

**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND**

MICHAEL D. BENNETT,
6191 Murray Terrace
Frederick, MD 21703
County of Residence: Frederick County

CIVIL ACTION NO. 1:25-cv-02491-SAG

JOSH KRUMPACH, and
174 Brandenburg Drive
Falling Waters, WV 25419

**CONSOLIDATED AMENDED CLASS
ACTION COMPLAINT**

JURY TRIAL DEMANDED

CHRIS TURGEON,
4 Tacoma Street
Thurmont, MD 21788
County of Residence: Frederick County

on behalf of the JJF Management Services,
Inc. Employee Stock Ownership Plan, and on
behalf of a class of all other persons similarly
situated,

Plaintiffs,

v.

BOARD OF DIRECTORS OF J.J.F.
MANAGEMENT SERVICES, INC.,
11411 Rockville Pike
Rockville, MD 20850
County of Residence: Montgomery County

MARIANNA F. HEETER, as Administrator
of the Estate of Richard A. Heeter,
112 Kim Acres Drive
Mechanicsburg, PA 17055

CAPITAL TRUSTEES, LLC,
112 Kim Acres Drive
Mechanicsburg, PA 17055

DOROTHY M. FITZGERALD, in her
personal capacity and in her capacity as

personal representative of the Estate of John J.
Fitzgerald, Jr.,
9624 Glencrest Lane
Kensington, MD 20895
County of Residence: Montgomery County

JOHN J. FITZGERALD, III,
13044 Gordon Circle
Hagerstown, MD 21742
County of Residence: Washington County

WALTER SKIPPER,
1035 Upper Ridgeway
Elm Grove, WI 53122

JAMES W. CASH,
14720 Tudor Chase Drive
Tampa, FL 33626

GREGG STEINBARTH,
11710 Old Georgetown Road, Apt 1511
North Bethesda, MD 20852
County of Residence: Montgomery County

MARGARET M. FITZGERALD,
12006 Gatewater Drive
Potomac, MD 20854
County of Residence: Montgomery County

KATHLEEN ICEBERG,
6711 Ilex Court
New Market, MD 21774
County of Residence: Frederick County

ROBERT M. SMITH, JR., and
14121 Heritage Lane
Silver Spring, MD 20906
County of Residence: Montgomery County

DAVID JENKINS,
11411 Rockville Pike
Rockville, MD 20850
County of Residence: Montgomery County

Defendants.

Plaintiffs Michael D. Bennett, Josh Krumpach, and Chris Turgeon (“Plaintiffs”) on behalf of all others similarly situated and the JJF Management Services, Inc. Employee Stock Ownership Plan (“JJF ESOP” or “the ESOP” or “the Plan”), state and allege as follows:

I. NATURE OF ACTION

1. This is a civil enforcement action brought pursuant to Sections 502(a)(2) and 502(a)(3) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), 29 U.S.C. § 1132(a)(2)-(3), on behalf of the ESOP and participants and beneficiaries of the ESOP.

2. The JJF ESOP is an ERISA-protected retirement plan whereby the individual retirement accounts of current and former employees are invested almost entirely in the stock of J.J.F. Management Services, Inc. (“JJF” or the “Company”), a formerly family-owned auto-dealership headquartered in Rockville, Maryland.

3. In summary, Plaintiffs allege that Capital Trustees, LLC and Richard A. Heeter (named via Marianna F. Heeter as the personal representative of his Estate) (the “Trustee Defendants”), JJF’s Board of Directors (Dorothy M. Fitzgerald, in her personal capacity and in her capacity as personal representative of the Estate of John J. Fitzgerald, Jr., John J. Fitzgerald, III, Walter Skipper, James W. Cash, and Gregg Steinbarth (collectively, the “Board Defendants”)), and the “Successor Trustee Defendants” (Robert M. Smith, Jr., David Jenkins, and Gregg Steinbarth) caused ERISA prohibited transactions whereby the ESOP purchased the Company from the “Seller Defendants” or “Sellers” (Estate of Jack Fitzgerald, Dorothy M. Fitzgerald, John J. Fitzgerald, III, Bill Cash, Margaret M. Fitzgerald, and Kathleen Iceberg) at inflated purchase prices and borrowed money from the Sellers (collectively, the “Transaction”), which caused continued prohibited transactions through ongoing loan payments to the Sellers after the sale.

4. On or around January 31, 2023, the Trustee Defendants caused the ESOP to acquire 1,000,000 shares of JJF common stock from the Seller Defendants for approximately \$442 million,

which exceeded the fair market value of those shares.

5. According to financial statements filed by the ESOP with the Department of Labor, the value of the JJF shares was just \$13.4 million on the same day the shares were purchased by the ESOP (Jan. 31, 2023), which is just 3% of the price paid to the Seller Defendants: \$442 million.

6. The next year, the stock was worth \$46.5 million, just 10% of what the ESOP paid.

7. The employee-participants, who would be forced to purchase the JJF shares through their retirement accounts, were not allowed to negotiate the Transaction price or any of its terms. In fact, the employee-participants had no input on the terms agreed to by the Trustee Defendants and the Seller Defendants. Nor did the employees consent to the terms of the Transaction.

8. A proper valuation of the Transaction would have accounted for several important risk factors that limited the value of the Company at the time of sale, including that new and used car prices were at unsustainably high levels—the result of COVID-19 related supply chain disruptions—which would not last forever. Moreover, a proper valuation also would have accounted for the manner in which the Transaction was structured, such that (i) the Seller Defendants would keep control over a majority of the Company's Board seats; (ii) the Seller Defendants created a governance structure such that, immediately after the Transaction, the ESOP Trustee role was transferred to Company insiders who were beholden to the Fitzgerald Family; (iii) almost the entire purchase price was financed through loans which were either guaranteed by the Company or issued directly by the Company to the ESOP; and (iv) the Company was financially burdened with the obligation to make contributions to the ESOP sufficient to make the necessary loan payments, including principal and interest payments to the Seller Defendants.

9. The Trustee Defendants and the Seller Defendants did not give adequate consideration to these and other factors in determining the sale price for the Company. To the

contrary, the Seller Defendants were focused on promoting the Company's value for their own financial benefit, including estate planning. The Trustee Defendants failed to ensure that the ESOP paid no more than fair market value because they did not sufficiently adjust management projections to account for COVID-based anomalous financial results; did not ensure that the price the ESOP paid was appropriately discounted based on the fact that the Seller Defendants retained the right to appoint a majority of the Board; and that, immediately after the Transaction, the ESOP Trustee role was transferred to Company insiders who were beholden to the Fitzgerald Family.

10. The Trustee Defendants and the Successor Trustee Defendants had a fiduciary duty under ERISA to act prudently and in the sole interest of ESOP participants, *see* 29 U.S.C. § 1104(a)(1)(A)-(B), and also had a duty to ensure that the ESOP did not engage in prohibited transactions, *see* 29 U.S.C. § 1106. The Board Defendants similarly had a fiduciary duty to install an appropriate governance structure to ensure that the Trustee Defendants complied with their fiduciary responsibilities. In particular, because the Board appointed the Trustee Defendants, the Board Defendants had a duty to monitor the Trustee Defendants and to ensure that they did not engage in prohibited transactions with the ESOP.

11. Based on the foregoing allegations and the other allegations set forth below, Defendants have breached their fiduciary duties and caused prohibited transactions with the Seller Defendants, resulting in substantial losses to the ESOP and Plaintiffs' ESOP accounts. Plaintiffs bring this action pursuant to ERISA §§ 409(a) and 502(a)(2)-(3), 29 U.S.C. §§ 1109(a) and 1132(a)(2)-(3), to restore these losses to the Plan, disgorge the monies that the Seller Defendants unlawfully obtained in connection with the Transaction, remove the Successor Trustees from their role as ESOP Trustee, and obtain other appropriate equitable relief and other available relief.

II. JURISDICTION AND VENUE

12. **Subject Matter Jurisdiction.** This Court has subject matter jurisdiction over this

action pursuant to 28 U.S.C. § 1331 and ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1).

13. **Personal Jurisdiction.** This Court has personal jurisdiction over Defendants because they transact business in, and have significant contacts with, this District.

14. **Venue.** Venue is proper in this District pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2) for at least the following reasons:

- a. The ESOP is administered in this District;
- b. Defendants' alleged breaches of fiduciary duty took place in this District at the Company's headquarters located in Rockville, Maryland; and
- c. Several of the Defendants, including Fitzgerald family members, reside or may be found in this District.

III. PARTIES

A. Plaintiffs

15. **Plaintiff Michael D. Bennett** is and has been a Plan participant, as defined in ERISA § 3(7), 29 U.S.C. § 1002(7), since August 1, 2021. He resides in Frederick, Maryland. In his most recent position, he was a Finance Manager at Fitzgerald Auto Mall, Inc., a subsidiary of JJF. He was employed there from on or about June 28, 2010 through October 19, 2023. At the time he left employment at JJF, he was 100% vested in shares of JJF in his Plan account.

16. **Plaintiff Josh Krumpach** is and has been a Plan participant, as defined in ERISA § 3(7), 29 U.S.C. § 1002(7), since August 1, 2021. Plaintiff resides in Falling Waters, West Virginia. In his most recent position, he was a Director of Services at Fitzgerald Auto Mall, Inc. He was employed there from on or about February 2004 through March 2023. At the time he left employment at JJF, he was 100% vested in shares of JJF in his Plan account.

17. **Plaintiff Chris Turgeon** is and has been a Plan participant, as defined in ERISA § 3(7), 29 U.S.C. § 1002(7), since August 1, 2021. He resides in Thurmont, Maryland. He was a Service Manager at Fitzgerald Auto Mall, Inc., a subsidiary of JJF. He was employed there from

on or about June 2013 to August 2023. At the time he left employment at JJF, he was 100% vested in shares of JJF in his Plan account.

B. Trustee Defendants

18. **Defendant Marianna F. Heeter** is personal representative for the Estate of Richard A. Heeter. She currently is listed as the governor for Capital Trustees, LLC and is thus responsible for overseeing its operations and making company decisions. Based on the best information available to Plaintiffs, she is a member of Capital Trustees, LLC.

19. Richard A. Heeter died on October 4, 2024. Prior to then, he was the Director, Principal, Founder, and Governing Member of Capital Trustees, LLC. Heeter was the trustee of the ESOP from July 31, 2022 through at least the completion of the Transaction. As the discretionary trustee responsible for approving the Transaction, Richard A. Heeter had discretion to authorize and negotiate the Transaction on behalf of the ESOP. The ESOP's Trust Agreement named Richard A. Heeter as the ESOP Trustee.

20. Richard A. Heeter was a fiduciary within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A) because he was the trustee under ERISA § 403(a), 29 U.S.C. § 1103(a), and because he exercised discretionary authority respecting management of the Plan, and exercised authority or control respecting management or disposition of the Plan's assets.

21. **Defendant Capital Trustees, LLC** ("CapTrustees") is a Pennsylvania Limited Liability Company founded in 2012. CapTrustees bills itself as "an independent trustee and fiduciary" that "serves as ongoing trustee to over 40 ESOP companies" and "serves as transaction trustee." CapTrustees' headquarters is at 112 Kim Acres Dr., Mechanicsburg, PA 17055.

22. Defendant CapTrustees was at all relevant times Richard A. Heeter's company and acted as a *de facto* trustee and fiduciary of the ESOP through the time of the Transaction. CapTrustees provides a team to execute ESOP transactions, office space, a routine due diligence

process, and insurance. CapTrustees advertises: “The professional team at Capital Trustees has extensive business experience, which allows them to efficiently and effectively fulfill their fiduciary duties.” In practice, CapTrustees acted in the ESOP Transaction through Richard A. Heeter and negotiated and approved the Transaction on behalf of the ESOP.

23. CapTrustees’ website mentions several ESOP Transactions in which it “served as Independent Trustee” of an ESOP, but its “About” page lists only one person—Richard Heeter. The “Contact” page of CapTrustees’ website directs visitors to only one email address: Rich@CapTrustees.com. The CapTrustees website links to a social media account on X (formerly known as Twitter), which leads to an account with the username @CapTrustees and display name of “Capital Trustees Rich Heeter,” and the profile picture is a photo of Heeter. CapTrustees and Heeter are interchangeable when Heeter serves as the trustee to an ESOP.

24. Based on the best information available to Plaintiffs, the Company appointed Heeter to be ESOP Trustee in his individual capacity rather than appointing CapTrustees merely because CapTrustees is not a registered trust company but JJF paid trustee services fees to CapTrustees, not to Heeter in his personal capacity.

25. CapTrustees was a fiduciary of the ESOP within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), from the early planning stages of the Transaction and up through when it (including Heeter) approved the Transaction because CapTrustees exercised discretionary authority or discretionary control respecting management of the ESOP, and/or exercised authority or control respecting management or disposition of the ESOP’s assets.

26. Pursuant to the Plan Document, the ESOP’s assets were invested and controlled by the Trustee, which, in practice, was Heeter and CapTrustees from the Transaction-planning stages up through its consummation.

27. Richard A. Heeter (named via his Estate) and CapTrustees are together referred to as the “**Trustee Defendants**” throughout this complaint.

C. Board Defendants

28. **Defendant JJF Board of Directors** and its members (collectively “**the Board Defendants**”) are named fiduciaries under the ESOP Plan Document.

29. The ESOP Plan Document grants the Board Defendants the power to select, retain, and remove the ESOP Trustee and ESOP Committee members and the responsibility for reviewing their performance. Under the terms of the Plan, they were responsible for “making decisions with respect to amending or terminating the Plan; making decisions with respect to the selection, retention, or removal of the Trustee and the ESOP Committee; periodically reviewing the performance of the Trustee, the members of the ESOP Committee and persons to whom duties have been allocated or delegated, and determining the form and amount of contributions.”

30. The Board Defendants appointed Richard A. Heeter as ESOP Trustee, and Heeter’s agreement gave the Board Defendants the power to remove him with or without cause.

31. **John J. Fitzgerald, Jr. (“Jack Fitzgerald”)** was the founder of “The Fitzgerald Automotive Family” in 1966, and the founder and principal owner of JJF. Jack Fitzgerald was the largest shareholder of JJF and sold his shares to the ESOP when he was the Company’s primary principal, President, and Chairman of the Board of Directors. Jack Fitzgerald continued to serve as President until September 2023 and remained Executive Chairman of the Board until his death.

32. As the Chairman of the JJF Board, Jack Fitzgerald signed the Trust Agreement appointing Richard A. Heeter as the Trustee of the ESOP prior to the Transaction and appointing Robert M. Smith, Jr., David Jenkins, and Gregg Steinbarth as the ESOP Trustees immediately after the Transaction. Due to his role in those appointments, he had a duty to monitor each of the ESOP Trustees to ensure they were fulfilling their duties to the ESOP and ensuring that the ESOP did not

pay more than fair market value for JJF stock.

33. Jack Fitzgerald was the sole member of the ESOP Voting Committee prior to and after the Transaction. He was thus an ESOP fiduciary through his power—under the ESOP’s Plan Document—to direct the Trustee how to vote for up to three members of JJF’s Board of Directors.

34. Jack Fitzgerald was a named fiduciary to the ESOP within the meaning of 29 U.S.C. § 1102(a)(2) and a *de facto* fiduciary within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21), from the early planning stages of the Transaction and up until his death because he exercised discretionary authority or discretionary control respecting management of the ESOP, and/or exercised authority or control respecting management or disposition of the ESOP’s assets.

35. Jack Fitzgerald was also a “party in interest” to the ESOP as defined in ERISA § 3(14)(A), (F), (H), 29 U.S.C. § 1002(14)(A), (E), (F), (H).

36. **Defendant John J. Fitzgerald, III** was a co-owner of the Company who sold his shares to the ESOP. He is Jack Fitzgerald’s son, a Vice President of the Company, and a member of the JJF Board (and its predecessor) prior to the ESOP Transaction.

37. As a Director, John J. Fitzgerald, III appointed Richard A. Heeter as ESOP Trustee prior to the Transaction. Due to his role in the appointment, he had a duty to monitor Heeter to ensure he was fulfilling his duties to the ESOP and ensuring that the ESOP did not pay more than fair market value for JJF stock.

38. John J. Fitzgerald, III was a named fiduciary to the ESOP within the meaning of 29 U.S.C. § 1102(a)(2) and a *de facto* fiduciary within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21), because he exercised discretionary authority or discretionary control respecting management of the ESOP and/or exercised authority or control respecting management or disposition of the ESOP’s assets.

39. John J. Fitzgerald, III is also a “party in interest” to the ESOP as defined in ERISA § 3(14)(A), (F), (H), 29 U.S.C. § 1002(14)(A), (F), (H).

40. **Defendant Dorothy M. Fitzgerald** was a co-owner of JJF who sold her shares to the ESOP. She is Jack Fitzgerald’s sister and serves as the personal representative of the Estate of Jack Fitzgerald. She was an Officer and a Board member of JJF prior to the ESOP Transaction.

41. As a Director, Dorothy M. Fitzgerald appointed Richard A. Heeter as ESOP Trustee prior to the Transaction. Due to her role in the appointment, she had a duty to monitor Heeter to ensure he was fulfilling his duties to the ESOP and ensuring that the ESOP did not pay more than fair market value for JJF stock.

42. Dorothy M. Fitzgerald as a Board member was a named fiduciary to the ESOP within the meaning of 29 U.S.C. § 1102(a)(2) and a *de facto* fiduciary within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21) because she exercised discretionary authority or discretionary control respecting management of the ESOP, and/or exercised authority or control respecting management or disposition of the ESOP’s assets.

43. Dorothy M. Fitzgerald is also a “party in interest” to the ESOP as defined in ERISA § 3(14)(A), (F), (H), 29 U.S.C. § 1002(14)(A), (F), (H).

44. **Defendant Walter Skipper** was a JJF Board member and a Board Representative at all relevant times and, like all Board members, had the powers and responsibility assigned to the Board in the ESOP Plan Document.

45. As a member of the Board, Walter Skipper appointed Heeter as ESOP Trustee prior to the Transaction and appointed Robert M. Smith, Jr., David Jenkins, and Gregg Steinbarth as the ESOP Trustees immediately after the Transaction. Due to his role in those appointments, Skipper had a duty to monitor each of the ESOP Trustees to ensure they were fulfilling their duties to the

ESOP and ensuring that the ESOP did not pay more than fair market value for JJF stock.

46. Walter Skipper was a named fiduciary to the ESOP within the meaning of 29 U.S.C. § 1102(a)(2) and a *de facto* fiduciary within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21) because he exercised discretionary authority or control respecting management of the ESOP and/or exercised authority or control respecting management or disposition of the ESOP's assets.

47. **Defendant James W. Cash** ("Bill Cash") was an owner of JJF stock prior to the ESOP Transaction. Cash sold his stock to the ESOP in the ESOP Transaction.

48. Bill Cash was Jack Fitzgerald's stepson, a JJF officer, and a member of the JJF Board prior to the ESOP Transaction.

49. As a member of the Board, Bill Cash appointed Richard A. Heeter as Trustee of the ESOP prior to the Transaction. Due to his role in the appointment, Cash had a duty to monitor Heeter to ensure they he was fulfilling his duties to the ESOP and ensuring that the ESOP did not pay more than fair market value for JJF stock.

50. Bill Cash was a named fiduciary within the meaning of 29 U.S.C. § 1102(a)(2) and a *de facto* fiduciary within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21) because he exercised discretionary authority or discretionary control respecting management of the ESOP and/or exercised authority or control respecting management or disposition of the ESOP's assets.

51. Bill Cash is also a "party in interest" to the ESOP as defined in ERISA § 3(14)(A), (H), 29 U.S.C. § 1002(14)(A), (H).

52. **Defendant Gregg Steinbarth** has worked at the Company since 1999. He has been a long-term Director and Assistant Secretary at JJF and is now the Company's General Counsel.

53. Gregg Steinbarth was a JJF Board member and Board Representative at all relevant times. As a Director, Gregg Steinbarth appointed Richard A. Heeter as ESOP trustee prior to the

Transaction and appointed Robert M. Smith, Jr., David Jenkins, and himself as the ESOP Trustees immediately after the Transaction. Due to his role in those appointments, Steinbarth had a duty to monitor each of the ESOP Trustees to ensure they were fulfilling their duties to the ESOP and ensuring that the ESOP did not pay more than fair market value for JJF stock.

54. Steinbarth was a named fiduciary within the meaning of 29 U.S.C. § 1102(a)(2) and a *de facto* fiduciary within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21) because he exercised discretionary authority or discretionary control respecting management of the ESOP and/or exercised authority or control respecting management or disposition of the ESOP's assets.

D. Seller Defendants

55. “**Seller Defendants**” refers to the Estate of Jack Fitzgerald, Dorothy M. Fitzgerald, John J. Fitzgerald, III, Bill Cash, Margaret M. Fitzgerald, and Kathleen Iceberg.

56. **Defendant Margaret M. Fitzgerald** was an owner of JJF stock prior to the ESOP Transaction. Margaret M. Fitzgerald sold her stock to the ESOP in the ESOP Transaction. Margaret M. Fitzgerald is Jack Fitzgerald's ex-wife and the mother of John J. Fitzgerald, III and Kathleen Iceberg.

57. At the time of the Transaction, Margaret M. Fitzgerald knew that her ex-husband and son were fiduciaries of JJF and that they both also sold stock to the ESOP.

58. Margaret M. Fitzgerald is a “party in interest” to the ESOP as defined in ERISA § 3(14)(F), 29 U.S.C. § 1002(14)(F).

59. **Defendant Kathleen Iceberg** was an owner of JJF stock who sold her JJF stock in the ESOP Transaction. She is the daughter of Jack Fitzgerald and sister to John J. Fitzgerald, III.

60. At the time of the Transaction, Iceberg knew her father was a fiduciary of JJF and that he also sold stock to the ESOP.

61. Kathleen Iceberg is a “party in interest” to the ESOP as defined in ERISA

§ 3(14)(F), 29 U.S.C. § 1002(14)(F).

E. Successor Trustee Defendants

62. The “**Successor Trustee Defendants**” refers to Defendants Robert M. Smith, Jr., David Jenkins, and Gregg Steinbarth.

63. Defendants Robert M. Smith, Jr., David Jenkins, and Gregg Steinbarth have been ESOP Trustees since immediately after the ESOP purchased Company stock. They have the power to vote the ESOP’s shares on matters for which the ESOP Voting Committee does not provide direction. They also control all ESOP plan assets.

64. Defendants Smith, Jenkins, and Steinbarth are named fiduciaries to the ESOP within the meaning of 29 U.S.C. § 1102(a)(2) and *de facto* fiduciaries within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21) starting immediately after the Transaction because they exercised discretionary authority or discretionary control respecting management of the ESOP and/or exercised authority or control respecting management or disposition of the ESOP’s assets.

65. **Robert M. Smith, Jr.** has worked at JJF since 1989. At the time of the ESOP Transaction, Smith was Vice President and became President of JJF on September 22, 2023. He is a Director of JJF and as part of the Transaction, he received substantial synthetic equity, which incentivized him to inflate the projections used to value the Company and to keep control through his role as ESOP trustee immediately after the Transaction.

66. **David Jenkins** has worked at the Company since 1987. At the time of the ESOP Transaction, Jenkins was Vice President of Operations. He became the Chief Operating Officer on September 22, 2023. As part of the Transaction, Defendant Jenkins received substantial synthetic equity, which incentivized him to inflate the projections used to value JJF and to keep control through his role as ESOP trustee immediately after the Transaction.

67. **Gregg Steinbarth** was and is the Company’s General Counsel, a member of the

Board of Directors, and a Seller (see above). He was incentivized to ensure the Transaction closed which provided a substantial payout for him on his JJF shares, the opportunity to award himself additional synthetic equity (as a Board member), and allowed him to keep control over JJF as an ESOP Trustee immediately after the Transaction.

68. Defendants Smith, Jenkins, and Steinbarth were not independent trustees whose only role was to represent the interests of the Plan and its participants. They were long-term associates of Jack Fitzgerald and the Fitzgerald Family. Their roles as Plan trustees and as directors, officers, and counsel belie their independence from Jack Fitzgerald and the other Seller Defendants. In fact, the Plan's 2023 Form 5500 reports: "the Plan is managed by 3 *non-independent* Trustees." (emphasis added).

69. Moreover, Dorothy Fitzgerald noted in Bethesda Magazine that Smith and Jenkins had "been with us since they were kids." And a September 28, 2023, press release stated: "Long-tenured executives Smith and Jenkins have been a part of the Fitzgerald family for over 30 years."

IV. FACTUAL ALLEGATIONS

A. The Company

70. JJF is a Maryland corporation that owns and operates twelve (12) Fitzgerald Auto Mall, Inc. car dealerships, with ten (10) in Maryland, one (1) Pennsylvania, and one (1) in Florida.

71. Jack Fitzgerald founded JJF in 1974. Prior to the Transaction, the Fitzgerald Family owned the Company.

72. JJF's current President explained that as Jack aged, he was looking for an "exit strategy" that avoided substantial estate taxes, and thus "put a lot of effort into changing the estate tax. Some people might say we were tilting at windmills but we put 10 years of effort" into changing the estate tax. "But after we ran into too many roadblocks . . . Jack decided the best exit strategy for him to perpetuate the brand is to do an ESOP, ...which allows him to continue his

brand **with the leadership team that he really looks at as family** over the years. . . [which also provides] significant tax benefits.” (emphasis added).

73. JJF is and was from the inception of the Plan, the sponsor of the Plan within the meaning of ERISA § 3(16)(B), 29 U.S.C. § 1002(16)(B). JJF also is and was from the inception of the Plan, the Plan’s administrator within the meaning of ERISA § 3(16)(A), 29 U.S.C. § 1002(16)(A), and a Named Fiduciary of the Plan within the meaning of ERISA § 402(a), 29 U.S.C. § 1102(a). The Company is responsible for the administration of the Plan.

74. Accordingly, JJF is and was an ERISA fiduciary to the Plan at all relevant times because it is a Named Fiduciary of the Plan; it is the Plan Administrator; and it possesses and exercised through the Board of Directors the fiduciary power to appoint and remove other Plan Fiduciaries, including the ESOP Trustee and the ESOP Committee.

75. As a Plan fiduciary, and an employer whose employees are covered by the Plan, JJF is and was at the time of the ESOP Transaction a party in interest to the Plan under ERISA § 3(14)(A) and (C), 29 U.S.C. § 1002(14)(A) and (C).

76. As of February 1, 2023, JJF became and still is an S Corporation.

B. The Plan and Plan Document

77. The ESOP is a pension plan within the meaning of ERISA § 3(2), 29 U.S.C. § 1002(2) and is subject to ERISA pursuant to ERISA § 4(a)(1), 29 U.S.C. § 1003(a)(1). The ESOP is also an individual account plan where current and former employees have an individual account that must purchase JJF stock as employer contributions are made. ERISA § 407(d)(6), 29 U.S.C. § 1107(d)(6); 29 C.F.R. § 2550.407d-6 (defining “employee stock ownership plan”). JJF stock is not and never was readily tradeable on an established securities market.

78. The Plan Document is to be “construed, administered and governed in all respects in accordance with ERISA and to the extent not superseded by federal law, in accordance with the

laws of the State of Maryland.”

79. Likewise, the Trust Agreement is to be “construed and administered according to the laws of the State of Maryland to the extent that the laws of the United States of America do not preempt such laws.”

80. Effective as of December 12, 2024, after all Plaintiffs left employment at the Company, the Plan Document was amended to include a forum selection clause designating the United States District Court for the Middle District of Florida, Tampa Division as the appropriate forum (hereinafter, “the Second Amendment”).

81. Based on the best information available to Plaintiffs, the forum selection clause was added by the Second Amendment to interfere with the rights of ERISA participants by designating a forum that is inconvenient, far from the parties and witnesses, and that applies an Eleventh Circuit exhaustion of administrative remedies requirement—which would commonly take a *full year* to complete. This would needlessly delay the adjudication of Plaintiffs’ claims given that neither the Fourth Circuit nor any other Circuit requires administration exhaustion for the claims brought here.

82. The Plan was amended after Plaintiff Bennett made a request for documents from the Plan Administrator under ERISA § 104(b)(4), 29 U.S.C. § 1024(b)(4), by letter dated November 6, 2024, putting Defendants on notice of potential litigation. And as previously stated, the Plan is administered in Rockville, Maryland; JJF is headquartered in Rockville, Maryland, with dealerships and employees predominantly in Maryland; most Defendants reside in Maryland; and Plaintiffs reside in this District or in West Virginia. And all the actions and omissions giving rise to the claims for relief occurred in this District or in Pennsylvania, including the Board of Directors’ decision to hire the Trustee, Trustee on-site meetings at the Company, numerous phone calls and email communications between persons in this District and Pennsylvania, and formation

and administration of the Plan.

83. Plaintiffs received the Second Amendment to the Plan after their claims had accrued and in response to their respective ERISA § 104(b)(4) requests in November 2024 and July 2025. The Second Amendment's forum selection clause and other provisions attempting to preclude this action from proceeding in this Court, which is the proper venue under ERISA § 502(e), 29 U.S.C. § 1132(e), are unenforceable, invalid, and void.

C. The Sale of the Company to the JJF ESOP

1. The Company Created a Willing Buyer through the ESOP

84. JJF established the ESOP effective on August 1, 2021. The ESOP Transaction took place on January 31, 2023.

85. The employer contributions, which invested in employer stock, are part of employee compensation and comprise an important part of employee retirement savings.

86. The ESOP's 2023 Form 5500 states that it had 2,051 participants with account balances as of the end of the plan year.

2. The Sellers Appointed Richard Heeter as Trustee Solely to Approve the Transaction

87. Planning for the ESOP Transaction began before Richard Heeter was appointed as ESOP Trustee.

88. A participant disclosure from May 18, 2023 states that the "Company made a very large cash contribution to the ESOP" for the 12-month period ending July 31, 2022 to "partially pre-fund the ESOP's purchase of the Company." There is no Form 5500 for this 12-month period.

89. The participant disclosure also states that "a portion of the contribution was directed specifically to those who have 15 or more years of service with the Company." Based on the best information available to Plaintiffs, some of the Defendants would have received this "bonus"

contribution.

90. On July 31, 2022, months after this initial contribution, the Company, acting through the Board of Directors, appointed Richard A. Heeter as Trustee of the ESOP solely for purposes of the signing off on the Transaction. Jack Fitzgerald, as signatory of the Trust Agreement, executed the appointment on behalf of the Company. Therefore, an unconflicted independent fiduciary did not make the appointment.

91. The Board of Directors also selected and took action to appoint Heeter as Trustee.

92. Heeter had sole and exclusive authority to negotiate and approve the ESOP Transaction on behalf of the Plan, including the price the Plan paid for JJF stock. This role required Heeter to (among other things) perform due diligence into JJF's business, negotiate and approve terms for the Transaction that were fair to the ESOP, and ensure that the ESOP paid no more than fair market value ("FMV") for the Company.

93. The Trust Agreement provided, in relevant part, that: "the Trustee shall have full and complete investment authority and responsibility with respect to the purchase, retention, sale, and pledge of Company Stock. The Trustee shall have the authority to contract or otherwise enter into transactions for the purpose of acquiring or selling Company Stock, including transactions with the Company or any Company shareholder, and to borrow money from any lender (including the Company) to finance the acquisition of Company Stock, giving its Note as Trustee, with such reasonable interest and security for the loan as may be appropriate or necessary (provide that such borrowing complies with the Plan)."

94. The Trust Agreement further provided that: "All purchases and sales of Company Stock shall be made at a price not less favorable to the [the ESOP's] Trust than fair market value as determined in good faith by the Trustee Any purchases or sales of Company Stock that are

not readily tradeable on an established securities exchange shall be made with the advice of an Independent Appraiser and in accordance with any applicable requirements of ERISA.”

95. The Trust Document also explicitly provided that Heeter “will be replaced by Rob Smith, David Jenkins, and Gregg Steinbarth immediately following the transaction.” This provision made clear that the Sellers knew the Transaction would be approved by Heeter, despite the fact that Heeter was supposed to approve the Transaction if it was in the best interest of the ESOP participants and the ESOP paid no more than FMV. This provision also made clear that the Sellers and the Trustee knew that insiders would control the ESOP after the transaction closed.

3. The Transaction Resulted in a Substantial Payout for the Seller Defendants and Burdensome Debt for the ESOP

96. According to a Form 5500 filed with the Department of Labor, the ESOP purchased 1,000,000 shares of the Company’s stock on January 31, 2023 for a total price of \$441,963,472, representing an average per-share price of \$441.96.

97. On January 31, 2023, the ESOP purchased 100% of the issued and outstanding shares of the JJF common stock, making the Company employee-owned through the ESOP trust.

98. To finance the purchase of shares, the ESOP entered into two separate loans, which together created an enormous debt burden for the ESOP. First, the ESOP took an external loan of \$89,321,858 to finance the remainder of the transaction, the Plan borrowed approximately \$331 million from Jack Fitzgerald and the remainder from other lenders.

99. The two loans were later refinanced on or around October 20, 2023 in the amount of \$441,963,472 as a loan from the Company to the ESOP. The total debt burden was higher than the original \$420 million because of a post-Transaction purchase price adjustment of \$16,508,475 and a post-closing adjustment of \$5,454,997. Based on the best information available to Plaintiffs, the additional \$21,963,472 was financed through additional Seller Notes, totaling roughly \$355

million in Seller debt.

100. The loan agreement provides for the loan to be repaid over 39 years. The day before the ESOP Transaction, on January 30, 2023, the Company's Articles of Incorporation were amended to guarantee that, until the loan was paid off, the Sellers would control a majority of the Board. This provision virtually guaranteed the Sellers would remain in control of JJF for decades—even after selling 100% of their stock to the ESOP and deriving major tax benefits for doing so.

101. The amendment to the Articles of Incorporation specified that Jack Fitzgerald would remain on the Board, along with his chosen directors: Defendant Walter J. Skipper and Defendant Gregg Steinbarth.

102. Article SIXTH to the Articles of Incorporation, as amended by the Articles of Amendment provide, in relevant part:

SIXTH: For so long as any amounts remain outstanding under the Applicable Notes, the size of the Board shall be set at five directors, and the Representative, on behalf of the Sellers, shall be entitled to nominate and cause the Company to appoint three individuals to the Board of Directors (one of which shall be the Representative) to serve as directors (the "Board Representatives"), subject to satisfaction of all legal and governance requirements regarding service as a director of the Company and subject to that certain Investor Rights Agreement. The initial Board Representatives shall be John J. Fitzgerald, Jr., Walter J. Skipper and Gregg J. Steinbarth, who shall also serve as members of the Compensation Committee of the Board of Directors as of the Effective Time. The Representative shall also be entitled to nominate and cause the Company to appoint replacements to fill any vacancies in such Board Representatives directorship at any time; provided that any such nominee shall be reasonably acceptable to the Company, it being understood that such acceptance shall be based on factors such as affiliation, knowledge and experience and shall not be unreasonably withheld The Company's nominating committee shall recommend to the Board of Directors that such persons designated by the Representative to be the Board Representatives (or any successor designated by the Representative and reasonably acceptable to the Company) be included in the slate of nominees recommended by the Board of Directors to shareholders for election as directors as each annual meeting of shareholders of the Company at which such person's term expires. The Company shall solicit proxies for the Board Representative to the same extent as it does for any of its other nominees to the Board of Directors. (Capitalized terms in this Article SIXTH shall have such meaning as ascribed to them as set forth in that certain Stock Purchase Agreement dated as January 31, 2023).

103. The “Representative” referenced in the Articles of Amendment who was “entitled to nominate and cause the Company to appoint three individuals to the Board of Directors” on behalf of the Sellers is Jack Fitzgerald.

104. In addition, to cement the Fitzgerald Family’s ongoing control over the Company post-Transaction, the Board Defendants structured the ESOP such that there was an “ESOP Voting Committee” with one member—Jack Fitzgerald—who would direct the Trustee’s voting for up to three (3) members of the Board until the Seller Notes were satisfied.

105. By design, JJF has remained under the control of the Seller Defendants after the ESOP Transaction.

D. The Transaction Was Not Fair and Not in the Interest of Plan Participants

1. The ESOP Paid More than FMV for the Company’s Stock

106. The ESOP’s purchase price (\$441,963,472) far exceeded FMV of the shares.

107. According to the ESOP’s 2023 financial statements filed with the DOL, the reported value of the acquired JJF stock was only \$46.45 million as of January 31, 2024—a nearly 90% reduction from the purchase price just a year earlier.

108. Although the ESOP ultimately paid \$441,963,472 for 100% of the Company’s shares, the Seller Defendants and Heeter had originally agreed that the ESOP would purchase those shares for \$420,000,000. The ESOP ultimately paid more than originally negotiated due to a post-Transaction price adjustment of \$16,508,475 and a post-closing adjustment of \$5,454,997. As a result, the ESOP paid an additional \$22 million without receiving anything additional in return.

109. Particularly concerning is, when the purchase price adjustment and post-closing adjustment were calculated, Heeter—who had negotiated the \$420 million purchase price for the ESOP—was no longer in charge. The Board Defendants had set up the ESOP so that Heeter would be immediately replaced by Smith, Jenkins, and Steinbarth, who were the leadership team that

Jack considered “family.” Steinbarth was also one of the Sellers’ hand-picked Board members.

110. The Successor Trustee Defendants, who had discretionary control over the ESOP, caused the additional payments (totaling \$22 million), which were prohibited transactions.

2. The Appraisal that Was Used to Justify the Inflated Purchase Price Failed to Properly Account for Several Material Considerations

111. The valuation process undertaken by Heeter was flawed. The stock appraisal upon which he relied was based on unrealistic and inflated projections of JJF’s future cash flows and earnings; excluded material facts relevant to the valuation; and ignored that the Sellers and Board Defendants would keep control of JJF even after the ostensible 100% sale to the ESOP.

112. *First*, the projections were prepared by Jack Fitzgerald and the leadership team (Smith, Jenkins and Steinbarth) that Jack considered “family.” These individuals were conflicted because they would receive a large payout from the ESOP Transaction or would receive substantial synthetic equity from the Transaction plus the power to award themselves even more synthetic equity.

113. The unrealistic and inflated projections of JJF’s future cash flows and earnings were influenced by the Seller Defendants, who stood to (and did) personally profit from any increased value in the stock price they received from the ESOP. The financial and business information provided by Jack Fitzgerald and his leadership team was inflated due to their significant conflicts of interest. These conflicts were not properly accounted for as part of Heeter’s valuation process.

114. *Second*, the synthetic equity which went to Jack’s leadership team (his “family”) substantially diluted the value of JJF stock allocated to employee-participants and were not adequately valued as a drain on the Company’s share value and cash flows.

115. The Plan defines “Synthetic Equity” as “any stock option, warrant, restricted stock, deferred issuance stock right, or similar interest or right that gives the holder the right to acquire

stock of the S Corporation in the future” and, subject to Regulations, “a stock appreciation right, phantom stock unit, or similar right to a future cash payment based on the value of such stock or appreciation in such value and ‘non-qualified deferred compensation’ that is treated as synthetic equity in accordance with Treas. Reg. 1.409(p)-1(f).”

116. When synthetic equity is granted, it dilutes the value of company shares held by ESOP participants and transfers that value to those persons holding the synthetic equity. Thus, when synthetic equity is granted, it reduces the value of the JJF shares owned by the Plan. This either harms the economic interest of Plan participants, or if the synthetic equity is not properly taken into account in the valuation of JJF stock, the stock is reported at inflated values.

117. Accordingly, the Plan overpaid for JJF stock, and the Seller Defendants were permitted to receive improper profits, resulting from the synthetic equity issued to them. A rational buyer would not have purchased the company stock that the ESOP was forced to purchase or would have demanded a significant discount in the price of the stock to account for these defects.

118. *Third*, the stock appraisal failed to account for COVID-related supply chain problems, which had drastically inflated the prices of new and used cars and trucks in the months leading up to the Transaction. Indeed, data from the Federal Reserve shows that the price of used cars hit an all-time high in June 2022, seven months before the Transaction.

119. Between August 2020 and June 2022, used car prices increased every single month for *23 months in a row*. At the 2022 peak, used car prices were 55% more than in August 2020.

120. Industry experts predicted that these sky-high prices would not last. Indeed, analysts at J.P. Morgan issued a report near the time of the Transaction predicting that used car prices would decline by 10% in 2023. J.P. Morgan also predicted that even new car prices would decline by 2.5% to 5% in 2023. Federal Reserve data shows that, immediately after the ESOP

Transaction, used car prices in the United States declined for 19 months in a row.

121. Heeter's valuation should have considered these anomalous conditions—caused by a once in a century pandemic—when evaluating the Company's growth projections. However, Heeter failed to consider that the Company's gangbusters performance in the months leading up to January 2023 was not indicative of the Company's underlying value, but merely of transitory, fluke economic conditions, driven by a global pandemic, that were already beginning to subside.

122. *Fourth*, the projections were unreasonably optimistic and aggressive as the valuation used “comparable” publicly traded companies that were significantly different than JJF in terms of financial size, geographic location, product offerings, and different markets served.

123. Using these guideline public companies to determine the FMV of JJF had the effect of improperly increasing the indicated value because the public companies were too different from JJF to provide a reliable indication of value.

124. *Fifth*, the stock appraisal also failed to account for the Sellers' continued control over the Company. The price investors are willing to pay for a company's equity is materially affected by the degree of control those investors will receive over the company when they invest.

125. Heeter valued JJF stock on a control basis by using an industry and/or an expected capital structure in the income approach analysis rather than the Company's actual capital structure. This type of analysis yields a control value of the Company stock because a lack of control equity interest would not be able to change the capital structure of the Company.

126. In connection with the Transaction, the Seller Defendants and Jack's leadership team (which he considered “family”) retained control over the Company.

127. In fact, the day before the ESOP Transaction, the Company amended its Articles of Incorporation to ensure that—until the ESOP Transaction debt was paid (a projected 39 years into

the future)—the Sellers would control a majority of the Board.

128. Even worse, immediately after the ESOP purchased JJF, Heeter was replaced by Jack’s long-term leadership team: Smith, Jenkins, and Steinbarth. Indeed, the Plan’s 2023 Form 5500 reports that “[t]he Plan is managed by 3 *non-independent* Trustees.” (emphasis added). As Smith admitted publicly, Jack wanted an “exit strategy” which “allow[ed] him to continue his brand with the leadership team that he really looks at as family over the years.”

129. Accordingly, a discount for lack of control of no less than 10% should have been applied to the value of the Company stock, but was not applied. Thus, the Plan paid more than FMV for the stock.

130. *Sixth*, the appraisal that Heeter utilized to value JJF failed to apply a sufficient discount for lack of marketability to JJF’s equity value. As a general matter, an arms-length purchaser is willing to pay more for a highly liquid asset, and less for a highly illiquid asset.

131. Because JJF stock has always been privately held, there is no public market on which it is traded. JJF stock is far less liquid than stock in public companies like Apple or Meta, whose stock can be bought and sold in seconds to willing buyers.

132. While ESOP consultants rely heavily on the “put option” in the ESOP Plan Document, that (still limited) liquidity is not available to the ESOP as a whole. In other words, the Plan’s “put option” does not provide liquidity for the ESOP to itself liquidate its interest in JJF. As stated in the Financial Statements to the Plan’s 2022-2023 Forms 5500, “The purpose of the put option is to ensure that *the participant* has the ability to ultimately obtain cash.” (emphasis added). Further, the “put option” has substantial restrictions, e.g. a more than five-year wait period.

133. Furthermore, were the ESOP to attempt to sell JJF, it would face many obstacles. There are very few potential buyers of large car dealership chain.

134. The most likely interested buyers—competitor dealerships in Maryland—would likely face antitrust scrutiny from state and federal authorities given JJF’s concentration in Maryland.

135. Such scrutiny would impose significant legal costs and risks on a potential buyer attempting to navigate regulatory approval. Those costs would reduce the price a third party would pay to purchase JJF. The antitrust concerns provide even more reason that Heeter should have applied a higher discount for lack of marketability (“DLOM”).

136. Any sale to an outside buyer would be extremely difficult due to the financing challenges. This is confirmed by the fact that, here, the Seller Defendants had to self-finance at least 75% of the ESOP Transaction through Seller Notes. The Sellers were only able to secure up to \$89 million of external financing for the \$441 million Transaction (20%). A third party buying JJF from the ESOP would likely need to secure far more external financing to execute the Transaction, as the ESOP could not simply issue hundreds of millions of dollars of Notes to make up the difference.

137. The Sellers’ inability to secure more external financing for the purchase—which they were incentivized to do, as more external financing would provide them more cash at closing—suggests that no external financier was willing to offer more than \$90 million in Transaction financing. Because of these financing hurdles, the ESOP would have to find an immensely cash-rich buyer for JJF.

138. Moreover, the pool of potential buyers is extremely limited—or even non-existent. Thus, the ESOP should have received a massive DLOM. Published academic studies have concluded that a proper DLOM may be as high as 60% to account for the limited pool of buyers but based on the best information available to Plaintiffs, Heeter applied a DLOM of 5%.

139. Even assuming none of the valuation errors identified above, applying a modest combined discount for lack of control and marketability of 20% means the Plan overpaid by approximately \$42 million. Because the Plan participant losses, *i.e.*, the Plaintiffs' losses, are coterminous with the Plan's losses, each Plaintiff (and each member of the putative class) suffered losses in proportion to the JJF shares allocated to their accounts.

E. The Trustee and Successor Trustee Defendants Improperly Approved the Transaction and Subsequent Purchase Price Adjustments

140. Consistent with their fiduciary obligations, the Trustee Defendants were required to ensure that the ESOP did not pay more than FMV for JJF stock, considering all aspects of the Transaction. However, the Trustee Defendants failed to do so and overlooked many important facts (see above) that should have caused them to question (and reject) the sky-high purchase price.

141. The Trustee Defendants also failed to adequately consider the related ESOP loan terms, the Company loan servicing obligations, and related implications for long-term cash flow.

142. Nor did the Trustee Defendants consider the risk to the ESOP associated with the additional amounts paid to the Sellers (post-Transaction), which would be overseen by the Trustee Defendants' replacements—Company insiders Smith, Jenkins, and Steinbarth.

143. Had the Trustee Defendants adequately considered all material facts, they would have recognized that (a) the purchase price was inflated, (b) it was not prudent and in ESOP participants' interest to complete the Transaction, and (c) the Transaction was designed to benefit the Seller Defendants rather than benefit Plan participants and their beneficiaries.

144. Moreover, the Successor Trustee Defendants failed to adequately oversee the post-Transaction purchase price adjustments (totaling \$22 million) which caused the ESOP to pay more for the Company without receiving additional shares or consideration.

F. The Board Defendants Failed to Exercise Appropriate Care and Loyalty to the Participants

145. The Board Defendants failed to prudently appoint the Trustee Defendants. The Board Defendants appointed the Trustee Defendants because they would rubber-stamp the Transaction, not because they would conduct a thorough review of the Transaction in participants' best interest. This is evident from the fact that the Trustee Defendants were immediately replaced by Company insiders (Successor Trustee Defendants) after the Transaction closed.

146. The Board Defendants also failed to prudently monitor the Trustee Defendants to ensure compliance with ERISA fiduciary requirements. To the contrary, the Board Defendants sought to convince the Trustee Defendants to approve the Transaction, even though they knew from their vantage point as Company insiders that the purchase price was inflated and the Transaction was not in the ESOP participants' best interest.

147. Because the Board Defendants were at the highest levels of Company management, each of them was involved in the preparation of financial projections and other information used in appraisals of JJF stock prior to and after the ESOP Transaction. This included involvement in the preparation of financial projections for JJF future cash flows and earnings that the Board Defendants knew or should have known were overly optimistic, and which formed the basis of the stock appraisal relied upon by the Trustee Defendants in agreeing to an inflated price.

148. The Board Defendants were aware of all facts alleged herein because they were Company leaders and members of the Board of Directors who were privy to the relevant events and had access to all relevant information. Due to their conflicts of interests, at no point did the Board Defendants ever raise any red flags or issue any cautionary warnings related to the Transaction. Since the Transaction was consummated, the Board Defendants have failed to take any remedial action or encourage the Company insiders who replaced the Trustee Defendants as

ESOP Trustee (Smith, Jenkins, and Steinbarth) to take any remedial action.

G. The Seller Defendants Have Retained Some of Their Ill-Gotten Gains Received from the ESOP Transaction

149. In public videos, senior JJF leadership explained that Jack Fitzgerald and his family took advantage of substantial tax breaks via the ESOP Transaction. To obtain these tax breaks, the Sellers' Transaction proceeds must be invested in Qualified Replacement Property ("QRP"). In other words, to avoid capital gains taxes on the sale of their JJF stock, Jack Fitzgerald and the other Seller Defendants invested their proceeds from the ESOP Transaction in "qualified replacement property" pursuant to I.R.C. § 1042.

150. Under I.R.C. § 1042, the gains on the sale of stock to the ESOP are taxed when the qualified replacement property is sold, and capital gains taxes can be eliminated entirely if the qualified replacement property is held by the Seller Defendants until death. On information and belief, the Seller Defendants still hold their ESOP Transaction proceeds in qualified replacement property to avoid the adverse tax consequences, and Jack Fitzgerald's proceeds remain in the same qualified replacement property now held by his Estate, which has not been fully settled.

151. Each Seller Defendant was required under I.R.C. § 1042 to complete a signed Statement of Purchase that identified and declared the QRP they purchased to avoid taxes on their proceeds from the ESOP Transaction. These Statement of Purchase would be filed by each Seller Defendant with their tax return.

V. PLAN REPRESENTATIVE ALLEGATIONS

152. Plaintiffs bring this action on behalf of the Plan pursuant to 29 U.S.C. §§ 1109(a) and 1132(a)(2)-(3). Plaintiffs seek Plan-wide relief under 29 U.S.C. §§ 1109(a) and 1132(a)(2)-(3); they do not seek individual relief solely for themselves.

VI. CLASS ALLEGATIONS

153. Plaintiffs assert their claims pursuant to Fed. R. Civ. P. 23 on behalf of:

All participants in the JJF Management Services, Inc. ESOP on or after January 31, 2023 who vested in whole or in part under the terms of the ESOP, and those participants' beneficiaries, excluding Defendants and their immediate family members; any fiduciary of the ESOP; and any current or former officers or directors of JJF Management Services, Inc.

154. **Numerosity.** The Class of approximately 2000 members is so numerous that joinder of all class members is impracticable.

155. **Commonality.** There are numerous common questions of law and fact, including:

- a. Whether the Board Defendants are fiduciaries, the scope of those duties and whether they breached their fiduciary duties under ERISA;
- b. Whether Successor Trustee Defendants are fiduciaries and scope of their duties;
- c. Whether the Trustee Defendants caused prohibited transactions under ERISA;
- d. Whether the Seller Defendants are parties in interest as defined by ERISA;
- e. The ESOP's losses that resulted from the unlawful conduct alleged herein; and
- f. The proper form of equitable and injunctive relief.

156. **Typicality.** Plaintiffs' claims are typical of other class members' claims because: (a) Plaintiffs were participants/beneficiaries in the ESOP; (b) they were treated consistently with other ESOP participants/beneficiaries; (c) Plaintiffs suffered the same injuries as other class members; and (d) Plaintiffs seek relief on behalf of the Plan as a whole rather than relief that is unique to themselves.

157. **Adequacy.** Plaintiffs will fairly and adequately protect the interests of the class. Plaintiffs' interests are aligned with the class they seek to represent, and they are committed to the vigorous representation of the class. All of Plaintiffs' undersigned Counsel are experienced in ERISA litigation and other complex class action litigation. Plaintiffs have no interests antagonistic to or in conflict with the interests of the class that would impair their ability to represent the class.

158. **Rule 23(b)(1)(A) and (B)** certification is appropriate because prosecution of separate actions by individual class members would create the risk of inconsistent or varying

adjudications that would establish incompatible standards of conduct for Defendants relating to the ESOP and be dispositive of the interests of other ESOP participants

VII. CAUSES OF ACTION

Count I - Breach of Fiduciary Duties

Under ERISA § 404(a)(1)(A)-(B), 29 U.S.C. § 1104(a)(1)(A)-(B) (Against Trustee Defendants)

159. Plaintiffs incorporate the preceding paragraphs as though set forth herein.

160. ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A), requires a plan fiduciary act “for the exclusive purpose of providing benefits to participants and the beneficiaries of the plan.”

161. ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B), requires that a plan fiduciary act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

162. In the context of a sale of a company/employer to an ESOP, the duties of loyalty under ERISA § 404(a)(1)(A) and prudence under ERISA § 404(a)(1)(B) require a fiduciary to undertake an appropriate investigation to ensure that the ESOP and its participants pay no more than adequate consideration for the company’s assets and the participants’ accounts in the ESOP and to ensure that all the Transaction terms are fair and in the best interest of participants.

163. The Trustee Defendants were required to undertake appropriate and independent due diligence and an investigation of the fair market value of JJF stock before approving the Transaction. Among other things, they were required to conduct a thorough and independent review of the stock appraisal and ensure that reliance on that appraisal was reasonably justified under the circumstances; to investigate the reliability and reasonableness of the management projections for JJF’s future revenue, earnings, and cash flow upon which the discounted cash flow

method used in the appraisal; to make an honest, objective effort to read and understand the valuation reports and opinions, and question any uncertain methods and assumptions; to identify, question, and test the underlying financial data and assumptions; determine that the projections were reasonable; and to verify that the conclusions were consistent with the data and analyses.

164. As alleged above, a prudent and loyal investigation of all the relevant terms, financial projections, and assumptions in connection with the Transaction would have revealed that the aggregate Transaction price of \$441,963,472, representing an average per-share price of \$441.96, was greater than the fair market value of the JJF stock at the time of the Transaction.

165. A prudent and loyal investigation by the Trustee Defendants also would have revealed that it was imprudent to approve the financing terms of the Transaction.

166. A prudent and loyal investigation by Trustee Defendants would have revealed that the Transaction terms, taken together, were not in the best interest of ESOP participants.

167. By failing to act prudently and loyally in participants' best interests in connection with the Transaction and by approving the Transaction, the Trustee Defendants breached their fiduciary duties under ERISA § 404(a)(1)(A)-(B), 29 U.S.C. § 1104(a)(1)(A)-(B) and caused losses to the ESOP and the retirement accounts of ESOP participants.

168. The Trustee Defendants are liable to restore these losses and for other appropriate relief under ERISA § 502(a)(2)-(3), 29 U.S.C. § 1132(a)(2)-(3), and ERISA § 409, 29 U.S.C. § 1109, as a result of these fiduciary breaches.

Count II – Improper Fiduciary Appointment and Monitoring

**In Violation of ERISA § 404(a)(1)(A)-(B), 29 U.S.C. § 1104(a)(1)(A)-(B)
(Against Board Defendants)**

169. Plaintiffs incorporate the preceding paragraphs as though set forth herein.

170. As members of the Company's Board of Directors, the Board Defendants appointed

the Trustee Defendants as the ESOP Trustee. Following the Trustee Defendants' appointment, the Board Defendants retained the power to remove the Trustee Defendants as the ESOP Trustee but elected to preserve them in that role until the Transaction was consummated, at which point they installed their loyalists Smith, Jenkins, and Steinbarth.

171. Company board members who are responsible for the selection and retention of Plan fiduciaries are themselves fiduciaries and are subject to ERISA's duties of loyalty and prudence with regard to the selection and retention of their appointed fiduciaries. *See* 29 C.F.R. § 2509.75-8 (D-4). They also have a duty to monitor their appointees.

172. The Board Defendants breached their fiduciary duties in connection with the appointment of the Trustee Defendants and the Successor Trustee Defendants and then failed to prudently and loyally monitor them. The Board Defendants appointed the Trustee Defendants because they believed they would rubber stamp the Transaction, not because they believed doing so was in the interest of the ESOP and its participants and beneficiaries. A prudent investigation would have revealed other candidates who would have done a better job.

173. The Board Defendants also breached their fiduciary duties by retaining the Trustee Defendants and failing to fulfill their ongoing duty to monitor them to ensure that they were acting in compliance with statutory standards under ERISA. *See* 29 C.F.R. § 2509.75-8 (FR-17) (1975).

174. Among other things, the Board Defendants:
- a. failed to make sure that the Trustee Defendants had adequate controls, including protections to ensure that they hired competent valuation advisors and did not unreasonably rely on flawed assumptions and inflated projections;
 - b. failed to make sure that the Trustee Defendants and their advisors received all material information in connection with the Transaction, including information relating to potential business risks;
 - c. failed to make sure that the Trustee Defendants received accurate information and realistic financial projections for due diligence;

- d. failed to monitor the Trustee Defendants' fiduciary processes;
- e. failed to monitor the Successor Trustee Defendants in connection with the significant post-Transaction payments;
- f. failed to review and evaluate the performance of Trustee Defendants and Successor Trustee Defendants, or install impartial fiduciaries who would do so; and
- g. failed to remove the Trustee Defendants and Successor Trustee Defendants when they knew that their performance was inadequate for the reasons described herein.

175. The Board Defendants are liable for appropriate relief under ERISA § 409, 29 U.S.C. § 1109, and ERISA § 502(a)(2)-(3), 29 U.S.C. § 1132(a)(2)-(3), for their failure to appropriately appoint and monitor the Trustee Defendants and Successor Trustee Defendants in a manner consistent with ERISA's fiduciary standards.

Count III – Prohibited Transactions

In Violation of ERISA § 406, 29 U.S.C. § 1106 (Against the Trustee Defendants)

176. Plaintiffs incorporate the preceding paragraphs as though set forth herein, including but not limited to the preceding allegations regarding the Trustee Defendants' fiduciary status.

177. ERISA § 406(a)(1), 29 U.S.C. § 1106(a)(1), requires that a plan fiduciary “shall not cause the plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect (A) sale or exchange, or leasing of any property between the plan and a party in interest,” or a “(D) transfer to, or use by or for the benefit of, a party in interest, of any assets of the plan.”

178. ERISA § 406(a)(1)(B), 29 U.S.C. § 1106(a)(1)(B), further provides that a plan fiduciary shall not cause the plan to engage in a transaction if he knows or should know that such transaction constitutes the direct or indirect loan of money between the plan and a party in interest.

179. ERISA § 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D), prohibits a plan fiduciary from causing the Plan to engage in a transaction that constitutes a direct or indirect transfer to a party in

interest, here the Seller Defendants, of any assets of the Plan, as took place in the ESOP Transaction with the transfer of Plan assets to the Seller Defendants.

180. ERISA § 3(14), 29 U.S.C. § 1002(14) defines a “party in interest” to include

- “any fiduciary . . . of such employee benefit plan”
- “an employer any of whose employees are covered by such plan”
- “an employee, officer, director . . . or a 10 percent or more shareholder” of an employer whose employees are covered by the ESOP
- “a relative (as defined in paragraph (15)) of any individual described in subparagraph (A), (B), (C), or (E)[.]”

29 U.S.C. § 1002(14)(A), (C), (H), (F).

181. The Seller Defendants are parties in interest to the ESOP within the meaning of ERISA § 3(14), 29 U.S.C. § 1002(14) because, *inter alia*, they were fiduciaries to the Plan; employees, officers, directors, and/or large shareholders of the Company whose employees were covered by the Plan; and/or relatives of Plan fiduciaries.

182. The Company is also a party in interest to the ESOP because it is an employer whose employees are covered by the Plan.

183. The Trustee Defendants, acting as fiduciaries of the ESOP, approved and caused the ESOP to purchase 1,000,000 shares of Company stock from the Seller Defendants, who were parties in interest to the ESOP. This was a prohibited transaction because the Transaction constituted an exchange of property between the ESOP and the Seller Defendants in violation of ERISA § 406(a)(1)(A), 29 U.S.C. § 1106(a)(1)(A) and a transfer of the ESOP assets to the Seller Defendants in violation of ERISA § 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D).

184. Thereafter, each individual payment to the Seller Defendants by the ESOP constituted another exchange of property between the ESOP and the Seller Defendants in violation of ERISA § 406(a)(1)(A), 29 U.S.C. § 1106(a)(1)(A), as well as a transfer of the ESOP assets to the Seller Defendants in violation of ERISA § 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D).

185. The Trustee Defendants also caused the ESOP to borrow over \$330 million from the Seller Defendants and, later, a total of \$441 million from the Company, which constituted prohibited transactions in violation of ERISA § 406(a)(1)(B), 29 U.S.C. § 1106(a)(1)(B).

186. Each payment by the ESOP of principal or interest to the Seller Defendants or to the Company in connection with these loans constitutes an independent violation of ERISA § 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D).

187. The Trustee Defendants knew or should have known that the foregoing transactions were prohibited and caused losses to the ESOP and its participants.

188. The Trustee Defendants are liable for appropriate relief under ERISA § 409, 29 U.S.C. § 1109 and ERISA § 502(a)(2)-(3), 29 U.S.C. § 1132(a)(2)-(3) as set forth herein.

Count IV – Prohibited Transactions

In Violation of ERISA § 406, 29 U.S.C. § 1106 and Claim For Equitable Relief Under ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3) (Against the Seller Defendants)

189. Plaintiffs incorporate the preceding paragraphs as though set forth herein, including but not limited to the preceding allegations regarding the Board Defendants' status as fiduciaries and the Seller Defendants' status as parties in interest.

190. The Seller Defendants knew or should have known that the transactions alleged in Count III were prohibited.

191. To the extent the Seller Defendants are not found to be fiduciaries who caused the prohibited transactions alleged in this Count, they are still liable for equitable relief under *Harris Trust and Savings Bank v. Salomon Smith Barney, Inc.*, 530 U.S. 238 (2000) because each of them knowingly participated in the prohibited transactions and the Trustee Defendants' and Successor Trustee Defendants' fiduciary breaches as described herein.

- As owners and leaders of the Company, the Seller Defendants were involved in and directed the preparation of the financial projections underlying the stock appraisal relied upon by the Trustee Defendants, which was the basis of the purchase price the ESOP paid for the Company.
- Given their role in the preparation of the Company's financial statements and its operations for many years, the Seller Defendants knew or should have known that the financial and business projections underlying the stock valuation were unrealistic and unreliable and that the purchase price exceeded the fair market value of the Company.
- The Seller Defendants knew or should have known that the Company faced idiosyncratic risks because of COVID-related supply chain disruptions.
- The Seller Defendants knew or should have known that, despite selling 100% of the Company's shares outstanding to the ESOP, they retained control over the Company due to their ability to appoint a majority of the Board, and their ability to remove the Trustee without cause.
- The Seller Defendants knew or should have known that the Transaction was highly leveraged, and the Company bore all risk of default in connection with the underlying loans.
- The Seller Defendants knew or should have known that the Company was obligated to make contributions to the ESOP in an amount sufficient to cover the principal and interest payments on the loans, which functioned as a significant drag on its future cash flows.
- Based on their knowledge, position, and unique access to the Company's financial and business information, the Seller Defendants knew or should have known that the Trustee Defendants had no basis for approving the Transaction or the continuing payments to the Seller Defendants but participated in the Transaction and accepted those continuing payments anyway in conscious disregard of the ERISA violations described herein.
- Based on their knowledge, position, and unique access to the Company's financial and business information, the Seller Defendants knew or should have known that the Successor Trustee Defendants did not fulfill their fiduciary duties in approving or allowing the additional post-Transaction payments of almost \$22 million to the Seller Defendants.

192. Accordingly, the Seller Defendants are liable as non-fiduciary parties in interest for disgorgement and other appropriate equitable relief under ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3).

Count V – Prohibited Transactions

**In Violation of ERISA § 406, 29 U.S.C. § 1106
(Against the Successor Trustee Defendants)**

193. Plaintiffs incorporate the preceding paragraphs as though set forth herein, including the preceding allegations regarding the Successor Trustee Defendants' status as fiduciaries and the prohibited transaction rules set forth in ERISA § 406(a)(1), 29 U.S.C. § 1106(a)(1).

194. The two additional payments totaling almost \$22 million which the ESOP made to the Seller Defendants as a post-Transaction price adjustment and a post-closing adjustment were both transfers of plan assets and exchanges of property with parties in interest.

195. The Successor Trustee Defendants knew or should have known they caused these prohibited transaction as they alone had discretionary power of the ESOP at the time the \$22 million in payments occurred.

196. They caused the payments of a total of \$22 million to the Seller Defendants, for which the ESOP received no additional stock or value and are thus liable for appropriate relief under ERISA § 409, 29 U.S.C. § 1109 and ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2) in connection with those prohibited transactions.

Count VI – Co-Fiduciary Liability

**Under ERISA § 405(a), 29 U.S.C. §§ 1105(a)
(Against Board Defendants and Successor Trustee Defendants)**

197. Plaintiffs incorporate the preceding paragraphs as though set forth herein.

198. ERISA § 405(a), 29 U.S.C. § 1105(a) provides that a fiduciary “with respect to a plan shall be liable for a breach of fiduciary responsibility of another fiduciary with respect to the same plan . . . if he participates knowingly in . . . an act or omission of such other fiduciary, . . . or [] he has knowledge of a breach by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach.”

199. As discussed above, the Board Defendants had knowledge of the Trustee Defendants' fiduciary breaches and the prohibited transactions set forth herein, and knowingly

participated in and facilitated those prohibited transactions.

200. The Board Defendants made no effort, much less reasonable efforts, to remedy those fiduciary breaches and prohibited transactions.

201. The Successor Trustee Defendants also had knowledge of the Trustee Defendants' fiduciary breaches and prohibited transactions, but made no effort to remedy them when they replaced the Trustee Defendants.

202. Based on the foregoing, the Board Defendants and Successor Trustee Defendants are liable as co-fiduciaries under ERISA § 405(a), 29 U.S.C. § 1105(a), for the Trustee Defendants' fiduciary breaches and other ERISA violations, and subject to appropriate relief under ERISA § 409, 29 U.S.C. § 1109, and ERISA § 502(a)(2)-(3), 29 U.S.C. § 1132(a)(2)-(3).

Count VII – Indemnification Claim

Under ERISA § 410(a), 29 U.S.C. § 1110(a) (Against Trustee Defendants, Board Defendants and Successor Trustee Defendant)

203. Plaintiffs incorporate the preceding paragraphs as though set forth herein.

204. ERISA § 410(a), 29 U.S.C. § 1110(a) provides that “any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this part shall be void as against public policy.”

205. Indemnification agreements requiring a company owned by an ESOP to indemnify the ESOP fiduciaries are prohibited as they “would have the same result as an exculpatory clause, in that it would, in effect, relieve the fiduciary of responsibility and liability to the plan by abrogating the plan's right to recovery from the fiduciary for breaches of fiduciary obligations.” 29 C.F.R. § 2509.75-4 (1975).

206. The Plan Document provides that “[t]he Board of Directors, the Plan Administrator or any person to whom duties and responsibilities have been allocated or delegated shall be

indemnified and held harmless by the Company from any expense or liability hereunder unless due to or arising from gross negligence or willful misconduct of the Board of Directors, the Plan Administrator, or such person, as the case may be.” JF’s governing documents likewise provide indemnification to Board members for any defense costs or liability associated with acts or responsibilities associated with their Board membership. These governance provisions are void under ERISA § 410(a), 29 U.S.C. § 1110(a), as applied to any liability in this case.

207. The Trustee Defendants, Board Defendants, and Successor Trustee Defendants are fiduciaries to the Plan within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21). Indemnifying them for the ERISA violations alleged in this case would abrogate the ESOP’s right to recovery from a breaching fiduciary and effectively require the ESOP to bear the cost of liability itself.

208. Plaintiffs seek appropriate relief under ERISA §§ 502(a)(2) and/or 502(a)(3), 29 U.S.C. §§ 1132(a)(2) and/or 1132(a)(3) to enjoin Defendants from relying on this indemnification provision in connection with any liability or costs of defense in this case.

VIII. PRAYER FOR RELIEF

209. WHEREFORE, Plaintiffs, on behalf of the Plan and the class, pray that judgment be entered against Defendants on each Count and that the Court grant all available relief to address the ERISA violations referenced herein, including (among other things):

- a. Declaring that the Trustee Defendants and Successor Trustee Defendants have caused prohibited transactions in violation of ERISA § 406(a), 29 U.S.C. § 1106(a);
- b. Declaring that the Trustee Defendants and Board Defendants have each breached their fiduciary duties under ERISA;
- c. Enjoining the Board Defendants from further violations of their fiduciary responsibilities, obligations, and duties;
- d. Removing Robert M. Smith, Jr., David Jenkins, and Gregg Steinbarth from their positions as Trustees of the JF ESOP and barring them from serving as a fiduciary of the ESOP in the future;

- e. Appointing a new, independent fiduciary to manage the ESOP and ordering the costs of such independent fiduciary be paid for by the Board Defendants;
- f. Ordering each fiduciary found to have violated ERISA to restore all losses resulting from the prohibited transaction(s) and fiduciary breaches they caused and to disgorge all profits made through use of assets of the ESOP;
- g. Ordering the Seller Defendants to disgorge all ill-gotten ESOP proceeds in connection with the ESOP Transaction (and profits thereon) and deposit them into a constructive trust for the benefit of all current and former ESOP participants;
- h. Ordering that Defendants provide other appropriate equitable relief to the ESOP, including but not limited to providing an accounting for profits, ordering surcharge against Defendants to restore losses to the ESOP, rescinding or reforming the Transaction, and imposing a constructive trust and/or equitable lien on any funds wrongfully held by any of the Defendants;
- i. Enjoining Defendants from seeking indemnification or exculpation from JJF Management Services, Inc. or the ESOP for their violations of ERISA;
- j. Enjoining the Seller Defendants from dissipating any of the proceeds they received from the Transaction held in their actual or constructive possession until the ESOP participants' rights can be adjudicated;
- k. Enjoining the Seller Defendants from transferring or disposing of any of the proceeds they received from the Transaction to any person or entity, which would prejudice, frustrate, or impair the ESOP participants' ability to recover the same;
- l. Reformation and/or rescission of the Seller Notes to extinguish some or all of the ESOP direct or indirect debt owed to any Sellers or Defendants;
- m. Voiding all transfers of ESOP proceeds to any person or entity who did not pay equivalent value for such proceeds;
- n. Requiring Defendants to pay attorneys' fees and costs pursuant to ERISA § 502(g), 29 U.S.C. § 1132(g) and/or ordering payment of fees and expenses to Plaintiffs' Counsel on the basis of the common benefit or common fund doctrine out of any money recovered for the class;
- o. Awarding pre-judgment interest and post-judgment interest; and
- p. Awarding such other and further relief that the Court determines to be appropriate pursuant to ERISA §§ 502(a)(2) and/or 502(a)(3), 29 U.S.C. §§ 1132(a)(2) and/or 1132(a)(3), or pursuant to Rule 54(c) of the Federal Rules of Civil Procedure, or that is otherwise equitable and just.

Dated: October 29, 2025

/s/ Elizabeth M. McDermott

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