimony -- if I quote, he started by saying, "I want to

come right out and say I made a series of terrible mistakes. These mistakes were profound, profound errors and lapses of judgment, and violated the personal and professional beliefs I have tried my best to live by. I am an active participant in the bankruptcy process and I believe in the sanctity of that process to my core. Anything I have done to that to put that process at risk is unacceptable and I apologize to the Court, the U.S. Trustee, to the Committee, and to the professionals who worked to make this case a success." I think those feelings were genuine and you can see that the work what he did in the bankruptcy process.

Another point that I want to make about the offense conduct, and I won't belabor it because I think I addressed it in response to one of your Honor's questions, this whole recovery that led to Mr. Kamensky's criminal conduct was something that he and Marble Ridge created on behalf of the unsecured creditors. It was no one else, it was a direct result of the years of work that Mr. Kamensky -- Dan -- took to pursue fraudulent conveyance claims against Neiman-Marcus' sponsor. No one else believed in it, no one else was willing to put in the work to pursue it. Dan did. He put in the laboring oar and the immense risk that came from it and all the unsecured creditors benefited from it.

So, it is unfortunate -- in some ways tragic -- that this recovery that he created for the unsecured creditors is

what lands him in this position now of having breached his fiduciary duty to those very same creditors for whom he worked to get this recovery.

THE COURT: Is he the largest unsecured creditor? Marble Ridge?

MR. KIM: Your Honor, I am not sure about that.

(Defendant and counsel conferring)

MR. KIM: Yes, he says he was the largest unsecured creditor.

Your Honor, that is the nature and circumstances of the offense here. In many ways it is quite unique, exceedingly short-lived, a time of particular intense pressure, no plan, no premeditation, no scheme, a reaction in a state of panic and desperation based on recovery that Dan and Marble Ridge had created, and a fiduciary duty that where because, when Marble Ridge and Dan started to negotiate the cash backstop offer with the Committee he refused, from that discussion, although not taken off the Committee. And so, the fiduciary duty that was breached was in the context of negotiations from which he had been recused and ultimately no actual economic harm resulting.

I would like to turn back to Dan Kamensky the person and talk about the characteristics of the defendant as your Honor will consider it.

You have seen all the letters about the type of person he is and the life that he has led, and significantly how out

of character the conduct on July 31 was. And, the probation office recognizes that. The letters show and confirm that Dan is someone who has and is considered to be fair, honest, and straight forward. If you read some of the letters that your Honor has seen, "Honesty is an immovable feature of Dan. Even in the most contentious situations, his legal and professional and personal ethics were never called into question. Great decency integrity and humility. Honesty and straightforwardness were prominent features of our interactions. One of the best people I have known in my lifetime. It is also clear that Dan has been uniquely collaborative and cooperative in an industry that is notorious for sharp elbows and rivalries." One of his investors noted, "Never one to bad-mouth his peers, we were taken aback by how nicely he spoke about his rivals."

And, as I said earlier, Dan has also has actively participated in trying to make the bankruptcy process better and fairer. Rich Levin, respected bankruptcy lawyer, talked about how Dan always worked to develop the best policy solutions independent of his firm's financial interests. Elliot Ganz, the general counsel of Loan Syndication Trading Association, shared how Dan worked actively with that organization to devise the fair disclosure rule. He said "Whenever Dan called, I knew that hard work lay ahead but I was always happy to partner with him because whatever he was

proposing was important and necessary and would make the system work better." Mr. Ganz noted that Dan does this work behind the scenes, never putting his name on anything.

Howard Shams, the CEO of a distressed debt investment firm says in his letter, "Dan has been responsible for many practical and positive changes to the bankruptcy code itself. That is what makes this error such an outlier. Dan is the guy who helped codify fair practices."

In terms of being an employer, his employees at Marble Ridge describe a truly exceptional employer. It was not just about being a good boss. He was kind and caring and in a real way, created a close knit culture at his firm, treated his employees like family. When employees' family members were sick, he would tell them to go home even if it was their first day at work. He looked out for their personal and professional development. He helped an employee's brother find work, paid for another's speech therapy. And in perhaps the most moving tribute among his employees, his former assistant who is currently pregnant, says that she hopes her son would grow up to be like Dan.

These are some of the people who knew him best and worked with him every day and that's what they said about him. And that's partly the reason why it has been so devastating for him for him to close Marble Ridge as a consequence of his actions.

In terms of his family -- and your Honor has seen the letters from his family members and many of them are here today and others are joining by phone -- his dedication to his family is apparent to everyone who meets him. As the former Chief Bankruptcy Judge Arthur Gonzalez who Dan has worked with and a class Dan taught in says, "What stands out to most to me is his commitment to family, a devoted husband and an extremely proud father of his teenage daughter."

And, Dan is part of an extremely close family with his wife Andy and his teenage daughter [redacted]. And your Honor has read the letters about how they met and how, despite what they feared would be challenges in having children, that they were able to have their miracle child [redacted] who is now a teenager. And you have read the moving letters about how they've supported each other through health issues that his wife had gone through, through the personal and professional challenges that Dan has gone through, and the challenges he and the family face today as a result of his actions on July 31. That commitment to his family and the extended family is something that we ask, your Honor, and I am sure you will, consider it in deciding the sentence.

The other point about Dan we want to emphasize is the charitable and generous work that he has done and he has done consistently throughout his life, whether it is helping a friend go through difficult times, even while he is going

through his own, or whether it is jumping at opportunities to provide support for worthy causes near and far. And, as your Honor has seen, it goes beyond just financial support. He puts in his time, his energy, his dedication, his tenacity, his creativity. It is not done in showy or flashy ways to get his name on a brochure, it is because he cares. And he didn't care whether he got credit or not. [redacted]

And his contributions -- financial, time, and otherwise -- have, the list is many and your Honor has seen them, The Jewish National Fund, Memorial Sloan-Kettering, Let Kids Try, The Michael J. Fox Foundation, but also as far away as Israel where he has been actively supporting a rehabilitation village of children with severe disabilities and a pediatric cancer center in Ghana.

So, this generous and charitable spirit is something that has been part of Dan his whole life and has actually been conveying and transferring to others including his daughter and others in his community.

In terms of what he has done after July 31 he has done

what he can, as best as he can, to try to make things better. He subordinated all of his personal interests in the bankruptcy in the interest of others. He settled all of his claims in the bankruptcy paying for all the fees incurred by the debtor as a result of his conduct. He voluntarily agreed, as part of his settlement, to perform 200 hours of community service including teaching at law schools and business schools. And, he has been working at a soup kitchen and your Honor has seen the letter from the person there showing how much they appreciate Dan and Dan appreciates them. And, the lecturing at law schools and business schools, that was Dan's idea, that is something that he wanted to do and make part of the bankruptcy settlement to see if he can make something positive out of this situation he is in. And, some of the comments from the students show that they appreciate it and is hopefully having the impact. I quote from one student who says: "It takes courage and humility to share his story with us and tell us what real life is professionally when it comes to risk. I would like to tell Dan that I admire him from the bottom of my heart and his story will have, without a doubt, impact on our careers." That is something that Dan has been trying to do. It goes not only to his character but also the question of general deterrence which the government has raised and obviously your Honor must consider. He understands that need and that's all part of the need to make sure no one else does what he did or makes the

mistake he did.

The government suggests that general deterrence needs to include a term of imprisonment. I don't think that's always the case. We don't think that's the case here. The Probation Office has agreed it is not every client, it does not require the person to go to jail and spend time in jail for there to be a general deterrent effect. The probation office has found that general deterrence will be served here by a sentence of three years' probation -- at least that's their recommendation.

There are other factors that we believe impact the general deterrence question. The first is that as the government has said, this offense and this crime is rarely charged. 18 U.S.C. 152(6), the offense, has actually never been charged before in the Southern District of New York. And in the 1.5 million federal sentences that are in the Sentencing Commission's database there is only two, and both of those defendants received terms of probation; one year and three years.

And, commentators, who have been following this case intensely, have noted that this is a remarkable case in that it is unusual for this type of conduct to result in criminal charges. I quote: What is remarkable is the government's position that a breach of fiduciary duty in bankruptcy is criminally fraudulent. And that's the question and recognition that is in the community. And it is not that this type of

conduct hasn't ever been charged because it hasn't happened before. There are breaches of fiduciary duties and misconduct in bankruptcy. They are obviously serious and need to be handled and treated seriously, they are mostly handled in the bankruptcy context in the bankruptcy court. As here, Dan has undergone and entered into the settlements that he did in the bankruptcy court. So, again, not to suggest in any way that the charge was inappropriate or the elements weren't met, but the fact that this statute has never been charged in this district before, so rarely charged, it already puts the resolution of Mr. Kamensky's -- Dan's case -- in an extreme, a harsh extreme and then if you consider how similarly situated individuals are treated. And, also the deterrent effect. It is -- I don't think there is anyone who is following this case in the bankruptcy or financial community would say that he was treated lightly here with a criminal charge and all the things that has happened to him as a result.

Specific deterrence, your Honor, I don't think there is much time needs to be spent on that. I don't believe the government believes there is a need for specific deterrence, tell you that Dan will never engage in this type of misconduct again. And, fundamentally, he has learned his lesson. As his wife put it, since July 31, 20, she has been living with a man thoroughly consumed by remorse and regret.

One final point, your Honor, before I close, and your

Honor has mentioned it, it is in our submissions, is the impact of the pandemic which, obviously, we are all going through. It has, although vaccinations are obviously going up and the numbers are getting better, it has and continues to have an extremely -- impose an extremely heavy burden on the Bureau of Prisons and they have and are taking extraordinary measures because of it, and specifically and in particular, we understand that there are strict protocols for incoming and outgoing inmates that include 14 days or more coming in and going out in solitary confinement. And, as your Honor is aware, solitary confinement is normally used for disciplinary or punitive purposes and although we recognize why the BOP may feel the need to do that to protect the inmates and their staff, the result is that any term of incarceration results in a month or more of solitary confinement, something that we respectfully submit that this offense and Dan Kamensky does not need to go through or is not fitting with the offense.

A couple of other things in terms of the impact of the pandemic that your Honor has seen. Dan's father, who is in Florida, is in late stage [redacted] Dan has been traveling down whenever he can to try to help. He went down recently to help set up a walker and wheelchair for him when he fell. He recently had a feeding tube that was inserted. It would impose -- obviously a prison term imposes substantial burden on any defendant but, your Honor, I raise this with your Honor.

And, because of her medical history, Dan's wife is [redacted] and Dan has played a critically important role in the family in raising their teenage daughter and his [redacted]

I would like to close where I started in talking about Dan as a person, how he is a generally good and decent person. He is a good and decent person who made serious mistakes on July 31, 2020 and his life, no matter what happens, will never be the same again. But, outside of that day, those two calls, he has been a loving family man, a reliable friend, honest and respectful professional, caring employer, and a generous member of his community. The worst moments of July 31 and perhaps his entire life has been captured in an audio tape that your Honor has heard. It is hard to do but we respectfully request that your Honor try to picture the best and perhaps normal moments of Dan and his life captured in audio tape as well. The many letters help, it is hard to do because the audio is very visceral, but the normal and best moments when Dan is trying to do the right thing, trying to treat people the right way caring for his family trying to help those in need, and we ask the Court to take into account this complete picture of Dan Kamensky as a person as well as the offense and some of the unique nature of it, and we request that you adopt the

recommendation of the Probation Office and find that a sentence of probation is sufficient but not greater than necessary to achieve the purposes of sentencing.

Thank you.

THE COURT: Thank you. And Mr. Kim, you have done a wonderful job gathering together all those materials and I very much appreciate it, the picture you gave of the defendant.

MR. KIM: Thank you, your Honor.

THE COURT: Mr. Kamensky, did you wish to speak to me on your behalf in connection with this sentence?

THE DEFENDANT: Yes, I do, your Honor. Thank you.

Your Honor, I want to first apologize to everyone affected by the terrible mistakes I made on July 31st; to the Court, the government, to those involved in the Neiman-Marcus bankruptcy, and to the U.S. Trustee, to the investors and employees of my fund Marble Ridge which I shut down, and to my friends and family who have suffered greatly as a result of my conduct. I struggle to even put into words the depth of sorrow and remorse I feel for the strain my actions have caused my family, especially my wife. She does not deserve this.

There is no excuse for my behavior and I am deeply regretful and embarrassed for my conduct that day. My actions that day do not represent the person I am or the person I aspire to be. They do not reflect my personal morals, ethics, and values.

My life will never be the same as a result of my actions. I have lost the business I dreamed of creating. My employees, who were like family to me, have had to find new jobs. My wife and daughter have been traumatized at the experience of an early morning arrest and raid in my home. Your Honor, I only learned later that my daughter had thought I had been killed and I will have to live and deal with that fact, the fact that I put those I love and care about, my friends and family, through this incredibly difficult ordeal.

Your Honor asked, questioned how to weigh and think about economic harm in this case. There is so much about my behavior that day that I still question and go over in my mind but I was aware that bidders were going to come in, we had talked about it. Whatever triggered my reaction, I will never know. But, if anything, even after this was -- this came out, which would have normally probably scared people away, bidders still came in and I was not surprised by that. It doesn't excuse my conduct. What I did was wrong but I want to try and give you a little bit of context for just how tragic what I did was.

Nothing can change what happened that day or excuse the things I said. I made grave and terrible mistakes that I will bear for the rest of my life. The only thing I can do is own up to it, learn from it, and try to move forward in a positive direction. And, your Honor, I am doing my best to do

just that. I have been and will continue volunteering at a food pantry where I give back to the community in a meaningful way. I have found that work to be especially rewarding for me personally. I think some of my colleagues from the Inn are on the phone today to show their support and I appreciate that. I plan to continue volunteering there going forward.

I am also using my experience as a real life example of how mistakes get made and the consequences they can have on your life and those around you so the next generation can learn from and hopefully avoid making the mistakes that I made.

I guest lectured to students in graduate school courses across law, risk management and business at schools including Columbia, Duke, NYU Law, NYU Stern and Wharton. I am preparing a case study for the faculty sponsored by Harvard so that others can learn from the mistakes I made. I have been asked to teach at Yale in the fall. I really sincerely hope I will be able to make those commitments.

In putting myself out there for the students, I was prepared for and expected to receive harsh judgment for my actions but the feedback from the students has been thoughtful and eye-opening, helping me reach deeper levels of understanding about my own behavior and hopefully teaching them not to make the mistakes I have as they start off their careers.

The experience of teaching has been cathartic. It has

helped me to heal in ways I could not have imagined and to emerge from this experience with a more positive outlook. Your Honor, I hope that you see in me, in addition to my failings, the person I am, the life I have tried to live and plan to live going forward, and that you take that into account in making your decision.

I thank you for your consideration.

THE COURT: Thank you, Mr. Kamensky.

I agree with defense counsel that there was no evidence of premeditation here, no premeditation. When the unexpected happened -- the Jefferies bid -- the defendant reacted in a way that I will discuss a bit more in a moment. It is key the defendant admitted that he told the individuals from Jefferies that they should stand down and not put in a competing bid, that he would use his position on the Committee to make sure that their bid would be rejected and that his firm's relationship with Jefferies would be affected by their conduct. Those statements during his plea allocution, on February 3rd, describe the first telephone communication that the defendant had with the Jefferies representatives that day.

I also accept that the defendant is deeply remorseful and that the conduct in which he engaged was not foreshadowed by the way he had lived the rest of his life. I commend the defendant for his teaching. I think it could be enormously important to law students and young lawyers to hear about what

happened on July 31st of last year. The defendant's own judgment and assessment about why he acted as he did and to understand the consequences and impact it had not on him -- not just on him, personally, but on that entire bankruptcy process and the chain of events that were triggered.

In my judgment, based on the materials that have been submitted to me, I feel quite confident in judging the defendant as a good man but one who lost his warrants, and I think that was true before July 31st of last year. It appears from the materials that have been submitted to me that since the defendant struck out on his own and founded Marble Ridge, the pressure of that undertaking proved to be too much for him. It took an enormous toll on his health, it took a toll on his relationships, in particular those whom he loved the most. And then, in July last year, working in the context of that pressure, he came undone. He tried to control what he could not control and, in doing so, he betrayed his profession, his duties to others, his relationships. He broke the law. He phoned Jefferies demanding that it stand down, and of course the pressure of that day has to be understood in the context of something he had been dealing with for literally years. Since 2018 he had been waging a battle over what he believed to be a fraudulent transfer of assets. He had spent three and a half million dollars in legal fees pursuing the issue. He believed he was doing a good thing for Marble Ridge and for

other unsecured creditors.

In the middle of the afternoon of July 31st, in a call with Jefferies, he violated his fiduciary duty to the unsecured creditors. He ignored his relationship with his fellow Committee members and the professionals with whom the Committee was working. And, of course, he breached his obligations to the bankruptcy process. And then, later in the afternoon, when he learned of what Jefferies said when it withdrew its bid because of this pressure, and when the enormity of the criminal activity in which he had just engaged became clear to him including the risks that he faced of going to jail, the defendant doubled-down. He tried to rewrite history. He tried to get another person to lie for him. He tried to obstruct justice and that's the recorded call.

So, there is a significant need here for both an appropriate punishment for that activity and, I submit, more general deterrence. The fact that there has not been or there have not been many prosecutions of this nature does not suggest that general deterrence isn't an issue. I would say quite the opposite.

The bankruptcy process depends on trust and honesty and good faith. Creditors must be able to have confidence in the Committee process and faith that their interests will be protected by the Committee that represents them and by the bankruptcy process as a whole. On the other hand, I don't find

that there is a need here to provide a sentence to the defendant that guards against a repeat of this activity. Individual deterrence is not necessary here. There is little risk and this is true for many reasons, that the defendant will violate the law again. I underscore that in my judgment he is a good man who has lived a life with an abundance of love, of kindness to others, and generosity.

In an exercise of my discretion and considering all of the Section 3553(a) factors, as well as the sentencing guidelines for a Zone C sentence, I am ready to impose sentence.

Mr. Kamensky, please stand. I do not find that a sentence of 12 months' imprisonment is necessary here. I impose, instead, a sentence of six months' imprisonment, with a term of supervised release of six months, with a condition of home detention. No further term of supervised release is warranted.

I believe there is also a requirement for a special assessment of $100. The Probation Department recommends a fine of $55,000. There has been no objection to that amount and I impose it as well.

Counsel, is there any legal reason why I cannot impose the sentence I have just described, as stated?

MR. COOPER: No, your Honor.

MR. KIM: No, your Honor.

THE COURT: I order the sentence I have just described on the record to be imposed, as stated. I need to advise the defendant of his right to appeal.

If you are unable to pay the cost of an appeal, you may apply for leave to appeal in forma pauperis. Any notice of appeal must be filed within 14 days of the judgment of conviction.

You may be seated. The defendant is required to surrender by June 18 at 2:00 to the designated institution for service of his sentence unless advised of an earlier surrender date.

Mr. Cooper, is there anything else we need to do?

MR. COOPER: No, your Honor. Thank you.

THE COURT: Mr. Kim?

MR. KIM: Your Honor, I know your Honor does not designate a particular facility, but if you could recommend a facility close to New York City, specifically Otisville, to be close for family visits and also more accommodating of inmates who are Jewish, we request a recommendation along those lines.

THE COURT: I will make a recommendation to the Bureau of Prisons that the defendant is designated to a facility as close as possible to the New York City area.

Anything else, Mr. Kim?

MR. KIM: No, your Honor.

THE COURT: Thank you.

o0o

Exhibit 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,	:	
Plaintiff,	:	**ECF CASE**
- against -	:	**20-cv-07193-VEC**
DANIEL B. KAMENSKY,	:	
Defendant.	:	

FINAL JUDGMENT AS TO DEFENDANT DANIEL B. KAMENSKY

The Securities and Exchange Commission having filed a Complaint on September 3, 2020 and Defendant Daniel B. Kamensky ("Defendant") having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment; waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

(a) to employ any device, scheme, or artifice to defraud;

(b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements

made, in light of the circumstances under which they were made, not misleading; or

(c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

II.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Judgment.

Dated: September 10, 2021

Valerie Caproni

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,	
Plaintiff,	**ECF CASE**
- against -	**20-cv-07193-VEC**
DANIEL B. KAMENSKY,	
Defendant.	

CONSENT OF DEFENDANT DANIEL B. KAMENSKY

1. Defendant Daniel B. Kamensky ("Defendant") acknowledges having been served with the complaint dated September 3, 2021 in this action, enters a general appearance, and admits the Court's jurisdiction over Defendant and over the subject matter of this action.

2. Defendant has pleaded guilty to criminal conduct relating to certain matters alleged in the complaint in this action. Specifically, in *United States v. Daniel B. Kamensky*, No. 21-cr-0067 (DLC) (S.D.N.Y.) (the "Criminal Proceeding"), Defendant pleaded guilty to violating 18 U.S.C. § 152(6) (bankruptcy bribery and extortion). In connection with that plea, Defendant admitted to facts set out in the transcript of his plea allocution that is attached as Exhibit A to this Consent. This Consent shall remain in full force and effect regardless of the existence or outcome of any further proceedings in the Criminal Proceeding.

3. Defendant hereby consents to the entry of the Final Judgment in the form attached hereto (the "Final Judgment") and incorporated by reference herein, which, among other things:

(a) permanently restrains and enjoins Defendant from violations of Section 17(a) of the Securities Act of 1933 [15 U.S.C. § 77q(a)].

4. Defendant waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

5. Defendant waives the right, if any, to a jury trial and to appeal from the entry of the Final Judgment.

6. Defendant enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce Defendant to enter into this Consent.

7. Defendant agrees that this Consent shall be incorporated into the Final Judgment with the same force and effect as if fully set forth therein.

8. Defendant will not oppose the enforcement of the Final Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

9. Defendant waives service of the Final Judgment and agrees that entry of the Final Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendant of its terms and conditions. Defendant further agrees to provide counsel for the Commission, within thirty (30) days after the Final Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Defendant has received and read a copy of the Final Judgment.

10. Consistent with 17 C.F.R. § 202.5(f), this Consent resolves only the claims asserted against Defendant in this civil proceeding. Defendant acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or

may arise from the facts underlying this action or immunity from any such criminal liability. Defendant waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendant further acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Defendant understands that he shall not be permitted to contest the factual allegations of the complaint in this action.

11. As part of Defendant's agreement to comply with the terms of Section 202.5(e), Defendant acknowledges the guilty plea for related conduct described in paragraph 2 above, and: (i) will not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; (ii) will not make or permit to be made any public statement to the effect that Defendant does not admit the allegations of the complaint, or that this Consent contains no admission of the allegations; and (iii) upon the filing of this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint. If Defendant breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right to take legal or factual positions in

litigation or other legal proceedings in which the Commission or the Division of Enforcement is not a party.

12. Defendant hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Defendant to defend against this action. For these purposes, Defendant agrees that Defendant is not the prevailing party in this action since the parties have reached a good faith settlement.

13. Defendant agrees to waive all objections, including but not limited to, constitutional, timeliness, and procedural objections, to the administrative proceeding that will be instituted when the judgment is entered.

14. Defendant agrees that the Commission may present the Final Judgment to the Court for signature and entry without further notice.

15. Defendant agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Final Judgment.

Dated: August 5, 2021

Daniel B. Kamensky

JOSHUA A BIRD NOTARY PUBLIC No. 01BI6384078 STATE OF NEW YORK Qualified in Orange County My Comm. Expires Dec. 3, 2022

On August 5th, 2021, Daniel Kamensky, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.

Notary Public
Commission expires: 12/3/2022

Approved as to form:

Joon H. Kim, Esq.
Alexander Janghorbani, Esq.
CLEARY GOTTLIEB STEEN & HAMILTON LLP
One Liberty Plaza
New York, NY 10006-1470
ajanghorbani@cgsh.com

Attorneys for Defendant Daniel B. Kamensky

[redacted]

Exhibit 4

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 93090 / September 21, 2021

ADMINISTRATIVE PROCEEDING
File No. 3-20588

In the Matter of **DANIEL B. KAMENSKY, Esq.,** **Respondent.**	**ORDER OF SUSPENSION PURSUANT TO RULE 102(e)(2) OF THE COMMISSION'S RULES OF PRACTICE**

I.

The Securities and Exchange Commission deems it appropriate to issue an order of forthwith suspension of Daniel B. Kamensky pursuant to Rule 102(e)(2) of the Commission's Rules of Practice. 17 C.F.R. § 201.102(e)(2).[1]

II.

The Commission finds that:

1. Kamensky is an attorney who has been admitted to practice law in New York since 2000.

2. On May 10, 2021 a judgment of conviction was entered against Kamensky in *United States v. Kamensky*, Case No. 21-cr-67 (S.D.N.Y.). Kamensky pled guilty to Extortion and Bribery in Connection with Bankruptcy. He was sentenced to imprisonment for six months, followed by six months of supervised release with home detention, and fined $55,000.

3. The Commission also brought an action against Kamensky, the founder of New York-based registered investment adviser Marble Ridge Capital LP, for the same misconduct at issue in the criminal proceeding. The Commission's complaint alleges that Kamensky used his position on the bankruptcy committee that facilitated the offering of securities for the Neiman Marcus Group Ltd. LLC bankruptcy estate to

[1] Rule 102(e)(2) provides in pertinent part: "Any … person who has been convicted of a felony or a misdemeanor involving moral turpitude shall be forthwith suspended from appearing or practicing before the Commission."

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manipulate the offering so that Kamensky's own fund could purchase the securities at an artificially low price. *SEC v. Kamensky*, Case No. 20-cv-7193 (S.D.N.Y.).

III.

In view of the foregoing, the Commission finds that Kamensky has been convicted of a felony within the meaning of Rule 102(e)(2) of the Commission's Rules of Practice.

Accordingly, it is ORDERED that Daniel B. Kamensky is forthwith suspended from appearing or practicing before the Commission pursuant to Rule 102(e)(2) of the Commission's Rules of Practice.

By the Commission.

Vanessa A. Countryman
Secretary

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Exhibit 5

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5869 / September 21, 2021

ADMINISTRATIVE PROCEEDING
File No. 3-20586

In the Matter of **DANIEL B. KAMENSKY,** **Respondent.**	**CORRECTED ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940 AND NOTICE OF HEARING**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Daniel B. Kamensky ("Respondent" or "Kamensky").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. From 2015 through at least August 1, 2020, Respondent was the founder and Managing Partner and Portfolio Manager of New York-based and Commission-registered investment adviser, Marble Ridge Capital LP ("MRC"). Respondent, 48 years old, is incarcerated at the Otisville Federal Correctional Institution in Otisville, New York.

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B. ENTRY OF THE INJUNCTION/RESPONDENT'S CRIMINAL CONVICTION

2. On September 10, 2021, a final judgment was entered by consent against Kamensky, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933 in the civil action entitled Securities and Exchange Commission v. Daniel B. Kamensky, Civil Action Number 1:20-CV-07193, in the United States District Court for the Southern District of New York.

3. The Commission's complaint alleged that Kamensky, founder of MRC, a then-registered investment adviser to private funds, including Marble Ridge Master Fund LP (collectively, the "Fund"), which specialized in distressed investment opportunities, engaged in misconduct in the offer of certain securities (MyTheresa Series B preferred shares) being disposed of as part of the Neiman Marcus Group Ltd. LLC ("Neiman") Chapter 11 bankruptcy proceedings. Specifically, on July 31, 2020, Kamensky, after learning that Jefferies Financial Group Inc. ("Jefferies") submitted a bid for the securities that was higher than his bid, contacted Jefferies to coerce it into withdrawing its bid. Kamensky told Jefferies that he would use his position on the unsecured creditor's committee (the "UCC") to ensure that Jefferies' bid was rejected and that, if Jefferies, nevertheless, proceeded with its bid, and thereby drove the price up, Kamensky would retaliate by having MRC cease doing business with Jefferies. Kamensky abused his position of trust as a member of the UCC by improperly leveraging that position to scuttle a competing, higher, bid that was in the best interest of all unsecured creditors to consider. Jefferies withdrew its rival bid in response to Kamensky's coercive threats, but reported Kamensky's misconduct to the UCC. When Kamensky learned of this, he again reached out to Jefferies to cover up the fact that Kamensky tried to prevent Jefferies from participating in Neiman's offering of securities through his coercive threats. On a recorded call, Kamensky candidly admitted to Jefferies that he could go to jail if Jefferies did not adopt his (a false) version of their previous conversation. Jefferies refused to cover up for Kamensky and his misconduct was ultimately revealed.

4. On February 3, 2021, Kamenksy pleaded guilty to one count of extortion and bribery in connection with bankruptcy, in violation of Title 18 United States Code, Section 152(6), before the United States District Court for the Southern District of New York, in United States v. Daniel Kamensky, No. 21-CR-67. On May 10, 2021, a judgment in the criminal case was entered against Kamenksy. He was sentenced to imprisonment for six months, followed by six months of supervised release with home detention, and fined $55,000.

5. The count of the criminal information to which Kamensky pleaded guilty arises out of substantially the same facts and circumstance underyling the Commission's complaint described in Paragraph 3 above, and, alleges, among other things, that Kamensky, while associated with an investment adviser, pressured Jefferies to refrain from bidding to purchase securities from the unsecured creditors of Neiman in connection with its Chapter 11 bankruptcy proceeding by threatening to: (i) use his position on the UCC to ensure that Jefferies' bid would be rejected; and (ii) withhold MRC's future business from Jefferies, so that MRC, an investment adviser partially owned and managed by Kamensky, could obtain those securities at an artificially lower price.

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III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations; and

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 203(f) of the Advisers Act.

IV.

IT IS ORDERED that a public hearing before the Commission for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed by further order of the Commission, pursuant to Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.220(b).

IT IS FURTHER ORDERED that the Division of Enforcement and Respondent shall conduct a prehearing conference pursuant to Rule 221 of the Commission's Rules of Practice, 17 C.F.R. § 201.221, within fourteen (14) days of service of the Answer. The parties may meet in person or participate by telephone or other remote means; following the conference, they shall file a statement with the Office of the Secretary advising the Commission of any agreements reached at said conference. If a prehearing conference was not held, a statement shall be filed with the Office of the Secretary advising the Commission of that fact and of the efforts made to meet and confer.

If Respondent fails to file the directed Answer, or fails to appear at a hearing or conference after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310.

This Order shall be served forthwith upon Respondent by any means permitted by the Commission's Rules of Practice.

The Commission finds that it would serve the interests of justice and not result in prejudice to any party to provide, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), that notwithstanding any contrary reference in the Rules of Practice to service of paper copies, service to the Division of Enforcement of all opinions, orders, and decisions described in Rule 141, 17 C.F.R. § 201.141, and all papers described in Rule 150(a), 17 C.F.R. §

201.150(a), in these proceedings shall be by email to the attorneys who enter an appearance on behalf of the Division, and not by paper service.

Attention is called to Rule 151(a), (b) and (c) of the Commission's Rules of Practice, 17 C.F.R. § 201.151(a), (b) and (c), providing that when, as here, a proceeding is set before the Commission, all papers (including those listed in the following paragraph) shall be filed electronically in administrative proceedings using the Commission's Electronic Filings in Administrative Proceedings (eFAP) system access through the Commission's website, www.sec.gov, at http://www.sec.gov/eFAP. Respondent also must serve and accept service of documents electronically. All motions, objections, or applications will be decided by the Commission. Any exhibits should be sent as separate attachments, not a combined PDF.

The Commission finds that it would serve the interests of justice and not result in prejudice to any party to provide, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), that notwithstanding any contrary reference in the Rules of Practice to filing with or disposition by a hearing officer, all filings, including those under Rules 210, 221, 222, 230, 231, 232, 233, and 250 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.210, 221, 222, 230, 231, 232, 233, and 250, shall be directed to and, as appropriate, decided by the Commission. This proceeding shall be deemed to be one under the 75-day timeframe specified in Rule of Practice 360(a)(2)(i), 17 C.F.R. § 201.360(a)(2)(i), for the purposes of applying Rules of Practice 233 and 250, 17 C.F.R. §§ 201.233 and 250.

The Commission finds that it would serve the interests of justice and not result in prejudice to any party to provide, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), that the Commission shall issue a decision on the basis of the record in this proceeding, which shall consist of the items listed at Rule 350(a) of the Commission's Rules of Practice, 17 C.F.R. § 201.350(a), and any other document or item filed with the Office of the Secretary and accepted into the record by the Commission. The provisions of Rule 351 of the Commission's Rules of Practice, 17 C.F.R. § 201.351, relating to preparation and certification of a record index by the Office of the Secretary or the hearing officer are not applicable to this proceeding.

The Commission will issue a final order resolving the proceeding after one of the following: (A) The completion of post-hearing briefing in a proceeding where the public hearing has been completed; (B) The completion of briefing on a motion for a ruling on the pleadings or a motion for summary disposition pursuant to Rule 250 of the Commission's Rules of Practice, 17 C.F.R. § 201.250, where the Commission has determined that no public hearing is necessary; or (C) The determination that a party is deemed to be in default under Rule 155 of the Commission's Rules of Practice, 17 C.F.R. § 201.155, and no public hearing is necessary.

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In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Vanessa A. Countryman
Secretary

OS Received 11/29/2021

Exhibit 6

UNITED STATES DEPARTMENT OF JUSTICE
OFFICE OF THE UNITED STATES TRUSTEE
HENRY G. HOBBS, JR.
ACTING UNITED STATES TRUSTEE
REGION 7, SOUTHERN and WESTERN DISTRICTS OF TEXAS
HECTOR DURAN
TRIAL ATTORNEY
515 Rusk, Suite 3516
Houston, Texas 77002
Telephone: (713) 718-4650 x 241
Fax: (713) 718-4670

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	**§**	**CASE NO.**
	§	
NIEMAN MARCUS GROUP LTD LLC,	**§**	**20-32519 (DRJ)**
***et al.*,**	**§**	**(Chapter 11)**
	§	**Jointly Administered**
DEBTORS[1]	**§**	

NOTICE OF APPOINTMENT OF
COMMITTEE OF UNSECURED CREDITORS

TO THE HONORABLE DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE:

COMES NOW Henry G. Hobbs, Jr., the Acting United States Trustee for Region 7, who pursuant to 11 U.S.C. § 1102(a)(1) hereby appoints the following eligible creditors to the Committee of Unsecured Creditors in this case:

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Neiman Marcus Group LTD LLC (9435); Bergdorf Goodman Inc. (5530); Bergdorf Graphics, Inc. (9271); BG Productions, Inc. (3650); Mariposa Borrower, Inc. (9015); Mariposa Intermediate Holdings LLC (5829); NEMA Beverage Corporation (3412); NEMA Beverage Holding Corporation (9264); NEMA Beverage Parent Corporation (9262); NM Bermuda, LLC (2943); NM Financial Services, Inc. (2446); NM Nevada Trust (3700); NMG California Salon LLC (9242); NMG Florida Salon LLC (9269); NMG Global Mobility, Inc. (0664); NMG Notes PropCo LLC (1102); NMG Salon Holdings LLC (5236); NMG Salons LLC (1570); NMG Term Loan PropCo LLC (0786); NMG Texas Salon LLC (0318); NMGP, LLC (1558); The Neiman Marcus Group LLC (9509); The NMG Subsidiary LLC (6074); and Worth Avenue Leasing Company (5996). The Debtors' service address is: One Marcus Square, 1618 Main Street, Dallas, Texas 75201.

Members	Counsel for Member
1. Wilmington Trust, National Association Attn: Steven Cimalore/Rita Marie Ritrovato 1100 North Market Street Wilmington, DE 19890 Tel. 302-656-5137 Fax 302-656-4145 E-Mail: scimalore@wilmingtontrust.com rritrovato@wilmingtontrust.com	Reed Smith, LLP Kurt F. Gwynne, Esq. Lloyd A. Lim, Esq. Jason D. Angelo, Esq. 811 Main St., Suite 1700 Houston, TX 77002 Tel. 713-469-3671 Fax 713-469-3899 E-Mail: kgwynne@reedsmith.com llim@reedsmith.com jangelo@reedsmith.com
2. Pension Benefit Guaranty Corporation Attn: Jack Butler 1200 K Street, N.W. Washington D.C., 20005-4026 Tel. 202-229-3471 Fax 202-326-4114 E-Mail: butler.jack@pbgc.gov	Pension Benefit Guaranty Corporation Joel Ruderman, Esq. Pegah Vakili, Esq. Marc Pfeuffer, Esq. Office of the General Counsel 1200 K Street N.W. Washington, D.C. 20005-4026 Tel. 202-326-4020 Fax 202-326-4112 E-Mail: ruderman.joel@pbgc.gov vakili.pegah@pbgc.gov pfeuffer.marc@pbgc.gov

3. UMB Bank, N.A. Attn: Gavin Wilkinson 120 South Sixth Street, Suite 1400 Minneapolis, MN 55402 Tel. 612-337-7001 Fax 612-337-7039 E-Mail: gavin.wilkinson@umb.com	McDermott Will & Emery LLP Nathan Coco, Esq. Two Allen Center 1200 Smith Street Houston, TX 77002 Tel. 713-653-1775 Fax 972-232-3098 E-Mail: ncoco@mwe.com and Kramer Levin Naftalis & Frankel, LLP Douglas Mannal, Esq. 1177 Avenue of the Americas New York, NY 10036 Tel. 212-715-9313 Fax 212-715-8308 E-Mail: dmannal@kramerlevin.com and Selendy & Gay, PLLC David Elsberg, Esq. 1290 Avenue of the Americas New York, NY 10036 Tel. 212-390-9000 Fax 212-390-9399 E-Mail: delsberg@selendygay.com
4. Marble Ridge Capital LP, on behalf of Marble Ridge Master Fund LP Attn: Dan Kamensky 1250 Broadway, Suite 2601 New York, NY 10001 Tel. 212-858-0620 E-Mail: dkamensky@marbleridgecap.com kdaniels@marbleridgecap.com	Brown Rudnick LLP Sigmund Wissner-Gross, Esq. 7 Times Square New York, NY 10036 Tel. 212-209-4930 E-Mail: swissner-gross@brownrudnick.com
5. Simon Property Group, Inc. Attn: Ronald M. Tucker 225 W. Washington Street Indianapolis, IN 46204 Tel. 317-371-1787 E-Mail: rsimon@tucker.com	

6. Chanel, Inc. Attn: Daniel Rosenberg 9 West 57th Street New York, NY 10019 Tel. 212-715-4815 E-Mail: danielrosenberg@chanel.com	Sheppard Mullin Richter & Hampton, LLP Justin Bernbrock, Esq. Michael Driscoll, Esq. 70 West Madison Chicago, IL 60602 Tel. 312-499-6321 E-Mail: jbernbrock@sheppardmullin.com mdriscoll@sheppardmullin.com
7. Kering Americas, Inc. c/o Laurent Claquin 75 Bleecker Street, 2nd Floor New York, NY 10012 Tel. 212-478-9080 E-Mail: laurentclaquin@kering.com	Pryor Cashman, LLP Seth H. Lieberman, Esq. 7 Times Square New York, NY 10036 Tel. 212-326-0819 Fax 212-798-6917 E-Mail: slieberman@pryorcashman.com
8. Estee Lauder Companies c/o Kenneth I. Cruz 7 Corporate Center Drive Melville, NY 11747 Tel. 347-534-8347 E-Mail: kecruz@estee.com	
9. Ebates Performance Marketing, Inc. c/o Greg Kaplan 800 Concor Dr., Suite 175 San Mateo, CA 94402 Tel. 415-908-2200 E-Mail: greg.a.kaplan@rakuten.com	Finestone & Hayes LLP Stephen Finestone, Esq. 456 Montgomery St., 20th Floor San Francisco, CA 94104 Tel. 415-421-2624 E-Mail: sfinestone@fhlawllp.com

Dated: May 19, 2020

Respectfully Submitted,

HENRY G. HOBBS, JR.
ACTING UNITED STATES TRUSTEE
REGION 7, SOUTHERN and WESTERN
DISTRICTS OF TEXAS

By: /s/ Hector Duran
Hector Duran
Trial Attorney
Texas Bar No. 00783996
515 Rusk, Suite 3516
Houston, TX 77002
Telephone: (713) 718-4650 x 241
Fax: (713) 718-4670

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by electronic means on all PACER participants on this 19th day of May, 2020.

/s/ Hector Duran
Hector Duran, Trial Attorney

Exhibit 7

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In Re:	)	Chapter 11
	)	
NEIMAN MARCUS GROUP, LTD., LLC, et al.,	)	Case Number 20-32519 (DRJ)
	)	
Debtors.	)	Jointly Administered

The interview of DAN KAMENSKY, called by the Office of the United States Trustee for examination taken pursuant to the Federal Rules of Civil Procedure of the United States Bankruptcy Courts pertaining to the taking of interviews, taken before Valerie Calabria, CSR, RPR, taken via Zoom videoconference, on August 16, 2020, at 8:14 a.m.

MR. LAYNG: Good morning everybody again. This is Pat Layng from the US Trustee Program. I'll be asking most of the questions of Mr. Kamensky who is here today with others. Mr. Drew and Mr. Duran may also ask questions during the process.

EXAMINATION

BY MR. LAYNG:

Q. So just to start before we go into the statement, Mr. Kamensky, could you state your full name and spell your last name for us?

A. Dan Kamensky, K-a-m-e-n-s-k-y.

Q. And you understand you're here to be interviewed by us and also to provide a statement, as you would like to do, pursuant to Judge Jones's August 5th, 2020, order in the Neiman Marcus group of cases?

A. I do.

Q. You understand you're not compelled to be here. You're here voluntarily; is that correct?

A. That's correct.

Q. And we thank you for your cooperation. So go ahead. I know that you had asked earlier through your attorney to give a

statement, and so I'd like to give you that opportunity now.

A. I want to come right out and say I made a series of terrible mistakes over the course of a few hours during which I was under extreme stress and time pressure that I will never forget and forever regret.

I had worked over two years to achieve a fair and just outcome --

Q. Can I stop you? I'm so sorry, Mr. Kamensky. There's one other process I'd like to do. I really apologize.

Could we give you the oath before you give your full statement? I forgot to ask that the court reporter do that.

(Witness duly sworn.)

BY MR. LAYNG:

Q. Mr. Kamensky, I apologize for interrupting you. Could you start once again from the beginning, if you would.

A. I want to come right out and say I made a series of terrible mistakes over the course of a few hours during which I was under extreme stress and time pressure that I will never forget and

forever regret.

I had worked for over two years to achieve a fair and just outcome for the Neiman estate. This is extremely important to me professionally. I felt like we were under enormous time pressure to complete an intercreditor deal over the weekend when Jefferies showed up.

Let me be clear. I should not have contacted Jefferies about the potential bid. I should not have contacted Joe later that night. These mistakes were profound -- profound errors in lapses of judgment and violated the personal and professional belief I tried my best to live by.

I'm an active participant in the bankruptcy process, and I believe in the sanctity of that process to my core. Anything I have done to put that process at risk is unacceptable, and I apologize to the Court, to the US Trustee, to the committee, and the professionals who worked so hard to make this case a success.

I will do my best to give you some context of what was going through my mind during that time period, not because it justifies anything I said or did, but to explain why it happened from

my own perspective.

The committee voted to accept the settlement on Wednesday, July 29th. I was not satisfied with the terms of that settlement and was working with Rich and Mo on a proposal that I would find acceptable that would result in more cash for trade creditors and more Series B shares for bondholders, including Marble Ridge's investors.

This is something we had been discussing for some period of time because of the desire of some trade creditors for cash and what I viewed as the potential upside in the shares. I thought we were very close to a final agreement but needed time to incorporate it into the disclosure statement.

On Thursday, July 30th, Rich asked the Court to adjourn the disclosure statement hearing until the middle of the following week to give us enough time to finalize any settlement. Later that same day we learned that we only had the weekend, until Monday, to finalize any disclosure statement issue.

By Thursday night I was feeling a bit frantic and under the gun to finalize that

Exhibit 8

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In Re:	)	Chapter 11
	)	
NEIMAN MARCUS GROUP, LTD., LLC, et al.,	)	Case No. 20-32519 (DRJ)
	)	
Debtors.	)	Jointly Administered

The interview of MOHSIN MEGHJI, called by the Office of the United States Trustee for examination taken pursuant to the Federal Rules of Civil Procedure of the United States District Courts pertaining to the taking of interviews, taken before Timi M. Turunen, CSR, RPR, taken remotely via Zoom Videoconferencing, on August 14, 2020, at 4:19 p.m.

Q. Do you remember who?

A. Brian Griffith was on the phone. There might have been one other person, but Brian was definitely on the phone.

Q. So this is late on the evening of August 2nd. Do you remember about what time?

A. You know what, again, my memory for this -- if I could refer to my phone, I could look at it and tell you.

MR. KORNFELD: Just do your best, approximate time, Moe.

BY THE WITNESS:

A. 8:30 or 9:00.

BY MR. DREW:

Q. Okay. And was there any discussion on this -- on this call about why they had decided to submit a bid again after backing out?

A. No. We did not get into any of that. I think that had all been handled by Mr. Pachulski so, no.

Q. What was the substance of the call late on August the 2nd?

A. Just that they were -- they were back and very interested in bidding and, you know,

had -- had various ideas and had worked through -- worked through the weekend post their discussion with Mr. Pachulski to put a proposal together, and they would be sending that.

Q. Okay. And they eventually did submit that proposal?

A. Yes.

Q. Can you tell us about your evaluation of that proposal? Was it what you expected on the basis of your initial conversations with Jefferies?

A. It was very complicated. It had a lot of caveats. It had a market basket for readjustment tied to some other stocks. It was just, you know, frankly not a good proposal. That would -- in my view, it would need a lot of work.

Q. Okay. What -- I understand that on the August 1st committee meeting, the committee had been informed that Marble Ridge was resigning from the committee; is that correct?

A. Yes.

Q. After that committee meeting, have you had -- did you have any conversations with Dan Kamensky?

A. After the committee meeting, I think he

had called me once sometime after that in relation to another proposal he was going to send or something like that. And I basically said to him, I'm not really in a position to speak to you. I'd much prefer if you'd work through counsel.

Q. Okay. And so Marble Ridge did submit another proposal on Monday, August 3rd; is that correct?

A. Yes.

Q. And so sometime before the end, Mr. Kamensky tried -- called you and tried to discuss that --

A. No, no. I think that would have been -- you asked me whether I had spoken to him after August 1st. That doesn't mean it was before August 3rd.

Q. Understood. And so he would have tried to talk to you after he submitted a new bid?

A. Yeah.

Q. Okay. And so the new, sort of, offer from Marble Ridge on August 3rd, how did it compare to their sort of initial offer, you know, back on -- late on the evening of July 28th or early on the morning of July 29th?

Exhibit 9

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

----------x

In re:
NEIMAN MARCUS GROUP LTD LLC, et al.,
Debtors.

----------x

MARIPOSA INTERMEDIATE HOLDINGS LLC, NEIMAN MARCUS GROUP LTD LLC, and THE NEIMAN MARCUS GROUP LLC,
Plaintiffs,
-against- Case No. 20-32519(DRJ)
MARBLE RIDGE CAPITAL LP and MARBLE RIDGE MASTER FUND LP,
Defendants.

----------x

REMOTE DEPOSITION OF MOHSIN MEGHJI
Old Westbury, New York
September 22, 2020

Reported By:
ERIC J. FINZ

simply delayed Jefferies' bid by a matter of hours. Is that a fair statement?

A. Look, I'm not sure when they were going to bid. So maybe there was a delay, maybe there wasn't. I don't know.

Q. So as far as you know there may not have been a delay at all. Is that right?

A. I just don't know.

Q. But the sequence is that you learned in the evening on Friday, July 31, that they were not going to bid, and then you learned in the morning on Saturday, August 1, that they, being Jefferies, were going to bid. Correct?

A. Yes.

Q. And did Jefferies put forward a proposal for a cash-out option relating to the Series B?

A. Yes.

MR. ROSENBAUM: Why don't we turn to tab 10, which we'll mark as MM 5 also.

(Exhibit MM 5 for

identification, email dated August 3, 2020, with attachments, production numbers CS 3 through NM_UST_CS 12.)

THE WITNESS: Okay.

MR. ROSENBAUM: So I'm showing you what will be marked as MM 5 for identification, it's marked as tab 10 in the materials we provided to you. And it is an email from [redacted], to you, among others, dated August 2, 2020, at 3:57 p.m.

BY MR. ROSENBAUM:

Q. Do you see that?

A. Yes.

Q. And do you recall having received this email and the attachment to it?

A. Yes.

Q. And am I correct that the attachment to MM 5 is a proposal by Jefferies relating to a cash-out option for the Series B?

A. Yes.

Q. In your testimony to the U.S. Trustee, I believe you said this was not a good offer, that may be your words, I may be paraphrasing. But that was your feeling about the proposal that Jefferies put forward, that it was not a good offer for Series B?

A. It was not an offer I could recommend to the committee.

Q. Why is that?

A. To accept.

Q. Why was it not an offer that you could recommend to the committee to accept?

A. I don't recall all the detailed reasons, but there were just, you know, un -- a bunch of uncertainties around price, including ties to the market price of other publicly listed companies, et cetera. And various other conditions in the Jefferies offer, which I felt made it not worthy of accepting.

Q. Do you recall -- and if we

need to look at the document as well, we certainly can and will -- that in its opening preamble, Jefferies expressed that its summary of terms was not a commitment, not a commitment by Jefferies to undertake the transaction described therein?

A. I don't recall that. But if I can just look at the document.

Q. Sure. So I'm going to point you to what is page A-1 of the Jefferies document, also marked in the bottom right-hand corner with a series of zeros 8. That's the page I wanted to point you to.

Let me know when you're there.

A. I'm there.

Q. So if you look at the top of the document, it's entitled "Summary of terms." Is that right?

A. Yes.

Q. And the first sentence says, "The following summary of terms outlines certain indicative terms of the

Transaction," capital T.

Do you see that?

A. Yes.

Q. The next sentence says, "These materials are neither an expressed nor implied commitment by Jefferies or any affiliate thereof to act in any capacity described herein, or to enter into the transaction described herein, which commitment, if any, shall only be as set forth in a separate definitive agreement."

Do you see that?

A. Yes.

Q. Am I correct, going back to the spectrum that we discussed earlier in the deposition, that you would not consider this to be a firm commitment that could be acted upon by Jefferies. Is that right?

A. Yes.

MR. ROSENBAUM: Let me show you what is identified in the materials we gave you as tab 11,

reach a conclusion with respect to that comparison?

MR. KORNFELD: Objection; vague.

A. I don't know.

MR. ROSENBAUM: I'll rephrase it. Let me put it a different way.

Q. Based on this comparison, did your firm make any recommendation to the committee relating to either the MRC settlement offer or the Jefferies LOI?

A. No.

Q. Is it fair to take from that that neither you nor your firm recommended that the committee accept either of the documents that are being compared in tab 14?

A. Correct.

Q. Why was that?

MR. KORNFELD: Objection; vague. And the way you phrased the question, I'm concerned that you will be getting into internal committee deliberations that are

privileged.

MR. ROSENBAUM: Okay. For clarity, let me rephrase the question. If it's a question that you will permit the witness to answer, he can. If not, we'll proceed.

Q. I think you just testified earlier that your firm did not make a recommendation to the committee with respect to the -- this comparison that is appended to tab 14 in MM 9. Did I get that right?

A. We did not make a recommendation to accept either of these offers.

Q. And so my question following up on that answer was, why did you not make a recommendation to accept either of these offers?

MR. KORNFELD: That's a different question. But I have no objection to it.

THE WITNESS: Yes, I can

answer it.

MR. KORNFELD: Go ahead, please.

A. Fundamentally, I reached -- my firm and I reached the conclusion that maximizing the value of the 140 million my preference -- MyTheresa pref B shares, that the committee had received or the unsecured creditors had received, the value of those could be maximized by deferring the monetization of those shares to a later time.

Q. Apart from Jefferies and Marble Ridge Capital through Mr. Kamensky, did any other market participant express interest in a cash-out option for the Series B that you recall?

A. Yes.

Q. Who expressed interest in the cash-out of the Series B?

A. Three parties had contacted me or had conversations with me that I can recall, in addition to Marble Ridge and

Jefferies.

Q. Who are those three parties?

A. Citi, Brigade Capital, and Anchorage Capital.

Q. I'm going to start with Brigade and Anchorage and come back to Citi.

Do you recall when Brigade expressed interest to you in a cash-out option for the Series B?

A. No. It would have been sometime after that August 3rd, 4th time frame, but I don't recall exactly when. It was sometime in August.

Q. Brigade is among the funded creditors in the class of unsecured creditors. Is that right?

A. It's one of the noteholders, correct.

Q. Did Brigade express this interest in writing to you or verbally only?

A. Verbally.

Q. What did Brigade say in

expressing interest in potentially purchasing Series B shares?

A. Something along the lines, I'm paraphrasing, of if you would consider -- if you are considering a cash-out option, we would of course be interested in participating or bidding.

Q. Who at Brigade did you have that communication with?

A. A gentleman by the name of Matthew Perkal. P-e-r-k-a-l.

Q. And I know you don't directly recall the exact date, but just to try to use a frame of reference, was it after the Jefferies proposal that we've been discussing or before that you had this conversation with Mr. Perkal at Brigade?

A. After.

Q. And again, I know, you know, these things can get fuzzy, do you believe it was the following week, was it several weeks after, or perhaps you just don't know?

A. My best guess is mid-August or

Exhibit 10

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Exhibit 11

To: Sathy, Anup[asathy@kirkland.com]
From: Melwani, Vivek[vmelwani@centerbridge.com]
Sent: Fri 8/7/2020 12:36:20 PM Central Standard Time

[redacted]

Hey on Neiman is the MT thing with Jefferies done - ie could we still try to buy it if we wanted? Recognize it would need to be higher then jefferies just wondering if its already done

Sent from my iPad

Exhibit 12

Patricia Jeffries

From: Mo Meghji
Sent: Tuesday, September 08, 2020 1:54 PM
To: Alan Kornfeld
Subject: Fwd: MyTheresa Pref B

Mo Meghji
M-III Partners, L.P.
[redacted]

[redacted]

Begin forwarded message:

From: "Nishida, Masumi" [redacted]
Date: September 8, 2020 at 4:39:45 PM EDT
To: Mohsin Meghji [redacted]
Cc: Joseph Frantz [redacted], "Brian J. Griffith" [redacted], "Keeley, Kenneth" [redacted], "Lalli, Daniel" [redacted], "Dove, Andrew M" [redacted]
Subject: RE: MyTheresa Pref B

Hi Mo-

I am following up from my previous email. We're very interested in being part of the process. We can show a firm bid for a specific size for any claim holder that may look to sell better than GUC Convenience Recovery. We would have room off our previous indication of 31

Please let us know if this would work. Depending on the size and level, we may have potential to grow this. We will be happy to discuss over a call.

Thank you,

Masumi

-----Original Message-----
From: Nishida, Masumi [ICG-MSS]
Sent: Monday, August 31, 2020 3:27 PM
To: '[External] Mohsin Meghji'
Cc: Joseph Frantz; Brian J. Griffith; Keeley, Kenneth [ICG-MSS]; Lalli, Daniel [ICG-MSS]; Dove, Andrew M [ICG-MSS]

Subject: RE: MyTheresa Pref B

Hi Mo,

Hope you are well. We have been following the recent developments in Neiman/MyTheresa. We would like to re-connect on the name. Would you have some time this week?

Best,
Masumi

-----Original Message-----
From: [External] Mohsin Meghji [redacted]
Sent: Thursday, August 06, 2020 11:59 AM
To: Nishida, Masumi [ICG-MSS]
Cc: Richard Pachulski; Lalli, Daniel [ICG-MSS]; Dove, Andrew M [ICG-MSS]; Joseph Frantz; Brian J. Griffith
Subject: Re: MyTheresa Pref B

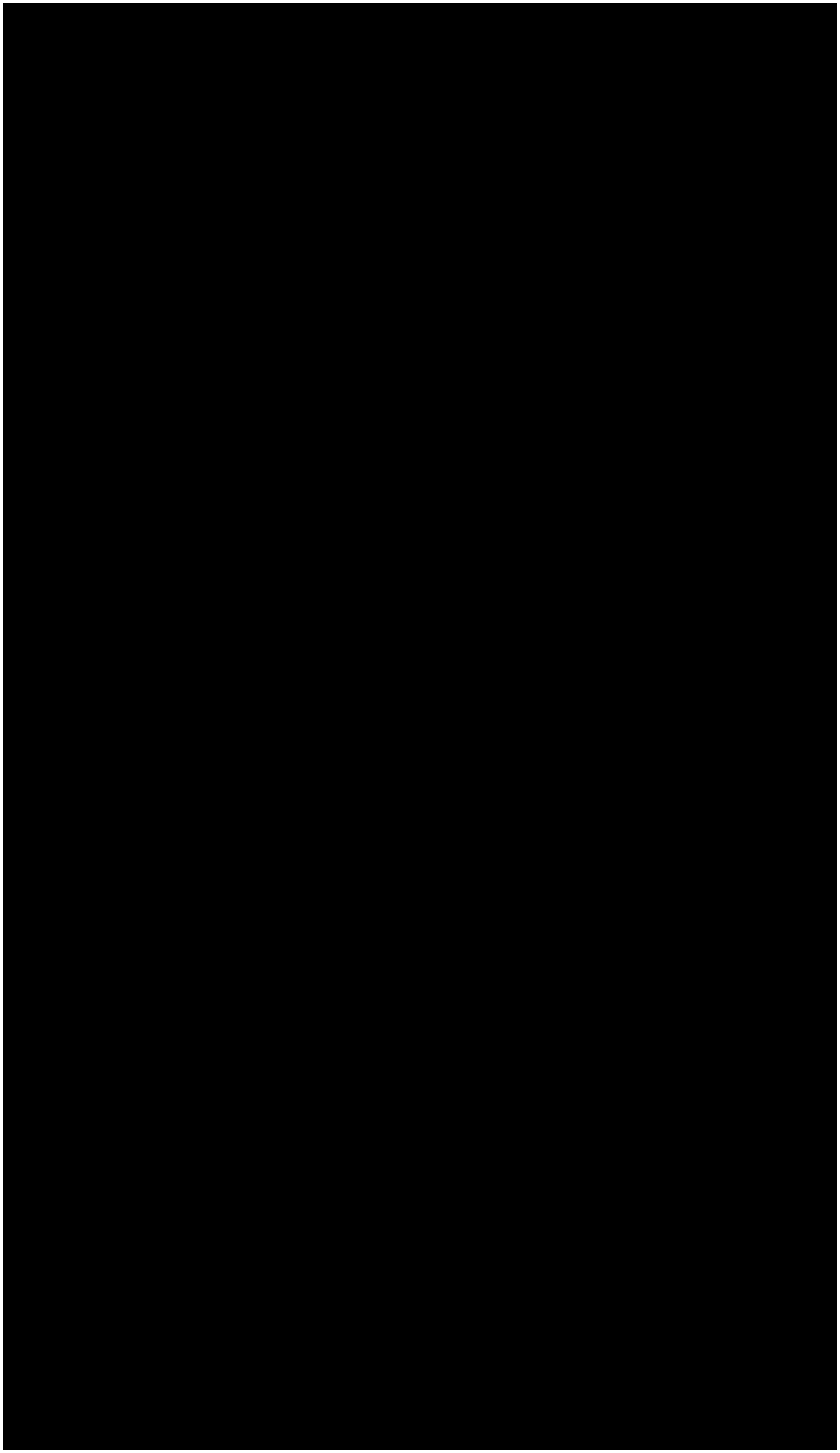
5pm or after is best

Mo Meghji
M-III Partners, L.P.
[redacted]

[redacted]

On Aug 6, 2020, at 11:15 AM, Nishida, Masumi [redacted] wrote:

> Thanks Mohsin, would 1pm work today?
>
> -----Original Message-----
> From: [External] Mohsin Meghji [redacted]
> Sent: Thursday, August 06, 2020 11:09 AM
> To: Richard Pachulski
> Cc: Nishida, Masumi [ICG-MSS]
> Subject: Re: MyTheresa Pref B
>
> Thanks, Rich.
>
> Masumi, I am happy to catch up later today or tomorrow. Thanks



[redacted]

[redacted]

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received the message in error, please advise the sender by reply email or by calling [redacted] and delete the message.

Exhibit 13

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re: NEIMAN MARCUS GROUP LTD LLC, *et al.*, Debtors.[1]	Chapter 11 Case No. 20-32519 (DRJ) Jointly Administered)
MARIPOSA INTERMEDIATE HOLDINGS LLC, NEIMAN MARCUS GROUP LTD LLC, and THE NEIMAN MARCUS GROUP LLC, Plaintiffs, v. MARBLE RIDGE CAPITAL LP and MARBLE RIDGE MASTER FUND LP, Defendants.	Adv. Proc. No. 20-03402

DECLARATION OF MARTI P. MURRAY

I, MARTI P. MURRAY, hereby declare under penalty of perjury:

1. My name is Marti P. Murray. I am a Principal at The Brattle Group, an economic consulting and litigation support firm. I have had a career of over 35 years in the financial services

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Neiman Marcus Group LTD LLC (9435); Bergdorf Goodman Inc. (5530); Bergdorf Graphics, Inc. (9271); BG Productions, Inc. (3650); Mariposa Borrower, Inc. (9015); Mariposa Intermediate Holdings LLC (5829); NEMA Beverage Corporation (3412); NEMA Beverage Holding Corporation (9264); NEMA Beverage Parent Corporation (9262); NM Bermuda, LLC (2943); NM Financial Services, Inc. (2446); NM Nevada Trust (3700); NMG California Salon LLC (9242); NMG Florida Salon LLC (9269); NMG Global Mobility, Inc. (0664); NMG Notes PropCo LLC (1102); NMG Salon Holdings LLC (5236); NMG Salons LLC (1570); NMG Term Loan PropCo LLC (0786); NMG Texas Salon LLC (0318); NMGP, LLC (1558); The Neiman Marcus Group LLC (9509); The NMG Subsidiary LLC (6074); and Worth Avenue Leasing Company (5996). The Debtors' service address is: One Marcus Square, 1618 Main Street, Dallas, Texas 75201.

industry, with a focus on financial analysis, business and securities valuation, bankruptcy and restructuring, credit analysis, and the alternative investment management industry.

2. I have been engaged by Kobre & Kim LLP in connection with that firm's representation of Marble Ridge Master Fund LP in the matter captioned *Mariposa Intermediate Holdings LLC et al. v. Marble Ridge Capital LP et al.*, Adv. No. 20-03402 (Bankr. S.D. Tex.). Annexed as Exhibit A is a report setting forth my opinions in this matter. I hope the Court finds this analysis helpful.

3. I declare under penalty of perjury that the foregoing is true and correct.

Executed on: September 23, 2020.

New York, New York

MARTI P. MURRAY

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF
TEXAS HOUSTON DIVISION

In re: NEIMAN MARCUS GROUP LTD LLC, *et al.,* Debtors.	Chapter 11 Case No. 20-32519 (DRJ)
MARIPOSA INTERMEDIATE HOLDINGS LLC, NEIMAN MARCUS GROUP LTD LLC, and THE NEIMAN MARCUS GROUP LLC, Plaintiffs, v. MARBLE RIDGE CAPITAL LP and MARBLE RIDGE MASTER FUND LP, Defendants.	Adv. Proc. No. 20-03402

EXPERT REPORT OF MARTI P. MURRAY

September 23, 2020

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I. Qualifications

1. I am a Principal at The Brattle Group ("Brattle"), an economic consulting and litigation support firm. I joined Brattle in May 2019, after founding and serving as the President of Murray Analytics, Inc. ("Murray Analytics") from 2015 to 2019. Murray Analytics provided consulting services, and specialized in corporate restructuring, financial advisory, complex valuation services, fiduciary roles, and litigation support. Immediately prior to founding Murray Analytics, from 2012 until early 2015, I served as the Senior Managing Director of Goldin Associates, LLC ("Goldin Associates"), a consulting firm founded by J. Harrison Goldin, the former Comptroller of the City of New York. At both Murray Analytics and Goldin Associates, I led teams of professionals on a variety of financial advisory and litigation support engagements, and I work in this same capacity at Brattle.

2. I have had a career of over 35 years in the financial services industry, with a focus on financial analysis, business and securities valuation, bankruptcy and restructuring, credit analysis, and the alternative investment management industry. My expertise in these areas was gained in large part through my combined career experience serving as a banker, an investment adviser, including founding and running an SEC-registered investment adviser, and my more recent work as a financial advisor and expert witness.

3. For most of my career - between 1987 and 2009, I worked in the hedge fund industry where I specialized in investing in the debt and equity securities of companies undergoing financial distress – frequently referred to as a distressed debt investing strategy and distressed debt securities ("Distressed Debt Investing" and "Distressed Debt"). As a result, for 23 years, I was an active participant in the trading markets for Distressed Debt investments.

4. For 15 years, between 1994 and 2009, I was directly involved in a senior capacity running and growing a hedge fund business focused on the Distressed Debt Investing strategy. During this period, I evaluated investments, managed portfolios, financed distressed companies, backstopped rights offerings, and oversaw a wide variety of different forms of investments in distressed and bankrupt companies.

5. Over the course of my career as a Distressed Debt investor, I was involved in countless bankruptcy and restructuring negotiations on a near continuous basis, including serving on both official and ad-hoc creditors' committees, including my firm's service on the official creditors' committees in the bankruptcies of Dow Corning, Global Power Equipment, and Werner Ladder. As part of my overall responsibilities, I was charged with protecting and enhancing the economic interests of the funds I managed in large and complex bankruptcy cases. As a result, I regularly reviewed plans and disclosure statements submitted by debtors, and directed the work of others in so doing. Evaluating the financial condition of distressed companies - including with respect to their liquidity, solvency, and valuation - was also part of my daily activities.

6. My financial services career commenced in 1982 at Bank of America. I completed the bank's formal credit training program, and I ultimately managed Bank of America's

relationships with Fortune 500 corporate borrowers in the consumer and industrial products segment, some of which were highly leveraged or in financial distress. My responsibilities included performing credit analysis on corporate bank customers, and seeking credit approval for the extension of credit to them. In 1986, I received my MBA in Finance from the NYU Stern School of Business, having been sponsored by Bank of America for the Executive MBA program. After graduation I worked for First New York Capital, a boutique investment banking firm, serving the needs of middle market companies pursuing financings or M&A transactions.

7. I entered the investment management industry in 1987. At that time, I joined Oppenheimer & Co. to work for a Portfolio Manager for the Oppenheimer Horizon Fund—one of the first hedge funds specifically established to invest in a Distressed Debt Investing strategy. I worked at Oppenheimer as an investment analyst, evaluating potential investments for the fund, making buy/sell recommendations to the portfolio manager, and subsequently monitoring investments for which I was responsible. In 1990, I joined Furman Selz Incorporated ("Furman"), a broker-dealer owned by Xerox at the time, to oversee its Distressed Debt department. As a Senior Managing Director and department head, my responsibilities included investing capital in the Distressed Debt, bank debt, and high-yield asset classes on the firm's behalf and for Xerox. I was also responsible for developing a money management business around the Distressed Debt Investing specialty and launched a number of hedge fund investment vehicles, while also overseeing a number of separately managed accounts.

8. After approximately five years at Furman, I founded Murray Capital Management, Inc. ("Murray Capital"). Murray Capital operated as an SEC-registered investment adviser, and specialized in investing in Distressed Debt securities, taking positions at all levels in the capital structure of distressed and bankrupt companies, from senior secured loans and first mortgages to second lien debt instruments, unsecured bonds, trade claims, preferred stock, common stock, and various forms of derivatives. Peak client capital under management at Murray Capital grew to approximately $750 million, and the client base consisted of pension funds, university endowments, fund of funds, family offices, and high net worth individuals. I had the ultimate responsibility for all aspects of the firm's business, including fund formation, marketing, client services, fund operations, research, portfolio management, investments, workouts, trading, fund financial statements, and compliance.

9. I served as President and Portfolio Manager of Murray Capital from the firm's inception in 1995 until 2008, when the business was acquired by Babson Capital - the money management division of MassMutual Financial Group. I subsequently joined Babson Capital and oversaw the business there.

10. In 2009, I retired from portfolio management and commenced providing financial advisory and litigation support services. In this capacity, I have been retained in a variety of matters relating to bankruptcy & restructuring, trading, business and securities valuation, solvency, fraudulent conveyance, industry custom and practice for investment advisers, conflicts of interest, fraud, and Ponzi schemes, among other topics. I have been retained in the capacity of a financial advisor to companies and stakeholders or as an expert witness in a variety of contested matters.

11. Selected matters in the public domain in which I have been engaged include the Sears bankruptcy, in which I testified on behalf of Cyrus Capital Management, a second lien lender, on the topic of 507(b) diminution in value claims relating to the collateral securing the second lien debt, and 506(c) surcharges. I also recently testified on behalf of the SEC in the matter captioned Securities and Exchange Commission v. Westport Capital Markets, LLC and Christopher E. McClure, which related to conflicted transactions undertaken by an investment adviser. I served as Special Consultant to Richard Davis, the Bankruptcy Trustee of the master fund managed by Fletcher Asset Management. As part of my work on Fletcher - which was described by the Trustee as having many of the characteristics of a Ponzi scheme - I oversaw the work to trace cash flows between various entities, reviewed issues relating to portfolio valuation, and evaluated the solvency of the Fletcher family of funds and operation. I am also currently engaged by Douglas Kelley, Trustee for the Petters Company, Inc. to evaluate the activities of a hedge fund manager who, on behalf of the investment vehicles he managed, invested into the Ponzi scheme masterminded by Thomas J. Petters. My work included evaluating solvency, and tracing cash flows, reviewing client communications, and calculating the quantum of management and performance fees that the hedge fund manager received based on false profits generated by the Petters Ponzi scheme.

12. Over the course of my work as an expert, I have offered opinions about industry custom and practice for corporate debt restructurings, Distressed Debt Investing and trading, post-reorganization securities, and business and securities valuation. I have worked on numerous SEC enforcement actions– both on behalf of, and adverse to, the SEC. These matters include, but are not limited to, In the matter of Lynn Tilton, Patriarch Partners, LLC et al.; In the Matter of Clean Energy Capital, LLC and Scott A. Brittenham, SEC v. Aletheia Research and Management, Inc. and Peter J. Eichler, Jr., In the Matter of VSS Fund Management, LLC, Securities and Exchange Commission v. Westport Capital Markets, LLC and Christopher E. McClure, as well as a number of other matters of that are confidential. I have also served as a Court-appointed monitor and receiver for Atlantic Asset Management - an investment management firm accused of fraud by the SEC in 2015, in connection with investments made in private debt instruments issued by a sub-investment grade borrower.

13. In addition to my professional responsibilities, over the years, I have taught as an Adjunct Professor at the NYU Stern School of Business. Between 2001 and 2013, I taught graduate level courses in Bankruptcy and Distressed Debt Investing, as well as in Valuation/Equity Analysis. In some cases, I co-taught with Professor Edward I. Altman, who holds the Max L. Heine Chair in Finance, and in other cases, I taught courses independently. I have also been invited to guest lecture at the Tuck School of Business at Dartmouth and at the Darden School of Business at the University of Virginia on topics relating to bankruptcy and Distressed Debt Investing. I have taught advanced valuation topics to legal professionals for CLE credit. I recently presented at the Valcon Conference, sponsored by the American Bankruptcy Institute (the “ABI”), on the topic of rights offerings and also on the topic of diminution in value claims. I also participated in a panel sponsored by the Association of Insolvency and Restructuring Advisors (“AIRA”) on the topic of net-short activism and manufactured defaults.

14. I have served on the Board of Directors of Edcon, a distressed retailer and the holding company for two of South Africa's largest retailers, Edgars and Jet, selling a wide variety of clothing and consumer products. I served as a member of Edcon's Audit and Risk Committee. I have also served on the Board of Directors of California Coastal Communities, a public homebuilder in Southern California, where I also was a member of the Audit Committee. I was also elected to serve on the Board of two PIMCO Funds—PIMCO Income Strategy Fund I and II—after having been nominated by Brigade Capital Management and recommended by Institutional Shareholder Services ("ISS").

15. I hold the designation of Certified Valuation Analyst ("CVA"), awarded by the National Association of Certified Valuators and Analysts ("NACVA"). I regularly attend training on a variety of valuation topics and obtain CPE (Continuing Professional Education) credit necessary to maintain the CVA credential. I also hold the designation of Certified Fraud Examiner ("CFE"), awarded by the Association of Certified Fraud Examiners ("ACFE").

16. I currently serve on the Board of Directors of the Turnaround Management Association's New York Chapter (the "TMA") and I am the Vice-Chairman of the Audit Committee. I previously served as the Vice-Chairman of the TMA Academic Relations Committee.

17. I received a BA from Colgate University in 1981 with a major in World Affairs and Chinese and an MBA in Finance from the NYU Stern School of Business in 1986.

18. A copy of my CV is attached hereto as Appendix A. Brattle is being compensated for my work at my usual and customary hourly rate of $1,000 per hour. Staff at Brattle have assisted me by performing work at my direction. All the opinions and conclusions stated in this report are my own. Brattle's compensation is not contingent upon the outcome of this case.

19. I was engaged in this matter on September 8, 2020. Prior to my engagement in this matter I had been retained to assist with the calculation of the claim of certain Neiman Marcus creditors, in connection with the filing of their proof of claim. My opinions in this case are based on the materials I have reviewed to date, as detailed in Appendix B, hereto. I may seek to supplement or modify my opinions in the future.

II. Scope of Engagement

20. I have been engaged by Kobre & Kim LLP ("Counsel") in connection with Counsel's representation of Marble Ridge Master Fund LP ("Master Fund" or "Client") in the matter captioned *Mariposa Intermediate Holdings LLC et al. v. Marble Ridge Capital LP et al.*, Adv. No. 20-03402 (Bankr. S.D. Tex.) (the "Adversary Proceeding"). I have been asked to offer my opinion on the economic harm (i.e., damages), if any, caused to the Plaintiffs and Plaintiffs' unsecured creditors in connection with certain conduct of

Dan Kamensky, the managing partner and founder of Marble Ridge Capital LP,[1] as such conduct is generally described in the Statement of the Acting United States Trustee Pursuant to Court Order Regarding the Conduct of Marble Ridge Capital LP and Dan Kamensky (the "July 31 Conduct").[2]

21. Based on my experience outlined above, my examination of the record and my analysis outlined below, as well as my consideration of industry customs and practices in Distressed Debt Investing, I examine whether the July 31 Conduct materially or tangibly affected the availability and the economic value of a so-called "cash out option" (the "Cash Out Option") for certain MyTheresa Series B preferred shares (the "MYT Series B Preferred"). I also examined whether the July 31 Conduct would have negatively impacted the value of MyTheresa Series B Preferred stock to be issued to unsecured creditors under the Neiman Marcus plan of reorganization.

22. I have not been asked to opine on the amounts of legal fees or other costs that may have been expended by Plaintiffs or creditors.[3]

III. Opinions and Conclusions

23. As part of this Adversary Proceeding, Plaintiffs have requested the issuance of a preliminary injunction requiring that $55 million be withheld from distribution to investors in the Master Fund during the pendency of this case, in order to ensure liquidity for both purported damages and potential sanctions, to be assessed against the Master Fund and/or its investment manager Marble Ridge Capital LP ("MRC") in connection with the July 31 Conduct.[4] The Complaint states that "[b]ecause of Marble Ridge's self-dealing and abuse of its fiduciary position, the Debtors' unsecured creditors lost a cash-out Option for illiquid MyTheresa Series B shares that would have provided an alternative recovery of approximately $42 million to $54 million in cash."[5]

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1 In re Neiman Marcus Group LTD LLC, *Complaint and Application for Temporary Restraining Order and Preliminary Injunction,* August 26, 2020, Case No. 20-32519 (DN 1551) at ¶10, (the "Complaint").

2 In re Neiman Marcus Group LTD LLC, *Statement of the Acting United States Trustee Pursuant to Court Order Regarding the Conduct of Marble Ridge Capital LP and Dan Kamensky*, August 19, 2020, Case No. 20-32519 (DN 1485), (the "Trustee Report"). I do not offer opinion about the actual July 31 Conduct, which should not be construed as my condoning it. I am strictly focused on whether the July 31 Conduct caused the damages identified by the Plaintiff.

3 The Complaint references costs in excess of $1 million as of August 26, 2020. Complaint at ¶58.

4 Complaint at ¶8 and ¶71. I am informed that third-party investors represent approximately 98% of the capital invested in Master Fund.

5 Complaint at ¶57. See also ¶64 "Without such interference, Plaintiffs' stakeholders could have received between $42 million and $54 million in cash rather than an illiquid security." and "As a result of Marble Ridge's breach of fiduciary duties, Plaintiffs and their stakeholders were damaged, including through the lost cash-out option and additional professional fees incurred to respond to and seek compensation for Marble Ridge's illegal activities."

24. Based on the application of my extensive experience as a bankruptcy and Distressed Debt Investing industry practitioner to the specific circumstances that I understand existed here I conclude that:

- The July 31 Conduct did not result in the loss of a Cash Out Option - there never was a Cash Out Option on offer that was acceptable, for reasons that were wholly unrelated to the July 31 Conduct;
- The July 31 Conduct did not cause material economic harm to the unsecured creditors, including because it did not negatively impact the value of MYT Series B Preferred;
- The July 31 Conduct did not separately cause material economic harm to the Neiman Marcus estate (the "Estate" or the "Debtors"); [6] and,
- Even if there had been a Cash Out Option that was subsequently lost due to the July 31 Conduct, (although I do not see evidence of that sequence of events in the record) the unsecured creditors did not suffer material economic harm, and certainly not economic harm equal to the purchase price for such shares, because the unsecured creditors will receive the MYT Series B Preferred shares themselves.

25. To explain the bases for my opinions, and place them in their proper context, it is necessary to set forth certain of the facts as I understand them, based on the record I have reviewed.

26. All of my opinions expressed below are given to a reasonable degree of professional certainty, based on my experience outlined above and my familiarity with industry custom and practice.

A. Prior to the July 31 Conduct, there was no Cash Out Option of Value Being Offered to Unsecured Creditors

27. The record shows that the July 31 Conduct occurred in connection with the exploration of a potential Cash Out Option that parties in the case considered offering to certain unsecured creditors who were slated to receive MYT Series B Preferred as part of the proposed plan of reorganization.[7] The Neiman Marcus creditors were set to receive a

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[6] The opinions set forth relate solely to any potential economic damages suffered as a result of the purported loss of a Cash Out Option, as stated in the Complaint. The opinions do not relate to my views on the conduct, issues relating to the integrity of the bankruptcy process, or any legal fees, costs, equitable subordination or other penalties or sanctions that may be imposed relating to the July 31 Conduct.

[7] To-date, I understand that no Cash Out Option has been made available to unsecured creditors under the Plan of Reorganization, other than for convenience claims, who the Debtors' counsel estimated

total of 140 million MYT Series B Preferred as a result of a global settlement, reached on or around July 29, between the parties of potential claims for fraudulent conveyance and breach of fiduciary duty.[8]

28. I understand that the concept of a Cash Out Option was initially pursued at the request of counsel to The Official Committee of Unsecured Creditors (the "UCC" or the "Committee"), who, according to the report filed by the U.S. Trustee, believed it could be beneficial to certain trade creditors (Class 11 under the plan).[9] Counsel to the UCC [redacted] It is my experience as an industry practitioner that certain creditors can prefer a cash exit, as opposed to receiving debt or equity instruments, typically depending on the creditor's circumstances, and contingent on the amount of cash that is being offered.

29. While the parties explored a Cash Out Option, it never formally existed. To confirm that, I applied the same due diligence methodology that I would have typically undertaken as a Distressed Debt investor – I reviewed the Neiman Marcus plan and disclosure statement that was approved on July 30, and which was the operative plan and disclosure statement in the public domain as of the date of the July 31 Conduct.[11] I see nothing in that plan and disclosure statement that would have left me, as a creditor, with the understanding, as of the time of the July 31 Conduct, that the plan would contain a Cash Out Option for the MYT Series B Preferred.[12]

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would receive a 14.2% recovery. This level of recovery was characterized by Debtors' counsel as being close to the mid-point of the estimated range of recovery to unsecured creditors of 1.7% – 34.4% million. In re: Neiman Marcus Group Ltd., LLC, et al., *September 4 Hearing Transcript*, September 4, 2020, Case No. 20-32519 at 94:07-16 ("September 4 Hearing Transcript").

8 In re: Neiman Marcus Group Ltd., LLC, et al., *Debtors' First Amended Joint Plan Of Reorganization*, Case No. 20-32519, July 30, 2020, (DN 1388) at 38 and In re: Neiman Marcus Group, Ltd. LLC, et al., *Interview of Richard Pachulski*, August 14, 2020 ("Pachulski Interview") at 29:02-30:05.

9 Trustee Report at 9 at E.

10 Trustee Report at 9 at E.

11 In re: Neiman Marcus Group Ltd., LLC, et al., *Debtors' First Amended Joint Plan Of Reorganization*, Case No. 20-32519, July 30, 2020, (DN 1388). *See also*, In re: Neiman Marcus Group Ltd., LLC, et al., *Notice of Filing of Disclosure Statement for the Debtors' First Amended Joint Plan of Reorganization*, Case No. 20-32519, July 30, 2020, (DN 1390) ("Notice of Filing of Disclosure Statement").

12 Conversely, one aspect of the disclosure statement that I would have made note of was the Debtors' estimation that the value of the MYT Series B Preferred to be distributed to Class 10 and Class 11 unsecured creditors under the plan would be worth in a range of $0 to $154 million in the aggregate, or $0-$1.10 cents per share. Unsecured creditors were slated to get $140 million out of $250 million total face amount of MYT Series B Preferred, or 56% of the total. The Debtors estimated that the $250 million in MYT Series B Preferred would be worth $275 million at the high end of the range. 56% of $275

B. There was no Cash Out Option, for Reasons Unrelated to the July 31 Conduct

30. I understand that there were multiple reasons that unsecured creditors have not been provided with a Cash Out Option to-date (which is the principle basis of the damages claim that the Plaintiffs contend ranges from $42 million to $54 million), and that these reasons are wholly unrelated to the July 31 Conduct. Those reasons include that (i) the terms of the MYT Series B Preferred had not yet been agreed prior to early September, (ii) [redacted][13]

1. The Terms of the MYT Series B Preferred Had not Been Finalized

31. On July 29, the UCC voted to support the proposed settlement reached in the bankruptcy, in which the unsecured creditors would be receiving 140 million in MYT Series B Preferred and $10 million in cash. The support for the settlement was subject to certain conditions.[14] Based on my review of the record, I understand that, as of July 31, the Committee had not yet accepted the proposed terms for the MYT Series B Preferred to be granted to unsecured creditors as part of the proposed settlement. As of the time of the July 31 Conduct, it appears that the Committee's acceptance of the MYT Series B Preferred as part of the settlement was contingent on the resolution of numerous open issues, including provisions relating to:

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million is equal to $154 million, which is equal to $1.10 per share (equal to 154/140). Notice of Filing of Disclosure Statement (DN 1390) at footnotes 7, 8, 10 & 11.

[13] In re: Neiman Marcus Group Ltd., LLC, et al., *August 21 Hearing Transcript*, August 21, 2020, Case No. 20-32519 at 16:5-10 ("August 21 Hearing Transcript"). Jefferies letter to Neiman Marcus Group LTD LLC and Official Committee of Unsecured Creditors, Re: Backstop of Proposed Cash-Out Option under the First Amended Joint Plan of Reorganization, August 2, 2020 (NM_UST_PSZJ_00085) at A-3 at Conditions, ("Jefferies Group August 2 LOI"). *See also* In re Neiman Marcus Group, Ltd., September 22 Deposition of Mohsin Meghji, September 22, 2020 at 53:13-54:08, 58:03-61:04, 68:14-21, 82:23-83:21, 86:25-87:08, ("September 22 Deposition of Mohsin Meghji").

[14] In re: Neiman Marcus Group Ltd., LLC, et al., *Email from Richard M. Pachulski to Hector Duran, Re: Neiman Marcus – Committee Issue*, August 2, 2020, Case No. 20-32519, (DN 1427) at ¶1, ("August 2 UCC Counsel Letter").

- a cap on the MYT Series B Preferred redemption price[15];
- the maturity date/mandatory redemption (ensuring that the Series B Preferred principal repayment and dividends are not deferred indefinitely);
- a change of control/mandatory redemption provision;
- a covenant limitation on restricted payments;
- a covenant limitation on the issuance of equity interests;
- a covenant limitation on liquidations;
- a covenant limitation on transactions with affiliates;
- a covenant limitation on circumvention of covenants;
- a covenant requiring successor assumption of obligations;
- information rights; and
- Series B Preferred Stock approval rights.[16]

32. The UCC was concerned that, without modifications, the proposed terms of the MYT Series B Preferred made its value "illusory", and the UCC did not want creditors to receive an "illusory piece of paper" and a "certificate with virtually no protection."[17] The UCC wanted to ensure that the MYT Series B Preferred had "tangible protections that ensure that the General Unsecured Creditors will be paid when and if a liquidation occurs."[18] These concerns were expressed publicly, including well past the July 31 Conduct.

33. Even though the underlying issues with the terms of the MYT Series B Preferred had not yet been resolved, the day after the July 31 Conduct, the UCC [redacted].[19]

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[15] The UCC was concerned that, in an optional redemption scenario, the price of Series B Preferred Stock was limited by the price of Series A Preferred Stock, limiting proceeds to Series B Preferred Stock. *See* the Term Sheet for Series B Cumulative Preferred Stock (DN 1756), at 57.

[16] In re Neiman Marcus Group LTD LLC, Status Conference Statement of the Official Committee of Unsecured Creditors, August 20, 2020, Case No. 20-32519, (DN 1493) at 37-40 ("UCC Statement").

[17] August 21 Hearing Transcript at 10:21-12:19 and 13:01-03. The UCC had 11 issues with the terms of the MYT Series B Preferred 14:01-05

[18] UCC Statement (DN 1493) at ¶8.

[19] August 2 UCC Counsel Letter at ¶5, (DN 1427).

2. The Bids from [redacted]

34. On August 1, the [redacted]

35. The [redacted]

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20 August 2 UCC Counsel Letter at ¶12, (DN 1427).

21 [redacted]

22 [redacted]

23 August 21 Hearing Transcript at 15:21-16:15 "Jefferies offer, to be frank, had so many conditions and so many problems, it was not an offer that we could accept, which I will also get into. In fact, your honor, the offer had a provision, as did Mr. Kamensky's that said the Series B certificate had to be to their satisfaction. And it was not at the time. So to basically take that an unsolicited offer, which it was, of which it said 30 cents, which could also go downward, depending on the prices of four different stocks, which had enumerable conditions to it, frankly was also fairly illusory, unfortunately." [redacted]

24 August 14 Interview of Mohsin Meghji at 85:08-15 and September 22 Deposition of Mohsin Meghji at 37:17-38-19.

[redacted]

36. On July 28, prior to the July 31 Conduct, [redacted]

37. [redacted], combined with the lack of finality on the terms of the MYT Series B Preferred, ultimately created obstacles to the provision of a Cash Out Option that were unrelated to the July 31 Conduct. Based on my experience, it is my opinion that, until these issues were resolved to the satisfaction of the parties, there would be no formalized Cash Out Option. Those terms were only largely resolved as of September 2, 2020, when the parties, including the UCC, the Neiman Marcus sponsors, and the Debtors, agreed to a term sheet.[30]

3. The UCC's Financial Advisor [redacted]

38. The financial advisor to the UCC has testified that [redacted]

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25 August 21 Hearing Transcript at 16:03-15.

26 August 14 Interview of Mohsin Meghji at 89:14-90:-13.

27 Email from Dan Kamensky to Richard Pachulski and Mo Meghji, Re: here we go…, July 29, 2020 (NM_UST_PSZJ_00127) ("Kamensky to Pachulski and Meghji Email") at 2.

28 Letter from Marble Ridge Capital to the Official Committee of Unsecured Creditors, *Re: Global Settlement Proposal Subject to FRE 408*, August 3, 2020 (NM_UST_PSZJ_00033), ("Initial Proposal Letter from Marble Ridge") *and* Letter from Marble Ridge Capital to the Official Committee of Unsecured Creditors, *Re: Revised Global Settlement Proposal Subject to FRE 408*, August 11, 2020, ("Revised Proposal Letter from Marble Ridge").

29 Initial Proposal Letter from Marble Ridge (NM_UST_PSZJ_00033) and Revised Proposal Letter from Marble Ridge.

30 In re: Neiman Marcus Group Ltd., LLC, et al., *September 2 Hearing Transcript*, September 2, 2020, Case No. 20-32519 at 6:06-17, 8:10-16, ("September 2 Hearing Transcript").

39. [redacted]

40. The financial advisor to the UCC testified that, [redacted] indicating that the August 2 UCC Counsel Letter and August 5th Court Order did not chill the bidding for the MYT Series B Preferred. That is consistent with my opinion that, based on industry custom and practice for Distressed Debt Investing, the July 31 Conduct would not have impeded interested parties from bidding if they were otherwise inclined to do so.[34]

41. On August 6, [redacted]

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[31] September 22 Deposition of Mohsin Meghji at 53:13-54:08, 58:03-61:04, 68:14-21, 82:23-83:21, 86:25-87:08.

[32] September 22 Deposition of Mohsin Meghji at 82:23-83:21.

[33] August 2 UCC Counsel Letter (DN 1427) and In re: Neiman Marcus Group Ltd, LLC, et al., *Order*, August 5, 2020, Case No. 20-32519 (DN 1442) ("August 5 Court Order").

[34] September 22 Deposition of Mohsin Meghji at 88:18-91:06

[redacted] The fact that [redacted] reached out on an unsolicited basis after the July 31 Conduct was in the public domain confirms my view, based on industry custom and practice, that market participants would have been prepared to engage in exploring a Cash Out Option - despite the July 31 Conduct.[37]

42. On August 7, a senior representative from [redacted] The [redacted] outreach also confirms my view that market participants would have been prepared to engage on the MYT Series B Preferred regardless of the July 31 Conduct.

43. The financial advisor to the UCC has testified that [redacted] I see no evidence that the July 31 Conduct has deterred any party from expressing interest in exploring some form of a Cash Out Option.

44. In fact, the public disclosures about the potential for a Cash Out Option could have actually increased interest among market participants because it provided more visibility into a potential investment opportunity. The August 2 UCC Counsel Letter, which became publicly available as of August 3, set out the price at which both [redacted] thus providing "price discovery" by informing the market

35 [redacted]

36 [redacted]

37 [redacted]

38 [redacted]

[redacted]

of current bid levels, and providing important information that the parties could use in fashioning their own bids.[40]

45. As of August 19, even though the outstanding issues with the MYT Series B Preferred were not resolved, there still remained the possibility that there could be a Cash Out Option and there were multiple potential bids on the table and under consideration.[41]

46. The issues surrounding the terms of the MYT Series B Preferred do not appear to have been resolved prior to the July 31 Conduct, or even after it, during August 2020. Those issues were only largely finalized in early September. But even then, once the issues with the documentation for the MYT Series B Preferred had been resolved, the terms of a Cash Out Option were still not finalized – but not because of a lack of expressed interest from prospective investors. By early September there had been at [redacted] who had reached out to express an interest in financing a Cash Out Option.

47. It is my opinion, that the July 31 Conduct did not impact and would not have impacted the value of the MYT Series B Preferred to a holder of that asset and therefore it did not alter the competitive landscape with respect to the parties who were potentially interested in providing financing for the Cash Out Option in a negative way. It is my opinion that it did not interfere with the ability of the process to move forward in exploration of a Cash Out Option after the July 31 Conduct occurred.

C. The July 31 Conduct did not Damage Unsecured Creditors

48. As previously stated, I understand that, prior to the July 31 Conduct, there were two interested parties who had expressed an interest in pursuing a Cash Out Option – [redacted], and I see no evidence that the July 31 Conduct impacted what the Jefferies Group was ultimately willing to bid, or even that it discouraged other potential bidders.

49. As discussed, and based on my review of the record, it appears that (i) on July 31, 2020 (but prior to the July 31 Conduct), the Jefferies Group made an initial unsolicited verbal expression of interest in providing a Cash Out Option[42]; (ii) [redacted]

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40 August 2 UCC Counsel Letter (DN 1427) at ¶4 and¶6.

41 Trustee Report at J.

42 The Complaint suggests that as of July 31, Jefferies was acting largely on behalf of a client. (see Complaint at ¶43) A Jefferies representative stated that it was initially expressing interest, [redacted] See Complaint at ¶36. See also in re Neiman Marcus Group, Ltd., Interview of Joseph Femenia, August 15, 2020 at 132:14-19 ("Femenia Testimony"), [redacted] was interested in $70 million (Femenia Testimony at 46:07-49:05) and another client was interested in $10 million, and [redacted] Jefferies sought

[redacted]."[43]

50. As an industry practitioner, I do not see any identifiable, material change between the process undertaken by the Jefferies Group before and after the July 31 Conduct. After experiencing a temporary cessation of forward movement that lasted about 24 hours, the [redacted]

51. This observation is buttressed by the fact that, based on the Trustee Report, the Jefferies Group's expression of interest was made, in large part, [redacted] This tells me two things: (1) I have seen no suggestion – nor would I expect to – that the Jefferies Group August 2 LOI was anything other than an extension of the expression of interest on July 31; and (2) even if the Jefferies Group permanently withdrew from the process, as opposed to doing so for about 24 hours, those same customers could have easily worked with a different broker-dealer with a distressed debt trading desk to advance their expression of interest, or else they could have contacted a UCC representative directly.

52. Based on my experience and review of the record, I do not see any reasonable basis to ascribe economic value to the delay between the Jefferies Group's verbal expression of interest on July 31 and [redacted] Jefferies Group August 2 LOI (which the Committee did not accept in any case). I see no indication that the Jefferies Group changed the terms it was otherwise prepared to bid because of the July 31 Conduct.

53. The Plaintiffs have stated that the July 31 Conduct resulted in the loss of a Cash Out Option, and therefore damaged unsecured creditors.[45] I have already stated my opinion that there was no firm, actionable Cash Out Option on the table prior to or after the July 31 Conduct. It appears that the UCC, [redacted] I also see no evidence that the July 31 Conduct made it any more or less likely that there would be a Cash Out Option available – at any price.

54. In my opinion, the July 31 Conduct did not negatively impact the bid ultimately made by the Jefferies Group. [redacted]

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internal approval to buy $10 million MYT Series B Preferred for their own account, for approximately $3 million. (Femenia Testimony at 52:02-55:23 and 76:16-77:15).

[43] *See* Jefferies Group August 2 LOI at A-3 at Conditions *and* August 21 Hearing Transcript at 16:5-10. *See also* UCC Statement at ¶5-7.

[44] Femenia Testimony at 128:10-131:05. *See also* Jefferies Group August 2 LOI.

[45] *See* the Complaint at ¶57.

[redacted]. Based on my own experience, having been in the market for Distressed Debt for decades as an investor, it is my opinion that different forms of offers have different degrees of value. A verbal expression of interest is on the less valuable end of the value spectrum. A verbal expression of interest only offers potential hope for value, but does not have tangible value. A non-binding letter of intent,[46] subject to all sorts of contingencies, including internal approvals, being subject to market conditions, having a downward price adjustment mechanism, and subject to definitive documentation satisfactory to Jefferies "in its sole discretion," would be viewed by market participants as somewhat more tangible and slightly more valuable. All else being equal, a written formal offer with firm commitment and few or no contingencies is tangible, and at the high end of the value spectrum. I see no evidence that [redacted]

55. By its terms, [redacted]

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[46] As a market participant, the language in Jefferies August 2 LOI, stating it [redacted].

[47] *See* Jefferies Group August 2 LOI. In addition, the level of the Jefferies bid was disclosed by the UCC which provided the market with a free backstop. Femenia Testimony at 132:14-19.

[48] *See* Jefferies Group August 2 LOI at A-1. *See also* August 2 UCC Counsel Letter at 6 at 13(b), (DN 1427).

[49] The UCC requested that the terms of the MYT Series B Preferred to broadly mirror the terms in the MYT Series A Preferred which was held by the holders of Third Lien Notes. The UCC sought "reasonable protections, such as basic covenants and information rights" and "without these protections, the value of the MYT Series B Preferred Stock is simply illusory from the perspective of General Unsecured Creditors." UCC Statement at ¶3, ¶4 and ¶ 7. "In order for such settlement to be reasonable from the perspective of the estates, the MYT Series B Preferred Stock must have tangible protections that ensure that the General Unsecured Creditors will be paid when and if a liquidation event occurs." UCC Statement at ¶8.

D. Distressed Debt Investing Industry Custom and Practice Suggest that the July 31 Conduct Would not Deter Investor Participation, which is Supported by the Record

56. The Complaint, which was filed on August 26, states that "[f]ollowing Marble Ridge's actions, the outcome of any cash-out option is uncertain, and the events that have transpired over the past few weeks may well deter parties from robustly participating in a process to provide any alternative cash-out option to the Debtors' unsecured creditors."[50]

57. I disagree - the idea that the July 31 Conduct would deter parties from robustly participating in a process to provide a Cash Out Option (or a variation thereon) is inconsistent with both industry custom and practice for Distressed Debt Investing, and with the record of what actually transpired with potential bidders, as previously described.

58. Investors who specialize in investing in distressed and bankrupt companies are not shy about expressing interest in new investments. Based on my experience in the industry, I do not believe that an unaffiliated third party bidder would have been discouraged from making a bid for the MYT Series B Preferred as a result of the July 31 Conduct, if such a bidder had otherwise been motivated to do so. Indeed, as discussed, the record indicates that after the July 31 Conduct [redacted]

59. Had there actually been an auction with a Stalking Horse Bidder as was envisioned as part of the Jefferies Group August 2 LOI, it is my opinion that the July 31 Conduct would have had no material impact on it. The value of MyTheresa to a bidder would not be impacted one way or the other by the July 31 Conduct. The July 31 Conduct had to do with the interference of potential interest in purchasing MYT Series B Preferred shares by third parties. The July 31 Conduct did not implicate MyTheresa's financial performance, management, reporting, exit strategy, or other factors I would expect a market participant to consider in making a determination of whether to bid on MYT Series B Preferred.

60. Based on industry custom and practice for investments in pre- and post-emergence Distressed Debt investments and in my experience, participants in that auction would most likely have been interested in owning an economic interest in MyTheresa going forward, and be most concerned about the price at which an interest could be acquired, relative to a bidder's view of MyTheresa's potential value, the terms of the instrument,

[50] Complaint at ¶57.

and the likelihood and timing of a monetization. The expected value of MyTheresa would not to be impacted one way or the other by the July 31 Conduct.

E. Other Potential Factors that Might Have Affected Economic Damages (if any) to Unsecured Creditors as a Result of the July 31 Conduct

61. In order to complete my evaluation of the effect of the July 31 Conduct (if any) on unsecured creditors, I also considered other factors that could have affected economic damages (if any) borne by those creditors – (the "Potential Factors"). In addition to reviewing the record to ascertain the status of the negotiations amongst the UCC, the Debtors, the Disinterested Manager, the Consenting Sponsors, and the Noteholder Group concerning the MYT Series B Preferred and the contingent nature of the offers to provide the Cash Out Option, all as discussed,[51] the Potential Factors that I considered included: (i) the number of bidders involved in pursuing the Cash Out Option; (ii) the monetary offers made by the bidders; and (iii) whether the July 31 Conduct derailed, or meaningfully delayed, the plan confirmation process.

1. The July 31 Conduct Would Not Have Impacted the Number of Bidders

62. I have seen no evidence that the July 31 Conduct impacted the number of bidders that were interested in providing a Cash Out Option, and in my opinion and based on my experience, on a hypothetical basis, there is nothing about the July 31 Conduct that would have likely altered the number of interested parties.[52]

63. The record I have reviewed reflects that, prior to the July 31 Conduct, there were [redacted] who could have worked with a host of other dealers if Jefferies permanently withdrew from the process, as opposed to withdrawing for about 24 hours, or alternatively could have contacted the UCC directly.

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[51] The Noteholder Group is an ad hoc group of holders of approximately 99% of the Second Lien Notes and approximately 70% of the Third Lien Notes. *See* UCC Statement at 4.

[52] In fact, the United States Trustee's investigation states that "after initially refusing to bid, the outside investor ultimately made a competing offer for the assets", Trustee Report at footnote 2.

64. Based on my review of the record, the impact of July 31 Conduct on the Jefferies Group was fleeting. After the July 31 Conduct the Jefferies Group decided to refrain from making a Cash Out Option proposal.[53] But within 24 hours of having made the decision to refrain, the Jefferies Group was back in discussions about financing a Cash Out Option.[54] Less than 24 hours elapsed between the time the Jefferies Group first made contact with a UCC representative to initially express interest, and when it expressed renewed interest *after* the July 31 Conduct. The Jefferies Group finalized an LOI on a Sunday, which was the day after it expressed renewed interest.[55]

65. Based on my experience and my examination of the record available to me, I am of the opinion that nothing of value was lost in the intervening period between when the Jefferies Group first expressed interest before the July 31 Conduct and when it made its conditional bid after the July 31 Conduct, and this caused no economic harm to creditors. Indeed, at the time Jefferies initially pulled back, it informed the UCC that certain of its clients on whose behalf it was bidding, might have an interest in bidding for the opportunity to finance the Cash Out Option directly, as opposed to going through Jefferies.[56]

66. As stated, by August 2, the Jefferies Group had executed the conditional letter of intent.[57] In the absence of specific evidence, it would not be possible to conclude that it would have taken Jefferies any less time to deliver the Jefferies Group August 2 LOI had there been no July 31 Conduct. In any event, it was delivered within the timeframe required by the UCC. In addition, it would also not be possible to conclude that the conduct impacted any of the terms and conditions in the Jefferies Group August 2 LOI.

67. Furthermore, I see no evidence that the July 31 Conduct dampened the interest of the bidders who had expressed interest prior to the July 31 Conduct. [redacted]

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53 August 2 UCC Counsel Letter at ¶9, (DN 1427).

54 In fact, Jefferies was only out for a short period. Jefferies told the UCC that they were out at 5 pm on July 31 and by noon at the latest the following day they said they wanted to bid again. *See,* Trustee Report at 20 at Section 3 "The Committee learns of Mr. Kamensky's Actions", Trustee Report at 25 at H "Jefferies Renews its Bid" *and* Trustee Report at 26, "During the morning of August 1 […]".

55 Trustee Report – first contact with Mr. Meghji (financial advisor to the UCC) was July 31 (Trustee Report at 10 at F), and renewed interest was expressed in August 1 (Trustee Report at 25 at H). The Jefferies Group delivered a Letter of Intent to the UCC on August 2 (Trustee Report at 27 at J).

56 August 2 UCC Counsel Letter at ¶10, (DN 1427).

57 Jefferies Group August 2 LOI.

58 Trustee Report at 27 at J.

68. I have also not seen any evidence to suggest that there was any other potential bidders prior to the July 31 Conduct who subsequently became discouraged by virtue of the July 31 Conduct, and then declined to participate as a result of the conduct. Indeed, as discussed the record reflects that [redacted] surfaced after the July 31 Conduct had been telegraphed to the market.

69. In my opinion, nothing was likely to happen as a result of the July 31 Conduct that would impact the quantum of economic return that an investor might think it could make by investing in the MYT Series B Preferred. An investment in that instrument would largely be driven by the perceived value of MyTheresa, the terms of the instrument, and the likelihood that there would be a catalyst to realize value from the MYT Series B Preferred through, for example, a sale or initial public offering.

2. The Impact that the July 31 Conduct Had, If Any, On the Price of a Cash Out Option

70. It is my opinion that the July 31 Conduct produced no discernible negative effect on the price to be paid as part of a possible Cash Out Option. My review of the record demonstrates that, during the relevant period, the same bidders – Marble Ridge and the Jefferies Group - were engaged in a competitive process, willing to finance a Cash Out Option, each offering to pay more than Marble Ridge's [redacted].[59] The Jefferies Group proposed [redacted] – in line with the price indication it had given prior to the July 31 Conduct.[60] The second bid from Marble Ridge included a [redacted]

71. The UCC's professionals also appeared to believe [redacted]

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59 Trustee Report at 27 at J.

60 *See* Jefferies Group August 2 LOI at A-1, Jefferies' offer price is listed at $0.3025 with a maximum aggregate purchase price of $42 million.; *See also* Trustee's report at 25 at H, *and* Trustee Report at 2 at footnote 2.

61 Revised Proposal Letter from Marble Ridge at "Transaction Fee" *and* Initial Proposal Letter from Marble Ridge at 035 (NM_UST_PSZJ_00033). *See also,* Kamensky to Pachulski and Meghji Email (NM_UST_PSZJ_00127).

62 [redacted]

63 [redacted]

72. As a result, I conclude that the July 31 Conduct produced no discernible negative effect on the price to be paid as part of the Cash Out Option; if anything, the prices the bidders were willing to pay had increased after the July 31 Conduct.

3. The July 31 Conduct Did Not Delay the Plan Process

73. Based on my review of the record, while I understand the July 31 Conduct resulted in very serious judicial attention, an investigation by the United States Trustee, and the expenditure of professional expenses by various constituents, to the credit of the Court and the various constituents, the July 31 Conduct did not derail or materially delay Neiman Marcus' overall path to reorganization.

74. On July 30 – the day prior to the July 31 Conduct - the Debtors' plan and disclosure statement were provisionally approved.[64] The deadline for voting on the plan was set for August 31, 2020.[65] The plan that was sent out for a vote contained no Cash Out Option for unsecured creditors and no provision was added subsequently.[66] Even though a Cash Out Option was never incorporated into the plan, the Debtors received the overwhelming affirmative votes from Class 11 unsecured creditors - the very class of non-funded debt unsecured creditors deemed most likely to require the Cash Out Option in order to support the plan. In fact, Class 11 voted overwhelmingly for the plan with no Cash Out Option - voting in support of the plan 88% in number and 84.5% in amount.[67]

F. The July 31 Conduct did not Separately Materially Damage the Estate

75. In my opinion, based on my experience and review of the record available to me, there was no material damage or economic harm to the Estate based on the July 31 Conduct. As an initial matter, as of the bankruptcy filing, the MYT Series B Preferred was not the property of the Estate – it was held by a non-debtor entity and the Neiman Marcus'

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64 In re: Neiman Marcus Group Ltd., LLC, et al., *Order (I) Approving the Adequacy of the Disclosure Statement, (II) Approving the Solicitation and Notice Procedures with respect to Confirmation of the Debtors' Proposed Joint Plan of Reorganization, (III) Approving the Forms of Ballots and Notices in Connection Therewith, (IV) Scheduling Certain Dates with respect Thereto, and (V) Granting Related Relief*, Case No. 20-32519, July 30, 2020 (DN 1400).

65 Notice of Filing of Disclosure Statement (DN 1390) at 33.

66 Other than for a Convenience Class. *See* "GUC Convenience Recovery" in re: Neiman Marcus Group LTD LLC, et al, *Order Confirming the Third Amended Joint Plan of Reorganization*, Case No. 20 32519, September 4, 2020 (DN 1795) at 85 ("Third Amended Plan").

67 In re: Neiman Marcus Group LTD LLC, et al., Certificate of Stretto Regarding Tabulation of Votes, September 3, 2020, Case No. 20 32519, (DN 1749) at 8, (the "Tabulation of Votes").

legacy equity sponsors.[68] As part of the plan, 140 million shares of the MYT Series B Preferred were slated to be transferred from the sponsors (through the estate as a conduit) to the unsecured creditors as part of a settlement relating to potential fraudulent transfer and breach of fiduciary duty claims. The Estate was not a separate beneficiary of any Cash Out Option, because the Cash Out Option was to be made directly to unsecured creditors receiving MYT Series B Preferred shares, not the Debtors.

76. Moreover, based on my review of the record, it does not appear that the July 31 Conduct materially delayed the timetable for the plan of reorganization. Key plan dates did not move after the July 31 Conduct from where they were before.[69] The Debtors' plan was confirmed on September 4, 2020 - within 5 weeks of the July 31 Conduct.[70] I have seen nothing that would suggest that the parties in the case allowed the July 31 Conduct to meaningfully derail or even temporarily delay the Debtors' pathway to plan confirmation.

77. As I understand it, the effective date of the plan (the "Effective Date") is not expected to be impacted by the July 31 Conduct. One of the conditions precedent to the Effective Date was to complete documentation with respect to the MYT Series B Preferred.[71] Based on my experience in the industry and my review of the record, the July 31 Conduct did not prevent the parties from reaching an agreement on those terms as of September 2 when the parties executed an agreed upon term sheet for the MYT Series B Preferred.[72]

G. Whether a Nexus Exists Between the $55 million Figure that Plaintiffs Propose to Have Withheld and Actual Economic Harm Caused to Creditors

78. Before coming to any conclusion about the "lost value" of a potential Cash Out Option, it is first necessary to establish that, in the absence of the July 31 Conduct, there would have been a Cash Out Option that the parties were otherwise prepared to pursue. As explained, applying my industry experience to the record that I have reviewed, I have concluded that there was no available Cash Out Option of any value [redacted]

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68 Trustee Report at 5-6. *See also* UCC Statement at ¶5.

69 *See* Superiority Secured Debtor-In-Possession Credit Agreement, In re: Neiman Marcus Group Ltd., LLC, et al., *Declaration of Mark Weinsten, Chief Restructuring Officer, of Neiman Marcus Group LTD LLC, In support of the Debtors' Chapter 11 Petitions and First Day Motions,* May 7, 2020, Case No. 20-32519, (DN 86) at 225 at §5.13.

70 *See* the Third Amended Plan (DN 1795).

71 In re: Neiman Marcus Group Ltd., LLC, et al., *Debtors' Third Amended Joint Plan of Reorganization,* September 4, 2020, Case No. 20-32519, (DN 1793) at 62.

72 September 2 Hearing Transcript at 6:06-17, 8:10-16.

[redacted] that the parties were interested in pursuing, for reasons unrelated to the July 31 Conduct. Indeed, the record reflects that counsel to the UCC stated that [redacted]

79. The Complaint references a "lost" Cash Out Option that would have provided unsecured creditors with an alternative recovery. However, the Plaintiff does not provide a calculation of the precise amount of damages sought in connection with the purported "lost" option. The $42 - $54 million cited in the complaint is mathematically equal to [redacted] of MYT Series B Preferred that would have been the subject of a potential Cash Out Option.[75]

80. My analysis of the Plaintiffs' implied damages assumes that the $42-$54 million figure in the complaint was derived from reports of the first outreach by the Jefferies Group, in which it apparently suggested it would pay somewhere "in the thirties" for the MYT Series B Preferred as part of a Cash Out Option.[76]

81. It is my opinion that a reasonable market participant would not rely on that communication to expect with any degree of confidence that the potential bid would likely be at any level [redacted], or that there would necessarily be any bid at all. Indeed, the [redacted]

82. But, even calculating economic harm based on a [redacted] offer would be in error for several other reasons, as well. The Jefferies Group bid provided for [redacted]

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73 August 21 Hearing Transcript at 15:15-16:08.

74 [redacted]

75 The $140 million in face amount is before giving effect to dividends, which would increase the "Liquidation Preference" of the MYT Series B Preferred.

76 Trustee Report at 11. To a market participant [redacted] would imply a price of 30 or more, but less than 40. Joseph Femenia testified that they did not want to give the UCC an exact number and said that they [redacted] Femenia Testimony at 65:12-66:05.

77 Complaint at ¶ 37 and ¶39 and Trustee report at 12 at Section 2 "Mr. Kamensky Learns of the Jefferies Proposal and Forces its Withdrawal." As noted, the letter from Jefferies indicated an offer price of 30.25 cents. *See* Jefferies Group August 2 LOI at A-1.

[redacted]

83. Furthermore, I disagree with the Plaintiffs' damages construct for another reason, which is that the Plaintiffs give no weight to the actual value of the MYT Series B Preferred. Instead, the Plaintiffs' complaint seems to reflect the view that damages should be assessed against the Master Fund equal to what Plaintiffs' perceived value of the Cash Out Option would have been (30-39 cents), without giving proper consideration to the value of the MYT Series B Preferred which would have been the subject of the Cash Out Option, and which the creditor would have received in the absence of the Cash Out Option, or if it had not elected the Cash Out Option.

84. In a scenario with no Cash Out Option, an unsecured creditor would receive the MYT Series B Preferred stock itself as part of its distribution – stock that numerous parties believed could have significant value. As part of the disclosure statement, the Debtors had estimated that the value of the 140 million in MYT Series B Preferred would fall in a range of zero to $154 million.[79] The $154 million upside case is the equivalent of $1.10 per share, in comparison to [redacted] The mid-point of the

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78 [redacted]

79 The maximum valuation of $154 million implies that the Series B Preferred stock is fully repaid to $275 million. The liquidation preference for Series B Preferred stock comprises $250 million in stated value and $25 million in accrued dividends. The unsecured creditors will hold 140 million shares of the Series B Preferred stock, out of a total of 250 million shares of Series B Preferred stock, or 56% of total Series B Preferred stock, implying up to $154 million in total proceeds from the sale of Series B Preferred stock (*i.e.*, $275 million * 140 / 250). *See* Term Sheet for Series B Cumulative Preferred stock (DN 1756).

80 The MYT Series B Preferred had an entitlement to a 10% dividend, which had been added to its liquidation preference meaning that with a face amount of $140 million, its liquidation preference was $154 million ($140 + 10% dividend on 140, or 14=154). According to the Disclosure Statement: "As part of the hard-fought amend-and-extend negotiations, these creditors agreed that the Sponsors could obtain two other indirect sources of recovery from any sale or IPO of MyTheresa. MYT Parent Co. obtained (i) 250,000,000 shares of Series B Preferred Stock (the "MYT Series B Preferred Stock") of MYT Holding Co. that would recover up to $250 million plus a 10% annual dividend only in the event of a monetization event that yielded over the $450 million (plus dividends)…". The Disclosure Statement

Debtors' estimated value range for the MYT Series B Preferred to be distributed to unsecured creditors would be $77 million, which is the equivalent of 55 cents per share – materially higher than [redacted].[81]

85. If the MYT Series B Preferred was worth the same value or more as the price offered under the Cash Out Option, then the creditor would have suffered no loss or economic harm by virtue of not having a Cash Out Option, because the stock would have been worth the same or more than the cash a creditor could have received under the Cash Out Option. As a result, it would be improper to calculate damages based on the purported loss of a Cash Out Option for a security, without giving weight to what that security was otherwise worth to the holder.

86. A further serious flaw with the Plaintiff's approach to damages is that the framework seemingly applied assumes that all unsecured creditors would have elected the Cash Out Option had it been available to them. I understand that many of the unsecured creditors were inclined to hold on to the interest in the MYT Series B Preferred, and they would not have participated in the Cash Out Option.[82] For example, I understand that [redacted].[83] As a result, those creditors could not have been damaged by the lack of [redacted] much less in an amount equal to the full value that the Cash Out Option might have paid them.

87. For instance, for illustrative purposes, if one were to assume that 30% of creditors entitled to receive the MYT Series B Preferred would have elected the Cash Out

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continues: "Pursuant to the Disinterested Manager Settlement, the Consenting Parent and the Consenting Sponsors will agree to return to the Debtors, for distribution to Holders of Allowed General Unsecured Claims in accordance with the treatment provided to Classes 10 and 11 in the Plan, 140 million shares (56% of the total shares) of MYT Series B Preferred Stock." In Exhibits to the Disclosure Statement, Exhibit D, August 6, 2020 (Document 1452-4), pp. 45 and 63. I have also assumed that any third party debt held by MyTheresa must be repaid prior to any distributions to MYT Series B Preferred Stock. *See* Table 1. For a summary of the terms relating to the liquidation preference, *see* the Term Sheet for Series B Cumulative Preferred Stock, (DN 1756).

81 At the September 4 hearing, the Debtors stated that there would be an attempt to distribute 14.2% recovery for the Convenience Class, around the mid-point of the estimated value for the MYT Series B Preferred. September 4 Hearing Transcript at 94:14.

82 August 2 UCC Counsel Letter at ¶7 (DN 1427). "We advised Geller and his colleague that we seriously doubted there would be any interest in selling the full 140 million Series B Shares at a discount because many unsecured creditors preferred their allocation of Series B Shares, but the Committee would be very interested in the cash-out option."

83 Pachulski Interview at 84:22-86:12.

Option, then the other 70% of the creditors who did not wish to elect it would not have been damaged by the fact that it did not exist.[84]

88. For the remaining 30% of the creditors who did want to elect the Cash Out Option, that would have resulted in $42 million in stock being tendered for cash ($140 million in MYT Series B Preferred to unsecured creditors multiplied by 30% equals $42 million). If $42 million in MYT Series B Preferred were tendered into [redacted] then creditors who held that tendered stock would have been paid [redacted]. The purported loss of a Cash Out Option would have deprived them of [redacted] However, to do a proper analysis of any actual damage suffered by these creditors, it would be necessary to compare that [redacted] in lost cash to the value of the MYT Series B Preferred those creditors would be receiving instead. To the extent that such stock was worth [redacted] or more, there would be no damages. [redacted].

89. In sum, even if I were to assume for the sake of argument that a firm Cash Out Option would have been available, and that its absence was solely due to the July 31 Conduct, in my opinion there is no apparent nexus between the amount sought to be frozen and the ultimate damages that Plaintiffs seek to recover in this case relating to the claimed loss of a Cash Out Option. Such a damages award would, instead, provide the creditors with *both* the cash component of a Cash Out Option (which would have been received by then *in exchange* for the shares) *plus* the MYT Series B Preferred shares themselves. In my opinion, therefore, that would compensate the creditors twice.

90. Given my experience in the market for post-reorganization securities, it is my opinion that it is likely there will be broker-dealers interested in making a market in MYT Series B Preferred, to the extent there are willing buyers and sellers.[85] That is how broker-dealers provide a service to clients and earn commissions or a spread. As a result, willing buyers and sellers of MYT Series B Preferred will likely be in a position to buy and sell stock following the effective date.[86] [redacted].

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[84] Before consideration of any potential option value that such an option might have had. I have not analyzed what, if any option value, any Cash Out Option may have had, and view it as highly speculative, given the fact, among other reasons, that the terms of the MYT Series B were not finalized, and the length of time that the Cash Out Option would be available is unclear.

[85] Subject to the 60 holder cap. "As such claims are Allowed, the Trust will provide (i) all holders of Funded-Debt General Unsecured Claims and (ii) up to sixty (60) holders (the "Cap") of other General Unsecured Claims (excluding convenience claimants) entitling them to not less than 50,000 shares (or equivalent units) of Series B with an opportunity to elect to opt out of the Trust and hold shares of Series B directly." See Term Sheet for Series B Cumulative Preferred Stock (DN 1756) at 16.

[86] Subject to trading restrictions placed on the MYT Series B Preferred, or on interests in a liquidating trust. The Amended and Restated Certificate of Designation of Cumulative Series B Preferred Stock of MYT Holding Co., filed on September 4, 2020 indicates that it was envisioned that parties will be able to transfer MYT Series B Preferred and a transfer agent will be appointed. *See* Term Sheet for Series B

91. The terms of the MYT Series B Preferred provide that holders can ultimately crystalize the value of the security through the sale of MyTheresa, for example, through an M&A transaction or an initial public offering.[87] Upon such a monetization event, there is a prescribed waterfall for payments to different parties, as shown in Table 1 below:

Table 1: MyTheresa Monetization Event Waterfall

Waterfall Step		Amount ($M) [A]	Required Valuation for Full Recovery ($M) [B]
Step 1			
Repay Third Party Debt, net of cash on hand	[1]	$37	$37
Step 2			
$200M to second lien lenders under limited guarantee	[2]	$200	$237
Step 3			
$250M plus accrued 10% dividend to holders of Series A Preferred Stock	[3]	$275	$512
Step 4			
$250M plus accrued 10% dividend to holders of Series B Preferred Stock	[4]	$275	$787
Step 5			
Remaining amounts to equity/third lien	[5]	n/a	n/a

Sources and Notes:
[1]: In re: Neiman Marcus Group LTD LLC et al., Debtors, Initial Expert Report of The Michel-Shaked Group Executive Summary, July 15, 2020, Case No. 20-32519, (DN 1355) at 4, 11, (the 'Michel-Shaked Group Report Executive Summary').

Cumulative Preferred Stock at Exhibit B (DN 1756). For appointment of a transfer agent, at Article VI Transfer Agent.

87 A holder could also sell it in the market, subject to any applicable restrictions in the governing documents. A monetization event is defined as a "MYT Secondary Sale". *See* The Term Sheet For Series B Cumulative Preferred Stock, (DN 1756), at 51. MYT Secondary Sale is defined by reference to the definition in the Second Lien Notes Indenture. According to the Second Lien Notes Indenture, a MYT Secondary Sale is the "the sale, disposition, monetization or other transfer (whether directly, indirectly or synthetically, including through derivative transactions or by means of a transaction involving MYT Parent or any other entity that directly or indirectly owns equity interests in the MYT Holdco) of equity interests of the MYT Holdco by Neiman Marcus Group, Inc. or its subsidiaries to any Independent Third Party…". *See* SEC, Neiman Marcus Group LTD LLC, Form 8-K, June 7, 2019 at Exhibit 10.5, Neiman Marcus Group LTD LLC, Indenture, dated June 7, 2019 (the "Second Lien Indenture") at 36.

[2]-[5]: Disclosure Statement (DN 1452-3) at 43, 44; Third Amended Plan (DN 1795) at 99-104; Term Sheet for Series B Cumulative Preferred Stock (DN 1756), at 49-51.
[A]: Includes accrued dividends.
[B]: Cumulative sum of [A].
I assume that third party debt (net of cash on hand) must be repaid before all other parties.

92. As shown in Table 1 above, under a monetization event, any third party debt must first be repaid (Step 1). Remaining proceeds are then applied to the repayment of the second lien lenders (up to a maximum of $200 million, Step 2). Remaining proceeds are then applied to the repayment of the Series A Preferred Stock (up to a maximum of $250 million plus accrued dividends, Step 3). Following the full repayment of Series A Preferred, Series B Preferred can receive payment (up to a maximum of $250 million plus accrued dividends, Step 4). Based on Table 1 above, in order for the MYT Series B Preferred to have value, then MyTheresa would have to be worth in excess of $512 million, based on current levels of accrued dividends.[88]

93. Unsecured creditors are slated to receive 140 million shares of MYT Series B Preferred, out of a total of 250 million shares that will be outstanding. After taking into account an additional current entitlement to $25 million in accrued dividends (of which the unsecured creditors MYT Series B Preferred share would be $14 million), the current upside recovery for the MYT Series B Preferred granted the unsecured creditors would be up to $154 million on the $140 million par value, or $1.10 per share.[89]

94. As discussed, in a hypothetical scenario where a Cash Out Option was available, to the extent an unsecured creditor did not exercise the Cash Out Option, it would still own the MYT Series B Preferred which would have value. As shown in Table 2, there are several indicia of value applicable to the MYT Series B Preferred.

95. First, in its disclosure statement, and as indicated in Table 2 below, the Debtors estimated that the value of the MYT Series B Preferred would be in a range of 0 to $1.10 per share. Based on an application of the waterfall in Table 1 above, if MyTheresa had a value of $787 million or more, the MYT Series B Preferred would be worth $1.10 per share, based on its current claim.

96. There are multiple other data points of note with respect to the potential value of MYT Series B Preferred. A July 15, 2020 valuation report from the Michel-Shaked Group was publicly filed on July 24, 2020 ("MSG" and the "MSG Valuation Report"). [90]

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88 The Complaint states that "The Series B Shares are illiquid and only recover if there is a sale or other monetization event of MyTheresa in an amount of at least $500 million." Complaint at ¶33.

89 $140 million par value plus $14 million in accrued dividends that is added to the liquidation preference for the Series B Preferred equals $154 million at present. *See* Term Sheet For Series B Cumulative Preferred Stock (DN 1756).

90 In re: Neiman Marcus Group Ltd., LLC, et al., *The Michel-Shaked Group, Initial Expert Report of the Michel-Shaked Group*, Case No. 20-32519, July 15, 2020, (DN 1354) (the "MSG Initial Report") and In re: Neiman Marcus Group Ltd., LLC, et al., *The Michel-Shaked Group, Initial Expert Report of the Michel-Shaked Group Executive Summary*, Case No. 20-32519, July 15, 2020 (DN 1355) (the "Michel-Shaked Group Report Executive Summary").

Among other things, the MSG Valuation Report states that MSG was asked to value MyTheresa reasonably contemporaneous with the Debtors' emergence from bankruptcy, which was estimated to be September 1, 2020.[91] MSG valued MyTheresa on an enterprise basis as of September 1, 2020 at $962 million. Applying the waterfall provisions outlined in Table 1 to MSG's concluded $962 million enterprise value for MyTheresa indicates that the MYT Series B Preferred could be worth $1.10/share in a monetization event, given its current claim – which is equal to the high end of the Debtors' range.

97. As a Distressed Debt investor, the MSG Valuation Report would have been one of the key documents I would have wanted to review in considering whether to make an investment in the MYT Series B Preferred. Indeed, the UCC's financial advisor has testified that [redacted]

98. During August 2019, [redacted]

99. In May 2019, as part of Neiman Marcus' liability management efforts, [redacted]

100. And, as has been discussed, there have been three bidders in the market – [redacted] On

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91 MSG Initial Report at 4.

92 September 22 Deposition of Mohsin Meghji at 84:09-85:22.

93 [redacted]

94 Valuations are performed as of a Measurement Date, meaning earlier valuations, and earlier results of sales processes may be less reliable than more recent valuation work performed, all else being equal.

[redacted] hose bids provide market evidence of value today, taking into account the specific characteristics of the security, and should be considered in concluding that the MYT Series B Preferred has value.[96]

Table 2: Indicia of Value for the MYT Series B Preferred

Valuer		Date of Valuation	MyTheresa Enterprise Valuation ($M)	Implied Maximum Value Available to 250M Series B Preferred ($M) [A]	Implied Value of 140M of MYT Series B Preferred ($M) [B]	Implied Value to Unsecured Creditors (cents on $) [C]
Debtor's Valuation	[1]	July 30, 2020				$0 - $[redacted]
[redacted]						

Sources & Notes:
[A]: Enterprise Valuation less $512M in priority payments, to a maximum of $275M liquidation preference. See Table 1.
[B]: [A] x 56%. Unsecured creditors hold 56%, or $140M of $250M Series B Preferred Stock. Jefferies and Marble Ridge bid values based on bid price multiplied by $140 million par value of stock.
[C]: [B]/140.
[1]: Notice of Filing of Disclosure Statement (DN 1390) at 130, FN 10, 11. The low to high end valuation of $0-$275 million stated in DN 1390 is equivalent to the implied value to unsecured creditors of $0-$1.10.
[2]: See Letter from Marble Ridge at -035.
[3]: [redacted]
[5]: Michel-Shaked Group Report Executive Summary at 3, FN 1. Valuation as of September 1, 2020. According to MSG, there is ambiguity around the classification of intercompany debt.
[6]: Email from Andrew Costa at 20. Valuation includes $75M in cash. Calculations are based on the midpoint of the range of valuation.
[7]: Notice of Filing of Disclosure Statement at 48.
Neiman Marcus Q2 2019 10-Q.

Dated: New York, New York
September 23, 2020

Marti P. Murray

95 [redacted]

96 I am not aware that a two sided trading market with buyers and sellers has yet developed for the MYT Series B Preferred.

IV. Appendix A – Expert CV of Marti P. Murray

MARTI P. MURRAY, MBA, CVA, CFE
Principal

New York, NY +1.212.789.3650 Marti.Murray@brattle.com

Marti P. Murray is a principal of The Brattle Group, with subject matter expertise in corporate financial distress and restructuring, securities trading, business and securities valuation, solvency, fraud (including Ponzi schemes), and industry custom and practice in the alternative investment management industry. She has had a 35+ year career in the financial services industry, including leadership roles at both alternative investment management firms and business restructuring financial advisory firms. She has also served on numerous boards of directors and has acted as a court-appointed SEC Receiver for an investment adviser accused of fraud.

Earlier in her career, Ms. Murray was the founder, president, and portfolio manager of Murray Capital Management, Inc. an SEC-registered distressed debt hedge fund firm which she ran from 1995-2008. The distressed debt business of Murray Capital was acquired by Babson Capital in April 2008.

Ms. Murray served as an adjunct professor at the NYU Stern School of Business from 2001-2013, teaching courses in bankruptcy, distressed debt investing, and equity analysis/valuation. While at NYU Stern she was the recipient of awards for excellence in teaching, including the Teacher of the Year Prize. Ms. Murray has written for numerous publications, and was a contributing author to Managing Hedge Fund Risk: From the Practitioner's Perspective, edited by Virginia Reynolds Parker, published in 2001.

Ms. Murray holds the Certified Valuation Analyst credential (CVA), awarded by the National Association of Certified Valuators and Analysts (NACVA). Ms. Murray is also a Certified Fraud Examiner (CFE), with proven expertise in fraud prevention, detection, and deterrence. She is a full member of the National Association of Federal Equity Receivers (NAFER) and serves on the Board of Directors and as Audit Committee Vice Chair of the New York Chapter of the Turnaround Management Association (TMA).

TESTIMONY

- SPCP Group, LLC v. UBS AG – Litigation over a failed trade of distressed bank debt. Provided expert report and deposition testimony. Issues included industry custom and practice in the distressed debt trading market and analysis of mitigation strategies, including damages calculations. (August 2010)
- In re SW Boston Hotel Venture LLC, et.al. – Litigation over plan feasibility, solvency, financial projections, claim amount, diminution in value of collateral, and cram-down rate of interest. Deposed and provided expert testimony before the United States Bankruptcy Court for the District of Massachusetts. (June 2011)
- Riad Tawfiq Al Sadik v. Investcorp Bank BSC, et al. – Litigation over major losses suffered in 2008. Provided three expert reports and testified at trial in the Grand Court of the Cayman Islands. (February 2012)
- J.P. Morgan Securities, Inc. v. Jason Ader, et al. – Litigation over financial arrangements between a hedge fund and a seed capital provider. Provided multiple expert reports and was deposed twice. (May 2012)
- Deephaven Distressed Opportunities Trading, et al. v. Imperial Capital, LLC – FINRA arbitration over liability for damages related to a failed trade of a distressed trade claim against a bankrupt

company. Issues included industry custom and practice in the distressed debt trading market, analysis and valuation of trade claims, and mitigation strategies including damages analysis. Provided expert report and testified at arbitration. (July 2012)

- In re The Dolan Company – Financial advisor and testifying valuation expert for the Official Committee of Equity Security Holders in the Dolan bankruptcy. Provided expert report and was deposed three times on a wide range of issues relating to business valuation, and industry custom and practice with respect to bank loan amendment fees. (May 2014)
- Green v. KeyCorp – Expert witness with respect to Austin Capital Management, a hedge fund-of-funds firm. Provided expert report and was deposed twice. (August 2014)
- In re GSC Group, Inc., et al. – Litigation over assumed management contracts for CLOs, Private Equity, and ABS CDOs, affiliate transfers, and investments made in hedge funds and CLOs. Provided multiple expert reports, was deposed, and testified in US Bankruptcy Court for the Southern District of New York. (February 2015)
- PICCIRC, LLC et al. v. Commissioner of Internal Revenue Service (United States Tax Court) – Retained as expert witness by the Internal Revenue Service with respect to an investment in a trade claim against Encol during its bankruptcy. Issues included industry custom and practice with respect to hedge fund and trade claim investing, trade allocation, principal transactions, and the economic substance of the trade. Provided expert report and testified at trial. (March 2015)
- Brown Jordan International, Inc., et al. v. Christopher Carmicle – Retained as expert witness by Brown Jordan. Provided expert report and deposition testimony. (August 2015)
- SEC v. Westport Capital Markets, LLC and Christopher E. McClure – Retained as an expert witness by the Securities and Exchange Commission with respect to alleged conflicted transactions of an investment adviser. Provided expert report, deposition testimony, and testified at trial. (May 2018)
- In re Sears Holdings Corporation, et al. – Retained as an expert relating to claims for diminution in value of collateral and alleged 506(c) surcharges relating to positions held by certain second lien debt holders of the Sears Bankruptcy. Provided expert report, deposition testimony, and testified at trial. (July 2019)
- Retained as an expert relating to a dispute regarding a seed capital arrangement entered into between two hedge fund firms. Provided expert report and testified at arbitration hearing. (September 2019)
- Retained as an expert in a litigation relating to a dispute between the manager of a private equity fund of funds and a public retirement system, which sought remedies related to alleged mismanagement of the funds. Provided expert report and testified at trial. (October 2019)
- D.E. Shaw Composite Holdings LLC and Madison Dearborn Capital Partners IV LP v. TerraForm Power LLC and TerraForm Power, Inc – Engaged to provide expert opinion with respect to the methodologies used to value earnout consideration, and private equity/hedge fund industry custom and practice for the valuation of illiquid investment positions. Issued affirmative and rebuttal expert reports and testified at deposition. (December 2019)

LITIGATION EXPERIENCE

- Douglas A. Kelley, in his capacity as the court-appointed Chapter 11 Trustee of Debtors Petters Company, Inc. and PL Ltd., Inc., vs. Westford Special Situations Master Fund, L.P. et al. – Retained as an expert in a litigation relating to claw-back claims stemming from the Petters Ponzi scheme. Issues included fraud, Ponzi schemes, solvency, asset tracing, and hedge fund industry custom and practice, including the calculation of management and performance fees. Issued affirmative and rebuttal report.
- In the Matter of VSS Fund Management LLC – Engaged as an expert witness by the SEC concerning registered investment adviser Veronis Suhler Stevenson ("VSS") for failure to provide the limited partners of a private equity fund it advised with material information relating to a change in the vehicle's valuation in connection with an offer by the owner and managing partner of VSS to purchase the limited partnership interests.
- Retained as an expert in a litigation arising from a failed debt restructuring.
- Tatiana Brunetti v. Dmitry Sergeev – Retained as expert in defense of claims of misappropriation of assets and as expert consultants for breach of contract and breach of fiduciary duty claims relating to restaurant investments.
- Engaged by counsel, on behalf of an investor, to analyze a fraudulent scheme relating to margin loans.
- Engaged to assist counsel in the defense of a fund administrator against an SEC enforcement action.
- Public Sector Pension Investment Board v. Saba Capital Management, L.P. – Engaged as an expert in a litigation brought by a former investor. Issues included industry custom and practice with respect to marketing illiquid investments for sale, including the use of bids-wanted-in-competition, industry custom and practice with respect to valuing illiquid investment positions, hedge fund ecosystems, and fair value measurements. Retained by counsel to Saba and issued expert report.
- Engaged as an expert in connection with a federal income tax case concerning a major multinational chemical company.
- Ramius Private Select Ltd., et al., v. Sacha Lainovic, et al. – Engaged as an expert in a dispute between redeeming investors in a hedge fund that was focused on the for-profit education sector. Issues included valuation, solvency, fraudulent conveyance, Ponzi schemes, and industry custom and practice in the alternative investment industry. Retained by counsel for the defendants and provided expert report.
- SEC v. Aletheia Research and Management, Inc. and Peter J. Eichler, Jr. – Enforcement action in the U.S. District Court for the Central District of California. Issues included industry custom and practice in the hedge fund industry regarding allocation of trades among accounts. Retained as industry expert by the SEC and provided expert report.
- In the Matter of Clean Energy Capital, LLC and Scott A. Brittenham – Administrative proceeding brought by the SEC against a private equity fund. Issues related to fees and expenses charged to the fund, the valuation of portfolio investments, and the calculation of carried interest. Retained as industry expert by the SEC and provided expert report.

- In the Matter of Lynn Tilton, Patriarch Partners, LLC et al. – Engaged as an expert in an SEC administrative proceeding involving three structured credit products that invested in distressed companies. Retained by counsel to Patriarch Partners and provided expert report.
- In re Fletcher International Ltd. – Served as Special Consultant to the bankruptcy trustee, assisting in his investigation. Issues covered included industry custom and practice with respect to investment fund management, valuation of complex esoteric investments, investment fees, solvency, red flags, Ponzi schemes, and industry custom and practice with respect to fund managers and third party service providers relating to the business of Fletcher Asset Management, a registered investment adviser and Richcourt, a fund of funds. Supported Trustee in the issuance of the November 2013 Trustee's Report and Disclosure Statement filed with the Bankruptcy Court for the Southern District of New York.
- Deephaven Distressed Opportunities Trading, Ltd. v. 3V Capital Master Fund Ltd., et al. – After claims against Imperial were dismissed in the matter of Deephaven Distressed Opportunities Trading, Ltd. et al. v. Imperial Capital, LLC, retained by 3V to defend against Deephaven. (See item #5 under Testimony)
- Sumitomo Mitsui Banking Corp. v. Credit Suisse, et al. – Litigation over rights of a bank debt participation holder in a debt restructuring. Retained by counsel to Credit Suisse and provided expert report.
- William Seibold v. Camulos Partners, et al. – Compensation Dispute. Retained by counsel to Camulos Partners and provided expert report.
- Retained by U.S. Government Agencies in a total of seven matters covering issues including market manipulation, distressed debt investing, trading and valuation, complex asset tracing, industry custom and practice with respect to registered investment advisers, fees and expenses, fund buyouts, trade allocations and conflicts of interest.
- Investors v. Asset-Based Lending Hedge Fund – Designated fraudulent conveyance and solvency expert witness in connection with the fund's restructuring.
- Gaming Industry – Consulting expert with respect to valuation, solvency, and fraudulent conveyance relating to one of the world's largest diversified casino companies.
- Retained as an expert in a litigation over the value of a specialty retailer. Provided rebuttal report.

WORK EXPERIENCE

The Brattle Group, Inc.

- **Principal** (May 2019—Present)
- Professional services firm that answers complex economic, regulatory, and financial questions for corporations, law firms, and governments around the world
- Litigation support and consulting engagements related to corporate financial distress and restructuring, securities trading, business and securities valuation, solvency, and fraud

Murray Analytics, Inc.

- **Founder & President** (April 2015 – May 2019)
- Professional services firm specializing in corporate restructuring, financial advisory, litigation support, and complex valuation products and services
- 2017 Winner HFMWeek US Service Provider Awards – Best Valuation Service – Hard to Value Assets; 2017 Finalist – Best Overall Advisory Firm; 2018 Finalist – Best Valuation Service – Hard to Value Assets

New York University Stern School of Business

- **Adjunct Professor** (2001 – 2013)
- Teaching courses in Bankruptcy and Distressed Debt Investing and Valuation/Equity Analysis
- Recipient of Teacher of the Year Prize
- Recipient of Excellence in Teaching Award

Goldin Associates, LLC

- **Senior Managing Director and Member of Management Committee** (2012 – 2015)
- Team leader on financial advisory engagements including for Pulse Electronics, Fletcher International, The Dolan Company, and casino industry engagement
- Numerous litigation support engagements with respect to alternative investment funds, investment advisers, trading matters, and bankruptcy/restructuring matters

Murray & Burnaman, LLC

- **Managing Member** (2009 – 2012)
- Co-founder of Murray & Burnaman, LLC, officially launched in October 2010
- Represented debtor and creditor constituencies in bankruptcies and out of court restructurings and provided independent third party expert witness/litigation support

Babson Capital Management (Mass Mutual)

- **Managing Director & Head of the Distressed Debt Investing Group** (2008 – 2009)
- The distressed debt investing business of Murray Capital Management was acquired by Babson Capital in 2008
- Ran the group as a business unit inside Babson Capital
- Invested in secured and unsecured bonds, equities, mortgages, bank debt, private claims, trade claims, options, credit default swaps, derivatives and aircraft lease debt obligations

Murray Capital Management, Inc.

- **Founder, President & Portfolio Manager** (1995 – 2008)
- Founded and served as President/Portfolio Manager of Murray Capital Management, an SEC registered investment adviser firm specializing in distressed debt with peak client assets under management of $750MM
- Invested in secured and unsecured bonds, equities, mortgages, bank debt, private claims, trade claims, options, credit default swaps, derivatives and aircraft lease debt obligations

Furman Selz Incorporated

- **Senior Managing Director & Head of Distressed Debt Investing Group** (1990 – 1995)
- Founded ReCap Partners, L.P. and ReCap International LLC
- Developed a third-party money management business in the distressed debt asset class

Oppenheimer & Co. Inc.

- **Senior Vice President** (1987 – 1990)
- Research Analyst for the Oppenheimer Horizon hedge funds, investing in distressed debt and private claims

First NY Capital

- **Associate** (1986 – 1987)
- Associate at boutique investment banking firm doing middle-market mergers and acquisitions, capital raises and fairness opinions

Bank of America, N.T. & S.A.

- **Assistant Vice President** (1982 – 1986).
- Relationship Manager for the Bank's Fortune 500 clients
- Completed Bank of America's formal credit training program

City of New York – Department of Housing Preservation & Development

- Worked in unit responsible for business relocations as a result of eminent domain proceedings (1981 – 1982).

FIDUCIARY ROLES / BOARD MEMBERSHIPS

Atlantic Asset Management, LLC

- **Receiver** (January 2016 – May 2019)
  - Atlantic Asset Management ("AAM") was a registered investment adviser specializing in fixed income investment strategies
  - AAM was the subject of an SEC enforcement action alleging securities fraud; certain of AAM's professionals are also the subject of a criminal action brought by the US Attorney's Office
  - Appointed on December 21, 2015 by Hon. William H. Pauley III, United States District Court, Southern District of New York as temporary Independent Monitor and subsequently as Receiver

Edcon

- **Director** (February 2017 – August 2018)
  - Edcon is the largest non-food retailer in South Africa, with over 1,400 stores in a variety of formats, including Edgars and Jet
  - Member of the Audit and Risk Committee

Private For-Profit Education Company

- Interim Advisor
  - Provided interim management services to a for-profit education company with a focus on medical career training
  - Services included aspects of general corporate and financial management, human resources, and school accreditation

PIMCO Income Strategy Fund, PIMCO Income Strategy Fund II

- Director
  - Nominated by Brigade Capital Management and recommended by Institutional Shareholder Services, Inc. (ISS)

ReCap International (BVI), Ltd.

- Director
  - Distressed debt investment fund for non-US taxable investors

California Coastal Communities

- Director
  - Former NASDAQ-listed California homebuilder that went through bankruptcy proceedings
  - Member of audit committee and compensation committee

Asphalt Green

- Trustee
  - A not-for-profit organization dedicated to assisting individuals of all ages and background achieve health through a lifetime of sports and fitness

Kent Place School

- Trustee
  - An all-girls K-12 nonsectarian, college preparatory day school whose focus is to provide a superior education for young women who demonstrate strong scholastic and creative ability

PROFESSIONAL AFFILIATIONS

- Certified Valuation Analyst (CVA), awarded by the National Association of Certified Valuators and Analysts (NACVA)
- Certified Fraud Examiner (CFE), awarded by the Association of Certified Fraud Examiners (ACFE)
- IMS ExpertServices
  - EliteXpert – invitation only membership is granted to experts identified by IMS, a leading expert witness search firm.
- Turnaround Management Association (TMA)
  - Board of Directors, NY Chapter
  - Vice-Chair, Audit Committee
- American Bankruptcy Institute (ABI)
- Association of Insolvency and Restructuring Advisors (AIRA)
- National Association of Federal Equity Receivers (NAFER)
  - Full Member – limited to individuals who have been appointed as equity receivers in complex proceedings or who have served as primary counsel or forensic accountants to a receiver

PUBLICATIONS

- "Assessing the Reasonableness of Rights Offerings: Raising Exit Financing in a Chapter 11 Proceeding," *AIRA Journal*, Volume 32: Number 3 - 2019, published by AIRA (Association of Insolvency & Restructuring Advisors).
- "Assessing the Reasonableness of Rights Offerings – Raising Exit Financing in the Context of a Chapter 11 Bankruptcy Proceeding," *Bankruptcy & Restructuring 2019: Expert Guide*, published by Corporate LiveWire.
- "Notes from the Road – The Bankruptcy Cases Everyone is Talking About and the Issues that Make Them Controversial," *ABI Young and New Members Committee Newsletter*, Volume 9: Number 3, June 2011.
- Contributing Author to the First Edition, *Managing Hedge Fund Risk: From the Seat of the Practitioner: Views From Investors, Counterparties, Hedge Funds and Consultants,* ed. Virginia Reynolds Parker, 2000.
- Co-Author with S. Peter Valiunas of *Money Jobs: Training Programs Run by Banking, Accounting, Insurance, and Brokerage Firms – And How to Get into Them,* 1984.

PRESENTATIONS

- Invited to speak at numerous hedge fund and distressed debt industry conferences, including GAIM, 100 Women in Hedge Funds, Infovest and VALCON, sponsored by the American Bankruptcy Institute.
- Brown Rudnick Advanced Valuation Seminar for CLE Credit (2014). Taught seminar as part of 2013/2014 Finance and Restructuring Training: Challenges to Valuation.

EDUCATION

MBA in Finance, New York University Stern School of Business, 1986
B.A. in World Affairs, Chinese, Colgate University, 1981

V. Appendix B – Documents Considered

In considering the documents listed below, a review was performed of those portions of documents that were relevant to Brattle's analysis and evaluation of the issues addressed in this report

Court Documents

- In re: Neiman Marcus Group Ltd., LLC, et al., (No. 20-32519)
  - Declaration of Mark Weinsten, Chief Restructuring Officer, of Neiman Marcus Group LTD LLC, In support of the Debtors' Chapter 11 Petitions and First Day Motions, May 7, 2020 (DN 86)
  - Disclosure Statement for the Debtors' Joint Plan of Reorganization, June 6, 2020 (DN 772)
  - The Michel-Shaked Group, Initial Expert Report of the Michel-Shaked Group, July 15, 2020 (DN 1354)
  - The Michel-Shaked Group, Initial Expert Report of the Michel-Shaked Group Executive Summary, July 15, 2020 (DN 1355)
  - Debtors' First Amended Joint Plan Of Reorganization, July 30, 2020 (DN 1388)
  - Notice of Filing of Disclosure Statement for the Debtors' First Amended Joint Plan of Reorganization, July 30, 2020 (DN 1390)
  - Order (I) Approving the Adequacy of the Disclosure Statement, (II) Approving the Solicitation and Notice Procedures with respect to Confirmation of the Debtors' Proposed Joint Plan of Reorganization, (III) Approving the Forms of Ballots and Notices in Connection Therewith, (IV) Scheduling Certain Dates with respect Thereto, and (V) Granting Related Relief, July 30, 2020 (DN 1400)
  - Letter from Richard M. Pachulski to Hector Duran, Re: Neiman Marcus – Committee Issue, August 2, 2020 (DN 1427)
  - Order, August 5, 2020 (DN 1442)
  - Notice of Filing Exhibit to the Disclosure Statement, August 6, 2020 (DN 1452)
  - Amended Notice Of Filing Solicitation Materials, August 6, 2020 (DN 1453)Statement of the Acting United States Trustee Pursuant to Court Order, August 19, 2020 (DN 1485)
  - Status Conference Statement of the Official Committee of Unsecured Creditors, August 20, 2020 (DN 1493)
  - Ares Management Corp.'s Status Conference Statement, August 21, 2020 (DN 1498)
  - Complaint and Application for Temporary Restraining Order and Preliminary Injunction, August 26, 2020 (DN 1551)
  - Certificate of Stretto Regarding Tabulation of Votes, September 3, 2020 (DN 1749)
  - Notice of Continued Hearing, September 3, 2020 (DN 1750)
  - Notice of Filing of (C) The Term Sheet for Series B Cumulative Preferred Stock, September 4, 2020 (DN 1756)

  - Debtors' Third Amended Joint Plan of Reorganization, September 4, 2020 (DN 1793)
  - Order Confirming the Third Amended Joint Plan of Reorganization, September 4, 2020 (DN 1795)
  - Notice to Holders of General Unsecured Claims Regarding Debtors' Third Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code, September 16, 2020 (DN 1841)
  - Hearing Transcripts
    - August 3, 2020
    - August 21, 2020
    - August 24, 2020
    - August 25, 2020
    - August 27, 2020
    - August 28, 2020
    - August 31, 2020
    - September 1, 2020
    - September 2, 2020
    - September 4, 2020
  - Deposition Testimony
    - Mohsin Meghji, August 14, 2020
    - Richard Pachulski, August 14, 2020
    - Joseph Femenia, August 15, 2020
    - Dan Kamensky, August 16, 2020
    - Mohsin Meghji, September 22, 2020
- Mariposa Intermediate Holdings LLC, et al., v. Marble Ridge Capital LP and Marble Ridge Master Fund LP, (No. 20-03402)
  - Complaint, August 26, 2020 (DN 1)
  - Plaintiffs' Witness and Exhibit List for August 27, 2020 Hearing, August 27, 2020 (DN 10)
  - Defendants' Witness List & Exhibit List for August 27, 2020 Hearing, August 27, 2020 (DN 12)

Party Documents

- Marble Ridge Capital, Revised Global Settlement Proposal Subject to FRE 408, August 11, 2020.
- M-III Advisory Partners L.P., Neiman Marcus Group MYT Financials July 2020.
- Email from Andrew Costa, Re: MyTheresa Project Monaco Workshop, August 22, 2019 (NMDEBTORS00521517).
- Email from Mo Meghji to Alan Kornfeld, Re: Fwd: MyTheresa Pref B, September 8, 2020 (NM_UST_MIII_00052)
- Letter from Michael Warner to Hector Duran, Re: In re: Neiman Marcus Group LTD LLC Case No. 20-32519 (DRJ), August 10, 2020

- Marble Ridge Capital LP, In re Neiman Marcus Group, LTD LLC, *et al.*: Presentation to the Office of the United States Trustee, Interest of Marble Ridge in these Chapter 11 Cases, August 13, 2020
- Kirkland & Ellis LLP, Package from Gary Vogt email link, August 10, 2020
  Cole Schotz, P.C., Privilege Log, August 10, 2020

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- BR-000008
- BR-000014
- BR-000015
- BR-000018
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- BR-000045
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- BR-000081
- BR-000083
- DK-000001
- MRC-00000001
- MRC-00000002
- MRC-00000022
- MRC-00000024
- MRC-00000028
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Other Sources

- Neiman Marcus Q2 2019 10-Q
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- SEC, Neiman Marcus Group LTD LLC, Form 8-K, June 7, 2019.

Exhibit 14

U.S. Department of Justice
Memorandum
Federal Bureau of Prisons

Central Office *Washington, DC 20534*

April 13, 2021

MEMORANDUM FOR CHIEF EXECUTIVE OFFICERS

FROM: **ANDRE MATEVOUSIAN, ASSISTANT DIRECTOR**
CORRECTIONAL PROGRAMS DIVISION

SONYA D. THOMPSON, ASSISTANT DIRECTOR
REENTRY SERVICES DIVISION

MICHAEL SMITH Digitally signed by MICHAEL SMITH
Date: 2021.04.19 11:27:06 -04'00'

M. D. SMITH, ASSISTANT DIRECTOR
HEALTH SERVICES DIVISION

SUBJECT: **HOME CONFINEMENT**

In our ongoing effort to protect the health and safety of staff and inmates during the COVID-19 pandemic, it is imperative to continue reviewing at-risk inmates for placement on home confinement in accordance with the CARES Act and guidance from the Attorney General. This memorandum provides updated guidance and direction and supercedes the memorandum dated November 16, 2020.

The following factors are to be assessed to ensure inmates are suitable for home confinement under the CARES Act:

- Reviewing the inmate's institutional discipline history for the last twelve months (Inmates who have received a 300 or 400 series incident report in the past 12 months may

be referred for placement on home confinement, if in the Warden's judgement such placement does not create an undue risk to the community);

- Ensuring the inmate has a verifiable release plan;
- Verifying the inmate's current or a prior offense is not violent, a sex offense, or terrorism-related;
- Confirming the inmate does not have a current detainer;
- Ensuring the inmate is Low or Minimum security;
- Ensuring the inmate has a Low or Minimum PATTERN recidivism risk score;
- Ensuring the inmate has not engaged in violent or gang-related activity while incarcerated (must be reviewed by SIS);
- Reviewing the COVID-19 vulnerability of the inmate, in accordance with CDC guidelines; and
- Confirming the inmate has served 50% or more of their sentence; or has 18 months or less remaining on their sentence and have served 25% or more of their sentence.

Additionally, pregnant inmates should be considered for viability of placement in a community program to include Mothers and Infants Together (MINT) programs and home confinement.

If the Warden determines there is a need to refer an inmate for placement in the community due to COVID-19 risk factors who is outside of the criteria listed above, they may forward the home confinement referral to the Correctional Programs Division for further review.

Referrals to a Residential Reentry Management (RRM) Office must be made based on appropriateness for home confinement. This assessment should include verification that the conditions under which the inmate would be confined upon release would be more effective in protecting their health than continued confinement at their present place of incarceration.

To this end, the inmate must be provided education on CDC guidance on how to protect themselves and others from COVID-19 transmission. This education includes, but is not limited to: hand washing, social distancing, wearing of facial coverings and self-assessment for signs and symptoms of COVID-19. Inmates should understand how home confinement provides the opportunity to practice optimal infection control measures, which may mitigate existing risks, based on rates of transmission in the local area, and exercising best practices. The information (education) provided to the inmate must be documented on the BEMR exit summary.

All referrals should clearly document the review of the following items prior to being submitted to the RRM office:

- Specific type of release residence (House/Apt/Group Home etc.);
- List of individuals with whom inmate will be living;
- Any health concerns of individuals in the residence;
- Contact phone numbers of the inmate should he/she be placed on home confinement; and,
- Transportation plan as to how the inmate will be transferred to the home confinement location.

Any questions as to eligibility in relation to the release plan will be referred to the Residential Reentry Management Branch Administrator.

Inmates determined to have a viable release residence will be further screened by Health Services and a determination made as to whether they require frequent and ongoing medical care within the next 90 days. If frequent and on-going medical care is required then:

- Health Services staff will coordinate with RRMB's Health Services Specialists to determine if the inmate's medical needs can be met in the community. RRMB will establish follow-up care prior to inmate transfer. The inmate must transfer with at least 90 days of any prescribed medications.
- If the inmate's medical needs cannot be met in the community, then the inmate will remain at his/her current institution. (If the inmate does not require frequent and on-going medical care then the referral will be processed.)

If an inmate is referred or denied for home confinement once a review is completed, the appropriate Case Management Activity (CMA) assignment should be loaded.

Case Management Coordinators must track all inmates determined to be ineligible for CARES Act home confinement or the Elderly Offender Home Confinement Pilot Program and ensure the appropriate denial code is entered in SENTRY. Reports outlining the reason for denial must be submitted to the Correctional Programs Administrator in the appropriate Regional Office.

If an inmate does not qualify for CARES Act home confinement under the above criteria, they should be reviewed at the appropriate time for placement in a Residential Reentry Center and/or home confinement consistent with applicable laws and BOP policies.

If you have any questions, please contact David Brewer, Administrator, Correctional Programs Branch.

Exhibit 15

🔥Exclusive: Daniel Kamensky Speaks🔥

Read the Entire PETITION Interview with Daniel Kamensky.

Jun 11 ♡2

Notice of Appearance - Daniel Kamensky, Former Managing Partner of Marble Ridge Capital. Part I.

Today we welcome **Daniel Kamensky**, former Managing Partner of **Marble Ridge Capital**. Unless you've been hiding under a rock, you're likely aware of who Mr. Kamensky is. If you don't, you can catch up on prior **Neiman Marcus** coverage here:

- 🍿Get Your High End Popcorn Ready (Long Risky DIPs)🍿
- ⚡"Independent" Directors Under Attack. Part II.⚡
- 🔥NEIMAN! A hot mess part 1🔥

OS Received 11/29/2021

- 🔥NEIMAN! A hot mess part 2🔥
- 🔥NEIMAN! A hot mess part 3.🔥
- 💥Creditor's Prison💥
- ⚡Update: Neiman Marcus (Short Freedom)⚡

Answers were edited only slightly for clarity.

*****

PETITION: Welcome Dan. Thank you for making the time for us. This is not a question we typically ask our Notice of Appearance subjects but these circumstances are obviously extraordinary: how are you holding up?

Kamensky: It's been a challenging time for me and my family. But we are taking it one day at a time. That's really the only way to approach something like this. You rely a lot on your support network. The distressed community has been a source of strength, and I am grateful for that.

Going through this experience has made me appreciate even more what is important in life. Purpose, gratefulness. Not that I didn't have those in mind before, but they were always competing against other day-to-day distractions.

I have a deeper appreciation for friendship and family. And the importance of empathy, the dangers of acting out of anger and panic.

In a moment, your entire life can change.

PETITION: Let's take a step back and talk about your youth. Any important experiences you would like to share?

Kamensky: I have always had a strong sense of right and wrong and for fighting against injustice. When I was 12 years old I joined Chicago Action for Soviet Jewry. I made a poster with the verse from Deuteronomy, "*Justice, Justice, Thou Shalt Pursue*" to raise awareness of the plight of Jews living in Russia. It may seem like

ancient history, but growing up in the Soviet Union in the 80s was dangerous for Jews. Jews lived in fear and with anxiety of an unknown future.

We had a large family still living in the old Soviet Union. So, I was able to hear of their stories first hand. And it was a call to action for me. We sponsored and worked to have them emigrate to the United States, which they did in the late 80s. We now have a large group of cousins living in Chicago. We helped them find jobs and adjust to their new lives. I then worked with a social service agency that worked with recent Russian immigrants to help them acclimate to their new country.

I have always tried to be a force multiplier for good and believe strongly in charity and doing well for others. That sense of justice and working to help others was borne from my youth.

In college, I studied **Cervantes** and traveled to Spain. My professor at the time, **Señor Juan Lopez**, became my mentor and my first great role model. Lopez and Cervantes believed that each one of us is a child of our own labors (*Cada uno es hijo de sus obras*) meaning that we have to stand up for what we believe in. Quixote criticized the goliaths (the knights and upper classes) of the medieval ages that relied on words of chivalry rather than standing against ignorance and bigotry. He challenged many of the prejudices and biases of his time by calling out inequality - that became a strong influence in my life.

PETITION: You made a jump "to the business side" that a lot of biglaw associates dream of. What advice would you give others looking to make a similar move?

Kamensky: Working at **Simpson [Thacher]** was at a great experience. I really enjoyed the people and the work but after 6 years there the work lost some of its challenge. Strategizing and the game theory of advising clients was one of the highlights of the job. But too often I spent my time waiting on others. I wanted more control over my career and to challenge myself. My advice to others would be don't leave a law firm after only spending a few years there. Too many people leave a law firm too early in their career, without getting any of the benefits of the practice. A future employer will see greater value in hiring someone with more

experience given the lock-step nature of associate compensation. Use that to your advantage.

Network. Network. Network. Always take a meeting and help others in making career choices. You never know when those people can help you. Read up. Take classes on finance and accounting and learn how to us excel.

And most importantly, play to your strengths. As a lawyer, you will have particular strengths that others with a more traditional financial background will not have. Use that to your advantage. My marketing pitch when I launched Marble Ridge started with, “I play to my strengths”. You should as well.

PETITION: What made you think you could make the jump from big law to an investment bank?

Kamensky: At the time I had no idea. I had no formal financial training, and had no idea how to build a financial model.

But I had learned about risk and reward as a lawyer. Law grounds you in reason and the building blocks of logic. That is an incredibly important skill-set. You can look at any problem and immediately see a three dimensional chess board of outcomes playing out before you. But not all lawyers make successful investors. The difference, and I have said this before when asked, is that most lawyers understand the risk of making a particular decision but few can look at both the risk and potential benefits of making a decision and explain how those roads could potentially diverge. And even fewer still can look at both risk and reward and then advise which decision, in their judgment, presents the best path forward. That is investing. A good example of someone who has that type of mindset would be someone like **Paul Basta** [of **Paul Weiss Rifkind Wharton & Garrison LLP**]. Paul does an amazing job of not only presenting bookends, the pros and cons of making a particular decision, but he also recommends a particular course of action even in light of the risks. Most lawyers don’t compare.

PETITION: You ended up at Lehman Brothers. Any defining experiences there?

Kamensky: Walking into the high yield and distressed trading desk of **Lehman Brothers** as the desk's legal analyst in March 2005 was like entering a gladiator's arena for the first time. The 4th floor opens up to a football field sized room with rows of trading desks set up with **Bloomberg** terminals and phone systems called turrets with dozens of dedicated speed dial buttons connecting sales/traders to clients and a protruding microphone called a hoot that's used to immediately disseminate information across the trading floor. All this made for a cacophony of yelling and cursing with traders and salesmen yelling back and forth across the rows communicating orders to and from client accounts.

In February 2007, **Hugo Chavez** nationalized three major heavy oil projects located in the Orinoco region of Venezuela. Each project had financed its expansion with high yield debt placed with insurance companies based in the United States. When the Venezuelan legislature passed laws enabling the expropriation of these projects, the insurance companies ran for the exits. The head of the desk covering the insurance companies, Jimmy G., sensed an opportunity and came running over from his row across the room to the distressed desk asking for help. I ran into an office and closed the door to drown out the background noise and scanned the collateral and security agreement and quickly found what I was looking for. All the bank accounts for the project were based in the United States with deposit agreements in place governed by New York law. As long as **PDVSA**, the Venezuelan national oil company, continued to ship oil to their specialized refineries located in the United States, which seemed highly likely, cash would continue to accumulate in a U.S. based account for the benefit of bond investors. Within an hour, we were picking up debt that had plummeted from near par to as low as 30 cents on the dollar. Of the $600 million of debt outstanding, Lehman Brothers had quickly become a holder of $100 million of bonds.

Bondholders then started the process of declaring a "prospective default". For as long as a prospective default existed, cash could not be distributed out of the collateral accounts and over the next year cash continued to build in the collateral accounts, eventually surpassing the total amount of debt outstanding. By the end

of 2007, bondholders had negotiated a full pay out of the bonds including a premium, the best possible outcome representing an enormous success for the trading desk and for me professionally.

PETITION: At Paulson & Co., the next stop on your career trajectory, you allegedly made a killing trading Lehman claims. Walk us through your process there and what — other than your knowledge of Lehman from your stint there — positioned you for success with this strategy?

Kamensky: Analyzing financial companies is probably the most difficult skill set I've learned in my career. Working on insurance liquidations in my first few years as a lawyer helped prepare me to understand how a financial company undergoes stress. For a financial company, you have to understand how they finance themselves. If a company is relying on financial instruments other than funded debt to finance its business, it likely has a complex financing structure where legal niceties give way to financing tools. And that usually leads to shifting assets throughout a capital structure to find the most efficient financing structure. In those cases, you have to ask what counter parties relied on in extending credit. In the case of Lehman Brothers, it was a very simple observation that counter-parties extended credit based on the rating of the holding company. That ultimately led to the theory of substantive consolidation, which benefits holding company bondholders over subsidiary creditors. I also had precedent on my side. The only other comparable broker-dealer to have filed for bankruptcy, **Drexel Burnham**, relied on substantive consolidation to distribute assets to creditors. In early 2009, we purchased approximately $9 billion of holding company bonds and created a coalition of the willing, led by **Jerry Uzzi** [of **Milbank LLP**] (including bond behemoths like **PIMCO** and governmental agencies like the **County of Santa Rosa in California**) to advocate for bondholder interests. In April 2011, we filed a plan premised on substantive consolidation and ultimately negotiated a plan (kudos to **Raj Iyer** [**of Canyon Partners LLC**]) that included significant value allocation to holding company bondholders. While this was a successful investment it, more importantly, led to friendships that still exist today (you know who you are).

PETITION: On the flip side — putting aside Neiman, what was one trade that went horrifically sideways in your career and why? What did you miss and why? What could you have done differently?

Kamensky: Stay away from energy. It's nothing but a bad bet on oil prices. We lost a ton in the energy space and I would stay away.

PETITION: In February 2015, you jumped ship from Paulson and decided to hang a shingle, so to speak. Tell us a bit about that process. What was it like starting a new fund as a first-time emerging manager and what was the fundraising process like? What were some of the challenges and if you could give your younger self any advice about it, what would that be?

Kamensky: It takes every ounce of energy, commitment and confidence to launch a fund. It is taking the ultimate risk, and my launch was risky even by those standards.

In 2015, I was preparing for a much celebrated launch of a hedge fund with significant funding from a large fund of funds based in Chicago. But as we neared our launch in October 2015, our seed went out of business and I had to pivot quickly and launched **Marble Ridge Capital** only a few months later in January 2016. We came limping out of the gates with only a bare minimum of capital raised from friends and family in what was an unheard of amount of $17 million for a credit fund.

We were well below the amount of assets required by even the most forgiving of banks to act as an intermediary between a hedge fund and a trading counter-party. Without a bank acting as a "prime broker" to extend credit to ensure closing of a trade, you cannot trade. And, if you cannot trade, you are out of business.

10 days before our anticipated launch, I managed to schedule a meeting with the Head of Prime Brokerage at **J.P. Morgan Chase & Co. ($JPM)**, **Mike Minikes**. Mike is a throw-back to a bygone era, when relationships meant something and deals were made by handshakes. I had already been through credit and risk reviews with

every third-tier bank and knew I would have to pull a rabbit out of a hat to make JP Morgan take us as a prime brokerage client. When I arrived at Mike's office, he had his entire team assembled: risk, credit, capital introduction and relationship management. I made a pitch from my heart, that no challenge was too great but I needed JP Morgan to make my dream become a reality. At the end of my speech, Mike rose and shook my hand and the rest, as they say, is history.

As I left, my head was spinning. Not only did we have an open-for-business sign but it had been planted by none other than JP Morgan.

2016 was a banner year for my new fund. Of the more than 500 hedge fund launches in 2016, we received the much coveted "*Absolute Return Award*" for best risk-adjusted returns of any new hedge fund launch for that year. And investors began to pile in. By the end of 2016 we managed over $200 million, by 2017 $500 million, and nearly $1 billion by 2020.

But that growth came at great emotional cost. Stress and anxiety took their toll on me. I sought help and am better for that. But we need to do a better job of talking about the challenges of mental health in what is an incredibly intense and stressful business. No one should be afraid to ask for help. That's the first step toward getting yourself to a better place.

PETITION: Neiman. Initially, you won. Discuss. How did it feel to defeat a couple of funds, BS independent directors, and a powerful law firm that had been gaslighting you for years?

Kamensky: This was never about winning or losing. This was about seeing something so wrong and so brazen that it needed to be called out. It is not about defeating any one party or about achieving a victory as such but rather righting wrongs. Throughout my entire life, my commitment has been to help right wrongs whether it be a social cause or otherwise. I have always believed and will continue to adhere to the concept "Justice, Justice thou shalt pursue." In the end, my efforts to hold the board of Neiman, its management, lawyers
at **Kirkland** and **Ares** accountable for their severe wrongdoing was addressed and

was made right ultimately for Neiman creditors, which included not only bondholders but merchants and suppliers who had been harmed by Ares' actions.

PETITION: But then you lost. You couldn't stop yourself, exhibiting a fierce sense of entitlement in your interaction with Jefferies. Walk us through your thought process there.

Kamensky: At the end of the day, my position was vindicated by every unbiased party in the case. What happened on July 31 is somewhat unrelated to Ares' fraudulent conveyance. What I lost was my ability to manage my emotions at a particular moment in time on July 31, when I let anger get the better of me, propelling me into an ill-fated phone call with Jefferies over their last minute attempt to get themselves cut into a potential bondholder deal. At the time, it felt like a shake-down by Jefferies and I did not believe that they were real. Subsequent events have proven me right.

Giving in to my anger in that moment has forever changed my life. I hope others can learn from my mistakes.

PETITION: We want to ask about the relatively recent barrage of creditor-on-creditor violence: what are your thoughts about what's been going on in matters like J.Crew, Neiman Marcus, Boardriders, Revlon, Transocean and others? What was it like to be a distressed investor in this environment?

Kamensky. Creditors need to stand up for their rights. The actions of the PE Sponsors and their lawyers went beyond the pale in **Neiman Marcus**. They saw what others had done at **PetSmart**, **J.Crew** and **Caesars** and decided to try to substantially push the boundaries further out. Without focusing the spotlight of accountability and responsibility on **Ares** and the Neiman Board, they would have completely gotten away with this fraudulent scheme. And there are a lot of lawyers and other supposed "fiduciaries" and so called "independent experts," who chase the money rationalizing why they are not upholding what's right against what is wrong.

PETITION: Any comments on the MyTheresa IPO?

Kamensky. I am glad Neiman creditors are able to benefit from its success. That would not have been the case without the battle **Marble Ridge** and I, as well as the Unsecured Creditors Committee, fought for in the Neiman case. A $2.5 billion valuation is a far cry from the $525 million value used by Ares and **Kirkland** in trying to jam bondholders.

PETITION: Prescribe some constructive changes to the bankruptcy process.

Kamensky: Over my career, I have seen how the increasing competition for capital and complexity and sophistication of financial products has led to a loosening of standards providing enormous flexibility and financial incentive for malfeasance. At first management teams and their equity owners would benefit themselves at the expense of creditors and more recently we have seen a race to the bottom, with creditors pitted against each other to see who can share in the spoils.

About 10 years ago, I saw that distrust among investors made it difficult to act in a coordinated fashion to push back against weakening market standards and I formed and became Chairman of the Bankruptcy and Creditor Rights Group of the Managed Funds Association.

We worked to increase transparency in the bankruptcy process to allow market-driven forces to help level the playing field between insiders and outsiders to the process. We also filed amicus briefs in cases before Courts to represent the interests of investors in the marketplace, even including an amicus brief in a case before the U.S. Supreme Court arguing in favor of reliable and transparent bankruptcy rules to support the development of robust secondary markets.

In December 2012, we staked out our defense of the absolute priority rule, the most fundamental protection for creditors in a corporate reorganization, before the Third Circuit Court of Appeals in **W.R. Grace**. We warned how "*managers and stockholders, who were often one and the same--became adept at manipulating the reorganization process to retain their own equity interests by diluting the*

claims of creditors." [W.R. Grace, Amicus Brief, December 6, 2012]. That feels fairly prescient.

I explained my views in two articles published in the American Bankruptcy Journal and St. John's Bankruptcy Law Review.

I recognized that competing interests in a bankruptcy process risked conflict and distrust:

> *...[when] critical decisions regarding case administration and the company's future are made by indivudals who may have little or no financial stake in the reorganized entity, [it] can lead to management entrenchment and mistrust by the ultimate owners of the company because of the misalignment between the interests of management (and their professionals) and actual shareholders. — ABI Feature, February 2015*

Unfortunately, with too many sponsor-friendly law firms and judges I don't see things getting any better for creditors anytime soon.

I still care a great deal about the bankruptcy system and may be in a better position after the dust settles to advocate for improvement. We'll see. It may be time to start another creditor rights group. Call it my **Milken**-style come-back.

Top of my list for reform would be venue rules. I think we need to have a national panel of bankruptcy judges to handle complex chapter 11 proceedings. We have come to a point where crafty lawyers can simply pick and choose a friendly judge, even if there is no rationale or reason for the case to be brought in that forum. **JCPenney** and Neiman filed in Houston? **Purdue Pharma** filed in White Plains New York? **Jonathan Lipson**, a professor at **Temple University's Beasley School of Law**, recently said "*It's similar to gerrymandering. In the same way that politicians are accused of choosing their voters, corporate debtors are accused of choosing their judges.*" That's not right, and should be changed.

PETITION: We've commented about the need for relatively more activist judges (in the context of feasibility and bullsh*t projections) while at the same time

criticizing certain judges for being overly power-trippy and punitive on the bench. You've obviously been on the receiving end of a particularly powerful lashing. What do you want others to know about your experience?

Kamensky: I have two judges in my family who both started their careers as public defenders. One had a hand in the founding of the **Innocence Project**, using his position to protect the lives of the downtrodden. So, when it comes to justice, the abusive personalized rhetoric of [United States Bankruptcy Judge for the Southern District of Texas] **Judge Jones** strikes a particularly sensitive chord. He crossed the line. There is no question. Whether he will bear the consequences of that is outside of my control.

PETITION: As part of the Neiman settlement, you've been going around sharing what happened with law and business students. What are some of the things you're advising them?

Kamensky: In my talks, my intention is not to explain away my conduct but to show students the complexity of what happened to avoid making mistakes in the future.

The Neiman story presents moral and ethical lapses on many different fronts. That's what makes it so interesting for students. Who did Kirkland represent in the spin? Who was their client? Did their conflict of interest present an ethical dilemma? Could they advise Ares of solvency and then defend against that in the bankruptcy? Ares was unable to get a third party fairness opinion and kept the spin from the company. Are these red flags? What would you do as a professional confronted with those facts? What happened on July 31? How should Committee Counsel handle a conflict of interest? Should Committee counsel call a member with information about a competing bidder, especially when that member has been recused? How should ethical walls be enforced? What is the role of the US Trustee? Should they be a mere traffic cop or actually try and educate members about potential conflicts of interest?

Teaching has really helped me have perspective for what happened during the Neiman case, and has been rewarding on many different levels. I will continue

teaching in the Fall of 2021 and Spring of 2022, and my case study will be published by **Harvard Business School** in Spring 2022.

PETITION: You're reporting to prison in less than two weeks. As things stand now, you may serve a significant portion of your term in solitary. As you can probably guess, there are certain PETITION readers who think you got off too easy. There are others who think your punishment was harsh. What do you want people on both sides to know?

Kamensky: I was taught that if you make a mistake, you take responsibility for it and do your best to make amends. I have done just that, and will pay my debt to society.

I think what many people don't understand is I made that last call to **Jefferies** in a state of panic.

I only became aware of the criminal consequences of my actions after speaking with my counsel later that evening when he called me at dinner.

He told me Jefferies said they were withdrawing from bidding because I had threatened them. He then said that my actions could constitute a bankruptcy crime and that I could go to jail. I was shocked and scared and went into a panic. It is in that state of shock and panic that I then made that recorded call to Jefferies.

This doesn't excuse or minimize my behavior in any way – it was inexcusable – and I take full responsibility for it but it does put it into context as an example of extreme impulsivity and poor judgement resulting from a moment of panic rather than anything premeditated.

PETITION: Thanks Dan.

OS Received 11/29/2021

Exhibit 16

Raj Iyer
[redacted]

The Honorable Denis L. Cote
U.S. District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

Your Honor:

I am writing to urge leniency in the sentencing of my friend, Dan Kamensky. I am a Partner and Senior Portfolio Manager of an investment fund specializing in strategies similar to those employed by Dan's fund Marble Ridge Capital.

I have known Dan since 2010 when we met during the negotiations of a complex bankruptcy case. In an industry characterized by strong rivalry, I found Dan to be a collaborative problem solver. During a particularly intense period in this complex bankruptcy, Dan had led significant portions of the negotiations involving billions of dollars. However at one point when it became clear that we could reach a better outcome if he stepped back, he had no hesitation to put his pride aside and asked me to take the lead. In those negotiations and subsequent ones I really enjoyed working with Dan who was creative, kind and engaging of the opinions of others. It was through this process we became friends. Since then I have interacted with Dan across multiple investments over the years. He has without fail been a trusted partner who has acted with tremendous integrity in several pressure filled and challenging situations. All of which make his significant error of judgment in Neiman Marcus genuinely an anomaly.

Away from work, Dan is a loving father who is dedicated to his family and is deeply engaged in his community. I remember calling Dan on a Saturday in the middle of another set of negotiations and interrupted him when he was coaching his daughter in basketball. He asked me to hold for a few minutes as he continued to coach his daughter patiently and I could hear him gently urge his daughter with "…practice makes perfect". I noted with admiration that Dan made time for his family and patiently guided his young daughter on the virtues of perseverance and hard work.

Over the past several years, the Dan I have come to know is someone who can be counted on to be a loyal friend and provide wise counsel. He is humble, hardworking and honest. Though I am based in Los Angeles, I have kept abreast of his involvement, leadership and contributions to his local community and professional organizations. I am proud to be his friend. I strongly believe that he will rehabilitate himself and play a positive role in the lives of those around him.

Therefore I believe that a lesser sentence is appropriate in this situation and I strongly believe that he is worthy of such consideration.

Sincerely,

Raj V Iyer

Raj Iyer

Exhibit 17

February 25, 2021

Re: Dan Kamensky

Your Honor:

I am writing in support of Dan Kamensky before his sentencing. I write in my individual capacity, not as part of my firm. My title and contact information is set forth at the bottom of this letter.

While generally aware of the circumstances that are the nexus of his guilty plea, I express no opinion about the specific facts and circumstances.

I do, on the other hand, wish to be heard about his character. I have known Dan for about 20 years. We met through work, and from that our relationship ripened to a sometime professional relationship and, more importantly to me, also a warm personal friendship. Dinners, phone calls, discussions at events and the like.

That we are often on the "other side of the table" from each other (he is usually a debt investor and my practice is to, consistent with all fiduciary duties, advise boards of directors on how to encourage debt investors to do what the board wants them to do in order to benefit

shareholders) in no way gets in the way of our warm feelings of respect and friendship.

I have nothing particularly original to add to what I am sure is the consistent litany of characteristics attributed broadly to Dan: Brilliant. Honest and honorable. Genuine family man. Philanthropist. Those are the characteristics that I have observed with Dan during the time I have known him.

It also always resonated with me that, while dating a young woman, he learned she was a cancer survivor and there was uncertainty about her long-term health and fertility. He went ahead and married her and they have a family that is the center of his universe. Many men of lesser morals might not have made the same decision.

In short, I am proud to call him my friend, and I still believe him to be honest and honorable. Many good people in the crucible of crisis do silly and stupid. Depending on what they do, such things do not make them bad people; rather they can be a good person doing a bad thing.

This is how I view Dan. He self-immolated over a six-hour period in (this is my understanding) a misguided attempt to stop a suddenly arising competing bid. *But – and I feel*

this is terribly important to underscore - my understanding is that Dan's temporary actions ultimately did not cause any economic harm to any creditors.

I am sure that there are other mitigating factors associated with his actions, but I am not qualified to speak to them. I do know that he was a lone voice in the wilderness decrying the MyTheresa proposed transaction, and turns out he was bang-on correct about it, to the benefit (I think) of Neiman creditors.

Jail time will of course hurt his family, and Dan's reputation is already in tatters. I respectfully submit for the Court's consideration that based on the consequences already to Dan and his life, a strong deterrent signal to the bankruptcy community of professionals has been well-sent and received.

The situation brings to my mind the classic movie Bridge on the River Kwai (I have digested the following from a published review). Alec Guinness is a British colonel who commands a new group of Allied prisoners held by the Japanese in WWII Burma. The prisoners are ordered to build a bridge to benefit the Japanese war effort. Guinness loses his way, and, far from undermining the

Japanese war efforts, proceeds to guide his men in building a superb bridge to prove the mettle of British soldiers under any conditions.

Meanwhile, British commandos are tasked with making their way through the jungle in order to blow up the strategically important bridge.

The daring mission is discovered, moments before fulfillment, by Guinness. He has so lost his way that all he still focuses upon is protecting the "glory" of his bridge-building feat - so much so that at first he tries to fight off the commandos and alert the Japanese.

When a British commando dies at his feet Guinness suddenly "gets it" and exclaims "what have I done"? Now mortally wounded by the British commandos, and in his death throes, he doggedly stumbles towards the detonator and blows up the bridge in time to derail the Japanese troops train about to go over it.

I see an awful lot of similarities here. I believe Dan was so focused and invested in being "correct", and seeking the best return for his investors, that he temporarily lost his way. Until he finally realized what he had done – and then he too timely "blew up" his bridge –

before any economic harm had been done to those to whom he owed duties (that is my understanding).

I ask for the foregoing considerations to be taken into account before sentencing.

Respectively submitted,

Peter S. Kaufman

President; Head of Restructuring and Distressed M&A
Gordian Group LLC

[redacted]

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Relentless. Results.

[redacted]

www.gordiangroup.com

Co-Author of the definitive works in the field: Distressed Investment Banking: To the Abyss and Back – 2nd Edition (Beard Books 2015) and Equity Holders Under Siege:

Strategies and Tactics for Distressed Businesses (Beard Books 2014)

Exhibit 18

March 16, 2021

The Honorable Denise L Cote
U.S. District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

Dear Judge Cote:

I joined Marble Ridge as CFO in April 2019. The Dan Kamensky I know from my time there is honest, hardworking, and caring. He valued my input and opinion. He challenged me and made me a better professional. He fostered a team and family environment and genuinely cared about the employees who worked for him. And he cared for others – at Christmas he adopted families and we had a firm gift-wrapping party. He funded a charity called the Gasana Foundation and made countless contributions to various charitable organizations. But what I learned most about Dan during my time there was how much he loves his family, especially his daughter [redacted]. I was in Dan's office multiple times when he was on the phone with his daughter and the love and support for her showed every time. The Dan I know is a good person. A good boss. And a loving and caring husband and father.

Regards,

Greg Pearson

Exhibit 19

Stephen Schembri
[redacted]

To: The Honorable Denise L. Cote,

I have known Dan Kamensky as a colleague for six years at Marble Ridge Capital. In that time, I have seen many aspects of Dan's personality and have found him to be hard working, dependable, fair, and well regarded among his peers and friends. I was surprised and very troubled to hear about the mistakes he made on July 31st, 2020. I hope this letter helps you to see the good works that Dan has completed in the years that I have known him, despite these recent transgressions.

Dan started Marble Ridge Capital in January 2016. I was with him as part of that day one team. Through the years and the growth Dan was a committed leader and ardent supporter of our team. He treated everyone fairly and made sure to make time to talk through any issues that arose. He helped to create and cultivate a strong culture of respect, open dialogue, continuous learning, and teamwork. Marble Ridge Capital's culture was consistently cited by our employees, partners, and potential recruits as a defining characteristic of Marble Ridge Capital and one of the many things that differentiated our firm. Dan set the tone of our culture from the top down and deserves credit for that and what it says about him as a person.

Dan's commitment and support extended beyond the office to several charitable foundations and causes. I had the great opportunity to join him most years at the UJA-Federation of New York and Jewish National Fund events; Dan was a consistent supporter of each institution. In 2017, the Jewish National Fund honored Dan with the Theodore Herzl Leadership award and I was in attendance as he accepted that award and recognized the many people that supported him over the years. It was clear Dan cared immensely about the Jewish National Fund and was happy to support the organization and its people and cause. Dan also supported me personally as I sought to expand Marble Ridge Capital's philanthropic efforts through our firm's participation in Habitat for Humanity, where Marble Ridge Capital employees spent a day helping to build a home in a borough of New York City.

It is my sincere hope that the court takes into consideration this letter and the good things that Dan has accomplished over his life, personally and professionally. Dan was a committed colleague that supported his team, created an open and honest work culture, and was generous with numerous charitable foundations and causes.

Sincerely,

Stephen Schembri

Exhibit 20

Anthony S. Marino
[redacted]

March 12, 2021

Honorable Denise L. Cote
U.S. District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

Dear Judge Cote,

I hope this note finds you safe, healthy and staying optimistic in these remarkable times.

I am writing to you today in support of my old and dear friend, Dan Kamensky. Dan, his wife Amy, and their daughter [redacted] have been close family friends for decades.

I first met Dan as a high school sophomore over thirty years ago in 1988. I'll never forget my first encounter with him as a new student at a boarding school in Connecticut. After a convocation that kicked off the school year, I watched as small groups of students reunited, laughed and reminisced in tight circles. I noticed a large group of students enter a dormitory building and followed them in; I remember thinking to myself that the only thing worse than actually being alone was appearing that way! I sped my pace to latch myself to the group as they entered the hall.

"Hey, what's up? I'm Dan!" I heard as I walked by a dorm room with the door wide open. I looked up and saw a short-ish kid with a sharp haircut, a big smile, and a crisp pair of white sport socks. "Come on in!" he called.

I introduced myself and I don't think Dan and I spent much time apart after that. Dan and I traded stories about his suburban Chicago Jewish upbringing and my big Italian family from NJ. We couldn't believe how much we had in common. We laughed hysterically together at stories that made clear how much we both loved our families, how excited we were about this new (and scary) experience away from home, and how fortunate we felt to be there. We shared a deep sense of possibility along with a little pain from being away from our families who we loved so much. But we knew this adventure was an important part of what it meant to grow up and achieve our dreams. In fact, for both of us, the mere fact that we'd made it to Choate was already its own dream come true.

For the next 30 years, Dan and I always stayed connected, talking by phone often and meeting whenever we were within a couple hours' drive from each other. We always made the effort and our friendship never lapsed.

So much of this is because of Dan's character and model of friendship. No matter what Dan was working on or committed to, he was always there to listen, to offer thoughtful advice, to bring judgement to a situation where there were no simple choices. I can think of so many times when he helped me resolve conflicts with my family, with my conscience, with my life, all by simply asking me questions that forced

me to explore the matter at hand. Dan is the rare person who brings a layered thoughtfulness and judgement to complex matters of the heart and the head. And he pauses to provide this no matter what else is happening around him. His greatest gift to me from the time I was that anxious 14-year old to today is to show me the power of friendship and how it can change a life for the better.

Of all the stories I can tell about Dan, there's one that moves me most and conveys the depth of his character best. In my early 30s, I was in NYC for a weekend and Dan invited me to meet Amy, then his girlfriend. He was very much in love with her and while he didn't say as much, it was clear to me after meeting her that they would marry. To see them together was to see the best that life can offer and its greatest reward.

What I learned shortly thereafter was that Amy might have a very rough road ahead of her due to serious health issues that could be life threatening. It was an unpredictable situation that could change the course of Dan's life and risk immense pain and loss, at worst, and certain difficulty at best.

I asked Dan about how he was thinking about what lay ahead as he planned the rest of his life with Amy. "I love Amy," he said to me matter-of-factly. "There's nothing I wouldn't do for her, and it really is an easy decision. We'll figure it out." The smile on his face convinced me for life.

That was it. Just like that, Dan's love for Amy made what I imagined to be an agonizing decision transform into something so simple. To me his act was a selfless lifelong commitment, come what may, knowing that what could come might be devastating. To Dan, it was simply the right thing to do when life gives you the gift of extraordinary love. That moment with him reminded me of the boyish goodness (almost an innocence), courage, judgement and commitment that led him to reach out to me all those years ago. It wasn't some social fluke; all of this was the proof of Dan's character and heart.

As I think about the full arc of Dan's life, I see it bending inevitably toward goodness and the qualities I have witnessed for over 30 years. I am struck by how a mistake could overshadow it all. It's hard for me, Dan's lifelong friend, to resolve that when I have been witness to a life lived in exemplary fashion, both publicly and privately.

It is my greatest hope that the full measure of Dan's actions over his life are weighed along with the most recent ones which landed him in such deep trouble.

Thank you, Judge Cote, for reading this far and for your consideration in this matter. I wish you the very best for a healthy 2021 and beyond.

Respectfully,

Exhibit 21

Your Honorable Denise L. Cote:

I am writing this letter in support of Daniel Kamensky.

My name is Nicholas G. Castellano. I was an employee with Equinox Fitness from 1999-2017. During my time with Equinox I worked at their New York City and Long Island clubs. My position was as a personal trainer and head triathlon coach and swim instructor.

In 2014 I founded Let Kids Tri (LKI) which was a team of individuals who trained and raced together to help bring awareness and to raise monies for kids and their families in need. During that time is when I first met Mr. Daniel Kamensky. Daniel was interested in personal training. During our first session he told me he wanted to train for a sprint triathlon. If you are unfamiliar with the sport of triathlon, it consists of three disciplines: swimming-biking-running plus transitions which is learning to transition from one to the other in a timely manner. I mentioned that I had organized this LKI team and was going to race out in Montauk LI in September of 2014. He asked me about how he could be part of it. I explained that by making a pledge to LKI he would get training, coaching, race entry and a LKI uniform with the charities name on it. We would meet 4 times during the week, mornings at 6am and evenings at 6 pm and then Saturday morning at 6 am as a group. He was welcome to join the team on all or which days/times worked best with his schedule. Daniel immediately said to sign me up.

Triathlon is not an easy sport, as I mentioned there are three disciplines plus the transition. Now add his job and time to spend with his family, that is a lot to cram into a week no less a day. Daniel was able to manage everything. What I want to point out was his commitment to the team's cause in helping kids and their families. He not only pledged to race but he also mentioned it to his coworkers and friends who also joined the team. Daniel was devoted to helping LKI reach its goal of what was needed to help these kids with cancer and their siblings go to camp (Sun Rise Day Camp) for the entire summer for life. Daniel was a driving force in always showing up to train and worked extra hard to master the disciplines. Even though he came from an unathletic background, he was always motivated at the 6am group swim session. He would then have to get ready to travel into NYC by train, work a full day and then go home to spend time with his family.

His family was always his first priority above all else. I told him how much I admired his love towards his daughter and wife. He shared with me stories about his daughter [redacted], how she loved to draw and how he would spend time with her after long days. I saw how he sacrificed the little time he had trying to fit a full-time career with time with his daughter and his family and still come to LKI training sessions!

At the event he brought his family which included his wife Amy, daughter [redacted] and his in-laws. He invited me to join them at breakfast the day before the race. I saw the love he has toward them. How he made sure they were taken care of with spending as much time as possible with them during the event. He even mentioned to [redacted] to make posters to hold up to encourage him so she could be a part of the event too. She was so excited to participate and he was so

proud to have his family there. I saw what type of man Daniel is and what strong character he possesses.

As a coach I worked with many different individuals and some would neglect their work and families because of the selfishness of just thinking of themselves when it came to training and racing. Triathlon is a very demanding sport. I know firsthand from what I had to put into it during my racing career. So, I always knew the importance of putting families first and making time for them. Daniel was one to always put family first.

During the time I spent with Daniel I came to know him well as a person. We became friends and I was invited to his 40th birthday party where I met some of his closest and dearest friends. I saw the admiration his friends had for him. His wife Amy sat next to him and I could see how truly in love they were by the way she looked at him and us. They were truly in love, it's just beautiful and a blessing I think to see that these days.

There were times Daniel would talk to me about his other charities, including one in Africa where he was involved in building a hospital. Then he would talk about his father who was diagnosed with [redacted] and how he had to fly out to help him on a minute's notice. I also heard about how close he was with his brothers and tried to spend as much time with them by visiting Chicago. Daniel always made time for everyone even while having a demanding career. Daniel is the type of person who would help anyone. That's just the type of person he is.

In closing, I would like to say that Daniel was always there to help me with LKI which made a difference in helping many families and their children have a happier life. It would not have been possible without his support and belief in helping kids to live a better life.

It's was an honor to have worked with Daniel and a privilege to know Daniel and to call him my friend.

Sincerely,
Nick Castellano
Nicholas G. Castellano

Exhibit 22

David Lieberman
[redacted]

March 7, 2021

Honorable Denise L. Cote
U.S. District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

Dear Honorable Denise Cote,

I am writing this letter on behalf of a dear friend, Dan Kamensky with whom I have been close with for over 20 years. In a very real way, we grew up together and have traversed through life's journeys, supporting each other both in times of celebration and through periods of challenge. I am hoping that this letter will help convey to you who Dan is as a person, a father, a husband, a mentor and a friend.

I first met Dan when his wife Amy decided that they had gone on enough dates to introduce him to the 'group'. Amy and I had been friends since childhood, and I knew that she was head over heels for her new boyfriend Dan. She described Dan using a plethora of complementary adjectives and crafted an almost impossible description to live up to. However, after meeting Dan, I quickly understood and shared Amy's enthusiasm. I knew Dan was going to be a large part of my life.

For as long as I have known Dan, he has always been someone less focused on himself than others. It is something that I have admired and emulated. This is woven into the fabric of who he is as a person. I am always in awe of how many different altruistic causes Dan supports. Dan's philanthropic endeavors are broad based and far reaching and far more than simply financial. He has been instrumental in providing support to many institutions and organizations which all are helping make the world a better place. His unending drive to help has led to support of schools, religious organizations, community centers, the arts and healthcare treatments which would not have been possible without some of the work Dan has done. But far beyond simply giving of himself, Dan has inspired countless other members in our community of friends to find joy in supporting causes important to them. He gets others involved and devotes of himself tirelessly.

Dan's compassion and caring are felt on a very personal level as well. Unfortunately, life inevitably involves tragedy and when I experienced the unexpected death of several family members, Dan was a pillar of strength. He was there for me without delay, without hesitation regardless of the time of day. Dan is always there to be counted on in times of need. It is often in these periods of distress when the true nature of a friend

can be felt. During a time when I was in between employers, Dan was a vital professional mentor. He made it his mission to assist in my finding the right new endeavor and his heartfelt dedication to me was unmatched by anyone. I have much to thank him for.

Dan's extensive compassionate reach also helps make him an incredible father and husband. Watching Dan with his daughter [redacted] is an absolute pleasure. He has helped to make a warm and loving home. Dan is a beaming and proud father. He and Amy have been unending in supporting all of [redacted] interests and talents and are shining examples of parenting. The love Dan has for family and friends is felt by all who know him. He is always eager to share with friends the pride he has in [redacted] talents as an artist and student and Amy's achievements as an author. His undying affection for being a father and husband has had a positive influence on me and others.

I ask that you please consider the real person Dan Kamensky is when imposing your sentence. Any further punishment will have a punitive effect on many others besides Dan who has already suffered irreparable consequences due to his actions. Amy, [redacted], friends and family will already be affected by Dan's mistake forever. This letter is not something I take lightly. It is the only letter of the sort I have ever written, and I take it as a large responsibility. It is difficult for me to feel like I was able to give you a real picture of who Dan is as a person and I can only hope that you see even a small part of the person he is through my words. My wife and I feel so strongly that Dan and Amy are incomparable such that If we were to pass prematurely our children will be placed in Dan and Amy's care. We cannot imagine feeling more comfortable knowing that if there were such a tragedy, our children are going to be cared for by those we love, admire and respect most. I cannot express to you in words enough how much we appreciate the Kamensky's.

Thank you for the opportunity to write this letter of support and for your leniency.

Sincerely,

David Lieberman

Exhibit 23

Honorable Denise L. Cote
U.S. District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: Letter of Character Witness for Mr. Dan Kamensky

I first met Dan and his family on September 12, 2013, at the Jewish National Fund (JNF) Gala Dinner in New York. As guest speaker at the dinner, I spoke about my late son, Eran, the most significant teacher in my life, despite the fact that he never uttered even one word. Eran had special needs and required full assistance every minute of the day, 24/7. I went on to speak about the defining characteristic of modern society, which overwhelmingly and almost exclusively judges people by their successes. But what, I asked, happens when a person can't "succeed," in accordance with society's demands? Who will care for such a person? What does it say about us, the ordinary people if we leave the weakest and the most vulnerable behind?

Dan and Amy Kamensky, with their outstanding sensitivity and sense of social awareness, instantly understood my message, and at that moment, my wife, Didi, and I immediately developed a personal friendship with the extended Kamensky family.

Some months later, in December 2013, I once again visited New York to fundraise for the unique rehabilitation village I initiated and established in Israel for the benefit of people with special needs like my dear, beloved son. The village provides lifetime solutions for people with disabilities, caring for their every need in an idyllic, pastoral setting. As I previously mentioned, Dan completely understood the immediate need to change the existing social reality, and there, on the spot, he gifted us with a most generous and significant donation. Dan dedicated this donation towards the opening of a Special Education School for our village, presently educating over 150 children with special needs.

In April 2014, Dan and his family came to visit our rehabilitation village. That first visit was the precursor of many trips to come, as each year saw Dan, Amy and their daughter [redacted] at the village, spending time with the residents, and fondly reassuring them, "We are here for you. We won't forget you. We won't abandon you."

On a personal level, our two families grew ever closer, as Dan and his family would join my extended family and me for meals during their stays in Israel.

On February 7, 2017, Dan was the guest of honor at the annual JNF fundraising event and asked me to be present. Despite my busy schedule, I could not refuse. I travelled from Israel to New York for 24 hours, to speak about Dan and sketch a picture of his care, thoughtfulness, empathy and generosity, underlining Dan's dedication to my life project.

[redacted]

עדי ADI
NEGEV-NAHALAT ERAN | JERUSALEM
ABILITY. DIVERSITY. INCLUSION.

In 2018, during one of Dan's trips to Israel, Dan took upon himself to subsidize a groundbreaking nationwide system for youth education, dedicated to teaching and imparting the attributes of social acceptance and giving unto others. We named this project "Tikkun Olam," Repairing the World. The inherent goal of this project, administered in partnership with the Israeli Ministry of Education, is to educate generations of Israeli children to accept, include and support those weaker than themselves and to help whomsoever is in need of assistance.

This unique ten-stage project would never have come to be without Dan Kamensky. Dan did more than just provide the funds to lift the project off the ground. Dan lived the project. He arranged fundraising events, turned to friends and acquaintances, and even convinced Russell Robinson, JNF-USA CEO, to provide matching funds for all monies raised towards this innovative project that educates and inspires youth towards understanding, benevolence and charity.

Dan has been blessed with a caring heart and boundless social compassion. He is a devoted member of his community, stepping in to offer support whenever possible. Dan is an unwavering friend and supporter of our rehabilitative village, ADI Negev-Nahalat Eran.

I cannot find the words to express my gratitude to Dan. Nothing can describe the selfless commitment that compelled Dan to grant the financial support necessary to improve the lives of those who are totally dependent on others, and to go above and beyond to ensure their future through his commitment to Tikkun Olam, the educational program that will teach empathy, positive action, and acceptance of others to generations of children. Dan's generosity and unique sense of social commitment are a beacon of light, shining positivity and guiding others as an example to follow.

Sincerely,

Major-Gen. (res.) Doron Almog
Chairman, ADI Negev-Nahalat Eran

[redacted]

[redacted]

Exhibit 24

Michael Ultsh
[redacted]

Judge Denise L. Cote, U.S. District Judge, Southern District of New York,

I am writing this letter in support of Dan Kamensky – someone I have come to know as an incredibly caring person, wonderful mentor and as outstanding member of the wider community.

I first met Dan through my sister who worked for him at Marble Ridge. My sister had told me what a fantastic manager and person he was – and this was especially high praise coming from my sister as she spent her career supporting high-energy individuals in the alternative asset industry (where she generally worked with individuals who were not necessarily the easiest to work with!). My sister had told me how Dan had helped her advance in her career by mentoring her and providing support even though she was a single mom which presented unique challenges for her.

As my sister advanced in her career, Dan asked my sister to help him find someone who could help one of the foundations he supports - the Eugene Gasana Jr foundation. The Eugene Gasana Jr foundation is a charity which has a goal to advance pediatric cancer care in countries which do not have the high standards of care or resources that wealthy nations can afford. The major project of the foundation is building a state-of-the-art cancer facility in Ghana, Africa. Dan had a special connection to the charity because its founder had helped his wife recover from when childhood cancer when she was treated at Memorial Sloan-Kettering. He wanted to see the charity not only succeed, but become a major presence in the pediatric cancer community.

At the time Dan was looking for someone to join the charity, I was considering a career-change. After my sister connected us, and we discussed the role, I felt comfortable applying my experience running a team to move this charity to the next level. Even though I didn't know Dan at the time, I sensed that he was genuinely interested in me and wanted to ensure my success in this new position. Over time, I grew to know Dan more as a person. He wanted to ensure my success and spent time with me outside of work hours to hone my skillset (as I did not have a non-profit background). Dan hosted breakfasts and dinners and attended almost every event for our charity – putting in the after-hours work, time and energy into a small, but growing non-profit.

Unfortunately, my time at the Gasana Foundation was not all positive. As I began to navigate the non-profit environment and culture I felt more and more out of place and uncomfortable. Dan was there for me during that time period as well – open to hear my concerns and help guide me through my anxiety and allowing me to put my best foot forward. Ultimately I decided the non-profit world was not a good fit for me professionally. Being that Dan was extremely passionate about this non-profit, I was nervous to tell him of my decision – after all, Dan had spent quite a bit of time with me to ensure I was successful. After I explained my decision to leave the foundation, I could not have had a more supportive conversation. Not only was Dan happy that I received clarity in my career choice, but he offered to help and continue to be a mentor even after I left. We continue to keep in touch as I navigate my way through the corporate world – which would not have been possible without the support Dan has provided to me.

In conclusion, although Dan made a mistake – I cannot stress enough what he means to me, my family and our community. In the typical day to day of Dan's life – he is a great man. The wonderful part of this country is how folks grow from mistakes and have a second chance. I have no doubt, given the opportunity, Dan will continue to do wonderful things in this world – his presence as a mentor and charitable individual is unparalleled. I respectfully hope this paints a picture of who I know Dan to be – not just a caricature – but a wonderful human being who has brought a positive experience to many in this world.

Regards,

Mike

Exhibit 25

March 18, 2021

To The Honorable Denise L. Cote, U.S. District Judge, Southern District of New York:

I have known Dan Kamensky for approximately 20 years. He and his wife, Amy Blumenfeld, are close family friends. I have interacted with Dan on innumerable occasions. Dan is a decent and honorable person. He is a good friend. He is a devoted and loving husband. He is an adoring and proud father.

Dan is very close with his wife's family. He and Amy live close to her parent's home in Queens, and see her family very often. They go to synagogue together, take family trips together, and see each other regularly for holidays. Dan is also close to Amy's brother's family. They are a tight-knit group, and even though Dan comes from Chicago, he has embraced and been embraced by the Blumenfeld family. It is important to Dan that his daughter [redacted] grow up in a loving and close family, and he has done all that he can to make that happen. Dan and Amy's house is in close proximity to Amy's parent's house and to Amy's brother's house. It is the same modest home they bought many years ago. Despite having the means to move into a much larger and showier house, Dan and Amy never did. A showy house isn't important to them. Family is important. So is living modestly. Their conduct in life reflects those principles.

Another principle that is important to Dan is giving back to his community. Dan has been very involved with the Jewish National Fund, where he was honored with the Theodor Herzl Leadership Award in 2017. He and Amy were also deeply involved with the Schechter School of Long Island and were honored for their service during the school's Annual Dinner Gala in 2019. I attended the event with my wife, and was impressed by how beloved Amy and Dan were within their community. I also know that Dan has been very involved with fundraising for the Memorial Sloan Kettering Cancer Center, which is a very important cause for Amy, and which Dan has wholeheartedly embraced as his own. Dan doesn't just coast through life, he participates and tries to make the world around him better.

To see Dan's eyes really light up, it suffices to bring up his daughter [redacted]. [redacted] is very artistic, and has been engaged in art since she was a little kid. When we would visit Dan and Amy at their house, we would often go to the basement which served as [redacted] art studio. Dan would go into docent mode, and show us each piece that [redacted] had worked on recently. Each painting had a story and theme, which Dan would expertly recount to us. Consistent with their great pride in [redacted] accomplishments and their philanthropic efforts, Dan and Amy staged an art show for [redacted] at a gallery on Long Island, the proceeds of which went to Memorial Sloan Kettering. The entire gallery was devoted to [redacted] artwork, and Dan and Amy, the beaming and proud parents, spent the entire night raving about their daughter's accomplishments, while

advancing the cause of medical research. Dan's relationship with [redacted] is very special and she obviously is the center of Dan and Amy's lives.

Three minor observations about my personal interactions with Dan: Dan doesn't gossip or speak ill of others. He does not engage in self-aggrandizement. When we spend time together, I talk to Dan about politics, or economics, or sports, or religion. We talk about what books we've read or our thoughts on self-improvement. There isn't conversation about how great anyone is doing at work, or how fancy someone's vacation was, or any of the typical topics of conversation I often hear between people. Also, a few years ago I was honored by the Westchester Jewish Council. It was a Saturday event, and as special as these events are for the honorees, they frankly aren't so much fun for most other people. But Dan and Amy trekked all the way to Westchester from Long Island, and were supportive and excited for me on my special day. Finally, when we get together with Dan and Amy as a family, Dan is always really nice to my kids. He asks them how they are doing, what they are up to in school, and generally makes them feel very special, like they are the center of attention. These are minor things, to be sure, but are all windows into the type of person that Dan is.

I recently saw Dan, Amy and [redacted] at our friends' house in Westchester. It was late in 2020, a warm and sunny autumn day. This was well into the ordeal that Dan and Amy have been dealing with since this all started. There was seemingly a pall of sadness that had descended on their entire family. Dan, Amy and [redacted] are outgoing, friendly, fun-loving people. But it wasn't so that day. What was heartwarming to me was how Dan was extraordinarily attentive to [redacted], and how he acted towards her with extreme kindness and tenderness. It was obvious that they had been through so much as a family, and that his heart ached for what his daughter was going through. It was the behavior of a loving and deeply concerned father trying to comfort his daughter in the middle of an extremely difficult time for their family. It was a touching moment.

Dan is a good person. I have no doubt that he will continue to be a good friend, a devoted husband, and a wonderful father. He has contributed to our society in many positive ways already, and I believe he still has much to give. I understand Dan made bad mistakes in July of 2020, actions which he deeply regrets and which are an utter aberration in an otherwise exemplary life filled with decency, goodness and love. I urge your Honor to weigh the multitude of good things Dan has done and to show great leniency in your decision. Despite this difficult and painful episode in their lives, I truly believe Dan's and his family's best days are ahead.

Sincerely,

Harry Mamaysky

Exhibit 26

David Pauker
[redacted]

March 15, 2021

The Honorable Denise L. Cote
U.S. District Court Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: Statement in Support of Dan Kamensky

Dear Judge Cote:

I write this letter in support of Dan Kamensky in connection with his upcoming sentencing hearing before this Court.

I have known Dan professionally for more than a dozen years, and have been involved in several matters in which he was an investor and I was acting in an independent fiduciary capacity. I have had the opportunity to work closely with Dan and observe his approach to negotiation, dispute resolution and compromise in the often-contentious bankruptcy environment. I want to share my observations with this Court.

I worked most closely with Dan in connection with the bankruptcy of Lehman Brothers. I was appointed to the new Board of reorganized Lehman Brothers pursuant to its bankruptcy plan and became Chair of its Committee on Claims and Legal Affairs. Dan was one of Lehman's largest creditors and was among those most responsible for the negotiation of its largely consensual bankruptcy plan. After my appointment, I received extensive briefings from creditors and other parties at interest regarding the Lehman plan process, claims to be investigated, defended and/or pursued by Lehman and the many disputes in which Lehman was involved. Dan was among the most active in briefing us and sharing his thoughts on management of the estate. In the years that followed, he frequently reached out to share thoughts on how to realize value on claims and assets, resolve disputes and other matters. This was a source of considerable value to Lehman.

In my conversations with Dan on diverse Lehman matters there was a common thread. Dan's focus was always on how Lehman might best achieve a consensual resolution of disputed matters rather than how it might ultimately prevail. He disagreed with those who urged us not to compromise. Dan's views clearly reflected one of two approaches commonly taken by investors

in bankruptcy negotiations. There are many investors who see negotiations as "zero sum" games to be won or lost. They measure success by how little everyone else receives in relation to themselves. By contrast, other investors stress the value of saving time and money – and reducing risk – by achieving resolution of disputes. These investors seek creative means to find common ground and recognize that all parties need to come away with something of value. Dan was squarely in that camp. In fact, he was a leading proponent of that approach.

I learned about Dan's role in the Lehman plan negotiations from multiple people. Although there were many who claimed (and deserved) credit for their role in negotiations, almost everyone named Dan as a key figure. As Dan related to me later, there had previously been far too much attention paid to what the "other guy" was getting. His strategy (with a handful of others) had been to get diverse creditors to focus on the benefit of the proposed plan to each party.

For a number of years, I was co-chair of the American Bankruptcy Institute's annual New York City Conference. After working with Dan in Lehman, I began inviting him to speak on various topics at the conference. On his various panels, Dan was an advocate for compromise and creative resolution of complex bankruptcy disputes. He developed a reputation in that regard within the industry.

I cannot explain Dan's actions regarding Neiman Marcus on July 31 of last year; my knowledge is limited to things I have read in the public record. But I can say that his actions on that occasion are very much contrary to my experiences with him in Lehman and other matters and contrary to his previous reputation as a "convenor" in bankruptcies that needed creative compromises. That one occasion is not representative of Dan's approach or attitude; it would be wrong to assume otherwise.

Sincerely,

David Pauker

Exhibit 27

The Honorable Denise L. Cote
U.S. District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

Dear Judge Denise L. Cote,

I'm writing this letter in support of Dan Kamensky. I was Dan's personal and executive assistant from November 2018 through November 2020. There are not enough words to express how much I miss working for him and being on his team. He is a truly honorable man - everything you could ask for in a boss, and a friend, despite the mistakes he may have made. There are so many stories I could tell to prove that, being involved in both his business and personal life. The one that first comes to mind always when I think of Dan is my first week at Marble Ridge Capital. My daughter had stayed home from school not feeling very well. Being it was my first week at a new firm, I immediately found an alternative and headed into the office only to be called a few hours later that she had a fever. I was so nervous to ask to leave but ultimately had no choice. The next day, I was back in the office and Dan called me into his office immediately. He was upset that I felt like I couldn't leave because I was new! He always said, family first. From there on out, Dan had my utmost respect and loyalty, and I truly feel lucky for my time at Marble Ridge and continuing to have Dan in my life now as a mentor and friend.

When I interviewed for Marble Ridge, Dan told me to read the book "The Boys in the Boat" by Daniel James Brown as he used that as a guide for his team at Marble Ridge. After working there for two years, it could not be more true. Dan came into the office each day with a good morning and a smile on his face, consistently asking about my family, telling me about his. He is a true family man - proud of his wife and daughter and all of their accomplishments and always wanting to hear the same about yours. I've been in the financial industry for 12 years now and I've never worked with someone such as him. My prior bosses barely knew my daughter's name. Dan knew her name, likes, dislikes, and personality because he wanted to. He cared about each and every member of his team at Marble Ridge and our families, which meant the world. I truly looked forward to work each day because of the positive environment he created there.

Dan is also one of the most generous people I've ever met, with both his time and money. His calendar was consistently filled with charitable events to attend, whether it be UJA, JNF, Gasana, among many others. One of my responsibilities was keeping track of his charitable contributions and I was always in awe. Instead of being selfish with his wealth, he was anything but. I had the most interaction with the Gasana Foundation, which he was a huge part of. He even paid the salary for the VP of Development as he saw there was a need there to truly help the foundation succeed. He could've had a bigger house, fancier car, etc.; however, instead he always chose to help others in any way he could.

In closing, I'm currently 20 weeks pregnant with my first son. I truly hope to raise him to be a man like Dan Kamensky. A family man, a great friend to have, someone who always puts others before himself, and the best leader a team could ask for.

Thank you,

Nicole Caiazzo

Exhibit 28

February 15, 2021

The Honorable Denise L. Cote

U.S. District Judge, Southern District on New York

500 Pearl Street

New York, NY 10007

Dear Judge Denise L. Cote,

My name is John Falcone and I am asking that you show leniency to Dan Kamensky in his sentencing. I would love to share a few of the instances where Dan has made an impact on my life as a person and I hope you can see the good that I see and have seen for the past 5 years.

I began working for Dan Kamensky in August of 2015 at Marble Ridge and over the past 5+ years I have gotten to know him much more than just a my boss but as a friend, confidant and mentor.

The first story I would like to share with you is how Dan has inspired me to give back to the community. When Dan was doing his philanthropic work helping build schools in Israel with his family, he seemed so at peace and in a wonderful place. When he returned I sat down with him and asked him why this made him so happy and Dan's response to me was " Remember this: we should and will never be remembered for what we did and do at our jobs, but what we leave behind and how we helped others". I was so inspired that I sought out a way to give back. I found a non-profit organization in my town called Hockey in Middletown and started to get involved and after a year I wanted to do more so I decided to run for President of the organization. I approached Dan about it and he could not be happier and I remember his saying "You should do it, the organization needs you. Anything you need, from time off to ideas to funds – you can come to me". 3 years later I am still involved and as happy as I have ever been and I owe it all to Dan for the inspiration, help and backing he gave me. The organization also holds an annual skate with Special needs students where we have a day the Hockey players skate with students from the middle schools who have special needs. Every year Dan would ask me when the date was and make sure that I was off to coordinate the day, offering to pay for the food for the kids and without fail the next day he would always ask me to see pictures and we would both sit there looking at the pictures smiling and commenting about how much this day meant to the kids as well as the hockey players and how neither would forget the day for the rest of their lives.

The second story I would like to share is how Dan really cared about each and every employee and their families. In 2019 my dad was having some heath issues with his heart, and Dan could see how it was weighing on me. Every morning Dan would come in and come directly into my office, sit down and ask me how "Dad" was doing and if there was anything he or I needed. Now I know most people would ask because it was what you were supposed to do, but with Dan I felt and knew it was different, he honestly and truly cared. He would always say to me "Take tomorrow off to be with Dad" or "Why don't you leave early to go see Dad. Even to this day Dan will ask daily how "Dad" is doing and does he need anything as well as always asking how my wife and kids are, are they doing ok in school?, are they all healthy and safe?

Dan has given so much of his time to causes that needed his help because he knew it was the right thing to do and because it made others feel good, including asking our team to volunteer for Habitat for Humanity with him, which I will say that there was not 1 person on the team that did not enjoy being side by side with him giving back to those less fortunate and enjoying the feeling of helping just 1 person realize their dreams.

Lastly I would like to share with you the positive impact Dan has had on me as a person. I have had a lot of interaction with Dan from work to personal but I have never met a person who really cares more about others than himself. In my 5 years of knowing him he has made me so much more of a better person than I could have ever dreamed imaginable. He always has a positive spin to even the darkest of situations that I or any other employee or friend would encounter. He offered us counselors in the office to talk about anything we needed to talk about whether it be personal or work related to help eliminate the stress of everyday life.

Your Honor – I could go on and on about how great of a person Dan is as it is a very easy topic to talk about and one that makes me smile as I write each and every word here. I understand the person that was brought before you but I can tell you that Dan is not that person, he is a kind, giving and loving soul who made 1 mistake. Coming from an Italian family we try to believe that 1 day does not explain a person's life, we try to look at the whole not a part and I know if you knew the Dan that I and everyone else who has come in contact with him knows you would agree with us.

I ask here that you show compassion to a man that has been nothing short of amazing to me and many others than have crossed paths with him.

If you want to talk more about Dan I am always free to talk if you need any other reasons or have any questions about this letter.

Sincerely,

John Falcone

[redacted]

Exhibit 29

Jared Nussbaum
[redacted]
February 17, 2021

The Honorable Denis L. Cote
U.S. District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

Your Honor:

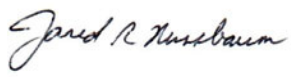
I am writing to you on behalf of Dan Kamensky. I am the founder and managing partner of Nut Tree Capital Management, an investment firm focused on distressed debt (similar to Marble Ridge Capital) with $2.7 billion of assets under management. My firm launched its flagship fund in February 2016, a month after the launch of Dan's fund at Marble Ridge Capital. Dan and I were introduced by a mutual friend about nine months later, in the Fall of 2016.

Dan and I quickly became friends and confidants. While ostensibly we should have been rivals, running funds with similar strategies and competing for capital from the same relatively narrow investor base, our friendship blossomed. Dan frequently suggested his own limited partners consider investing in Nut Tree Capital, at a time when he was still trying to raise capital and grow his own business. He also gave me invaluable marketing advice which I subsequently implemented, and which contributed to my firm's fundraising success in 2018 and 2019. We compared notes on how to better mentor our employees, particularly those with performance issues. And we worked together on several credit investments, with our respective analysts helping each other in their research efforts.

My firm was not involved in the Nieman Marcus bankruptcy, and it pains me that Dan made a grievous error of judgement, for which he must now suffer the consequences. Having worked with Dan on numerous investments, I believe it runs counter to how I always saw him conduct himself in our professional interactions. My purpose in writing you is to share my experience with his character from a professional perspective. There were several other launches of "distressed debt" funds within months of our funds' commencement. I have met most of these founders along the way, and often detected a "zero sum game" feeling with these managers that made it difficult to form a meaningful connection. And then there was Dan, who offered up his counsel and friendship so freely, and who I can say truly contributed to the success of my business. I believe it reflects Dan's character – he is someone who believes in forming relationships with good people without worrying too much about who might get the (slightly) better end of the deal.

My friendship with Dan now transcends that initial basis for our connection. He and I will remain friends because he has so much to offer. I am confident the world is a better place because he is in it and look forward to seeing what he does in the next chapter of his personal and professional life after the resolution of his criminal case.

Sincerely,



Jared Nussbaum

Exhibit 30

Saul E. Burian
[redacted]

April 13, 2021

Hon. Denise L. Cote
United States District Judge
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, NY 10017-1312

RE: Daniel Kamensky

Dear Judge Cote,

I am writing this letter in support of my friend and colleague Dan Kamensky. I first met Dan over 10 years ago in a professional capacity and our relationship slowly blossomed into a close friendship. Even though Dan made a terrible mistake under pressure and stress, I hope your Honor can appreciate the whole of the person in making your sentencing decision.

My first recollection of meeting Dan was across the table in the bankruptcy of Lehman Brothers. My firm was a financial advisor to the Official Committee of Unsecured Creditors, and Dan, through his firm at the time, was one of the largest creditors of Lehman. Lehman Brothers was one of the largest and most complex bankruptcy cases of all time, and turned out to be an extraordinary success (from a restructuring perspective) that led the restructuring industry to reassess all assumptions regarding the opportunity to maximize value in an orderly wind-down. In a transaction as complicated as Lehman with its far flung, multifaceted and intertwined domestic and international operations across all sectors of banking and finance, Lehman Brothers could have easily degenerated into a financial and litigation morass that would have clogged the legal and financial systems for decades. And, while many contributed to the successful restructuring of Lehman Brothers, Dan played a unique role. He used his intellect, credibility and integrity to bring creditors together in support of a mutually beneficial global solution to Lehman's domestic bankruptcy cases. None of this would have happened absent Dan's open and honest approach that built trust across the capital structure.

After Lehman Brothers, Dan's firm had acquired a distressed real estate investment and hired my firm to represent the company, as its financial advisor, during its bankruptcy in 2011. This was a contentious case and involved many actual and potential conflicts of interest. Notwithstanding the stress and pressure, Dan conducted himself with the utmost integrity, including bringing in truly independent directors when conflicts arose.

After these cases, our relationship grew into a deeper friendship as I and my family got to know Dan, his wife Amy and his wonderful and talented daughter, [redacted]. They have joined us in our home for Friday

night and holiday meals and we love spending time with all three of them. Most impressive about the Kamensky family is the combination of a strong work ethic, with compassion and sense of duty to the broader community. Unfortunately, you do not often see that level of commitment, humbleness, obligation and goodness in very successful people. We appreciate Dan and his family for who they are, but also for what they represent – a fantastic role model for our kids to learn from and emulate.

In fact, Dan is responsible for introducing me to one of my most important and meaningful charities. I recently served as President of the New York Board of the Jewish National Fund, and have devoted many, many hours to helping the disadvantaged in Israel because of Dan. Dan became acquainted with the work of JNF on a trip to Israel in 2011 and immediately turned his prodigious talents to helping to support their work, especially on behalf of physically or mentally challenged youth that require specialized (and expensive!) services. Working together, we created a Finance & Restructuring Committee for the benefit of JNF, started an annual dinner and co-sponsored numerous events to raise awareness and funding. In all of my interactions with Dan, he has been thoughtful, sensitive, caring and effective. He goes out of his way to make people comfortable and leads by example, using his skills and character to be a force-multiplier for good.

You also see Dan's true personality in the little things that, in my view, add up to what is most important. As I already mentioned, we have spent time together as families and it is clear to me that Dan is a kind, loving and supportive husband and father. My heart breaks when I think about how difficult this most recent period has been on Amy and [redacted], and on Dan, both for himself and for the anguish over how this has impacted Amy and [redacted].

Even though my children are almost a generation ahead of his daughter, when Dan joins us for dinners, holidays and for family celebrations, he always shows a genuine interest in their lives and is available for advice. In fact, about two years ago, I met Dan in Israel and had the opportunity to travel with Dan and my son and nephew to some rugged terrain in the Northern part of the country. It was a fantastic three days, with Dan blending in seamlessly. We traversed rapids, hiked river beds and climbed up to an ancient fortress while exploring the thousands of years of history of the places we were visiting. You just cannot fake being a good guy for that period of time, and in those conditions. I was beyond impressed by Dan's focus on my son and nephew, his patience and generosity in sharing his knowledge, his willingness to really listen to what they were saying and how protective he was of each of them – always the first to lend a hand, grab a backpack or make sure that neither young adult slipped or fell.

I know this is a very difficult time for Dan and his family. We talk often, given the circumstances, and I know he bears great regret for what has happened. I know from my personal experience with Dan that this was truly aberrational behavior. I have seen Dan in other highly contentious situations, and while he was an advocate for his position, he respected the process and sought compromise over conflict. He is a good, thoughtful, charitable and loving person. There is no need for a greater message or more punishment. Dan and his family have already suffered so much. Dan has always given to others and will continue to give back to the broader community.

I write to urge your Honor to look at all of Dan, the Dan we know over many years – the Dan that so many rely on for his commitment, integrity, skill, loyalty and love – and not judge Dan solely by his regretful actions over a few fateful hours.

Thank you very much.

Sincerely,

Saul E. Burian

Exhibit 31

Evan Lederman
[redacted]

April 9, 2021

Honorable Denise L. Cote
US District Judge
Southern District of New York

Dear Judge Cote:

I am writing this letter in support of the character of Daniel Kamensky. As a fellow member of the NY Bar who ultimately transitioned from practicing law to becoming an investment professional, Dan has been a close friend and mentor to me for over a decade. Just like Dan, I started out as a bankruptcy attorney at a large New York City law firm before making my way over to the investment side, specializing in distressed and special situations investments. Over time, I worked my way up the proverbial ladder, ultimately becoming a senior Partner at Fir Tree Partners (2010-2020), a leading global investment firm founded in 1994 that manages billions of dollars on behalf of public pensions, university endowments and sovereign wealth funds.

At Fir Tree, I was the Co-Head of Distressed and Restructuring, and first met Dan in 2010 following the collapse of Lehman Brothers. Dan's firm at that time and Fir Tree were two of the largest creditors in Lehman and together Dan and I helped lead its historic and successful restructuring. From working long hours together on Lehman and many more investments after that, I became close to Dan. What started as a business relationship quickly turned into a close friendship. I count Dan as one of a few mentors I have had in my life.

Without hesitation, over more than a decade of friendship, Dan has always been there for me with words of encouragement, sage career advice, and perhaps most importantly perspective on what matters most in life at the end of the day. In particular, Dan taught me the importance of work and life balance and to do everything with the utmost of integrity. While Dan was an extremely accomplished distressed investment professional and founder of a highly successful investment firm of his own, at bottom he always cared most about being a good father, husband, and member of his community. He much preferred being with his family for his kid's school events or at a book signing for his wife or supporting a cause that he thought could benefit from his involvement then at the office in front of a Bloomberg terminal "making money". He made sure to impart on me the importance of family first, integrity in everything you do and to always remember to make time for your community and for those who are less fortunate.

Judge Cote

April 9, 2021
Page 2

I have worked with Dan on tons of investments, and I can say on every single one of them he conducted himself with integrity, honesty and reasonableness. He never tried to get ahead by cutting corners, by backstabbing or by manipulation. Rather, he wanted to succeed for himself and his investors because of his intellect and hard work. I can say with all the force of my being that what took place here was out of character for Dan and a terrible lapse of judgement, but it's not who Dan is as a person and investment professional. I know this, I worked with him in this arena for a decade, sometimes on the same side and sometimes against him. He always played fair. He took pride in winning under the law not by any other means. People make mistakes, but a single mistake does not and should not overshadow all the good in a person. Dan is a good person, a wonderful friend and mentor, who made a terrible mistake. One mistake against a lifetime of good.

In closing I want to quickly convey a very personal story about Dan that I think defines his character. In our free time, both Dan and myself enjoyed training for and participating in triathlon races. Dan was always a bit better than me. In one race about 7 or 8 years ago in Westchester, I was somehow ahead of Dan after the swim, which is the first leg of the race. But I was having an extremely hard time on the next leg, which is the bike portion. I was struggling to climb a hill and cramping. Dan whizzed by me on his bike and looked back and saw how badly I was doing. Instead of pressing ahead to try to finish with the best time he could (which is the purpose of the race!), he stopped and came back to me as I was slowly struggling up the hill. He checked to make sure I was ok, asked me if I needed some of his water. He said he would ride with me at my pace to help me get through the pain. I had to basically scream at him and make a scene to get him to continue on and finish in the best time he could. Now, this may not seem like a big deal, but these races require a ton of training and preparation. Because of that you really want to finish in the best time you can and try to set personal best times. But Dan did not care about his own time, he cared more about making sure another human being who was his friend was ok. That is the Dan I know and the real Dan.

Dan made a mistake and committed a terrible lapse of judgment, but it's one out of character mistake against a lifetime of good. I hope you consider this when deciding Dan's sentence.

Sincerely,

Evan Lederman

Exhibit 32

March 30, 2021

The Honorable Denise L. Cote
U.S. District Judge
Southern District of New York
500 Pearl Street
New York, NY 1007

Your Honor:

I write to provide a personal perspective on Dan Kamensky, a friend and former colleague. We worked together at Paulson & Company during his employment there from 2008 through 2015. I was a partner and the Chief Operating Officer during this time and had the broadest and possibly deepest perspective on the firm's employees, their performance, character, and individual personal situations.

While I am familiar with Dan's care and love for his family, the preponderance of my experience with him has been in a professional setting. In our case, this setting was one of intense focus, teamwork, individual performance, and integrity. Our group included some of the most well-educated, talented and experienced people in the investment management business. Dan's professional accomplishments stood out in this context. For me, though, the hallmark of my experience with Dan was his total honesty.

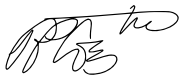
Whether a situation was trending positive or negative, Dan's straightforward nature and commitment to clarity of facts and truth was unwavering, even if those facts may have suggested a mistake or misjudgment on his part. His character in this regard was a primary reason why the firm placed a great deal of trust in Dan, trust backed by billions of dollars of at-risk capital. Across the spectrum of time and investment situations where we worked together, Dan's absolute candor and no-shade honesty was an immovable feature, the one that stuck with me.

After 25 years in the securities and investment business at senior levels with expansive views, I've seen a lot of people blow up. It happens for many reasons: greed, pressure, fear, over-confidence, exhaustion, competitiveness, to name a few. Somewhere, somehow a lapse of judgement occurs, sometimes once or sometimes systematically. The self-awareness, humility, vigilance, perseverance, luck and fortitude required to prevent these lapses is enormous because we all make mistakes and work with imperfect information. I say this not as an excuse. Our system only works with reliable trust built on the system of regulation and law that drive normative behavior.

I don't know what caused or why Dan made this error. What I trust is that his honesty will remain the core feature of his character. Combined with his talent, his ability to contribute positively, whatever his path from here, will remain. I hope, if possible, that he will be able to do this sooner rather than later.

Thank you for listening.

Sincerely,



Putnam Coes

Exhibit 33

The Honorable Denise L. Cote
U.S. District Judge
Southern District of New York
500 Pearl Street
New York, N.Y. 10007

My name is Samuel Molinaro. I am President of UBS Holdings LLC. I have known Dan Kamensky since 2008 when we worked together at Paulson Partners.

I am writing this letter to attest to the person and character of Dan Kamensky, who I have known and worked with over the past 13 years. My relationship with Dan began at Paulson, where we worked closely together on a variety of projects. During that time I found Dan to be smart, engaged and an excellent colleague. We worked very well together and I got to know Dan reasonably well. In addition to being an individual of outstanding ability, more importantly I found Dan to be an excellent person. Dan worked hard but was caring, had a good sense of humor and became a good friend.

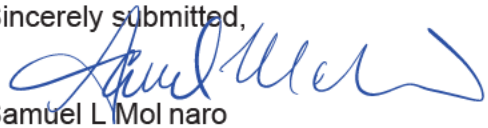
Subsequent to my involvement with Paulson Partners I stayed in contact with Dan—while he was at Paulson, during his decision to leave to start his own venture and over the last several years. Dan and I enjoyed both a personal and professional relationship during this time period. In 2013, while still working at Paulson, Dan approached me about my interest in joining the RESCAP Liquidating Trust Board of Directors to fill the seat which Paulson Partners had the right to nominate given their ownership position. I mention this for two reasons. First, Dan didn't need to come to me for this role; there were many other qualified candidates he could have sought out. I was in a new job but had been working on a start-up for the prior year and a half, which didn't ultimately work out. I had continued to work with Dan and Paulson Partners on a consulting basis with respect to their investment in Lehman Brothers throughout 2011, and in 2012 Dan put me forward as a potential Lehman board candidate. While I certainly didn't think Dan was "throwing me a bone," I did appreciate his thoughtfulness in considering me and providing the opportunity. Second, following my appointment to the RESCAP Board, there was never an instance where Dan attempted to exert any influence over me. He respected my independence at all times and never once asked for me to influence a decision or outcome.

When Dan was making the difficult decision to leave Paulson to start his own fund we spoke often. He was trying to balance the competing issues of his relationship with Paulson, his appreciation for all they had done for him, his desire to start something of his own and his concern for his family and what this would all mean for them. As he contemplated all of these competing issues, including the challenge of considering taking on a new business partner, I saw Dan conduct himself well and show great respect and thoughtfulness for how he was handling all of these stakeholders. Never once did I see Dan act capriciously or thoughtlessly during this whole process.

Not surprisingly, when Dan did ultimately launch his own fund I was one of his initial investors and have remained invested with him to this day, never having taken a distribution. I did that because I had total faith in Dan as a true professional—smart, honest and hard working. I knew Dan was a winner. That is why I find the events that have unfolded surrounding Dan's involvement with Neiman Marcus so surprising and honestly dumbfounding. This is simply not who Dan Kamensky is. He is tough and engaged but not a ruthless bully. It is beyond my wildest imagination that Dan meant for what transpired in that ill-fated series of phone calls to happen.

I write today to request the court to take into account who Dan Kamensky is as a person, to consider his history and record of success, to consider the philanthropist, father and husband he is when deciding upon the consequences for these actions. While the heat of the moment may have momentarily overtaken his emotions, this does not reflect who the person my friend Dan Kamensky is.

Sincerely submitted,



Samuel L Mol naro

Exhibit 34

JAMES P. SEERY, JR.

March 30, 2021

The Honorable Denise L. Cote
U.S. District Judge, Southern District of New York
500 Pearl Street
New York, New York 10007

Re: Daniel Kamensky

Dear Judge Cote:

I write on behalf of Daniel Kamensky, a defendant awaiting sentencing before Your Honor at the end of April. I have known Mr. Kamensky in a professional capacity for more than 15 years having hired him into his first role in the securities business in 2004. My perspective on Mr. Kamensky as a professional and a person is unique because I worked closely with him as he developed and learned the securities businesses, and I have maintained a professional relationship with him as he moved to other roles and formed his own investing firm. I hope that insight into my personal experience with Mr. Kamensky will assist you in crafting a just sentence for the crime to which he has admitted guilt.

By way of brief background, I am a New York attorney and have been involved in the investing, finance and restructuring businesses for more than 30 years. I currently serve as a court appointed independent director, chief executive officer, and chief restructuring officer of a company exiting bankruptcy protection. I have an unblemished record of ethical performance in all of the roles I have undertaken in my career.

In 2004, Mr. Kamensky joined me in the high yield and distressed investing business at Lehman Brothers. The role for which he was hired was designed to help him evolve from his legal experience to the business side of corporate investing. While his bankruptcy experience was more limited than I was seeking, Mr. Kamensky had broad experience as a mid-level corporate lawyer and came highly recommend.

Mr. Kamensky enthusiastically jumped into the role and learned the business. He was eager to develop his skill and worked well with more experienced teammates. Importantly, Mr. Kamensky coordinated closely with both the compliance and legal teams at the firm. Much of the high yield and distressed investing universe revolves around appreciating relative legal rights of various competing securities and creditors. To assure that investments are structurally sound and competing interests are considered, distressed investing professionals must develop a keen understanding of governing credit agreements, indentures, and creditors rights laws. And to do that correctly and not risk legal jeopardy for the investor or the investment, the legal and compliance teams must be involved in each step of the investing and investment management process.

During his time working with me, Mr. Kamensky was conscientious and thorough in respecting the compliance and legal guardrails that governed the firm's personnel and its investments. Even in the most contentious of situations (distressed investing can often devolve into a zero-sum battle), his legal, professional and personal ethics were never called into question. And as his direct supervisor, I would know if they were.

After leaving Barclays (successor to Lehman) and moving to a large hedge fund, Mr. Kamensky and I maintained professional contact and frequently discussed investing strategies and legal issues. Mr. Kamensky's role at the new firm enabled him to continue to grow his skills but also increased the number of contentious investments with which he was involved. Mr. Kamensky and I even found ourselves across the table from one another in a tense and high stakes negotiation to resolve a material issue in the General Motors bankruptcy case. Knowledge of the bid-ask of that negotiation could have enabled a party to engage in unethical or illegal trading, but to my personal knowledge it did not. Mr. Kamensky remained true to the law, the compliance frame-work, and his word.

When Mr. Kamensky formed his own firm, I served as a reference by fielding numerous calls from potential investors regarding his skills, acumen, and ethics. I endorsed Mr. Kamensky and believed he would be a good and prudent steward of investors' money. (As a competitor, I did not consider investing in his firm.) Once again, I was confident that Mr. Kamensky would apply the knowledge he has gained to achieve good risk-weighted returns, which included assuring that a strong compliance structure was built and followed.

This abbreviated history brings me to the crime, sentencing, and my plea to Your Honor. In 15 years of close professional contact with Mr. Kamensky, including confidential direct negotiations, I have not seen him breach the ethical rules and laws that govern participants in the securities and bankruptcy arenas. Nonetheless, he currently sits before you having admitted guilt for conduct that I can only describe as aberrational. Like Ahab, he appears to have become consumed with the goal of winning and temporarily forgotten the rules that, in my experience, he was so careful to follow throughout his career.

In passing sentence on a charitable, energetic and remorseful defendant who has admitted his crime, I believe that Your Honor has wide latitude to craft an appropriate sanction that leads to just result. Focusing on that goal, I urge Your Honor to consider Mr. Kamensky's exemplary record up to July 31, 2020 and not to focus solely on isolated conduct that is so out of character.

Thank you for your consideration of my views. I have not discussed the content of this letter with Mr. Kamensky or his counsel.

Respectfully Submitted,

James P. Seery, Jr.

Exhibit 35

March 29, 2021

Marc Heimowitz
[redacted]

The Honorable Denise L. Cote
U.S. District Judge
Southern District of New York

Dear Judge Cote:

I write on behalf of Dan Kamensky. I first met Dan in 2005, when he was a practicing lawyer at Simpson Thatcher looking to make a professional career move from bankruptcy law to restructuring finance. I had made a similar career move a few years earlier, and in our first conversation we spoke about career risks and upsides. He joined Lehman shortly thereafter. We spoke often, for his benefit as he came up the learning curve, but also for my benefit, as Dan readily shared his bankruptcy knowledge and experience. The restructuring community is small and tight-knit, and as Dan and I gained experience and seniority we often found ourselves working together, whether aligned in interest or nominally at cross purposes. More than that, Dan and I each specialized in analyzing complex restructurings driven by liability management and bankruptcy process risk, so our interactions and depths of conversation were, on the whole, considerable and repeated. I would be surprised if Dan and I worked on fewer than 30 common matters. In addition, we typically see each other at conferences and events, and annually we work together on the Advisory Board for the New York chapter of the American Bankruptcy Institute. As an indication of our longstanding professional relationship and friendship, Dan took me into confidence when he was setting up Marble Ridge, once again to discuss career risks and upsides.

I am aware of Dan's underlying conduct and crimes committed last July 31. In all the years I have known Dan, I have neither seen him engage in nor heard of him engaging in conduct remotely comparable. To the contrary, my experience is that Dan strove to act scrupulously and to avoid even the appearance of impropriety. The disregard for fiduciary duties so apparent in the transcripts of Dan's calls to Jeffries is completely inconsistent with everything I know about Dan's prior actions, and I sincerely hope for my friend that a single day does not define him.

Outside of a strictly professional context, I also have seen Dan at events through UJA Federation, where Dan is a dependable and dynamic member of the Bankruptcy and Reorganization Group, and he is an active fundraiser for United Jewish Appeal and Jewish National Fund. He is a valued member of these philanthropic communities.

Sincerely,

Marc Heimowitz

Exhibit 36

Marc S. Kirschner
[redacted]

Honorable Denise L. Cote
U.S. District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: Dan Kamensky

Dear Judge Cote:

I have decades of experience as a bankruptcy, restructuring lawyer, distressed debt investor and financial advisor specializing in fiduciary assignments for bankruptcy courts and other governmental agencies. For 15 years prior to my retirement from private legal practice, I founded and led the Bankruptcy/Restructuring Department at the New York office of the global law firm, Jones Day.

I first met Dan by phone in early 2006 after I was appointed by Bankruptcy Judge Robert Drain to be Chapter 11 Trustee for Refco Capital Markets, one of the largest international securities and derivatives dealers at that time to have filed for bankruptcy protection and one of the largest for which a Chapter 11 Trustee was appointed.

At that time Dan was a distressed debt analyst at Lehman Brothers, and he and many other sell-side analysts and traders frequently called me to discuss complex issues in Refco. Dan was much more respectful of my fiduciary duties and obligations not to disclose material non-public information than many who constantly tried to overstep their bounds. I then became Court appointed Litigation Trustee for several other large and complex post-confirmation Litigation Trusts, and Dan and I continued discussions about those cases as well. I found Dan to be extremely knowledgeable about the intricacies of bankruptcy law and practice and the fiduciary duties of those professionals in the field.

I met Dan in person several years later after he joined Paulson & Co. Inc. while we were both members of the Planning Committee for the UJA Federation Bankruptcy Lawyers group. This group sponsors the preeminent restructuring professionals event in the country, comprised of bankruptcy lawyers, accountants, financial advisors, investment bankers, financial institutions, hedge funds and private equity funds. Dan assumed a leadership role on the Planning Committee. Dan and I began to meet regularly for breakfast and lunch to discuss our mutual commitment to the UJA, complex, evolving bankruptcy issues, his interesting matters at Paulson and his impressive, comprehensive due diligence processes at Paulson. Despite his

seemingly around the clock work and philanthropic efforts, he constantly told me proudly about his daughter, [redacted], and her school, The Schechter School of Long Island, which ultimately honored Dan for his devotion to the School.

Coincidently, we both started to take swimming lessons around the same time in early 2012 in two different venues. I took up this sport rather late in life, so I frequently shared my struggles with Dan. He constantly encouraged and motivated me and took unbelievable interest in my progress, a credit to his empathy and selfless commitment to projects he takes an interest in.

We were having breakfast in early 2015 when he suddenly received an email publicly announcing that he had left Paulson to start his own hedge fund. To his credit and a mark of his sensitivity to his fiduciary duties and confidentiality obligations, he never once hinted at this move until the public announcement, then spent a quick couple of minutes explaining his future plans before racing off to start his new business. I followed his great success as an investor, told many of my colleagues and friends that I thought he was one of the best distressed debt managers in the business, and encouraged a good friend of mine to invest in his new fund, which he did.

I stood next to Dan for about a half hour when he was being honored at a Jewish National Fund Gala for his support and dedication to the ADI Negev – Nahalat Eran rehabilitative village in Israel established for the benefit of people with special needs. Dan was so proud of his commitment to this organization and told me that evening about his several emotional and heart-wrenching trips to visit the facility.

From my many years of interaction with Dan, I came to know him as extremely talented analyst and investor, very sensitive to his fiduciary duties and obligations in the rough and tumble restructuring business. He is extremely devoted to his family and committed to Jewish values, always giving back to the community, known in the Jewish faith as Tikkun Olam (acts of kindness to perfect or repair the world).

When I read about Dan's arrest, I was shocked beyond belief, extremely upset, still am. His alleged misconduct is inexplicable. In lay terms, I think he just cracked under the extreme financial stress at that moment as described in the Government's indictment.

Dan's life (and probably that of his family) has already been destroyed. I urge the court to grant leniency. I am convinced Dan will devote the rest of his life to helping others and will be a very valuable member of the community at large.

Sincerely,

Marc S. Kirschner

Exhibit 37

Richard Levin
[redacted]

March 1, 2021

The Honorable Denise L. Cote
United States District Judge
United States District Court for the Southern District of New York
500 Pearl St.
New York, NY 10007

Re: Daniel Kamensky, Case. No. 1:21-cr-00067-DLC

Dear Judge Cote:

I am a restructuring and bankruptcy lawyer in New York City and head of the practice at Jenner & Block LLP. I began my legal career working for the House of Representatives Committee on the Judiciary on bankruptcy law reform issues, and I have continued to be involved in such policy matters during the many years since then that I have been engaged in private practice.

I have known Daniel Kamensky for about 15 years, since our paths crossed in the New York restructuring and bankruptcy community in the mid-2000s. Since then, I have worked with Mr. Kamensky on a variety of law revision and improvement projects in our area of mutual expertise. We also attempted a few times to work together on client matters, both when Mr. Kamensky was an advisor and later when he moved to becoming a principal in different investment firms, including Marble Ridge, but we never were able to do so.

In his work on law revision projects, Mr. Kamensky always worked to develop the best policy solutions, independent of his firms' financial interests. Though he brought his investor and lender perspective to the work, he was nevertheless committed to the public good, not private gain. When he engaged directly with policy-makers on his firms' behalf, he was clear about his advocacy role. But in the more far-reaching discussions unrelated to specific investments, he was able to "leave his client at the door," a trait those of us who work in this area value highly.

I believe his ability to do so reflects his high ethical and moral standards that I have observed in working with him. Because of my experience with him, I was surprised and deeply saddened when I first read about his conduct in the Neiman-Marcus chapter 11 case that led to his criminal plea. His conduct was inconsistent with the character of the man I had known and worked with for well over a decade.

Late last year, I discussed with Mr. Kamensky the circumstances surrounding the offense, his feelings about his conduct and actions, and his intention to enter into a plea agreement. I believe

he deeply regrets his conduct and takes full responsibility for his actions. In our conversation, he did not attempt in any way to excuse or justify his behavior. I believe his voluntary guilty plea and his related agreements all evidence his sense of responsibility and his commitment to making amends. He has proposed an education program based on a case study to help law students and business students improve their ethical awareness and conduct when they enter the legal or business world. Because I have great respect for Mr. Kamensky and his integrity, despite the lapse resulting in this case, and great faith in his genuine desire to make a contribution as part of his effort to make up for what he did, I have agreed to help him in his preparation of the case study and to act as a character reference for him as he attempts to propose it to law and business schools. I also understand that as part of the settlement in the bankruptcy case, he voluntarily proposed and has already been performing many hours of community service.

I hope that you will take these factors into consideration in your sentencing decision and in determining what would best serve the community, Mr. Kamensky, and justice.

Sincerely,

Exhibit 38

Elliot Ganz
[redacted]

April 7, 2021

The Honorable Denise L. Cote, District Judge
Southern District of New York
500 Pearl Street,
New York, NY 10007

Re: Dan Kamensky

Dear Judge Cote,

I write today on behalf of my friend and colleague Dan Kamensky. In my role as General Counsel of the Loan Syndications and Trading Association ("LSTA"), I have had the opportunity and privilege of working closely with Dan over the past 16 years on several important projects. I believe I can offer a unique insight into his character, work ethic, humility and decency.

I first met Dan shortly after I joined the LSTA in May 2005. The LSTA (www.lsta.org) is a financial trade association that focuses on all aspects of the $1.3 trillion syndicated corporate loan market. Dan was employed at Lehman Brothers in its distressed debt group when I joined. Very early on, Dan approached me with a proposal to fix a significant problem that prevented the trading of loans in bankruptcy out of concern that such trading would jeopardize a debtor's "net operating loss" carry forward, a potentially very valuable post-bankruptcy asset. Under his guidance and leadership, we partnered with the Bond Market Association (now part of SIFMA) to create a model "First Day NOL Trading Order". I have attached a short article from Institutional Investor that highlights the publication of the model order. This order was immediately adopted by the market and has been in continuous use since its publication in May 2006.

A few years later, Dan identified another bankruptcy system problem and once again reached out. This time, many stakeholders in bankruptcy cases were "weaponizing" an obscure bankruptcy disclosure rule, Rule 2019, by engaging in costly and time-consuming "scorched earth" litigation that had no purpose other than to antagonize other stakeholders. At Dan's urging, the LSTA proposed important changes to the rule that would defuse the flood of litigation while at the same time providing the appropriate level of disclosure to courts and stakeholders. After two years of negotiations, a revised rule was constructed and approved by the United States Supreme Court. To my knowledge, there has not been one lawsuit regarding Rule 2019 disclosure since the December 2011 effective day of the revised rule. I have a attached a short law firm memo describing the Rule 2019 amendment and its implications.

Elliot Ganz
[redacted]

In each of these cases, Dan was the impetus behind the change and, through the LSTA, a driver of the process that resulted in a consensus acceptable to a broad spectrum of stakeholders with competing interests. It is noteworthy and a testament to Dan's humility that few in the bankruptcy community are even aware of Dan's critical role in these important accomplishments. (Indeed, neither of the attached articles mention his name and, after an extensive Google search, I have been unable to find *any* article on either topic that notes his involvement).

Dan has served as a charter member of the LSTA's Amicus Litigation Committee, a committee I run that considers requests to submit amicus briefs. Dan was always one of the most thoughtful, articulate and knowledgeable members of the committee and I frequently vetted cases with him before submitting them for consideration by the full committee. During Dan's tenure the LSTA filed over 25 amicus briefs, including three in bankruptcy cases before the U.S. Supreme Court and three in cases before the New York Court of Appeals (all of which supported the prevailing side).

I also worked closely with Dan when we both served, from 2012 to 2014, on advisory committees of the American Bankruptcy Institute's Commission to Study the Reform of Chapter 11. (In fact, Dan was instrumental in my being appointed, persuading the Commissioners that it was important for them to appoint people like me who held views that were anathema to many of them). Dan testified before the full commission at its first hearing, hosted by the LSTA at its October 2012 Annual Conference, explaining the critical role played in Chapter 11 proceedings by distressed debt stakeholders, and was an important member of that process throughout. (A video of Dan's testimony is available at http://commission.abi.org/field-hearing-lsta-october-17-2012 at 2:07:30).

Dan also served as co-Chair of the LSTA's Trade Practices and Forms Committee ("TPFC") from 2006 through 2009. The TPFC is one of the most important LSTA committees, developing market conventions and documents that govern trading and settlement of par and distressed loans. Since its inception, the Committee has worked to identify key market issues and to build consensus toward resolving those issues through the drafting and adoption of standard documents and market practices. Dan's leadership during the early years of the Committee led to the development of a large suite of standard documents and conventions that were important factors in the tremendous growth of the syndicated loan market.

For all the years that Dan and I worked together, and in each project, Dan was funny, humble, honest, fair and trusted. Dan was a valued colleague who treated everyone with great respect. Whenever Dan called, I knew that hard work lay ahead, but I was always happy to partner with him because whatever he was proposing was important and necessary and would make the system work better.

Elliot Ganz
[redacted]

I would like to close with some personal thoughts. Besides being close colleagues and collaborators, Dan and I have become good friends. I have seen firsthand his large body of charitable work and he has always generously supported the charitable work that I've been involved in. Dan did not just write checks; he rolled up his sleeves and used his considerable talents to lead and get things done.

For the 16 years I have known him Dan has been one of the thought leaders in the bankruptcy and distressed lending markets and a person of great decency, integrity and humility. My hope is that in considering the appropriate sentence for Dan you will take into account the full body of his life and career.

Yours sincerely,

Elliot Ganz

Institutional Investor

INNOVATION

BMA, LSTA Update Model NOL Order

The Bond Market Association and the Loans Syndications and Trading Association have updated their model net operating loss (NOL) order after its application in several high-profile bankruptcies highlighted some shortfalls in the document.

May 14, 2006

The Bond Market Association and the Loans Syndications and Trading Association have updated their model net operating loss (NOL) order after its application in several high-profile bankruptcies highlighted some shortfalls in the document. Sarah Starkweather, regulatory counsel at the BMA, said the updated version of the NOL order was made after the association received feedback from its application in large bankruptcy cases, such as Northwest Airlines and United Airlines.

The model NOL order consists of rules for handling tax credits generated by companies in bankruptcy. It aims to preserve liquidity in the debt markets by allowing participants to trade an issuer's debt after it has entered bankruptcy. The order was introduced in 2004 after companies that filed for bankruptcy tried to restrict trading of their securities to protect their use of net operating loss tax benefits.

One change to the document is the elimination of first day restrictions on claims trading in an issuer's debt. The revised order permits counsel for the debtor to impose restrictions in trading of a bankrupt company's equity only. Any future restrictions related to claims can be put in place only after a court hearing. The revised order also lays out which information the creditor is required to provide the debtor about its holdings in the company. The debtor requires this information to determine whether a creditor should sell down its holdings to a level that would allow the company to still take advantage of NOLs. Under the new order, a form sets out exactly which information the creditor is required to provide.

The BMA and LSTA plan to post the revised draft of the NOL order on their Web sites today. The market has until June 9 to give feedback on the changes.

Related Content

CORNER OFFICE

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Michelle Celarier July 08, 2019

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The Man Who Would Take Down McKinsey

Michelle Celarier March 18, 2019

Akin Gump
Strauss Hauer & Feld LLP

Bankruptcy Alert

Amended Bankruptcy Rule 2019 Is Now in Effect!

December 2, 2011

Bankruptcy Rule 2019, which contains certain disclosure requirements for "committees" representing one or more creditors, has been the subject of much controversy over the past few years. In August 2009, the Advisory Committee on Bankruptcy Rules (the "Rules Committee") first published proposed amendments to the Rule, which were widely criticized by the distressed investor community. In June 2010, distressed investors received some good news when, following a period of extensive public comment and hearings to consider the proposed amendments, the Rules Committee modified its original proposal to eliminate some of its more controversial features. The amendments as published in June 2010 have been approved by the Supreme Court and Congress, and are in effect as of December 1, 2011.[1]

Background

Prior to being amended, Bankruptcy Rule 2019 provided that "every entity or committee representing more than one creditor" must file a verified statement disclosing information about its claims including, among other things, (i) the nature and amount of its claims or interests, (ii) the date of acquisition of its claims or interests acquired in the year before filing of the bankruptcy cases, (iii) the amount paid, and (iv) any subsequent sales of claims or interests.[2] Historically, law firms representing ad hoc committees complied with Rule 2019 by disclosing the names of the members of their group and the aggregate amount of claims held by such members. However, in recent years courts were divided on requiring the members of ad hoc committees to comply strictly with all of Rule 2019's disclosure requirements, including disclosure of the price paid for a claim in bankruptcy and the date such claim was acquired.[3]

In August 2009, the Rules Committee first published proposed amendments to Rule 2019 that would have required, among other things, each member of an ad hoc committee to disclose the price paid and the date each claim or economic interest was acquired, if directed by the court. At a February 5, 2010, public hearing before the Rules Committee, which included testimony from Akin Gump Strauss Hauer & Feld LLP financial restructuring partner Abid Qureshi and, among others, Elliot Ganz of the Loan Syndications and Trading Association, the Rules Committee was strongly urged to drop the price and date disclosure requirements in its revised proposal for Rule 2019. Those giving testimony argued that such information was both irrelevant to the bankruptcy process and proprietary in nature. In June 2010, after the conclusion of the public comment period, the Rules Committee adopted significant changes to the amendments it originally proposed, which are now embodied in the new Rule 2019.

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[1] The full text of the amendments can be found at: http://www.supremecourt.gov/orders/courtorders/frbk11.pdf.

[2] Fed. R. Bankr. P. 2019(a).

[3] *In re Philadelphia Newspapers, LLC*, Case No. 09 11204 (Bankr. D. Del. Feb. 4, 2010) (court did not require price and date disclosure); *In re Accuride Corporation* Case No. 09-13449 (Bankr. D. Del. Jan. 25, 2010) (court required price and date disclosure); *In re Premier International Holdings, Inc.* Case No. 09-12019 (Bankr. D. Del. Jan. 9, 2010) (court did not require price and date disclosure); *In re Washington Mutual, Inc.* Case No. 08-12229 (Bankr. D. Del. Dec. 2, 2009) (court required price and date disclosure). See our Client Alerts titled "Rule 2019 Does Not Apply to Steering Groups," published February 5, 2010, and "Rule 2019 Does Not Apply to Ad Hoc Committees," published January 12, 2010.

www.twitter.com/akin_gump

Akin Gump
Strauss Hauer & Feld LLP

Amended Rule 2019

The new Rule 2019 requires the disclosure of more information about the economic interests of creditors and equity holders than the prior iteration of the Rule, and applies to a broader range of parties. Some of the highlights of the new Rule 2019 include the following:

- The Rule applies to every group or committee of creditors or equity holders, and every entity that "represents" multiple creditors or equity holders that are "acting in concert to advance their common interests." A group or entity is considered to "represent" multiple creditors or equity holders if it takes a position before the bankruptcy court, or solicits votes on a plan of reorganization, "on behalf of another."
- Each member of a group or committee to which the Rule applies must individually disclose the nature and amount of each "disclosable economic interest" held in relation to the debtor.
- A "disclosable economic interest" is defined broadly to include any economic interest that could affect the legal and strategic positions a stakeholder takes in a chapter 11 case beyond just claims and interests, including, among other things, short positions, credit default swaps, total return swaps, participations, and derivative instruments.
- Creditors and equity holders are *not* required to disclose the price paid for any claim or economic interest, or the date of acquisition.
- With respect only to members of a group or committee that claim to "represent" any entity in addition to the members of such group or committee (other than official creditor or equity holder committees), such members must disclose, by quarter and year, the date of acquisition of each "disclosable economic interest" acquired within one year of the petition date.
- If any fact disclosed changes "materially," it must be updated whenever the entity, group, or committee takes a position before the bankruptcy court, or solicits votes on a plan.
- If the court determines, on its own or on a motion of any party in interest, that there has been a failure to comply with the Rule, the court may, among other things, refuse to permit the entity, group, or committee to be heard or to intervene in the case.
- Indenture trustees, administrative agents under credit agreements and groups composed entirely of insiders or affiliates are exempted from the Rule.

While the new Rule 2019 is in many respects clearer and more precise than its predecessor, and therefore less likely to spark the type of litigation seen under the prior Rule, disputes will undoubtedly arise in connection with the interpretation of some of its provisions.

CONTACT INFORMATION

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Exhibit 39

March 8, 2021

The Honorable Denise L. Cote
U.S. District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

Your Honor:

My name is Howard Shams, and I am writing to you on behalf of Dan Kamensky.

I am the CEO and co-founder of an investment firm specializing in investment in and around high-value commercial litigations. I have also been an attorney licensed in New York state since 1990. I practiced at major law firms for a decade before becoming an investment professional at an investment house that eventually merged with Credit Suisse, the global investment bank. I knew Dan during those years as a professional similarly positioned at a competing bank responsible for analyzing and investing in situations involving legal dislocation. Dan and I became good friends and we stayed in touch throughout his experience at Paulson, through the formation of my company in 2013, and through the formation of his Marble Ridge group a few years later.

I have known Dan for nearly two decades. During that time, I have known him to be a person of great character and integrity. I say that without hesitation knowing full well that he committed a serious error in judgment in connection with the Neiman Marcus bankruptcy. It has been said that "we are all more than the worst thing we have ever done." I hope to share with you ever so briefly a few things about Dan that speak to his innate worth as a member of our society. I truly hope they mitigate against the idea that a harsh and punitive level of punishment is warranted.

First, Dan is among the most collaborative persons I know. Even in competitive situations, Dan always seemed to reject a binary "winner/loser" approach. He was more a believer in the idea that many people could win together. I am sure that I am not the only person who regularly received the benefit of Dan's proprietary thinking, ideas, and work product. Dan encouraged sharing and cooperation. He shared his formidable intellect freely and was always open to challenge and correction. I think this is important to note because Dan's approach required humility, appreciation for the opinions of others, and a willingness to learn. Dan was never a prideful person and his ability to course correct made him an incredibly skilled investor. It also made him a better man as time went on. It makes him capable now of understanding, learning from, and never repeating the error of his ways in this most singular and unfortunate situation.

Second, Dan is so much more than a businessman. He has a whole other life away from business. I have known Dan as a loving father, devoted husband, and philanthropic community member during the entire time that I have known him. That has been his real existence and the true motivation

behind his hard work. Life also offered Dan his shares of scars and he responded as the best of us do – with acceptance and humility and an increase in kindness to others. Dan has committed himself to bettering the world as best he could and has supported many philanthropic causes. He especially supported those institutions, like Sloan Kettering Hospital, that had a connection to him from personal experience. I beg that Dan not be seen as a caricature – he is not and never was that, not even for a moment. Dan has always been a real person, loyally trying his best to serve a devoted family that loves and needs him, and a community that has always appreciated him. Dan may have made a terrible mistake as all human beings can, but it does not detract from the fine person he was and still can be.

Finally, Dan is a person who has always made outsized contributions to his business areas of practice. Dan has always been committed to building properly functioning fair market practices. I spent many hours working with him on policy applicable to the then-fledgling Bank Loan markets. Dan was also one of the key advisors to the self-regulatory organization known as the Loan Syndication and Trading Association ("LSTA"). And Dan has been responsible for many practical and positive changes to the bankruptcy code itself. That is what makes this error such an outlier; Dan was the guy who helped codify fair practices. Dan has made real contributions to society in a myriad of ways – not just entrepreneurially but also intellectually. Dan will find ways to contribute to society meaningfully after this episode of his life completes. I believe that is so very important to consider when deciding a sentence that values remediation.

In my personal conversations with Dan, I find him to be truly penitent and ready to accept the consequences of his actions. To the extent contrition and the avoidance of recidivism is a goal in this matter, Dan's rehabilitation has already begun. I implore the court to consider the imposition of a sentence that reflects the full measure of Dan's contributions and deeds, rather than judging him solely by his self-admitted worst moment. I know Dan to be a person worthy of such consideration.

Respectfully,

Howard Shams
New York, NY

Exhibit 40

February 25, 2021

The Honorable Denise L. Cote
U.S. District Judge,
Southern District of New York
500 Pearl Street, New York, NY 10007

Ref: Dan Kamensky

To the Honorable Judge Cote;

I've known Dan Kamensky for over 30 years. Back in school, he was always kind to everyone, even the kids nobody else was particularly kind to them. Dan and I lost personal contact after school, when we all go out on our own and try to figure out our lives, and your contact with others is reduced to social media likes and comments.

But a few years ago, when I had some personal problems in my life and I needed help from others, people sent me messages and words of support. Dan however picked up the phone and called me to try and help. He genuinely cared. He spent hours on the phone with me, talking things out and trying to help me through my personal rough times. That's just the kind of person he is. It didn't matter that we hadn't seen each other in years. He wanted to help me if he could.

Dan was such an outgoing person. He always had to excel in everything he did. Whether this was personal or family pressure to always be the best, I do not know. But I do know that many of us were in awe of Dan's accomplishments and need for excellence.

People make mistakes. Dan made a mistake. We've all made mistakes. But mistakes shouldn't define the rest of our lives. If they did, I think every one of us would have given up at some point. If given an opportunity, I know Dan can turn this experience around into something positive. He is someone who can take this mistake and help others to not give up after they have fallen hard. His life has been permanently changed by this one event. But if given the chance, Dan is a person who can right his wrongs, learn from it and teach others how to get back up after falling down. He has so much to offer.

It's a big ask. I believe people need to own and pay for their mistakes. But sometimes people can do more helping others than they would just paying for their mistakes in punishment form. I truly hope he is given the opportunity to turn this event around and have something good come out of this one mistake.

Sincerely,

Shira Citro

Exhibit 41

The Honorable Denise L. Cote
United States District Judge
Southern District of New York

March 18, 2021

Dear Judge Cote:

I am writing in support of our close friend, Dan Kamensky. My husband and I met Dan shortly after he began dating Amy Blumenfeld (now his wife) in 2000. Amy has been a treasured and dear friend since 1993, when she and I became close as undergraduate students at Barnard College.

Over the last two decades, Dan, Amy, my husband Harry, and I have shared in more social events and get-togethers, as well as special events and milestones, than I can possibly recollect. I also had the privilege of serving as Maid of Honor at Dan and Amy's wedding. It is heartbreaking to see Dan – not only a good friend, but an extremely good person – suffering so much. It is also heartbreaking to see Amy, as well as Dan and Amy's daughter [redacted], overcome with pain and fear as they try to process what has happened and to navigate their changed lives.

In the two decades I have known him, I have never seen Dan act dishonestly, nor intentionally hurt another human being. Rather, Dan has always demonstrated an admirable commitment to self-improvement, a rock-solid devotion to his family, and a generous involvement with his community. I have often observed, and listened to Dan discuss, his efforts to grow, learn, and live the best and most moral life possible. He has pushed himself physically (completing triathlons, for example), spiritually (seeking out religious learning and guidance), and professionally (in his own business and in helping friends when they needed it).

While success is important to Dan, he is not motivated by materialism, but by a desire to do and be his best. My husband and I have been invited to multiple events honoring Dan for his charitable activities, including his work with the Jewish National Fund and the Solomon Schechter School of Long Island, where Dan served as a board member. At the Solomon Schechter event in their honor, Dan and Amy invited only a small group of friends from their larger social circle. They didn't want anyone to feel pressured or be inconvenienced, and were reluctant to be in the spotlight. Harry and I sat with their family as we learned about their deep involvement in helping the school, which was struggling. We are also aware that Dan is involved in other philanthropic activities, including work with a pediatric hospital in Africa. I have never seen Dan seek recognition for his philanthropy. Instead, I believe Dan is motivated by his commitment to giving back, improving lives, and helping others reach their potential. Dan's contributions to the community are not limited to monetary donations. He has prioritized service through deep involvement, investing substantial quantities of his own time and energy.

Harry's and my friendship with Dan and Amy cannot be described in anecdotes, nor funny or dramatic stories, but is defined by years of showing up and being present for each other, in good and challenging times, as only true friends can. Still, a few memories of ordinary moments stand out. I remember visiting Amy and Dan at their home the summer before the pandemic, and watching [redacted] put on

spontaneous tap-dancing performance after dinner. Dan radiated pride at this impromptu show outside their kitchen, and [redacted] beamed as well, clearly aware of Dan's unwavering support for all of her pursuits. Dan shows similar pride and interest when discussing [redacted] artwork, which has been displayed prominently on the walls throughout their home since [redacted] was very young. I also remember that, in late 2019, Dan stopped by our home on the day after our family held a celebration for one of our children. It was such a welcome surprise to see Dan, adding to the joy of the weekend and giving us a chance to recap with a friend who has become like extended family. As usual, Dan had nothing but kind words and positive energy to share. Finally, I remember discussions with Dan and Amy when they were considering a school change for [redacted]. Although Dan has always attended prestigious schools, and although [redacted] is an excellent student, Dan's sole concern was for [redacted] happiness and well-being as he and Amy tried to make the best decision possible. I was impressed by Dan's parenting skills in truly seeing his child, rather than projecting his own qualities onto her as some parents might, and by the strong partnership with which he and Amy have always approached parenting decisions. For us, Dan's friendship and character are defined not by one specific event, but by being a reliable presence and resource for those around him, by honoring his commitments, and by the boundless positive energy he exudes for the joys and accomplishments of others.

Finally, Dan's character can be gleaned from his choice of a life partner. As a childhood cancer survivor involved in helping others with similar experiences, Amy cares profoundly about making a positive impact in the world. She is one of the most honest people I have ever met, reflecting her upbringing as the daughter of a judge and a public school teacher. For Amy and those closest to her, integrity, justice, generosity, learning, and kindness are paramount values which are discussed frequently and pursued always. Amy's parents have lived modestly in order to help others, devoting their lives to family and community. Choosing to join this close-knit family is just one of the many ways in which Dan has consistently demonstrated that he shares the same values, prioritizing integrity, generosity, and good works. Amy's entire family has embraced Dan, and the closeness they have all developed together is a further testament to Dan's character and good heart. As parents, Dan and Amy are passing the same values onto [redacted], who already shows an affinity for using her artistic talents to benefit people in need and participating in service opportunities. Finally, Dan is a devoted husband who clearly adores Amy. He supports and cares for her through the residual health challenges that still confront her today; and at times when Amy needed it most, Dan has been by her side with emotional and physical support.

Dan brings immense goodness to the world by being present as a husband, father, friend, and community member. I have no personal knowledge of the events at issue in this case. But in this extraordinary time that has brought on unprecedented stresses, I urge your Honor to view any lapse of judgment that Dan made over the course of several hours on one day (as I understand the timing) in the context of the exemplary life he has painstakingly carved out over nearly five decades, and the positive contributions that he has made and will continue to make – so long as he has opportunities – to his family, friends, and community. Thank you for your consideration.

Respectfully,

Kelly Mamaysky

Kelly Mamaysky

Exhibit 42

March 1, 2021

Adam Herz
[redacted]

The Honorable Denise L. Cote
U.S. District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

To the Honorable Denise L. Cote:

Thank you for taking the time to understand Dan Kamensky for more than the reason he is in front of you. I honestly can't believe that I am writing this letter. I have never written a letter like this before and hope never to have to do anything like this again.

I have known Dan Kamensky for around 15 years. I have generally known him in a professional capacity but have gotten to know him personally. Dan and I first met when I was a headhunter for "all star" investment professionals in the hedge fund industry. Through my work I have met and interviewed thousands of people and Dan was one who stood out. Getting to know people was my business and investing in relationships my key activity. I have always felt good about investing in my relationship with Dan. He is a passionate, intelligent and driven investment professional. He was also a straight shooter and

someone who demonstrated the importance of being direct. He and I would speak and meet regularly and over the years and I have gotten to know him better and respect him more. Dan is a good guy, full stop. He is someone who I trust in industry where many are not. I have no idea what happened that caused Dan to act so out of character, but to say I am surprised is an understatement. Dan has always been hard charging and passionate but ethical. On multiple occasions people in the industry would contact me about potentially joining Dan's firm (he was never a client and I never received any compensation from him), and I always said he was a good guy who could be trusted. Then, like now, I am happy to put my reputation behind Dan for no other reason than I think he is a good guy and someone I have grown to really like over the years. It would be a horrible shame not to take into consideration the totality of his character.

I'm also aware of Dan's contributions to the broader community and hope that is recognized. As the chairman of board of a nonprofit, I am keenly aware how often people turn away from an obligation to support others. Dan is someone who leans into it. We have had multiple conversations about the importance of giving to the community and it was clear how important this was to him. He is well respected by many.

In conclusion, I am asking you to please recognize that Dan is a good guy who allowed his hard charging and passionate nature do something out of character. I hope you able to show leniency.

Sincerely,

Adam Herz

OS Received 11/29/2021

Exhibit 43

INN

Serving Hungry and Homeless Long Islanders

[redacted]

www.the-inn.org

April 6th 2021

The Honorable Denise L. Cote,
U.S. District Judge,
Southern District of New York.

Re: Daniel Kamensky

Dear Honorable Judge Cote,

Daniel Kamensky has been a committed member of the volunteer team at The Mary Brennan INN soup kitchen for over two months, in which time he has completed 97 volunteer hours.

Mr. Kamensky (or Dan, as he is known at The INN) has demonstrated an ability to adjust his mindset and approach to meet each circumstance, and adapted his skills to perform at a high degree to meet the ever-changing needs of the day.

Dan maintains a positive attitude throughout his day and takes on every humble task with enthusiasm. Some of these tasks include sorting and organizing non-perishable food, dishwashing and clean up, assembling lunch bags, plating hot meals and soup, and handing out bags of groceries to The INN's guests.

Observations also show Dan to possess a great work ethic. He is responsible with his time and has "heart". He is kind and compassionate to those around him and has a wonderful rapport with volunteers, guests and staff. Dan takes advantage of opportunities to build meaningful connections with his team members, who like and respect him. His interpersonal skills are commendable. When working with guests, Dan is friendly and helpful, often drawing on his Spanish-speaking skills to communicate effectively with them. He is often humorous with them, which helps to alleviate their anxiety.

Dan also does not operate in a vacuum. He has taken keen interest in The INN's operations and work and takes the time to visit and learn about other activities at The INN.

I hope the court can see that Dan has worked very hard and has applied himself to not only meet The INN's daily program goals, but his personal goals as well.

Sincerely,

Michelle Singh
Manager of Volunteer Services.

OS Received 11/29/2021

Exhibit 44

The Honorable Denise L. Cote
U.S. District Judge
Southern District of New York

March 23, 2021

Dear Judge Cote:

I am writing this letter as a character reference for Dan Kamensky <Dan>, who has pleaded guilty to bankruptcy fraud in the Neiman Marcus case. I have known Dan for 11 years starting when in 2009 he joined the investment management firm, Paulson & Co., as a senior Bankruptcy Associate and I was an external advisor to Paulson's Credit Investment team. I am the Max L. Heine Chaired Professor of Finance, Emeritus, at the NYU Stern School of Business, where I have served now for 54 years. Over more than five decades, my research, teaching and professional testimonies have focused on the Bankruptcy process, High-Yield Bond markets, Credit Risk Management and Distressed Debt investing. In my role at Paulson & Co. from 2009-2015, and subsequent to Dan's co-founding his own Distressed Firm Hedge Fund in 2015, Marble Ridge Capital, I have interacted with Dan on numerous occasions, including inviting him to lecture in my classes at NYU and discussing scholarly works on bankruptcy and distressed investing.

I waited to write this character reference letter until Dan presented his most recent lecture/discussion to our students in the Masters in Risk Management Program just a few days ago, on March 18, 2021. I wanted to listen to Dan and to gauge student and faculty reactions to his role in the highly charged Neiman Marcus bankruptcy proceeding, and to understand his and others' perspectives on the terrible mistake that he made, and the explicit ethical and legal transgressions that ensued. I was particularly interested in what Dan now feels about his actions and the important lessons learned from this tragic episode. My appreciation of Dan's character, honesty and current state has been positively reinforced from this experience, and the students and faculty who listened to Dan were genuinely impressed, and expressed their understanding of the issues and why Dan acted as he did.

In my interactions with Dan, I have been impressed with his expertise, motivation, and unflagging rigor with which he approached his profession, and which resulted in his many accomplishments and respect from his colleagues. He is a focused investment analyst and advocate of Distressed Debt investing. Indeed, recently Dan read a new paper that I just wrote on the "Pricing Dynamics of Distressed Debt Securities". He analyzed the work thoroughly and gave me several constructive comments. Throughout my experience with Dan, I was struck by his commitment to a culture of transparency and mutual respect for others, for his colleagues, competitors and personal friends and family. I learned about his devotion to his family and his philanthropic religious activities. He always seemed focused, caring and a respectful person, and I was shocked, like many others, when I learned about the fraud situation. I have discussed with Dan on several occasions about the civil and criminal charges confronting him and I was struck by his sincere efforts to serve the broader community during the process of the legal proceedings and challenges. He convinced me that he has grown as a human being in working

as a community soup kitchen volunteer, and with his willingness to discuss his transgression with students of finance and business ethics.

It was during these discussions with Dan that I learned that he was planning to put together and deliver a set of lectures and a case study on financial ethics, involving his tragic experiential learning, with a Professor from the Harvard Business School. I asked him if he would do the same for my students at Stern, and he readily accepted. I believe these public presentations have taken a good deal of courage to plan and execute, especially in going over painful details of what happened, and why he acted in a way that has brought shame and damage to his firm and professional career. This has also created an extremely difficult environment for his family. Dan gave his first presentation a few days ago and he received praise, sympathy, and yes, critical judgments, from the students and a senior faculty member who attended the session. This experience was totally consistent with my personal evaluation of Dan as a moral and honest person who has already suffered and learned a great deal from this experience and, in my opinion, will go on to be a substantial asset to the greater community in whatever capacity he is allowed to and chooses to follow.

I hope that this letter will help the Court evaluate Dan Kamensky in its final legal deliberations and decisions.

Yours sincerely,

Edward Altman
Max L. Heine Professor of Finance, Emeritus
NYU Stern School of Business

Exhibit 45

[redacted]

March 26, 2021

The Honorable Denise L. Cote
U.S. District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

Your Honor,

We write to provide a character reference for our bother-in-law Dan Kamensky.

Josh has known Dan since the year 2000, when his sister Amy first introduced them. Michelle met Dan when she and Josh began dating in 2001.

Both of us (Michelle and Josh) come from homes that are deeply rooted in the notion that family is something to be cherished and valued. Relationships are to be grown, tended and developed in order to strengthen our love and bonds for one another. Josh and Amy grew up extraordinarily close. [redacted], the siblings grew inseparable – staying close in high school, attending the same university and committed to making sure their spouses would support their need to stay connected.

When we got married, this shared value allowed us the opportunity to join our two families together – not as extended family units but more like one large immediate family, where aunts and uncles and relationships aren't defined strictly by where people fall on a family tree. Michelle's siblings share the same desire for all of us to be close. Family comes first and our desire to remain close and connected is something that we cherish. Michelle's and Dan's families folded right in. Michelle's siblings see Dan and Amy genuinely as another set of siblings. And the feeling is mutual. Similarly, we frequently find ourselves texting and popping on calls with Dan's siblings in Chicago and checking in with Dan's parents in Florida. Over the years, holidays have been all-inclusive affairs including Mothers' days and Fathers' days, birthdays, and Jewish holidays as well. We have visited Dan's family in Chicago and in Florida and we have all traveled to Israel together. Dan and Amy have been generous and have allowed an open-door policy with their home in the Berkshires, where all are welcome. We are grateful for this sacred physical family landing-space.

And within our family, Dan, who is known as "Uncle Dan-O" or "Uncle Danny", can most frequently be found rallying the troops and leading the way with family games and fun. Examples include: calling people over to play Banagrams and board games, working the BBQ with 4 different types of food (and always tofu for his vegetarian nieces) to make sure

everyone's tastebud needs are met, creating obstacle courses for the kids, teaching the children to ski, giving them hayrides in the back of an old pick-up truck, or taking them out for 6am training runs as one of his nieces wanted to test the waters in triathlons. All of the cousins (and aunts and uncles too) crave Dan-O time. Dan is most content when he knows everyone else is thriving. And at the end of a fun-filled day, while the rest of the adults sit back and watch the kids, it's fun Uncle Dan-O who runs outside to join them. He jumps right alongside them on the trampoline, making sure everyone is included.

Dan's desire to see everyone thrive goes beyond fun times. When family members experience times of trouble and/or struggle, Dan consistently shows up. Over the course of the last few years, there have been family members who have relied on them for support and Dan's response has always been, "what can Amy and I do to help you"? For one family, it was based on a financial need, for another, it was based on a health and safety need. This is done without request for anything in return, without a desire for acknowledgement, and with great humility; this is something that truly speaks to Dan's character.

Two years ago we learned that our younger daughter might need medical treatment, the high cost of which was barely covered by our medical insurance. And, like always, we shared the information with Amy and Dan. Dan called us the next day and stated that he and Amy discussed it and offered to pay for costs not covered by insurance. He said, "make sure you are able to move ahead with your decision without the financial weight on your shoulders. We are here and we've got you." We insisted to Dan that we hadn't sought that offer when we brought his niece's medical situation to their attention. Dan listened intently to us and assured us he had not taken the conversation as a request – he simply wanted to contribute however he could to keeping her healthy. While ultimately we have not needed to seek their financial help, Dan has never rescinded the offer; even though our daughter is not out of the woods yet and Dan's focus since July 31, 2020, has understandably been on himself and his legal troubles.

Our teenage daughter experienced a personal trauma in spring, 2020. Over the last year, her healing has been our family's number one priority. The current pandemic has made that work more challenging, as we are focused on her feeling balanced, secure and being able to navigate social experiences. At the recommendation of the therapist, we shared the information with Amy and Dan in early July, 2020. Their immediate reaction again was "what can we do?" Since that initial conversation, Dan has stepped up to the plate in ways that demonstrate his true character: they communicate independently, share feelings, go for runs together, and share a passion for exercise. For our family Dan has served as a safe person for her, and someone with whom she can practice strategies she is working on with her therapist. He has been someone with whom she can rely on and who can provide a soft landing for her. He has been an integral part of her healing. And the majority of this work has happened since July 31, 2020. Our daughter is on a journey to being okay. We have a long way to go, and Dan will continue to be an essential part of her work.

We would be doing Dan a disservice, and not giving you the full measure of him, if we focused solely on Dan's importance in the family. Perhaps the best example of Dan's character

is not in what he has done for members of his family but rather his efforts for the greater community. Dan has been involved as a member of the Board at our niece's (his daughter's) elementary school, has raised money for the Jewish National Fund (an organization dedicated to supporting the land of Israel and its inhabitants) as well as Aleh Negev (a residential facility in Israel that supports that country's disabled population). Neither the JNF nor Aleh Negev are local to Dan and he stands to derive no benefit from his work with them, other than the satisfaction of knowing he has done his part in making the world a better place for others. As far as we know, Dan has never asked to have his name displayed anywhere at Aleh Negev, JNF, or our niece's elementary school.

Now let us turn to the high character Dan has shown since the events of July 31, 2020. Within a short period of time Dan voluntarily testified under oath to the U.C.C. committee investigators where his opening statement apologized for his actions and their repercussions. He also admitted to the actions that have since led to the instant charges before Your Honor, the closing of his business (and subsequent layoff of approximately 1 dozen employees, for which Dan has confided to us how ashamed he is that his actions caused the loss of employment and income for people he cares deeply about), and the likelihood he will not again work in finance let alone retain his license to practice law.

A person of high character admits his or her wrongdoings early, genuinely apologizes for his or her wrongful actions, and meaningfully seeks to repair the damage done. The former 2 points have been made, above. Our understanding is that the latter point has been addressed by Dan outside of these proceedings and that some of the very investors in Marble Ridge Capital who could have written Your Honor seeking revenge for any losses have instead written letters in support of Dan's character despite those losses.

The above may not make you think that Dan is special or Uncle of the Year – that is not our point. Every family member and every member of society should act the same way Dan has. Rather, our goals are to show you that Dan has behaved in the way responsible members of society should, and to illustrate that he is an integral member of a tight-knit family and the larger society whose character is solid and whose absence through incarceration would create a major void in the lives of that tight-knit family and beyond.

To the extent this letter can serve as a sentencing request, we respectfully ask this Court to impose upon Dan a non-incarceratory sentence.

We would be remiss if in our one communication with this Court, we neglected to advocate for our sister and niece. On page 1 of this letter you have learned of Amy's compromised health. Josh remembers a time when Amy was 100% healthy; but she hasn't been since approximately 1987. She has had periods of remission and lives a good and fulfilling life. But she has also [redacted] over the years, and three times in her 15 years as a mother. Amy's [redacted] since the late '80s, and she has had to take precautions in her everyday life since that time that most of society didn't consider for themselves until COVID-19 hit.

If Dan is incarcerated even for a short period of time, Amy may exhaust herself fulfilling the role of a 2-parent household alone. The toll of suddenly becoming a single parent is hard on anyone – Amy is not unique in that regard. But in this particular circumstance, the implications of being a single parent for Amy may result in putting her long-term health at risk. That does no one any good – especially not our niece – and we believe it is certainly not the collateral consequence that fits this crime.

We thank you for the opportunity to be heard, and wish you had had the pleasure of meeting Dan not as a defendant.

Respectfully and Sincerely,

Michelle Witman & Josh Blumenfeld

Exhibit 46

From the desk of
Steven Goode, CFA
[redacted]

March 15, 2021

Attention:
The Honorable Denise L. Cote
U.S. District Judge
Southern District of New York

Dear Honorable Judge Cote,

I have known Dan Kamensky for over 40 years, since we both grew up in Northbrook, IL, subsequently both pursued our careers and had our own families in New York City. Our mothers have been close friends with each other since they were children in Chicago.

Dan has been a supportive friend to me over the years, and he has been committed and caring to his parents and family. He has consistently and sincerely expressed concern for me and my family over the years. As he built his career, I have seen that he focused on high professional standards, and he has regularly shared insights from his experiences. The breath and depth of Dan's charity involvement has served as an inspiring example.

Dan has personally expressed his deep regret for his actions related to this sentencing to me. I have seen in my own professional experience that there can be tremendous stress from managing funds for investors. Dan has acknowledged and accepted his responsibility for his mistakes. Now Dan is actively helping others learn from his experience by candidly educating business and law school students about his lapses in judgement as a warning. Dan is also volunteering at a community food pantry, acting on a sincere interest to remain constructive and compassionate.

I am confident that Dan will apply the same ernest, hard work that led to his business successes to educating many others of his cautionary tale, as well as continuing to be a leader trusted by his family, friends, and his community.

Sincerely,

Steven Goode

Steven Goode

Exhibit 47

March 23, 2021

The Honorable Denise L. Cote
United States District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007-1312

Judge Cote:

I am writing to provide you with my personal impression of Dan Kamensky. I am not going to discuss the substance of the allegations which brought Dan to this point. Nor am I going to defend what he may have done or not done. But, rather, I am hoping to give you a sense of the man I have known for fifteen years.

I am a non-practicing, but licensed attorney in the states of New York and New Jersey. I have been admitted to several US District Courts, including this court, and the Third Circuit Court of Appeals. Although I have not practiced law since December 2003, I continue to hold myself to the highest standards of ethics.

Dan is a good person. I do not believe his apparent lapse of judgment in this situation defines the person I know. Dan is a person who is compassionate, considerate, generous and empathetic. He cares about people and has been a person who has given back to society as much if not more than it has provided him. His work with various charities (e.g., UJA, AJC, Memorial Sloan Kettering) speaks volumes to his passion and character. In my experience, Dan has always tried to "pay it forward."

I had the chance to visit with Dan this summer shortly after his arrest in his backyard to just see how he was doing. Checking in on friend, if you will. He was very contrite. The one thing he kept talking about was how his actions have hurt his family and friends. Not about how it may have hurt him or his career. But, how it was hurting those he cares about.

It was clear that he knows he made some very bad decisions in a very short period of time and that he cannot take them back. He told me that this event has given him the time to think about how he can better himself and changes he is already implementing, such as teaching at NYU. But, I also believe that he wants to prove to everyone – his family, his friends, this court and himself – that those few bad decisions are not who he is. I do not believe they represent the Dan that I have known professionally and personally for all of these years.

I hope this court finds my thoughts helpful as Your Honor considers Dan's sentencing.

Respectfully,

Alan J. Carr

Exhibit 48

Amy Blumenfeld Kamensky
[redacted]

Honorable Denise L. Cote
U.S. District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

March 17, 2021

Dear Judge Cote,

I am writing to you in order to provide greater insight into my husband, Dan Kamensky, as well as our family. As you may imagine, this is an absolutely nightmarish time in our lives and for a family comprised of many attorneys and a couple of judges, this is particularly surreal.

I grew up in a home in Queens where a painting of the scales of justice and the words "Justice, Justice, Shall You Pursue" was prominently framed in our living room. My father was a public defender and the head of the Bronx office of the Legal Aid Society before becoming a Criminal Court Judge in Queens in 1987 (and subsequently assigned to the Criminal Term of Queens County Supreme Court in 1996). When I was young, Legal Aid attorneys would often come over to our home and I would listen as they gathered around our dining room table working through their client's case with my dad. Later, after he became a judge, I would sit on the bench beside my father observing arraignments from his vantage point. I was taught to "believe in the system" as well as the importance of "justice for all" regardless of race, religion, gender, or economic means. I witnessed the complexity behind each situation and came to appreciate that defendants were not simply docket numbers, they were human beings.

With a dad who mentored lawyers and spent decades teaching the intensive trial advocacy program (ITAP) at Benjamin Cardozo Law School, and a mom who worked as a junior high school English teacher in the New York City public school system for nearly thirty years, I was raised to give back to society, make the world a better place, and to surround myself with people of similar values.

Six months after my father became a judge, [redacted]. I was 13-years-old. [redacted] After two months in a reverse isolation room, I walked out onto York Avenue cancer free, but with a lot of uncertainty about my future. I was told that I might never be able to have a biological child. I was told that I could relapse or get a secondary cancer and must be vigilant about long-term follow-up care. And I was warned to always be cautious about germ exposure because I would forever have a compromised immune system.

Fortunately, my health improved, I graduated from Barnard College, Columbia University's Graduate School of Journalism, was employed as a magazine editor/writer, and in March of 2000 I attended a party on the Upper West Side where I met Dan Kamensky.

Dan had just completed a federal clerkship in Jacksonville, Florida for the 11th Circuit Court of Appeals and moved to New York to work as a first year associate at Simpson Thacher & Bartlett. At the time, I was on staff as an associate editor/writer at George Magazine. On our third or fourth date I shared my medical history with Dan. I noted that the intensity and experimental nature of my treatment meant that long-term effects were unknown and that it was unclear if I would relapse, develop a secondary cancer, or be infertile. Dan's immediate reaction was a broad smile followed by the words, "So, we'll adopt!" I knew then he was a keeper.

Dan and I married in June, 2002, and he immediately took on my survivorship story as his own. We have been interviewed by national news sources about the long-term impact of pediatric cancer, Dan joined a survivorship committee at Memorial Sloan Kettering for which he helped organize fundraising events including a 5K Run/Walk as well as Comedy Nights benefitting the survivorship program, and more recently, beginning in 2018, he began volunteering his time and energy to helping build a pediatric cancer hospital in Africa through the Eugene Gasana, Jr. Foundation.

Dan's kindness and generosity toward others was one of the things I admired most about him when we met, and it is a quality that has never waned over the twenty-one years I have known him. In addition to cancer charities, Dan has been actively involved with numerous other philanthropic causes such as the Jewish National Fund, United Jewish Appeal, and Aleh Negev – a long-term care facility for disabled people in Israel. He also served on the board of our local synagogue as well as the Solomon Schechter School of Long Island. Given declining demographics, Solomon Schechter is the only Conservative Jewish day school on Long Island. To ensure the continuity of the school, we have made donations over the years to supplement teachers' salaries, subsidize tuition for families in need, and contribute to the annual fund. Dan and I have insisted that our major donations be anonymous because we do not want any recognition. In 2019, Dan attended a board meeting where he learned that the school needed half of its entire annual budget to downsize from two campuses to one due to declining enrollment. Without skipping a beat, Dan reached out to a top school administrator and pledged to provide whatever was needed so that the school would not have to shut its doors – and once again, Dan insisted his contribution remain anonymous. This is Dan. He instinctively stands up, rolls up his sleeves, and does everything in his power to help others in need. He puts his heart into everything he does, and he does so much for so many.

In 2006, Dan and I were blessed to become parents to our own biological child through gestational surrogacy. Though the radiation scarred my uterus too severely to carry a pregnancy, my ovaries, fortunately, remained healthy. Our daughter, [redacted], has my eyes and Dan's smile. She is truly the greatest gift we have ever received. She is an old soul and a gem of a human being. It was absolutely worth all the pain I endured in my life to have this particular girl as my daughter. To give you a sense of who she is, I have enclosed a copy of the book she published when she was eleven years old. "Art for a Cure" is a compilation of some of her artwork and all proceeds benefit Memorial Sloan Kettering Cancer Center's department of pediatrics (because they saved

my life when I was a child) and the Michael J. Fox Foundation for Parkinson's Research (because both my mother and Dan's father have Parkinson's disease).

From the moment [redacted] was born, Dan has been a loving and very involved father. It's just the three of us at home and we are an incredibly close trio. Like [redacted] and I, Dan and [redacted] share a tight bond. He is her math and Spanish homework helper. Her bike ride companion. Her exercise buddy. He has attended every school play, graduation ceremony, dance recital, and art exhibition, and he has always kept a small standing easel with art supplies in the corner of his office for when she visits. No matter where he is or what he is doing, he will drop everything and do anything for her.

In 2013, when [redacted] was seven years old, I was diagnosed with early stage breast cancer and underwent a bilateral mastectomy. Though it was a frightening time, Dan rose to the occasion and insisted on tending to my every need – cleaning and changing the bandages, emptying the drains, and even creating a chart to monitor the fluid in the tubes so that he could provide my doctor with precise measurements.

Two years later, in 2015, I needed a [redacted]. Again, Dan juggled multiple roles between his professional and parenting responsibilities, but insisted on spending every night sleeping on a recliner chair next to my hospital bed so that I would not be alone.

[redacted]. The most recent hiccup came in 2018 when a biopsy revealed some atypical cells on my thyroid. Fortunately it was not advanced, so I am now screened regularly. But even when there aren't major crises such as these, my weakened immune system leaves me more vulnerable to everyday ailments as well as increased exhaustion. This fragility is the price I pay for living. I will certainly take it over the alternative, but it doesn't come without stress – especially during a pandemic. Dan has been my partner through it all and having him home and available to help my daughter and me during these times is crucial.

In 2015, Dan decided to start his own business. After spending several years working at Simpson, Thacher & Bartlett, Lehman Brothers, and Paulson & Co., he had developed an expertise in bankruptcy law and finance. He guest lectured for years at both NYU and Columbia and felt it was time to fulfill a lifelong dream of building a company from scratch.

Dan grew up in suburban Chicago with a father who ran a small law firm and I believe the model set by his dad to combine law and business inspired Dan to establish his own company. Unrelated, but equally as formative, I know Dan has been deeply affected by the fact that he was born following a family tragedy. Dan's parents had three sons before Dan arrived. Their middle son, [redacted], [redacted]. About a year and a half later, Dan was born. He was a ray of hope and light for his grieving family and with him came the promise of a new future. When Dan proved early on to be bright, he was given educational opportunities such as academic summer programs and enrollment at a private high school that were not offered to his older brothers. If you ask Dan, he will tell you he has lived his entire life knowing that his own existence was born from tragedy. He has never taken the gift of his life for granted, and

paying tribute to [redacted] is one of the reasons Dan has always felt the need to make a positive difference in the world.

So in 2014, when Dan excitedly told me that he was thinking of starting his own company, I supported him. Finance is not at all my area of expertise or interest, but I cheered him on the way I suspect most loving partners would. Personally, I felt he was best suited to be a full time professor given his vast knowledge, fondness for writing, as well as the genuine joy he felt every time he taught and conversed with students, but he had his mind set on starting Marble Ridge Capital. I had always known Dan to be hard working, ethical, passionate, smart, fair, and a generous mentor to others, but above all, he possessed a good, kind heart. If anyone could do it, he could. Plus, I figured, what was the worst that could happen? If the business didn't prove to be as successful as he had dreamed, at least he could say he tried and would never live with regret.

During the first year of Marble Ridge Dan experienced great success. He was winning awards, he was written up in trade magazines, and the little company he intended to keep as a boutique firm – just like his father's boutique law firm – attracted the attention of more investors. The increase in investors led to hiring more employees. Eventually, they grew out of their office space and rented a larger property.

Though the company expanded, Dan made sure Marble Ridge maintained its intimate feel and stayed true to its core values. There was an annual holiday gift drive where Marble Ridge employees purchased and hand wrapped toys in their office for underprivileged children in the Bronx. There were out-of-office days in which they rolled up their sleeves and constructed homes for Habitat for Humanity. And every charitable donation made by an employee was matched by Marble Ridge. For Dan, creating a positive, supportive office culture was as integral to his company's success as building the business.

Dan cared deeply for his colleagues' personal wellbeing. When an office member's brother was unemployed, Dan helped him find a job. When another employee was struggling with verbal communication skills stemming from a childhood speech impediment, Dan arranged and covered the cost for confidential one-on-one speech therapy over a six month period. At one point, a junior staff member sent an email to Dan in which he wrote, "I've likened you to Atlas with how much you carry on your shoulders across so many different fields – trading, research, hedging, legal firm admin, IR, talent development – the list goes on, and could only describe a superhuman."

Though this employee's analogy to Atlas may have been fitting, Atlas was a mythical figure. Dan is human. He relished seeing Marble Ridge blossom, but it came at a hefty personal price.

[redacted]

Needless to say, the change in my husband left me feeling scared, alone, and the need to be more of a parent/caregiver to him than a partner/spouse.

On Friday evening, July 31, 2020, my parents came over to our home for Sabbath dinner as they do every Friday night. That Friday was no different from any other. After my parents arrived, the five of us happily chatted in the kitchen while I put the final touches on the meal. Around 7pm we were ready to recite the prayers and eat but just as we were about to begin, our landline telephone rang. I let the call go to the answering machine because I didn't want to interrupt dinner, but I could hear a man who identified himself as Ed Weisfelner leave a message on our machine apologizing for reaching out on a Friday evening and asking to speak with Dan. Dan has rarely interrupted our Sabbath dinners for work, so my parents, daughter, and I assumed it must have been an emergency when he excused himself to go upstairs and return Mr. Weisfelner's call.

I am in no position to comment on the events that took place on July 31, 2020 as I had no knowledge or involvement other than witnessing my husband excuse himself from our dinner table to make a telephone call and then return to our meal looking ashen and shocked.

When Dan sat down in the chair beside me after taking Mr. Weisfelner's call he didn't touch his food. I suggested he eat or else his meal would get cold. He didn't look at me. Instead, he stared blankly at his plate and said, "I think I've lost my appetite." In the twenty-one years I have known Dan, not once has he ever uttered those words when he was not ill. He is a lover of food and can *always* eat. I thought he might be sick. Though my parents, [redacted], and I continued to chat away, I noticed Dan's silent, vacant stare went on for a few minutes. Then suddenly, he stood up and excused himself from the dinner table again to make another telephone call upstairs.

Later that night, after my parents had left, [redacted] had gone to sleep, and Dan and I had cleaned the dishes, he sat me down and told me that he had made a huge mistake that day during a fit of anger and panic. Your Honor, I can tell you with absolute certainty, that every day since July 31, 2020, I have been living with a man thoroughly consumed by remorse and regret.

The following morning, on August 1, Dan acknowledged that he made a mistake and that he wanted to do whatever he could to take responsibility for what had happened. I know that he resigned from the official committee of creditors, invited Jeffries to submit a bid, and emphasized his willingness to work with any other party interested in submitting a bid.

On August 16, Dan *voluntarily* participated in an interview with the US Trustee to explain what had occurred and to apologize for the grave mistake he made on July 31, 2020.

A few weeks later, at 6am on Thursday, September 3, 2020, Dan, [redacted], and I were awakened by a pounding on the front door of our home with high beam flashlights shining over the windows. Dan ran to see what was happening. By the time I opened my bedroom door, there was an FBI agent standing directly in front of me and another agent running toward our hallway bathroom. I looked down our staircase to the front door and saw a swarm of agents in our small entry foyer. I asked an agent to explain what was going on and she said there was a warrant for my husband's arrest. I immediately turned to my daughter who had the covers pulled up to her chin and I said, "Honey, stay where you are and don't leave this room. Promise?" She nodded. I then closed the door so she wouldn't have to witness what was unfolding in our home.

I then walked down a few steps and looked into the dining room where I saw Dan in his underwear and tee-shirt handcuffed and seated in a chair. My hands flew over my mouth and I shrieked at the sight. I walked to the base of the staircase where several agents were packed closely together. Dan instructed me to write down the name and phone number for his attorney. The agents suggested I write down the 500 Pearl Street address and the time of his hearing that afternoon. An FBI agent then escorted me back upstairs as I retrieved Dan's clothing and medicine from our bedroom. [redacted] had fallen asleep watching a movie in our bed the night before and so she was there beneath the covers, lying on Dan's pillow, witnessing the agent shadow me as I gathered her father's belongings. "Is Daddy okay?" she repeatedly asked. I was shaking, but tried my best to remain in control and calm for my daughter. I told her he would be okay. I did

not realize it at the time, but later learned that from the moment the FBI entered our home to the moment I returned to the bedroom and assured her that he would be okay, she had assumed that the people who invaded our home had killed Dan. She did not know that the people pounding on our front door were law enforcement officers and not burglars. So while I was writing down the contact information for Dan's attorneys and the details about where the agents were taking my husband, my child was weeping alone in bed believing that her father was dead.

[redacted]

Over the last several months Dan has been volunteering his time at the Interfaith Nutrition Network (Mary Brennan INN) in Hempstead, Long Island, as well as the Met Council Food Pantry's locations in Greenpoint, Brooklyn and Little Neck, Queens. No one asked him to volunteer – he made the arrangements on his own and he proposed making it a part of his bankruptcy settlement. He truly finds organizing the inventory, packing boxes of food, and handing out meals to those in need to be incredibly rewarding. He likes to chat with the recipients who are waiting in line and he has even befriended a priest – a fellow volunteer at the INN. I know he hopes to continue helping out at the INN for years to come. In addition to his food pantry work, Dan has been creating a case study for Harvard Business School based on the lessons from this experience and he is slated to lecture again at both NYU Law School and NYU Business School this March and April. I believe he sincerely hopes that through teaching he can help others learn from his mistakes.

Your Honor, I am fully cognizant that there are consequences to the actions that occurred on July 31, 2020, but please know, this truly is aberrant behavior for Dan. There was no scheme, no conspiracy, no plot, no theft and no harm done to anyone but himself, our family, and the employees he has cared for as if they were family. Dan has been absolutely distraught by the ripple effect of his mistake. Knowing that his error cost staff members their jobs and affected their personal lives has been tearing him apart. One employee recently had a [redacted]. Fortunately, he is recovering well, but the first thought Dan had upon hearing the news was that it was all his fault. Dan has committed to doing everything within his means to assist his former employees and help repair the bankruptcy process, but the remorse is profound and I don't think will ever fully fade.

Dan is a man of great integrity. He is not at all a bully or motivated by greed – I never would have chosen someone who was selfish, materialistic, and money hungry to be my husband or the father of my child. Those values are antithetical to every fiber of my being and the antithesis of the example I would want set for my daughter. That is not how I was raised, they are not the values I live by, and they are not the values we have ever imparted to [redacted] I know all too well about the brevity and fragility of life as well as what truly matters. I would not have dedicated

twenty-one years to a man who did not appreciate or share this perspective. I married a mensch. In fact, one of the things I admire about Dan is that despite his success, he has always remained grounded. That is why it is so heartbreaking to witness the way Dan has been portrayed in the press.

I truly do not believe that it would serve any purpose to subject Dan to any period of incarceration. He has already lost his business and become a cautionary tale in his industry. And it all happened because, in his words to me, he finally "broke" after so many years bearing the weight of tremendous pressure. To me, the most valuable lessons from this entire debacle are the importance of caring for one's mental health and maintaining balance in life. For Dan, July 31, 2020, was the day his stress scale finally tipped over.

[redacted]

Your Honor, my husband is deeply, deeply remorseful. He is a good person and so much better than this momentary lapse. He is an upstanding human being who lost his composure over the course of a few hours on a single day in his life. He swiftly admitted to making a grave mistake in a moment of panic and has since done everything within his power to rectify this wrong. I sincerely hope you will consider the whole of this man – all the good he has done in his 48 years and the abundance of good that still lies within him. With the loss of his reputation, the collapse of his business, the fact that he will never again work in his chosen field, and the trauma and tremendous shame this has brought upon his innocent family, my husband is suffering. [redacted] and I need him at home. She is an only child who needs her father. The rest of the world will move on, but the absence of a loving, wonderful father during these formative years will change my daughter's life forever. Please have leniency.

Respectfully,

Amy Blumenfeld Kamensky

Exhibit 49

From: Elisabeth de Fontenay [redacted]
Date: April 14, 2021 at 4:50:25 PM EDT
To: Daniel Kamensky [redacted]
Subject: Thank you

Dan,

I'm so very grateful to you for speaking to my class today. It was such a powerful message for the students to hear, and your ability to teach them both the underlying finance aspects of the transaction as well as the life lesson was so impressive. I don't think students expect these sorts of ethical dilemmas to come up in their future careers, and they certainly don't anticipate how they will respond to them. So hearing about these sorts of experiences and especially imagining themselves in these situations is, in my view, the best way to prepare them to respond in the way they ought to. I can't thank you enough for taking the time to help with that.

I have already heard from several students who stuck around after class about how much they got out of your talk and how grateful they were for the opportunity, but I will encourage them to provide feedback in writing so that I can share it with you.

I'll also reach out to some other folks in academia about this. The semester is almost over for everyone, but if you're still willing to do this in the fall or beyond, I'm sure there will be many takers.

Best,
Elisabeth

Elisabeth de Fontenay
Professor of Law
Duke University School of Law
[redacted]

Exhibit 50

MICHAEL J. LEFFELL
mleffell@portagepartners.com

November 16, 2021

To whom it may concern:

I am writing in support of Dan Kamensky in connection with the administrative proceeding commenced against him by the Division of Enforcement of the Securities and Exchange Commission.

I began my career as an attorney at Kaye Scholer in 1984 and left in 1988 to join what is now Davidson Kempner Capital Management. I was a partner there for over twenty years where, among other things, I co-managed the distressed investing business and also served as deputy managing partner. I retired from Davidson in 2010 and now manage a private proprietary investment firm. In those capacities I have met numerous managers and investors and may have met Dan and likely spoke with him while he was at Lehman.

A few years after my retirement a former colleague introduced me formally to Dan, with whom she was establishing a new hedge fund. In a purely unpaid and advisory capacity I spent a fair amount of time with them strategizing about the focus of the fund and helping them formulate a plan for raising capital. After several months of planning, things went awry. I suddenly became akin to a marriage counsellor trying to help them work together. They were not destined to work together and I became a mediator as they worked on their separation.

It was in this capacity that I came to know and respect Dan. As they negotiated their separation, I spent a considerable amount of time speaking and working with Dan. Throughout he impressed me with his focus, integrity and honor. He simply recognized that they could not work together as co- managers and sought to negotiate a fair and reasonable resolution. To my eye, while tough, he never sought to extract onerous or impose terms. He focused on the facts and circumstances and always behaved in an honorable manner.

I was an investor in two or three single opportunities that presented themselves before the new fund, Marble Ridge, raised capital, and even after he parted ways with his partner, I was a day one investor in his fund. Although

I fully redeemed all of my capital from the fund as of March 2020, I would be happy to invest with Dan again.

Throughout the entire time I have known Dan he has comported himself with honor, fairness, dignity and respect.

Based on my knowledge of Dan what happened in July 2020 was a one off, emotional reaction. Dan recognized that what he did was wrong and assumed responsibility. Although not required to, he quickly organized the orderly wind down of his fund to make sure his investors were treated fairly and equitably. Dan's behavior on that day in July 2020 cannot be excused. His immediate recognition that his behavior was wrong and his willingness to acknowledge it and take concrete steps to take responsibility for what happened (through reimbursing 100% of all professional fees), reflect Dan's inherent honor, honesty and goodness.

With that in mind I do not believe a full and permanent associational bar against him would serve any necessary purpose. There has been, so far as I know, no fraud or manipulation, or even anyone who incurred a capital loss because of his actions. In this particular case I am unsure what can be gained, even as a general deterrent, by barring him from the investment management industry. Given his innate honor, integrity, communal involvement and life-long behavior, I believe there are better ways than a permanent bar for him to pay his debt to society.

Thank you for your consideration. Should you find it necessary or helpful I am available to discuss this matter in greater detail.

With best regards and wishes for a fair and equitable outcome.

Sincerely,

MICHAEL J. LEFFELL
[redacted]

February16, 2021

Dear Judge Cote:

I am writing in support of Dan Kamensky who will appear before you for sentencing in May.

I began my career as an attorney at Kaye Scholer in 1984 and left in 1988 to join what is now Davidson Kempner Capital Management. I was a partner there for over twenty years where, among other things, I co- managed the distressed investing business and also served as deputy managing partner. I retired from Davidson in 2010 and now manage a private proprietary investment firm. In those capacities I have met numerous managers and investors and may have met Dan and likely spoke with him while he was at Lehman.

A few years after my retirement a former colleague introduced me formally to Dan, with whom she was establishing a new hedge fund. In a purely unpaid and advisory capacity I spent a fair amount of time with them strategizing about the focus of the fund and helping them formulate a plan for raising capital. After several months of planning, things went awry. I suddenly became akin to a marriage counsellor trying to help them work together. They were not destined to work together and I became a mediator as they worked on their separation.

It was in this capacity that I came to know and respect Dan. As they negotiated their separation, I spent a considerable amount of time speaking and working with Dan. Throughout he impressed me with his focus, integrity and honor. He simply recognized that they could not work together as co- managers and sought to negotiate a fair and reasonable resolution. To my eye, while tough, he never sought to extract onerous or impose terms. He focused on the facts and circumstances and always behaved in an honorable manner.

I was an investor in two or three single opportunities that presented themselves before the new fund, Marble Ridge, raised capital, and even after he parted ways with his partner, I was a day one investor in his fund

Throughout the entire time he comported himself with honor, fairness, dignity and respect. I fully redeemed all of my capital from the fund as of March 2020.

Based on my knowledge of Dan what happened in July 2020 was a one off, emotional reaction. Dan recognized that what he did was wrong and assumed responsibility. He quickly organized the orderly wind down of his fund to protect his investors. Dan's behavior on that day in July 2020 cannot be excused. His immediate recognition that his behavior was wrong and his willingness to acknowledge it, reflect Dan's inherent honor, honesty and goodness.

With that in mind I do not believe a prison sentence would serve any necessary purpose. There has been, so far as I know, no fraud or manipulation, or even anyone who incurred a capital loss because of his actions. In this particular case I am unsure what can be gained, even as a deterrent, by sentencing Dan to a prison term. Given his innate honor, integrity, communal involvement and life-long behavior, I believe there are better ways than a term for him to pay his debt.

Thank you for your consideration. Should you find it necessary or helpful I am available to discuss this matter in greater detail.

With best regards and wishes for a fair and equitable sentence.

Exhibit 51

Steven Blumgart & Michael Benaim
Destra Investment Advisory LLP
Hillsdown House, 32 Hampstead High Street,
London, NW31QD, United Kingdom

November 18, 2021

To Whom It May Concern:

We hope this finds you and your family well.

We are writing to you today to request that the Commission decline to impose an associational bar on Mr Dan Kamensky. We are a family office based in London and in the course of our investing activities we meet with scores of fund managers and invest in a handful of them. All these relationships, including the one we have with Dan, are professional, not personal, which allows us to view our managers from a dispassionate, unbiased perspective. And coming from this clear-eyed perspective, we can say unequivocally that of all these managers we encounter, Dan Kamensky is amongst the most honourable, trustworthy, and big-hearted. In short, he is a good man and a gentleman. Despite the events of last year, we have no regrets that we chose to invest in him and we would do so again. Given his sterling character, we believe that the one professional error of his distinguished and honourable career could not possibly have been made with any malice or ill intent. We urge you to recognise that he is an asset to the industry and it would not be in the public interest to penalise him further. We think he has earned it.

We first met Dan about five years ago professionally and ended up investing in his fund. Being London-based, we would speak to Dan at least four times a year and meet with him in NY at least twice annually.

We saw - and see - in Dan an ambitious, hard-working, family man always looking to do what is right and best for his investors and all around him. This was a distinguishing and rather striking side to Dan that we found to be a rare quality in his industry. Never one to bad-mouth his peers, we were often taken aback by how nicely he spoke about his rivals (one in particular that we vividly recall - Jed Nussbaum at Nut Tree Capital), wanting them to do well too, alongside him. And when any of them were undergoing challenges, we observed that he would guard his tongue, never casting aspersions about them; for Dan Kamensky, there is no room for schadenfreude in his heart nor brain.

We further observed, when responding to our questions about his investment positions, that Dan was always extremely careful never to disclose information to us which we were not entitled, both ethically and legally, to receive. He was additionally very careful not to favour, or be seen to favour, one investor over another.

During the course of our meetings and conversations, we also became aware that Dan is an individual who is actively involved and engaged with his family, with the broader community and with charitable endeavours. This personal, community-minded, persona is entirely in keeping with the professional, ethical persona that we encountered.

Our observations of how Dan has conducted himself during this difficult time have only strengthened our opinion of his character. He quickly admitted his mistake and accepted full responsibility, despite the risk of grave consequences. Throughout this painful experience, he has continued to make it his first priority to protect his investors. Although he did not need to, he chose to organise the responsible closure of his business, as this would be in his investors' best interest. Dan has continued to demonstrate to us throughout this process that he'll always endeavour to put his investors' interests before his own, a quality that we continue to admire in him.

While the great courage Dan has shown in this moment of adversity is admirable, it is not surprising, as it entirely consistent with the integrity we have always seen from him. We are confident that his conduct on that day was a single mistake in a moment of great stress and not representative of the utmost professionalism he has demonstrated during his years in the industry. We have complete faith in him, and we would be honoured to invest with him again if we are given the opportunity.

Dan has endured serious legal penalties and professional consequences as a result of this single ill-judged call. We implore you to treat this as sufficient punishment. By judging him favorably, we are certain that he will live up to your high expectations.

Thank you for reading and considering our note.

G-d Bless.

DocuSigned by:
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Steven Blumgart & Michael Benaim

Steven Blumgart & Michael Benaim
Destra Investment Advisory LLP
[redacted]

The Honorable Denise L. Cote,
U.S. District Judge,
Southern District of New York

April 6, 2021

Dear Judge Cote

We hope this finds you and your family well.

We are writing to you today to appeal to you to show the maximum possible leniency in your sentencing decision of Mr Dan Kamensky. We are a family office based in London and in the course of our investing activities we meet with scores of fund managers and invest in a handful of them. All these relationships, including the one we have with Dan, are professional, not personal, which allows us to view our managers from a dispassionate, unbiased perspective. And coming from this clear-eyed perspective, we can say unequivocally that of all these managers we encounter, Dan Kamensky is amongst the most honourable, trustworthy, and big-hearted. In short, he is a good man and a gentleman. Despite the events of last year, we have no regrets that we chose to invest in him and we would do so again. Given his sterling character, we believe that the one professional error of his distinguished and honorable career could not possibly have been made with any malice or ill intent. We urge you to be as just as you possibly can be to him. We think he has earned it as a human being.

We first met Dan about five years ago professionally and ended up investing in his fund. Being London-based, we would speak to Dan at least four times a year and meet with him in NY at least twice annually.

We saw – and see – in Dan an ambitious, hard-working, family man always looking to do what is right and best for his investors and all around him. This was a distinguishing and rather striking side to Dan that we found to be a rare quality in his industry. Never one to bad-mouth his peers, we were often taken aback by how nicely he spoke about his rivals (one in particular that we vividly recall – Jed Nussbaum at Nut Tree Capital), wanting them to do

well too, alongside him. And when any of them were undergoing challenges, we observed that he would guard his tongue, never casting aspersions about them; for Dan Kamensky, there is no room for schadenfreude in his heart nor brain.

We further observed, when responding to our questions about his investment positions, that Dan was always extremely careful never to disclose information to us which we were not entitled, both ethically and legally, to receive. He was additionally very careful not to favour, or be seen to favour, one investor over another.

During the course of our meetings and conversations, we also became aware that Dan is an individual who is actively involved and engaged with his family, with the broader community and with charitable endeavours. This personal, community-minded, persona is entirely in keeping with the professional, ethical persona that we encountered.

Dan's blossoming career is permanently impaired as a result of this single ill-judged call. He will always have to live with this tarnished reputation. We implore you to treat this as sufficient punishment. By judging him favorably, we are certain that he will live up to your high expectations.

Thank you for reading and considering our note.

G-d Bless.

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083412AFDA84474...

Steven Blumgart & Michael Benaim

Exhibit 52

Alvarez & Marsal Cayman Islands Limited
Flagship Building
PO Box 2507
2nd Floor, 70 Harbour Drive
George Town, Grand Cayman, KY1-1104
Cayman Islands

23 November 2021

In the Matter of Daniel B. Kamensky (Administrative Proceeding File No. 3-20586)

To Whom It May Concern:

I write in relation to the above-captioned matter and, in particular, in relation to the Division of Enforcement's (the "**Division**") motion for summary disposition pending before the Securities and Exchange Commission (the "**Commission**"). I write to express my view that it would not serve the public interest to impose a collateral bar against Mr. Kamensky.

Please be advised that on 23 September 2020, Alexander Lawson and I, both of Alvarez & Marsal Cayman Islands Limited, Flagship Building, 2nd Floor, 70 Harbour Drive, George Town, Grand Cayman KY1-1104, Cayman Islands were appointed as Joint Voluntary Liquidators ("**JVLs**") of the following entities:

- Marble Ridge Master Fund LP (the "**Master Fund**");
- Marble Ridge Offshore Fund Ltd; and,
- Marble Ridge LP.

(together, the "**Funds**")

As the Commission will be aware, prior to being placed in voluntary liquidation, the Funds were managed by Marble Ridge Capital LP (the "**Manager**"), an entity I understand to be under the control of Mr. Kamensky. The Manager, at the behest of Mr. Kamensky, appointed the JVLs as independent fiduciaries to oversee the winding up of the Funds. Prior to our appointment we had no prior involvement with the Funds or Mr. Kamensky. I previously wrote a letter on behalf of Mr. Kamensky in connection with his sentencing, with which I am familiar, and I attach my prior letter for reference.

By way of a brief background on the JVLs, both Mr. Lawson and I are experienced Cayman Islands-based insolvency practitioners. We have both been practicing for over 15 years and are very familiar with fund liquidations of both a consensual and contentious nature. We frequently work closely with fund managers during the wind down process.

Winding down the Funds

At the date of writing, over 90% of the Funds' positions have been liquidated and returned to investors, due in large part to the assistance Mr. Kamensky has provided. At present, the Funds retain only three open positions. These remaining positions are late-stage post-bankruptcy liquidations which we expect to exit by mid-2022. They are complex with two of the three dependent on litigation proceedings, about which Mr. Kamensky has provided, and we hope will be able to further provide, helpful guidance to the JVLs. Additionally, many of our ongoing activities involve communicating with investors and service providers, which benefit from Mr. Kamensky's involvement and assistance.

It is my view that Mr. Kamensky has demonstrated an unwavering commitment to the Funds' shareholders during the liquidation, and indeed his efforts have contributed to the Funds' strong performance during the wind down. We report that the fees associated with this liquidation have been

significantly lower than a normal engagement of this size and complexity, in large part because we have been able to rely on Mr. Kamensky's expertise. That we have only three remaining positions after only approximately a year of work is an exceptional result for funds of this size and could not have happened without Mr. Kamensky's support throughout the process.

Interaction with Mr. Kamensky

In my capacity as one of the JVLs of the Funds, I have worked closely and communicated regularly with Mr. Kamensky in unwinding the Funds since my engagement on 23 September 2020. We have often engaged him to assist with the realisation of the Funds' assets and supervised his work related to carrying out these duties. At this stage in the liquidation, we are in contact with Mr. Kamensky on an approximately weekly basis. It is our opinion that Mr. Kamensky has acted with exceptional integrity throughout the entire process.

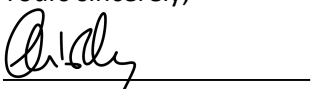
From the day of our appointment, Mr. Kamensky has welcomed our assistance by providing an unparalleled degree of cooperation, collaboration, and transparency. He provided complete access to all materials we would need to successfully manage the Funds and instructed his employees to assist with our efforts wherever possible. When we have come to Mr. Kamensky with a query on behalf of an investor, as we frequently do, Mr. Kamensky has invariably provided a prompt, accurate, and thorough response. Mr. Kamensky has also consistently made himself available for calls with investors, even during the difficult period shortly following his decision to wind down his business. He has ensured that we are fully briefed on all relevant matters. These are but a few examples of many illustrating our positive experience with Mr. Kamensky.

The level of support and commitment to investors I have seen from Mr. Kamensky throughout the liquidation process has been exceptional, surpassing what I have typically seen in my experience assisting with fund liquidations. Mr. Kamensky, who has continued to prioritise his investors first and foremost throughout the entire process, has actively engaged with us and provided critical support at every turn, and the result has been a highly efficient and cost-effective wind down.

In sum, I am confident in my assessment that Mr. Kamensky is a man of integrity and has been an invaluable asset in successfully winding up the Funds. I have witnessed Mr. Kamensky accept responsibility for his conduct on 31 July 2020, both in private conversations with the JVLs and more broadly in communications with the Funds' investors, where he has openly acknowledged his conduct and taken every action he can to protect his shareholders. The JVLs have found it a pleasure to work with Mr. Kamensky, and we would readily do so again should the opportunity present itself.

Should you have any queries regarding the above or should you require clarification or further information regarding the wind down I should be happy to assist.

Yours sincerely,



Christopher Kennedy
Joint Voluntary Liquidator

Christopher Kennedy and Alexander Lawson are authorised to act as JVLs in accordance with the Companies Act (2021 Revision), the Exempted Limited Partnership Act (2021 Revision) and the Delaware Limited Partnership Act, 6 Del. C. § 18-703, as applicable. The JVLs act as agents of the Funds only and do so without personal liability.

Alvarez & Marsal Cayman Islands Limited
[redacted]

Honorable Denise L. Cote
United States District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

13 April 2021

United States of America versus Mr. Daniel B. Kamensky (1:20-mj-09381)

Dear Judge Cote,

I write in relation to the above-captioned matter and, in particular, in relation to the upcoming sentencing of Mr. Kamensky.

Please be advised that on 23 September 2020 Alexander Lawson and I, both of Alvarez & Marsal Cayman Islands Limited, Flagship Building, 2nd Floor, 70 Harbour Drive, George Town, Grand Cayman KY1-1104, Cayman Islands were appointed as Joint Voluntary Liquidators ("**JVLs**") of the following entities:

- Marble Ridge Master Fund LP (the "**Master Fund**");
- Marble Ridge Offshore Fund Ltd; and,
- Marble Ridge LP.

(together, the "**Funds**")

As your Honour will be aware, prior to being placed in voluntary liquidation, the Funds were managed by Marble Ridge Capital LP (the "**Manager**"), an entity I understand to be under the control of Mr. Kamensky. The JVLs were appointed as independent fiduciaries to oversee the winding up of the Funds and had no prior involvement with the Funds or Mr Kamensky.

In my capacity as one of the JVLs of the Funds I have worked closely with Mr. Kamensky since my engagement on 23 September 2020. To the extent it may be of some assistance to this Court, I would like to provide some details on the Funds' liquidation and the JVLs' experience with the Manager and Mr. Kamensky during the Funds' wind down.

By way of a brief background on the JVLs, both Mr. Lawson and I are experienced Cayman Islands-based insolvency practitioners. We have both been practicing for over 15 years and are very familiar with fund liquidations of both a consensual and contentious nature. We recently appeared in front of your Honour in re Securities and Exchange Commission v. International Investment Group, LLP (Case 1:19-cv-10796-DLC), in our capacities as joint official liquidators of two hedge funds formerly managed by the International Investment Group.

<u>Winding down the Funds</u>

The terms of our engagement as JVLs are such that we assume control of the Funds. In this capacity we engaged the Manager to assist with the realization of the Funds' assets and as such our role naturally evolved to include close supervision of the work undertaken by the Manager in carrying out its duties.

To enable the JVLs to properly supervise the Manager's actions the Manager (at Mr. Kamensky's direction) added members of the JVLs' team -- myself included – to various of the Manager's internal email distribution lists and provided the JVLs with full and direct access to all of the Manager's employees. This provided the JVLs with insight of the day-to-day activities of the Manager, relating to the Funds. I would note that such access and cooperation is often promised in voluntary wind down situations, however, it is rarely provided to the extent it has been in this case.

At the date of writing, the Funds have realised the majority of their assets and have paid distributions of approximately 88% of their net asset value (as per the net asset value immediately prior of the JVLs' appointment). To achieve distributions of this magnitude within the first 6 months of the wind down is a significant achievement.

In respect of the wind down process generally, the JVLs' consider that the Manager and Mr. Kamensky have been fully cooperative and have worked diligently to ensure that realisations are maximised and that distributions to investors are paid expeditiously.

It is the JVLs' view that the strong performance of the Master Fund during (and despite) its wind down is in significant part due to Mr. Kamensky's commitment to the Funds' investors and their monetary return.

Interaction with Mr. Kamensky

It is my opinion that from the liquidation's commencement Mr. Kamensky has acted with honesty, has been forthright with the JVLs and has acted with integrity.

I can confirm that management fees paid by the Funds to the Manager have not comprised a salary for Mr. Kamensky since 1 January 2021 and it is my understanding that in fact, he has not taken a salary since 23 September 2020.

Should you have any queries regarding the above or should you require clarification or further information regarding the wind down I should be happy to assist.

Yours sincerely,

Christopher Kennedy
Joint Voluntary Liquidator

Christopher Kennedy and Alexander Lawson are authorised to act as JVLs in accordance with the Companies Act (2021 Revision), the Exempted Limited Partnership Act (2021 Revision) and the Delaware Limited Partnership Act, 6 *Del. C. §* 18-703, as applicable. The JVLs act as agents of the Funds only and do so without personal liability.

Exhibit 53

MOHSIN Y. MEGHJI

November 26, 2021

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: In the Matter of Daniel B. Kamensky
Administrative Proceeding File No. 3-20586

Ladies and Gentlemen:

I am writing to express my support for Daniel B. Kamensky in his opposition to the motion of the Division of Enforcement of the Securities and Exchange Commission to permanently ban him from the securities industry.

I approach this from an unusual perspective – because not only have I known Mr. Kamensky for more than 12 years, but I also was intimately involved in the events that gave rise to this proceeding. As financial advisor to the Committee of General Unsecured Creditors for Neiman Marcus, I was the first person to hear of Mr. Kamensky's discussions with Jefferies and then, together with counsel to the Committee, I reported the events to the Office of the United States Trustee. I was personally witness to many of the discussions and events that resulted from Mr. Kamensky's actions and I provided a portion of the evidence that resulted in his conviction. As such, I think that I am uniquely positioned to speak to Mr. Kamensky's motion.

Through my work in this industry, I have interacted with Mr. Kamensky – both on the same side of the table and as adversaries – on a number of occasions over the years. Although Mr. Kamensky is a zealous advocate for his investors, he has consistently shown integrity in his dealings with me and, to my knowledge, with others. This made Mr. Kamensky's actions in the Neiman Marcus proceeding even more surprising to me – because they were completely out of character for him.

While I believe that Mr. Kamensky's actions in the Neiman Marcus proceeding were out of character for him, I also believe that his actions there were inexcusable and I do not question that he deserves punishment for those actions. However, Mr. Kamensky has already been punished: He pled guilty, was convicted and jailed for his actions, and his reputation has been destroyed. He has shown contrition for his crimes and has accepted full responsibility for his actions. Even though Mr. Kamensky is paying his "debt to society," the consequences will remain with him for the rest of his life and be apparent to anyone who deals with him – regardless of the outcome of this proceeding.

It is my understanding that this proceeding is not about punishment and retribution, but rather determining whether banning Mr. Kamensky for life from the securities industry is appropriate in order to protect the integrity of the US securities markets or otherwise to protect investors from potential future fraud or misdeeds. On that basis, I believe that a lifetime ban is an inappropriate sanction for the following reasons:

- Mr. Kamensky does not have a prior history of violating securities laws or dishonesty of any kind and to my knowledge there have been no allegations of wrongdoing by him either before or after the events at issue. Indeed, as noted above, I believe Mr. Kamensky to be a fundamentally honest and decent person who made a small number of related errors in judgment.

- Mr. Kamensky's errors in judgment did not occur over an extended period of time and were not premeditated. Rather, they all took place over a period of only 24 hours and resulted from an emotional reaction in the heat of the moment. Moreover, once the "heat of the moment" ended, Mr. Kamensky willingly admitted his errors and accepted full responsibility. There is nothing here to suggest that he would ever do something like this again or that he has not been contrite about his conduct and learned his lesson.

- As someone who made a mistake and then accepted the consequences of his mistake, I do not see how Mr. Kamensky poses a continuing threat to the securities industry. I do not see how permanently banning him from the industry will deter others beyond the existing deterrent effect of his prison sentence. I also do not see how the return to the securities industry of a man who has spent many years behaving honorably and decently in the industry, other than with respect to a single matter on a single day, will pose a risk to the markets or to investors.

Mr. Kamensky committed a crime and he deserves the punishment that he has received, but he does not deserve to be destroyed. His existing prison sentence is a severe punishment that is appropriate for his crime. I would respectfully submit that now adding a lifetime ban from the securities industry does not protect the integrity of the markets or reduce the risk of injury to investors in the future. Rather, it is simply additional punishment of Mr. Kamensky which, when combined with the prison sentence, is vastly out of proportion to his crime. I believe that Mr. Kamensky now deserves a chance to redeem himself – and not destruction.

Very truly yours,

Exhibit 54

PACHULSKI
STANG
ZIEHL
JONES

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Richard M. Pachulski
310.772.2342
rpachulski@pszjlaw.com

November 29, 2021

Re: Dan Kamensky

To whom it may concern:

I am writing this letter on behalf of Dan Kamensky as a result of my role as lead counsel to the Neiman Marcus Unsecured Creditors Committee ('UCC' or 'Neiman Marcus UCC') and my extensive dealings with Mr. Kamensky during the Neiman Marcus case.

Before describing my interactions with Mr. Kamensky during the Neiman Marcus case, I want to provide you with some of my background. I graduated from Stanford Law School in 1979. In 1983 I co-founded what was then named Pachulski & Stang, which today is known as Pachulski Stang Ziehl & Jones LLP (the 'Firm'). While the Firm originally was founded with only two of us, today the Firm is the largest legal restructuring boutique in the United States with just under 80 lawyers and offices in five cities. During my career I have represented numerous Debtors, including American Suzuki, Sizzler Restaurants and, most recently, Ruby Tuesday. Additionally, I have represented during my career no fewer than 40 creditors' committees and, most recently, in addition to the Neiman Marcus UCC I represented the Woodbridge Group of Companies UCC, a Ponzi scheme of in excess of $1.2 billion with significant involvement by the SEC.

Prior to May 20, 2020 I had never met, spoken to or, frankly, ever heard of Dan Kamensky. During the week of May 18, 2020 the Neiman Marcus UCC was formed. Counsel interviews for the Neiman Marcus UCC were scheduled for May 22, 2020, with the Firm being one of the firms invited to interview as UCC counsel. On May 20, 2020 Dan Kamensky reached out to me to discuss my potential retention as Neiman Marcus UCC counsel. We arranged a phone conversation for the next day. During an approximate one

hour call Mr. Kamensky and I had a thorough conversation about the Neiman Marcus chapter 11 case, at the end of which Mr. Kamensky asked nothing more of me than I keep an open mind about the case in general and the propriety of the MyTheresa transaction in particular. Before my conversation with Mr. Kamensky I was well aware that Mr. Kamensky was extremely focused on receiving a recovery against Ares Capital and the Canadian Pension Plan for their involvement in what Mr. Kamensky believed was a constructive and actual fraudulent conveyance involving the MyTheresa transaction. Notwithstanding Mr. Kamensky's strong feelings about the inappropriateness of the transaction, at no time during our initial conversation did Mr. Kamensky even remotely suggest that he would support my Firm's retention or that any such support as lead restructuring counsel to the Neiman Marcus UCC was conditioned on agreeing with him about the MyTheresa transaction. The Firm was formally retained on May 22, 2020 as counsel to the Neiman Marcus UCC, and during my interview I committed that I would be lead counsel to the UCC and I would spend the vast majority of my time on the Neiman Marcus case until the Effective Date of a Neiman Marcus Plan of Reorganization.

Prior to the Firm's employment, Marble Ridge had filed an Examiner Motion requesting that an examiner be appointed to investigate the pre-chapter 11 MyTheresa transaction. The hearing on the Examiner Motion was held on May 29, which the Neiman Marcus UCC voted to support. While Judge Jones effectively denied the Motion, at the conclusion of oral argument the Judge requested that instead of appointing an examiner I personally lead the investigation of the MyTheresa transaction, and that I should provide a report to the Court of my findings and conclusions by July 15, 2020. During the next six weeks the Firm worked around the clock to produce a report. Dan Kamensky was instrumental in providing information regarding the MyTheresa transaction, but at no point in did Mr. Kamensky insert himself into the investigative process and push his views of the transaction. The Firm and I determined that the MyTheresa transaction, which benefited Ares and the Canadian Pension Plan, was both a constructive and an actual fraudulent conveyance.

During the month of July, in addition to working on the report, I was involved in negotiations among Ares, the Neiman

Marcus Independent Director and Neiman Marcus. To be frank, as I stated at the Neiman Marcus Disclosure Statement hearing I believed that the Independent Director completely undermined the Neiman Marcus UCC's efforts to obtain a satisfactory result from Ares and the Canadian Pension Plan. Throughout the settlement negotiations the UCC and, in particular, Mr. Kamensky was heavily involved in trying to construct a fair resolution relating to the MyTheresa transaction. As a result of the efforts of the Independent Director and the Debtor, not surprising with both having strong relationships with Ares, Mr. Kamensky offered, if needed, to purchase the MyTheresa litigation and share any recovery with the Neiman Marcus unsecured creditors as an alternative to a settlement forced on the unsecured creditors. What was very clear was Mr. Kamensky was not seeking to simply attain a recovery from Ares and the Canadian Pension Plan for his own benefit, but for the benefit of all unsecured creditors. Neither the Committee nor I felt it was necessary for Mr. Kamensky to make that offer.

Neiman Marcus set its Disclosure Statement Hearing for July 30. During the two weeks after the report was filed with the Court, the Independent Manager made it very clear that, notwithstanding the Neiman Marcus UCC's opposition, he would likely propose to include in the Plan a settlement with Ares and the Canadian Pension Plan. As a result, intense negotiations occurred between July 15 and July 29, 2020, and on July 29, 2020 the UCC voted to agree to a settlement with the Debtor and the Independent Manager to accept for Neiman Marcus unsecured creditors $140 million of MyTheresa Series B Preferred Stock.

After the UCC voted by a very narrow margin to go forward with the MyTheresa settlement on July 29, 2020, the UCC asked Mr. Kamensky to excuse himself for the remainder of the deliberations that day regarding the MyTheresa transaction, so the UCC could discuss next steps outside of Mr. Kamensky's presence. The reason for his exclusion was the UCC had determined to try to enter into a backstop arrangement with Mr. Kamensky so that he would purchase any Series B Preferred Shares at a prescribed price so any unsecured creditor that did not want to accept Series B Preferred Shares through the Neiman Marcus Plan of reorganization because of, among other things, the illiquidity of the Series B Preferred Shares, could be cashed out.

I was given clear parameters by the other members of the Neiman Marcus UCC for a backstop transaction with Mr. Kamensky. I began those negotiations with Mr. Kamensky on the evening of July 29, which were very far long as of July 31, 2020. There was an urgency in coming to a conclusion if possible with Mr. Kamensky because any arrangement with Mr. Kamensky needed to be included in the Neiman Marcus Disclosure Statement that was set to be finally approved on August 3, 2020. On the morning of Friday, July 31, I learned that Jefferies was interested in being the backstop for the same Series B Preferred Shares. On the afternoon of July 31 the financial advisor for the Neiman Marcus UCC and I contacted Mr. Kamensky to inform him that we were going to take a short respite from negotiating with him until we could determine what Jefferies was willing to provide as a backstop, which Jeffries promised to do by the end of that Friday.

Later in the afternoon of July 31 I was contacted by two Jefferies representatives, who informed me that Jefferies would not be pursuing a Series B transaction because of a conversation with one of their clients. I asked if Mr. Kamensky was the client, and they said yes. Initially I could not convince Jefferies to move forward with any transaction, but by the following day, Saturday, August 1, Jefferies did agree to submit an LOI for the Series B Preferred Shares. Also on that Saturday I contacted the UCC and the attorney for United States Trustee, and reported Mr. Kamensky's actions. By then Mr. Kamensky had resigned his position as a member of the UCC. On the following day, Sunday, August 2, I received a letter of intent from Jefferies regarding the Series B Preferred Shares, which frankly was a proposal that would not work under any set of circumstances. Thereafter, the UCC determined that they would not pursue any sale or backstop for the MyTheresa shares.

In all of my dealings with Mr. Kamensky from May 22, 2020 through the morning of July 31, 2020, I can say without equivocation that Mr. Kamensky was an excellent committee member. In Mr. Kamensky's role as the Marble Ridge representative on the UCC, Mr. Kamensky was instrumental in assisting the UCC in receiving the maximum possible recovery for the Neiman Marcus unsecured creditors. Frankly, having dealt with Mr. Kamensky most days between May 22, 2020 - July 31, 2020 I strongly believe his

PACHULSKI STANG ZIEHL & JONES

LAW OFFICES

actions on July 31, for which there can be no excuse, was not the Mr. Kamensky I dealt with during the case.

Because I was the person who reported Mr. Kamensky, I believe we each independently concluded that neither of us should reach out to the other until Mr. Kamensky fully dealt with the criminal actions relating to his behavior. As a result, Mr. Kamensky and I did not speak to each other until a few weeks ago. During that call, first Mr. Kamensky apologized to me for his actions, and putting me in the middle of a horrible situation. Mr. Kamensky was contrite and fully appreciated how wrong it was, what he had done. Even without monetary damages caused by his actions, for which there were really none, if I still felt that Mr. Kamensky had little remorse or had done bad acts in the past, I would understand why Mr. Kamensky should receive an SEC sanction. In contrast, from my extensive dealings with Mr. Kamensky during the Neiman Marcus case, and my belief after recently speaking to him that he understands what he did wrong and what he needs to do in the future to advance the integrity and ethics within the securities and related industries, and taking into account the punishment Mr. Kamensky has already suffered, I don't believe it would be appropriate for the SEC to further punish Mr. Kamensky.

To be also clear, I would be quite willing to work with Mr. Kamensky in the future since notwithstanding what I believe was a one-time very serious lapse of judgment, I firmly believe that Mr. Kamensky brings value to complex situations and has learned from his Neiman Marcus experience.

I would be happy to discuss this or any other matter with you.

Very truly yours,

Richard M. Pachulski

RMP

Exhibit 55

BOSTON COLLEGE

FINANCE DEPARTMENT
CARROLL SCHOOL OF MANAGEMENT

November 28, 2021

To whom it may concern,

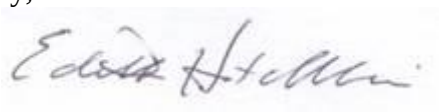
I am writing to provide some insight regarding Dan Kamensky's recent visits (via zoom) to my classes at Boston College.

I am a Professor of Finance at Boston College's Carroll School of Management, and have been teaching finance classes including courses on corporate restructuring for over 25 years. Dan visited my masters level class on Wednesday November 17, 2021, and my undergraduate classes on Tuesday November 23, 2021, speaking to almost 100 students across the two days.

From the feedback I received from students, Dan's conversation helped many of them to put into context the concepts we have been working towards all semester in an engaging and insightful way. But more importantly, his talk was a unique opportunity for the students to better appreciate the potential conflicts that arise in many business settings.

As an educator, it is not easy to find ways to convey the importance of remaining grounded in the ethical considerations of many of the decisions made in a business setting. I believe that listening to Dan's difficult narrative left the students with a long lived impression of the importance these concerns to many situations they are likely to experience in their future careers.

Sincerely,



Edith Hotchkiss

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