



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

TERRY JANDREAU,

Plaintiff,

v.

BRENDAN WALLACE, ANDRIY
MYKHAYLOVSKYY, ALANA
BEARD, VICTOR COLEMAN,
ANGELA HUANG, WISDOM LU,
FIFTH WALL ACQUISITION
SPONSOR LLC, and FIFTH WALL
ASSET MANAGEMENT LLC,

Defendants.

C.A. No. 2024-0119-MTZ

PUBLIC VERSION:
Filed February 14, 2024

VERIFIED CLASS ACTION COMPLAINT

Plaintiff Terry Jandreau (“Plaintiff”), on behalf of himself and similarly situated current and former stockholders of Fifth Wall Acquisition Corp. I (“Fifth Wall” or “FWAA” in the Proxy), brings this Verified Class Action Complaint asserting: (i) breach of fiduciary duty claims arising from Fifth Wall’s August 24, 2021 merger (the “Merger”) with legacy SmartRent.com, Inc. (“Legacy SmartRent”) against: (a) Brendan Wallace (“Wallace”), Andriy Mykhaylovskyy (“Mykhaylovskyy”), Alana Beard (“Beard”), Victor Coleman (“Coleman”), Angela Huang (“Huang”), and Wisdom Lu (“Lu”) in their capacities as members of Fifth Wall’s Board of Directors (the “Board” or the “Director Defendants”); (b) Wallace, Fifth Wall’s Chief Executive Officer (“CEO”) and Board Chairman, and

Mykhaylovskyy, Fifth Wall's Chief Financial Officer ("CFO") (together, the "Officer Defendants") in their capacities as officers of Fifth Wall; (c) Fifth Wall Acquisition Sponsor, LLC (the "Sponsor"), Wallace, and Mykhaylovskyy (together, the "Controller Defendants" and, together with the Director Defendants and the Officer Defendants, the "Fifth Wall Defendants"), in their capacities as Fifth Wall's controllers; (ii) aiding and abetting breach of fiduciary duty claims against Fifth Wall Asset Management LLC ("FWAM"); and (iii) unjust enrichment claims against all Defendants.

These allegations are based on Plaintiff's knowledge as to himself and his own actions, and on information and belief, including counsel's investigation and review of publicly available information and the documents produced in response to Plaintiff's demands for inspection of books and records under 8 *Del. C.* §220 (the "220 Documents"), as to all other matters.

NATURE OF THE ACTION

1. Fifth Wall, now renamed SmartRent, Inc. ("New SmartRent"), is a Delaware corporation that was formed as a special purpose acquisition company ("SPAC") by the Controller Defendants. New SmartRent is an enterprise software company that provides home operating systems to residential property owners and operators and homebuilders.

2. The Controller Defendants took Fifth Wall public as a SPAC. A SPAC—also known as a “blank check” company—is a publicly traded company without commercial operations that is formed strictly to raise capital through an initial public offering (“IPO”) for the purpose of entering into a business combination with another company within a specified period of time. The proceeds of the SPAC’s IPO are held in trust for the benefit of public stockholders. When the SPAC agrees to a business combination, the SPAC’s public stockholders are presented with a decision: they can elect to redeem all or a portion of their shares and receive a proportionate share of the funds held in trust *or* they can invest those funds in the post-combination company. If a SPAC does not close a business combination within the time specified in its charter, it is required to liquidate; in these circumstances, public stockholders would receive a proportionate share of the liquidating distributions from the trust held for their benefit.

3. Fifth Wall’s history is part of a disturbing trend of SPAC transactions in which sponsors and insiders have placed their financial interests ahead of the interests of the SPAC’s public stockholders, thus breaching their fiduciary duties. Here, the Fifth Wall Defendants, aided and abetted by FWAM, granted themselves significant financial interests in Fifth Wall that diverged from the interests of Fifth Wall’s public stockholders and that were contingent on Fifth Wall entering into an “initial business combination” within the time specified by Fifth Wall’s Charter.

4. Defendants had a powerful incentive to cause Fifth Wall to enter into any business combination and avoid a liquidation. Prior to the IPO, the Controller Defendants purchased 7,187,500 “Founder Shares”—shares of Fifth Wall Class B common stock—for a total of \$25,000, or \$0.003 per share. The Controller Defendants thereafter quickly transferred 30,000 Founder Shares to each of Coleman, Beard, Huang, and Lu, aligning their interests with those of the Controller Defendants. Following a 1:1.2 stock split on February 4, 2021, at the time of the Merger the Controller Defendants held a total of 8,481,000 Founder Shares, and Coleman, Beard, Huang, and Lu each held 36,000 Founder Shares.

5. In addition, concurrently with the IPO, the Sponsor—funded by the Board members and their affiliates, along with Fifth Wall partners and employees—purchased 1,047,500 private placement shares (the “Private Placement Shares”) at a price of \$10 per unit, for a total for \$10.475 million. Specifically:

- Wallace contributed \$2.8 million;
- Huang caused EE Capital, of which she is the Managing Director, to contribute \$2.0 million via an affiliate;
- Lu caused Stibel & Company (“Stibel”), of which she is a general partner, to contribute \$1.5 million;
- Mykhaylovskyy contributed \$1.4 million; and
- Coleman contributed \$75,000.

The remaining funds were paid by “other [undisclosed] Fifth Wall partners and employees.”¹

6. The Fifth Wall Defendants waived their liquidation and redemption rights with respect to all their Founder Shares and the Private Placement Shares. As a result, unlike the shares held by Fifth Wall’s public stockholders, the shares that the Fifth Wall Defendants held would have value *only if* Fifth Wall closed a business combination.

7. Fifth Wall’s structure created an inherent conflict of interest between the Defendants and the public stockholders. If Fifth Wall succeeded in consummating a business combination, the Fifth Wall Defendants would hold shares in the combined company. But if Fifth Wall liquidated, the Fifth Wall Defendants’ Founder Shares and Private Placement Shares would be worthless—and the Sponsor and the Fifth Wall Defendants who had funded it would lose their entire investment. Thus, these insiders’ interests in getting any deal done—even a value-destructive one—to avoid liquidation provided them with a perverse incentive to complete a merger regardless of whether it was in the best interests of the Company’s public stockholders. Furthermore, since Defendants would continue to hold their shares after any business combination, they had an interest in discouraging public

¹ Fifth Wall Acquisition Corp., Proxy Statement/Prospectus (Form 424(b)(4)) (Feb. 8, 2021), at 16.

stockholders from redeeming their shares, as each share redeemed would decrease the amount of cash available to the post-Merger company in which they would own equity.

8. Armed with these conflicting incentives, the Board approved the Merger and took steps to ensure its approval by disseminating a false and misleading proxy statement/prospectus (the “Proxy”) that contained no fewer than five categories of false statements and/or material omissions to induce the stockholder vote in favor of the Merger and to deter Fifth Wall’s public stockholders from exercising their redemption rights.

9. *First*, the Proxy withheld critical information from Fifth Wall’s public stockholders about the value the stockholders could reasonably expect to receive in the Merger. Because Fifth Wall’s sole asset was cash, the value of a Fifth Wall share was the amount of net cash underlying the shares. The Proxy failed to disclose to stockholders the true amount of the net cash underlying their Fifth Wall shares. Although the Proxy misleadingly suggests that each Fifth Wall share was worth \$10.00, in reality there was only approximately \$7.50 in cash underlying each Fifth Wall share. Furthermore, with every redemption, the net cash per share available to contribute to the combined company would decrease. The amount of net cash underlying the Fifth Wall shares was material information because the value a Fifth Wall stockholder could reasonably expect to receive from Legacy SmartRent

stockholders in exchange for their shares would be equal to the amount of net cash underlying those shares.

10. Critically, on January 24, 2024, the SEC adopted a new Subpart 1600 of Regulation S-K (the “SPAC Disclosure Mandate”) to address the myriad disclosure problems that have plagued SPAC transactions. The SPAC Disclosure Mandate requires that SPACs disclose—both at the IPO and de-SPAC stages—the extent to which SPAC equity is diluted and cash dissipated.² By adopting the SPAC Disclosure Requirement, the SEC effectively acknowledged that information relating to the net cash underlying SPAC shares is material to SPAC investors.

11. *Second*, the Proxy omitted material information relating to Legacy SmartRent’s projected future performance. The Proxy did not contain a set of stand-alone Legacy SmartRent projections. Instead, the Proxy contained a set of projections for the pro forma company that were based on the assumption that \$500 million of cash would be available to the post-Merger entity (the “Proxy Projections”). But the Proxy did not explicitly disclose that the Proxy Projections were based on an assumed \$500 million cash contribution. Instead, the Proxy misleadingly suggested that the Proxy Projections assumed only \$100 million in cash from the Merger.

² See generally U.S. Sec. & Exch. Comm’n, *Final Rule: Special Purpose Acquisition Companies, Shell Companies, and Projections*, File No. 27-13-22 (Jan. 24, 2024).

12. Failing to disclose the full amount of assumed cash underlying the Proxy Projections was critical, because the achievability of the Proxy Projections would have been called into question if the Proxy explicitly flagged that these projections assumed that \$500 million of cash would be available to the company post-Merger. Critically, \$500 million was the most amount of cash that was even potentially available to the *pro forma* company (*i.e.*, the \$345 million held in the trust account and the \$155 million from the PIPE investment). Thus, if more than a miniscule number of Fifth Wall investors redeemed, the pro forma company would not have had \$500 million in cash. Under these circumstances, the amount of available cash assumed in the Proxy Projections (and the prospect that this cash would not be available) would have been material information for a Fifth Wall investor faced with a redemption decision.

13. *Third*, the Proxy omitted material information relating to Legacy SmartRent’s projected revenue. An April 22, 2021 Investor Presentation—disclosed in a Form 425 disseminated to stockholders and incorporated into the Proxy (the “Investor Presentation”)—misled stockholders into believing that Legacy SmartRent had firm customer commitments and/or binding purchase orders for booking and deployment of its “SmartHub” units—the primary products driving Legacy SmartRent’s projected revenue [REDACTED]

[REDACTED].

14. Further undermining the reasonableness of the Proxy Projections, Legacy SmartRent’s largest customers at the time of the Merger included affiliates of [REDACTED]. To induce these customers to place orders, Legacy SmartRent [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. The Proxy did not disclose this. Thus, contrary to the Investor Presentation’s representation that Legacy SmartRent had a “[s]ticky customer base,” Legacy SmartRent’s actual customer base was propped up by unsustainable inducements.

15. *Fourth*, the Proxy failed to disclose that the Merger process was effectively controlled by the conflicted FWAM, with the Board relegated to the background. The Proxy did not disclose that the Board:

- played no role in formulating the initial offer (and, in fact, was not even told about it until two days after it was made);
- was not informed of or asked to approve the revised Merger terms that dropped the valuation from a \$2.4 billion midpoint down to \$1.75 billion, reduced the PIPE investment to \$155 million, and reduced the “minimum cash condition” to \$250 million before these revised Merger terms were submitted to Legacy SmartRent;
- effectively played no role in the due diligence process; and

- was not informed about – nor asked to approve – Fifth Wall’s and FWAM’s revision of the Legacy SmartRent Projections to create the Proxy Projections *before* the process was undertaken.

16. *Finally*, the Proxy failed to disclose a key piece of information bearing on the reliability of the \$1.75 billion pre-money valuation ascribed to Legacy SmartRent in the Merger. In March 2020—a mere twelve months before Fifth Wall began negotiations with Legacy SmartRent—a Fifth Wall fund in which two Fifth Wall directors were invested participated in a Legacy SmartRent financing round that valued Legacy SmartRent at [REDACTED] \$1.75 billion pre-money valuation Fifth Wall put on the company in the Merger. A Fifth Wall investor faced with deciding whether to redeem or roll over into the Merger would have wanted to know that Legacy SmartRent had been valued at [REDACTED] the previous year in assessing the reliability of the \$1.75 billion valuation.

17. On August 23, 2021, Fifth Wall’s public stockholders approved the Merger during a special meeting. Armed with a materially false and misleading Proxy, investors redeemed only 246 of Fifth Wall shares—i.e., 99.993% of Fifth Wall public stockholders opted *not* to exercise their redemption rights and to instead roll over into the Merger. The Merger closed on August 24, 2021.

18. Soon after the Merger closed, the truth about New SmartRent began to emerge:

- After the market closed on November 10, 2021, New SmartRent issued revenue guidance for 2021 that informed the market that

New SmartRent likely would fall far short of the Proxy Projections. The Proxy Projections disclosed that New SmartRent was projected to earn \$119 million in revenue for 2021; New SmartRent's revenue guidance was for a range of \$100 million to \$105 million. Further, SmartRent reported negative \$16.1 million EBITDA, a decrease from the negative \$6.8 million it had posted for the prior year period. SmartRent's stock dropped from its \$12.35 closing price on November 10, 2021 to a \$10.18 closing price on November 11, 2021;

- On December 28, 2021, New SmartRent stock fell below \$10.00 per share to \$9.55 per share. It has never traded above \$10.00 since that date;
- After the market closed March 24, 2022, New SmartRent lowered its 2022 revenue guidance to \$220 million to \$250 million, substantially less than the \$342 million projected in the Proxy Projections. New SmartRent issued 2022 Adjusted EBITDA guidance of negative \$50 million to negative \$35 million, substantially below the positive \$8.9 million forecasted in the Proxy Projections. On this news, New SmartRent's stock dropped from its \$6.30 close on March 24, 2022 to a \$5.51 close on March 25, 2022;
- After the markets closed on August 11, 2022, New SmartRent announced its second quarter results, adjusted its outlook for full-year 2022, and provided guidance for the third quarter. New SmartRent once again lowered its 2022 guidance for revenue and adjusted EBITDA. New SmartRent revised prior revenue guidance down to a range of \$155 million to \$180 million, approximately 30% lower than it had announced six months earlier, and to a number only 44% to 53% of the \$342 million in revenue projected in the Proxy Projections. New SmartRent also dropped Adjusted EBITDA guidance from a range of negative \$50 million to negative \$35 million to a revised range of negative \$75 million to negative \$70 million, now \$77 million to \$82 million less than the positive \$8.9 million projected in the Proxy Projections. In response, New SmartRent stock dropped from its \$5.61 per-share closing price on August 11, 2022 down to \$3.82 per share on August 12, 2022;

- After the market closed on March 8, 2023, New SmartRent reported 2022 revenue of \$167.8 million, Adjusted EBITDA of negative \$74.7 million, and a net loss of \$96.3 million. Further, New SmartRent lowered its 2023 guidance, disclosing projected revenue of \$225 million to \$250 million for 2023, which is 28.7% to 32% of the \$782 million in 2023 revenue contained in the Proxy Projections. New SmartRent also projected Adjusted EBITDA of negative \$25 million to negative \$15 million, as compared to the positive \$78 million of Adjusted EBITDA contained in the Proxy Projections for 2023. On this news, New SmartRent's stock dropped from \$2.74 per share at the close of trading on March 8 to \$2.57 per share at the close of trading on March 9;
- As of November 7, 2023, New SmartRent had reported revenue for the first three quarters of 2023 of only \$176.6 million, implying that the company was on pace to deliver total 2023 revenue of \$235 million. If reached, this would equate to only 30% of projected revenue of \$782 million in the Proxy Projections;
- On January 29, 2024, New SmartRent announced that it will disclose its fourth quarter and fiscal year 2023 results on March 5, 2024; and
- As of February 7, 2024, New SmartRent's stock was trading at \$2.99 per share.

19. No director, officer, or controlling stockholder fulfilling its fiduciary duties to stockholders would have entered into the Merger with Legacy SmartRent, let alone concluded that the Merger was in the best interests of Fifth Wall's public stockholders. Defendants did.

20. Fifth Wall's deeply conflicted directors, officers, and controlling stockholders breached their duties of loyalty and candor by entering into an unfair Merger and impairing public stockholders' ability to exercise their redemption rights

on a fully informed basis by providing a materially false and misleading Proxy that omitted to disclose information that was highly material to public stockholders' decision whether to redeem their shares or invest in the Merger. Defendants did this to promote their own self-interest in seeing redemptions minimized and the Merger consummated to secure their windfall from their Founder Shares and Private Placement Shares.

21. Although an abysmal deal for Fifth Wall public stockholders, the Merger provided a financial windfall to the Fifth Wall Defendants. On the day the Merger closed, August 24, 2021, New SmartRent's stock was trading at \$12.00 per share and the Founder Shares alone were worth \$103,500,000—a return on their initial investment of nearly 414,000%. Even New SmartRent's \$3.01 February 1, 2024 closing price, the Founder Shares would be worth \$25,961,250, a return on their investment of 103,845%.

22. Due to Defendants' conflicts of interest, the Merger requires judicial review for entire fairness. Defendants cannot meet the exacting entire fairness test. Plaintiffs seek monetary and/or rescissory damages against Defendants for their various breaches of fiduciary duty owed to Fifth Wall's public stockholders and/or aiding and abetting thereof.

PARTIES

23. Plaintiff Terry Jandreau acquired Fifth Wall shares on March 3, 2021, held Fifth Wall shares at the time of the redemption deadline, did not exercise his redemption rights, and is a current New SmartRent stockholder.

24. Defendant Sponsor is the controller of Fifth Wall. The Sponsor is an affiliate of FWAM, and is directly controlled by Wallace and Mykhaylovskyy. At the time of the Merger, according to the Proxy, the Sponsor held of record 8,481,000 Founder Shares and 1,047,500 Private Placement Shares. As of the closing of the Merger on August 24, 2021, these Founder Shares were worth \$101,772,000 and these Private Placement Shares were worth \$12,570,000.

25. Defendant Wallace was the Chairman and CEO of Fifth Wall. Wallace is the manager of the Sponsor and controlled the Sponsor through FWAM. Wallace is the co-founder and managing partner of FWAM, and the chairman of its investment committee. Wallace was/is also the chairman and CEO of two other SPACs that he controls through FWAM, Fifth Wall Acquisition Corp. II (“FW II”) and Fifth Wall Acquisition Corp. III (“FW III”). Wallace controlled/controls the sponsors of those SPACs, Fifth Wall Acquisition Sponsor II (“FW II Sponsor”) and Fifth Wall Acquisition Sponsor III (“FW III Sponsor”), respectively. FW II has yet to go public. FW III acquired Mobile Infrastructure Corp. (“MIC”) in August 2023. At the time of the Merger, Wallace—who, as a manager of the Sponsor, had voting

and investment power over the Founder Shares held of record by the Sponsor—was deemed to share beneficial ownership of the Founder Shares held of record by the Sponsor. As of August 24, 2021, the close of the Merger, these Founder Shares were worth \$101,772,000 and these Private Placement Shares were worth \$12,570,000.

26. Wallace stood on both sides of the Merger. Along with Mykhaylovskyy, Wallace is a beneficial owner of the general partner of Fifth Wall Fund II LP (“FWF II”), a FWAM investment fund and an affiliate of the Sponsor. On March 11, 2020, nine months before Fifth Wall was incorporated, FWF II invested \$10 million in Legacy SmartRent Series C Preferred Stock (the “Preferred Stock Investment”). The Proxy valued this investment at \$50 million at the close of the Merger, “assuming a \$10 per share market value for the Post-Combination Company.” The Proxy stated that FWF II’s general partner at Merger close would earn approximately \$8 million in “carried interest” from the Preferred Stock Investment. As beneficial owners of the general partner, Wallace and Mykhaylovskyy were entitled to receive an undisclosed share of the general partner’s Merger-related profits resulting from FWF II’s Preferred Stock Investment in Legacy SmartRent.

27. Defendant Mykhaylovskyy was a director and the CFO of Fifth Wall. Mykhaylovskyy controlled the Sponsor through FWAM. Mykhaylovskyy is a managing partner and the Chief Operating Officer (“COO”) of FWAM.

Mykhaylovskyy is/was the director and/or executive officer of two other SPACs that he controls through FWAM, namely, Mykhaylovskyy is the CFO of FW II and was the CFO and a director of FW III. Mykhaylovskyy controls FW II Sponsor and controlled FW III Sponsor. From May 2014 to January 2016, Mykhaylovskyy was the Vice President of the Gores Group, which has founded a number of SPACs. Mykhaylovskyy—who, as a manager of the Sponsor, had voting and investment power over the Founder Shares held of record by the Sponsor—was deemed to share beneficial ownership of the 8,481,000 Founder Shares and 1,047,500 Private Placement Shares held of record by the Sponsor. As of August 24, 2021, the close of the Merger, these Founder Shares were worth \$101,772,000 and these Private Placement Shares were worth \$12,570,000.

28. Mykhaylovskyy stood on both sides of the Merger. Along with Wallace, Mykhaylovskyy is a beneficial owner of the general partner of FWF II, and therefore has a financial interest in the Preferred Stock Investment. The Proxy valued this investment at \$50 million, “assuming a \$10 per share market value for the Post-Combination Company.” The Proxy stated FWF II’s general partner at Merger close would earn approximately \$8 million in “carried interest” from the Preferred Stock Investment. As beneficial owners of the general partner, Wallace and Mykhaylovskyy were entitled to receive an undisclosed share of the general

partner's Merger-related profits resulting from FWF II's Preferred Stock Investment in Legacy SmartRent.

29. Defendant Beard was a director of Fifth Wall as of February 2021. Beard was placed on the Legacy SmartRent board at the close of the Merger. Beard is a director of FW II and was a director of FW III. At the time of the Merger, Beard held 36,000 Founder Shares. As of August 24, 2021, the close of the Merger, Beard's Founder Shares were worth \$432,000.

30. Defendant Coleman was a director of Fifth Wall as of February 2021. Coleman is the CEO, chairman and president of Hudson Pacific Properties, Inc. ("Hudson"). Hudson has a direct corporate partnership with FWAM and is one of the principal investors in multiple FWAM funds, including FWF II and FWAM's Climate Tech Fund.³ Hudson is one of the primary investors in FWF II, and therefore has a beneficial ownership interest—in an undisclosed amount—in the Preferred Stock Investment. Coleman contributed \$75,000 towards purchase of Private Placement shares, equivalent to 7500 shares. At the time of the Merger, Coleman held 36,000 Founder Shares. As of August 24, 2021, the close of the Merger, Coleman's Founder Shares were worth \$432,000, and his Private Placement Shares were worth \$90,000.

³ *Our Partners*, Fifth Wall (last visited Feb. 5, 2024) (<https://fifthwall.com/partners>).

31. Defendant Huang was a director of Fifth Wall as of February 2021. Huang is the managing director of EE Capital, which contributed \$2 million towards the purchase of Private Placement Shares, equivalent to 200,000 shares. EE Capital also has an investment in FWF II. At the time of the Merger, Huang held 36,000 Founder Shares. As of August 24, 2021, the close of the Merger, Huang's Founder Shares were worth \$432,000, and EE Capital's Private Placement Shares were worth \$2.4 million.

32. Defendant Lu was a director of Fifth Wall as of February 2021. Lu is a founding and general partner of Stibel, which contributed \$1.5 million towards the purchase of Private Placement Shares, equivalent to 150,000 shares. Lu was a director of two other SPACs, Tailwind Acquisition Corp., which merged with NUBURU, Inc. in January 2023, and Tailwind Acquisition Corp. II, which merged with Terran Orbital Corporation in March 2022. At the time of the Merger, Lu held 36,000 Founder Shares. As of August 24, 2021, the close of the Merger, Lu's Founder Shares were worth \$432,000, and Stibel's Private Placement Shares were worth \$1.8 million.

33. Defendant FWAM is a venture capital firm focused on proptech investments. Wallace co-founded FWAM in 2016. Wallace and Mykhaylovskyy are FWAM's managing partners. FWAM controlled the Sponsor, which controlled Fifth Wall. FWAM also controls FW II, FW III, FW Sponsor II, and FW Sponsor

III. FWAM is the controller and general manager of FWF II, the entity that made the Preferred Stock Investment in Legacy SmartRent. FWAM has a direct partnership with Hudson, which includes multiple Hudson investments in FWAM funds, including FWF II. This collaboration positioned Hudson to receive “preferential terms” on any such invested funds managed by Fifth Wall.⁴

34. Wallace and Mykhaylovskyy are referred to herein as the “Officer Defendants.” Wallace, Mykhaylovskyy, Beard, Coleman, Lu, and Huang are referred to herein as the “Director Defendants.” Wallace, Mykhaylovskyy, and the Sponsor are referred to herein as the “Controller Defendants.”

RELEVANT NON-PARTIES

35. New SmartRent is a Delaware corporation with principal executive offices at 18835 N. Thompson Peak Parkway, Suite 300, Scottsdale, Arizona. New SmartRent is an enterprise software company that provides home operating systems to residential property owners and operators and homebuilders. New SmartRent is a publicly traded company, listed on the NYSE under the ticker “SMRT.” New SmartRent was formerly known as Fifth Wall, a publicly traded corporation formed as a SPAC by the Controller Defendants. Following Fifth Wall’s de-SPAC Merger on August 24, 2021, Fifth Wall changed its name to SmartRent, Inc.

⁴ Fifth Wall Acquisition Corp. I, Prospectus Supplement (Form 424B3) (Aug. 6, 2021), at 209.

36. On April 21, 2021, Fifth Wall entered into a merger agreement with Legacy SmartRent (“Merger Agreement”). The Merger closed on August 24, 2021. Legacy SmartRent now operates as New SmartRent.

37. FWF II is an affiliate of the Sponsor and an FWAM investment fund. FWF II made a Preferred Stock Investment in Legacy SmartRent on behalf of Wallace, Mykhaylovskyy, and Hudson. Wallace and Mykhaylovskyy are beneficial owners of the general partner of FWF II. FWAM is the general manager of FWF II. FWF II made the Preferred Stock Investment on March 11, 2020, nine months before Fifth Wall’s date of incorporation. FWF II invested \$10 million in the Preferred Stock Investment. EE Capital (an entity associated with Huang) and Hudson (an entity associated with Coleman) have invested undisclosed amounts in FWF II.

38. Moelis & Company LLC (“Moelis”) is a global investment bank. Ken Moelis, the founder and CEO of Moelis, is himself a serial SPAC founder, having formed at least five SPACs through Atlas Crest Investment Corp. Moelis rendered an opinion that the Merger was fair to Fifth Wall’s stockholders (the “Fairness Opinion”), for which it was paid \$1 million. The Fairness Opinion was included in the Proxy and Fifth Wall’s stockholders relied on it in determining whether to exercise their redemption rights.

39. Houlihan Lokey, Inc. (“Houlihan Lokey”) is a domestic investment banking and financial services company. Although its name does not appear

anywhere in the Proxy, Houlihan Lokey advised Fifth Wall in connection with the Merger; its precise role and compensation were never disclosed.

SUBSTANTIVE ALLEGATIONS

A. THE CONTROLLER DEFENDANTS FORMED FIFTH WALL

40. On November 23, 2020, the Controller Defendants incorporated Fifth Wall in Delaware as a SPAC for the purpose of effecting a merger, capital stock exchange, asset acquisition, stock purchase, reorganization, or similar business combination with one or more businesses. Fifth Wall was controlled by the Sponsor, which was, in turn, controlled by FWAM, Wallace, and Mykhaylovskyy. The Sponsor, Wallace, and Mykhaylovskyy selected all of Fifth Wall's directors.

41. On December 2, 2020, the Controller Defendants purchased 7,187,500 Founder Shares for a total of \$25,000, or \$0.003 per share. In February 2021, the Controller Defendants transferred 36,000 Founder Shares to each of Fifth Wall's "independent directors"—namely, Coleman, Beard, Huang, and Lu—aligning their interests with those of the Controller Defendants. Following a 1:1.2 stock split, at the time of the Merger, the Controller Defendants collectively held 8,481,000 Founder Shares, and Coleman, Beard, Huang, and Lu each held 36,000 Founder Shares.

42. At the time of the Merger, the Sponsor owned of record 8,481,000 Founder Shares and 1,047,5000 Private Placement shares. The Proxy disclosed that

Wallace and Mykhaylovskyy “may be deemed to share beneficial ownership” of these Founder Shares and Private Placement Shares:⁵

Name of Beneficial Owner ⁽¹⁾	Before the Business Combination				After the Business Combination			
	Class A		Class B		Assuming No Redemption		Assuming Maximum Redemption of Public Shares	
	Number of Shares Beneficially Owned	Percentage of Class	Number of Shares Beneficially Owned ⁽²⁾	Percentage of Class	Number of Shares Beneficially Owned	Percentage of Class	Number of Shares Beneficially Owned ⁽²⁾	Percentage of Class
Principal Stockholders:								
Fifth Wall Acquisition Sponsor, LLC ⁽²⁾	1,047,500	2.9%	8,481,000	98.3%	9,528,500	4.4%	9,528,500	5.0%
Baron Capital Group, Inc. ⁽³⁾	4,647,670	13.0%	—	—	4,647,670	2.1%	4,647,670	2.4%
Empyrean Capital Overseas Master Fund, Ltd. ⁽⁴⁾	1,780,000	5.0%	—	—	1,780,000	*	1,780,000	*
Directors and Named Executive Officers of FWAA:								
Brendan Wallace ⁽²⁾	1,047,500	2.9%	8,481,000	98.3%	14,214,554	6.5%	14,214,554	7.4%
Andriy Mykhaylovskyy ⁽²⁾	1,047,500	2.9%	8,481,000	98.3%	14,214,554	6.5%	14,214,554	7.4%
Alana Beard ⁽⁵⁾	—	—	36,000	*	36,000	*	36,000	*
Victor Coleman ⁽⁵⁾	—	—	36,000	*	36,000	*	36,000	*
Angela Huang ⁽⁵⁾	—	—	36,000	*	36,000	*	36,000	*
Wisdom Lu ⁽⁵⁾	—	—	36,000	*	36,000	*	36,000	*

(2) Fifth Wall Acquisition Sponsor, LLC, FWAA's sponsor, is the record holder of 1,047,500 Class A shares and 8,481,000 Class B shares of FWAA common stock (collectively, the “Sponsor Shares”). The Sponsor is governed by two managers, Messrs. Andriy Mykhaylovskyy and Brendan Wallace, who have shared voting and investment power over the Sponsor Shares and as such may be deemed to share beneficial ownership of the Sponsor Shares. Also, Messrs. Mykhaylovskyy and Wallace are beneficial owners of the general partner of Fifth Wall Fund II, an affiliate of the Sponsor that currently owns approximately 3% of the outstanding shares of capital stock of SmartRent that, upon consummation of the Business Combination, will convert into approximately 4,686,054 Class A shares of Post-Combination Company common stock (the “Fifth Wall Fund II Post-Closing Shares”). Messrs. Mykhaylovskyy and Wallace may be deemed to share beneficial ownership with respect to the Fifth Wall Fund II Post-Closing Shares. Messrs. Mykhaylovskyy and Wallace disclaim beneficial ownership of the Sponsor Shares and Fifth Wall Fund II Post-Closing Shares, except to the extent of their pecuniary interest therein.

43. On February 9, 2021, Fifth Wall conducted an IPO, selling 34,500,000 Class A common stock to public investors at a price of \$10 per share (“Public Shares”). Each Public Share came with a redemption right that allowed those Public Shares to be redeemed at \$10 per share plus any accrued interest from the trust held for the public stockholders’ benefit in the event Fifth Wall either requested to extend

⁵ Proxy at 131-32.

its liquidation deadline or recommended a business combination. In the event of a liquidation, public stockholders were entitled to receive the same \$10 per share plus interest from the trust. The redemption right applied regardless of whether Fifth Wall’s public stockholders voted in favor of the Merger.

44. In addition, concurrently with the IPO, the Sponsor—which was funded by the Board members and their affiliates, along with Fifth Wall partners and employees—purchased 1,047,500 Private Placement Shares at a price of \$10 per unit, for a total for \$10.475 million. Specifically:

- Wallace contributed \$2.8 million;
- Huang caused EE Capital (an entity of which Huang is Managing Director) to contribute \$2.0 million via an affiliate;
- Lu caused Stibel (an entity of which Lu is general partner) to contribute \$1.5 million;
- Mykhaylovskyy contributed \$1.4 million; and
- Coleman contributed \$75,000.

“[O]ther [undisclosed] Fifth Wall partners and employees” contributed the remaining funds.⁶

45. Following the IPO, the Founder Shares and Private Placement Shares held by the Sponsor and the Director Defendants comprised 28% of Fifth Wall’s outstanding equity. But these Founder Shares and Private Placement Shares would be worthless absent a business combination, because they were not entitled to any

⁶ Proxy at 208.

distributions from the trust in the event of a liquidation. Thus, each of the Defendants and their affiliated entities was heavily incentivized to get a deal done—even if it was a bad deal for Fifth Wall’s public stockholders—to avoid losing their investments.

46. Under its Charter, Fifth Wall had until February 9, 2023, to close a business combination. In the alternative, Fifth Wall could ask its stockholders to approve an extension of the time period in which it could consummate a transaction; if Fifth Wall asked for an extension, it would have to give public stockholders the option to redeem their shares at \$10.00 per share plus interest.

B. THE CONTROLLERS PACK THE BOARD WITH LOYALISTS

47. The Controllers have extensive financial relationships with the Fifth Wall “independent directors” that gave these directors personal financial incentives to see a merger close. Wallace and Mykhaylovskyy awarded these individuals with a series of directorships—placing Beard, Coleman, Huang and Lu on the Fifth Wall Board; Beard on the Legacy SmartRent Board; and Beard on the boards of FW II and FW III—and gave each of these individuals Founder Shares that were worth \$432,000 at the close of the Merger.

48. Further, as noted above, each of Coleman, Lu, and Huang made investments in the Sponsor that the Sponsor used to purchase 1,047,500 Private Placement Shares from Fifth Wall. Huang invested \$2.0 million via EE Capital, Lu

invested \$1.5 million via Stibel, and Coleman invested \$75,000. These investments were worth \$2.4 million, \$1.8 million, and \$90,000, respectively, at the close of the Merger. These Private Placement Shares would have been worthless had Fifth Wall not closed a Merger.

49. In addition, Coleman has a direct partnership with FWAM via Hudson, which made investments in a number of FWAM funds, including FWF II. Huang also invested in FWF II via EE Capital.

C. FIFTH WALL ACQUIRES LEGACY SMARTRENT THROUGH A FLAWED MERGER PROCESS

50. On February 9, 2021, Fifth Wall’s IPO closed. Wallace had an extensive relationship with Legacy SmartRent CEO Lucas Halderman (“Halderman”) that “predate[d]” FWF II’s Preferred Stock Investment in Legacy SmartRent. Armed with these conflicting incentives, Wallace immediately zeroed in on Legacy SmartRent as Fifth Wall’s acquisition target.

51. By February 15, 2021, Fifth Wall had been given access to Legacy SmartRent’s data and Legacy SmartRent’s standalone operational financial projections (the “Legacy SmartRent Projections”). To ensure that their preferred deal got done, Wallace and Mykhaylovskyy called on FWAM, enlisting a number of FWAM partners and investment advisors—including Jeremy Fox (“Fox”), Vik Chawla (“Chawla”), and Clay Macfarlane (“Macfarlane”) —to negotiate their preferred deal. As detailed in Fifth Wall’s Board minutes and presentations (as

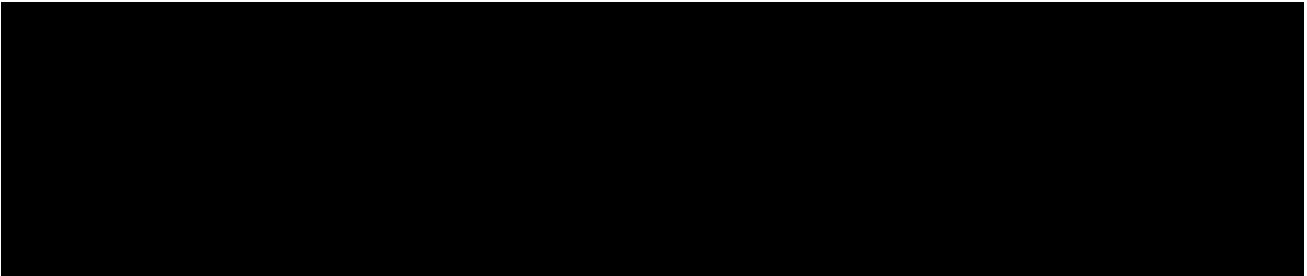
discussed *infra*), FWAM—not the Fifth Wall Board—led the Merger process by conducting Fifth Wall’s due diligence, performing financial valuations of Legacy SmartRent, and delivering Fifth Wall’s Merger offers to Legacy SmartRent. The Proxy does not disclose the critical role FWAM played in the deal process.

52. Within weeks, Fifth Wall was ready to move forward to close the de-SPAC Merger that would allow Defendants to monetize their lucrative Founder Shares and Private Placement Shares.

53. On March 6, 2021, without Board approval, Fifth Wall submitted a proposal to merge with Legacy SmartRent on terms that implied a [REDACTED] enterprise value.⁷ The initial term sheet assumed that all of the cash in Fifth Wall’s trust would be part of the “SPAC Combination Sources & Uses”—i.e., Fifth Wall assumed *no* redemptions—and that a \$255 million PIPE investment would close concurrently with the Merger. Fifth Wall did not anticipate any difficulty in raising the PIPE money; Fifth Wall told Legacy SmartRent that an “overwhelming majority” of its IPO investors had expressed an interest in participating in a PIPE investment. Under this initial proposal, the post-close company was expected to have [REDACTED] in “Incremental Cash to Balance Sheet”:⁸

⁷ SMARTRENT-220-0000948.

⁸ SMARTRENT-220-0000948 at 0955.



Fifth Wall’s Board played *no role* in this proposal. Fifth Wall explicitly told Legacy SmartRent that the proposal had been approved by the “senior members of [Fifth Wall] who are responsible for all aspects of the transaction process.”⁹

54. On both March 11, 2021¹⁰ and March 15, 2021,¹¹ Fifth Wall made follow-up proposals on essentially the same terms. Neither proposal was provided to the Board before it was submitted to Legacy SmartRent. On March 17, the Board got the March 15 proposal—two March 15 proposal would later be given to the Board days *after* it was submitted.

55. On March 17, 2021, the Board met for the first time to consider the Merger. Fifth Wall and FWAM led the meeting; Fox and Chawla were collectively designated in the minutes as the “management team.” At the meeting, the “management team” discussed the Merger that had already been proposed to Legacy SmartRent. On March 15, 2021—*before* the Fifth Wall Board was informed that

⁹ SMARTRENT-220-0000948 at 0953.

¹⁰ SMARTRENT-220-0000977.

¹¹ SMARTRENT-220-0000003 at 0037.

Legacy SmartRent was a potential merger target—Mykhaylovskyy submitted a letter agreement (the “Letter Agreement”) to Legacy SmartRent contemplating that the parties would enter into a merger agreement within 30 days.¹² The Letter Agreement had been approved “by senior members of [Fifth Wall];” Mykhaylovskyy told Legacy SmartRent that these members of senior management—not Fifth Wall’s Board—were “responsible for all aspects of the Transaction process.”¹³ Mykhaylovskyy—without prior Board approval—had committed to a 30-day “exclusivity period” during which Fifth Wall and Legacy SmartRent would deal only with each other.¹⁴ The Proxy does not disclose the existence of the Letter Agreement or that Fifth Wall management submitted a proposal without Board approval. Instead, the Proxy misleadingly states: “Following the FWAA Board meeting, on March 17, 2021, [Fifth Wall] and SmartRent signed a non-binding term sheet, which included, among other terms, a pre-money equity valuation of SmartRent of \$1.75 billion and a binding exclusivity provision.”¹⁵

56. During the March 17 meeting, the “management team” told the Board that Fifth Wall had conducted a “preliminary valuation” yielding a value range for

¹² SMARTRENT-220-0000003 at 0037.

¹³ SMARTRENT-220-0000003 at 0038.

¹⁴ SMARTRENT-220-0000003 at 0042.

¹⁵ Proxy at 191.

Legacy SmartRent of between “\$1.9B-\$3.0B (\$2.4B at the midpoint).” Mykhaylovskyy and Chawla told the Board about the “proposed terms to be included in the preliminary term sheet,” including the “binding mutual exclusivity provision” Mykhaylovskyy had already agreed to. Fox described the de-SPAC merger process and “confirmed the intent to obtain a fairness opinion” from a financial advisor.¹⁶

57. In addition, Mykhaylovskyy told the Board that Fifth Wall had a pre-existing investment in Legacy SmartRent. Specifically, in March 2020, FWF II invested \$10 million in Legacy SmartRent in a financing round that valued Legacy SmartRent at [REDACTED] \$1.9 billion to \$3.0 billion the Board was now being told Legacy SmartRent was worth. Thus, FWF II owned 3% of Legacy SmartRent. The Board did not discuss the [REDACTED] [REDACTED] and the “\$1.9B-\$3.0B (\$2.4B at the midpoint)” range they were being asked to accept in March 2021.¹⁷ Notably, although the Proxy discloses the \$10 million investment, it does

¹⁶ SMARTRENT-220-0000003 at 0003-04.

¹⁷ The Fifth Wall minutes do not reflect any discussion of this [REDACTED]. Thus, Plaintiff is entitled to a pleading stage inference that the Fifth Wall Board did not discuss this issue. *See, e.g., In re Boeing Co. Derivative Litig.*, No. 2019-0907-MTZ, 2021 WL 4059934, at *1 n.1 (Del. Ch. Sept. 7, 2021) (“It is reasonable to infer that exculpatory information not reflected in the [220] document production does not exist.”); *Teamsters Local 443 Health Servs. & Ins. Plan v. Chou*, No. 2019-0816-SG, 2020 WL 5028065, at *24 (Del. Ch. Aug. 24, 2020) (“[T]he Plaintiff is entitled to the inference that the Board never discussed the subpoena due to its absence from the Board’s minutes.”); *In re China Agritech, Inc. S’holder Derivative Litig.*, No. 7163-VCL, 2013 WL 2181514, at *20 (Del.

not disclose that the \$10 million investment took place in a round that valued Legacy SmartRent at [REDACTED]; disclosing that SmartRent had been valued at [REDACTED] the year before the Merger undoubtedly would have caused a Fifth Wall stockholder to question the reliability of Legacy SmartRent valuations disclosed in the Proxy.¹⁸ Further, the Board discussed that entities affiliated with Huang and Coleman had invested in FWF II, but the Board did not discuss whether those directors should have been recused from discussions concerning a merger with Legacy SmartRent.¹⁹

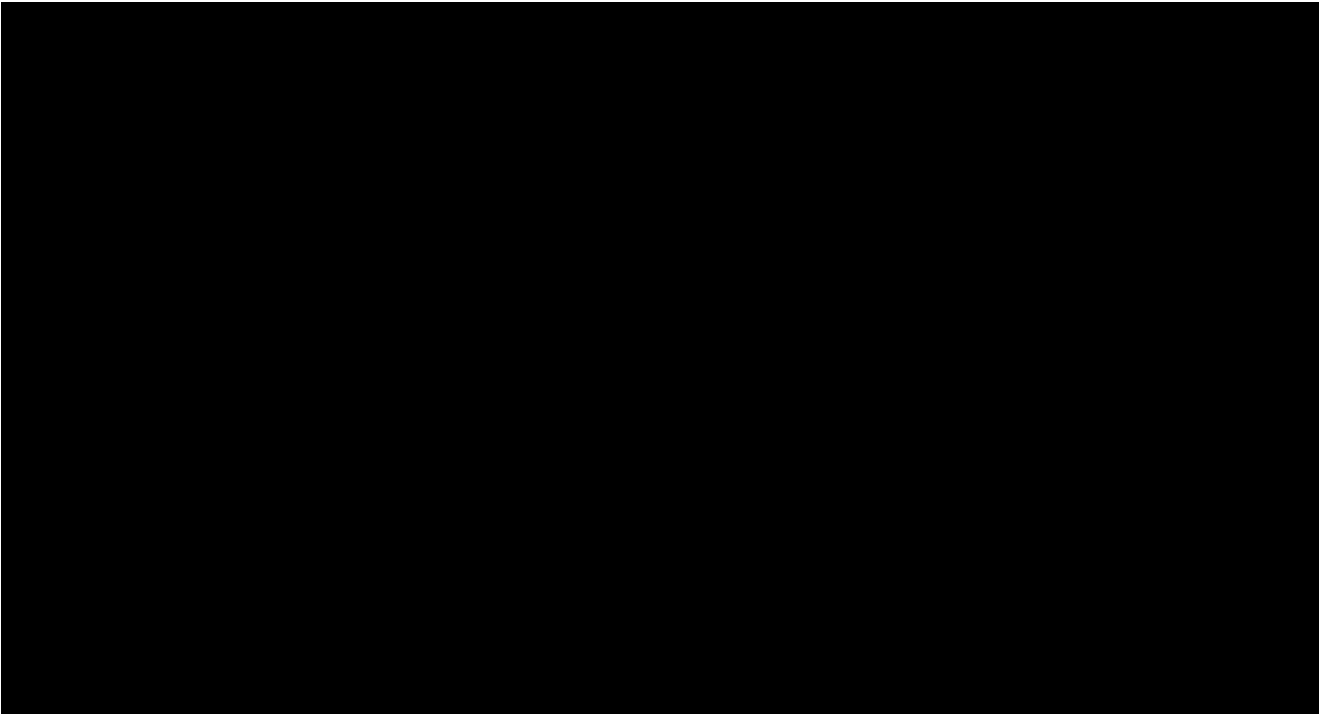
58. Fifth Wall and FWAM delivered a presentation (the “March Board Presentation”) that, among other things, set forth the valuation range the “management team” had discussed with the Board:²⁰

Ch. May 21, 2013) (“[T]he Complaint supports these allegations with references to books and records obtained using Section 220, and with inferences that this Court can reasonably draw from the absence of books and records that the Company could be expected to produce.”); *In re Tyson Foods, Inc.*, 919 A.2d 563, 578 (Del. Ch. 2007) (“[I]t is more reasonable to infer that exculpatory documents would be provided [in response to a Section 220 demand] than to believe the opposite: that such documents existed and yet were inexplicably withheld.”).

¹⁸ Proxy at 189 (“In early 2020, one of Fifth Wall’s funds participated in the SmartRent Series C Preferred Stock financing round, purchasing approximately 10.8% of the SmartRent Series C Preferred Stock. As a result of such participation, a Fifth Wall fund holds approximately 3.0% of the outstanding fully diluted shares of SmartRent common stock as of April 30, 2021.”).

¹⁹ The Fifth Wall minutes do not reflect any discussion of recusal. Thus, Plaintiff is entitled to a pleading stage inference that the Fifth Wall Board did not discuss this issue. *See supra* n.18.

²⁰ SMARTRENT-220-0000001 at 0020.



59. The Board did not discuss making *any* changes to the terms of the offer previously made to Legacy SmartRent in the March 15 proposal. Instead, “the Board unanimously authorized management to enter into a non-binding term sheet” on the same terms. The meeting lasted one hour.

60. On March 18, 2021, Fifth Wall submitted a term sheet to Legacy SmartRent dropping Legacy SmartRent’s enterprise valuation to \$1.75 billion, reducing the PIPE investment to \$155 million, and reducing the “minimum cash closing condition” to \$250 million. These drastic decreases, according to the Proxy, were “based on further review of valuation matters and market conditions.”

61. The Board was *not* told about these revised terms—let alone asked to approve them. The Board was never given a revised term sheet containing a lowered \$1.75 billion valuation and was never told what (if anything) had transpired between

March 15 and March 18, 2021 to cause this large drop from the \$2.4 billion midpoint valuation the Board was told about on March 17, 2021 *or* whether whatever events had led to the substantial change impacted the deal. The Board was never given the opportunity to discuss whether management was still authorized to proceed with the term sheet on materially different terms. Instead, the parties executed the term sheet on March 18, 2021—with no further Board involvement.

62. On March 29, 2021, the Board met to discuss retaining a financial advisor. Beard and Huang did not attend. Fox again led the meeting; he told the Board that Moelis and Houlihan Lokey would be pitching to serve as their financial advisor. The March 29, 2021 minutes say that the retention of Moelis or Houlihan Lokey had been “previously discussed with Board members,” but this topic was not discussed at *any* prior Board meeting.²¹ At the end of the presentations, Coleman and Lu—the two “independent” directors present—decided they preferred Moelis.

63. On March 31, 2021, during a 25-minute meeting, three of the “independent directors”—Beard, Coleman, and Lu—decided to retain Moelis. The directors also signed off on allowing J.P. Morgan Securities, LLC (“J.P. Morgan”) and Morgan Stanley & Co. LLC (“Morgan Stanley”) to serve as the placement agent

²¹ Defendants have not produced *any* documents indicating that any member of the Board – during a meeting or otherwise – discussed retaining Moelis or Houlihan Lokey as a financial advisor for the Merger before the March 29, 2021 meeting. Thus, Plaintiff is entitled to a pleading stage inference that the Fifth Wall Board did not discuss this issue before that meeting. *See supra* n.18.

for the PIPE while simultaneously representing Legacy SmartRent as an M&A advisor. Huang was not present.

64. On April 7, 2021, Fifth Wall formally engaged Houlihan Lokey to evaluate a “potential merger” with Legacy SmartRent; its precise role was undefined.²² On April 8, 2021, the Board also retained Moelis. Moelis told the Board that it would need *less than two weeks* to complete its due diligence and internal fairness review process. Fifth Wall would be able to announce the deal during the week of April 19. Moelis would get \$1 million for its Fairness Opinion; Houlihan Lokey’s fees were never disclosed.

65. Wallace and Fox updated the Board on the Merger process and the PIPE investors. The Board did not ask *any* questions about these potential investments.²³

66. On April 15, 2021, the Board met. Moelis told the Board that it had “substantially completed its due diligence” in the seven days that had elapsed since its retention. Some of Moelis’s “preliminary findings” called into question the achievability of the Legacy SmartRent Financial Projections. Specifically, the presentation Moelis provided to the Board stated that [REDACTED]

²² SMARTRENT-220-0000991.

²³ The Fifth Wall minutes do not reflect that anyone asked any questions about these investments. Thus, Plaintiff is entitled to a pleading stage inference that such questions were not asked. *See supra* n.18.

[REDACTED]

[REDACTED]²⁴ The Board did not ask any questions about Legacy SmartRent’s plans to [REDACTED].²⁵

67. At the same meeting, FWAM’s Macfarlane “reviewed with the Board the updates to [Legacy] SmartRent’s financial projections.” These “updates” would subsequently become the Proxy Projections. Macfarlane reported that Fifth Wall and FWAM had been working with Legacy SmartRent management “to develop a forecast that contemplated the impact of the potential proceeds from the potential transaction” would have on New SmartRent’s business.²⁶ Macfarlane gave the Board a presentation (the “April Board Presentation”) that provided a summary of the update to the Legacy SmartRent Projections that “contemplated the impact that up to \$500M of proceeds could have on the Company.” According to the April Board Presentation, [REDACTED]

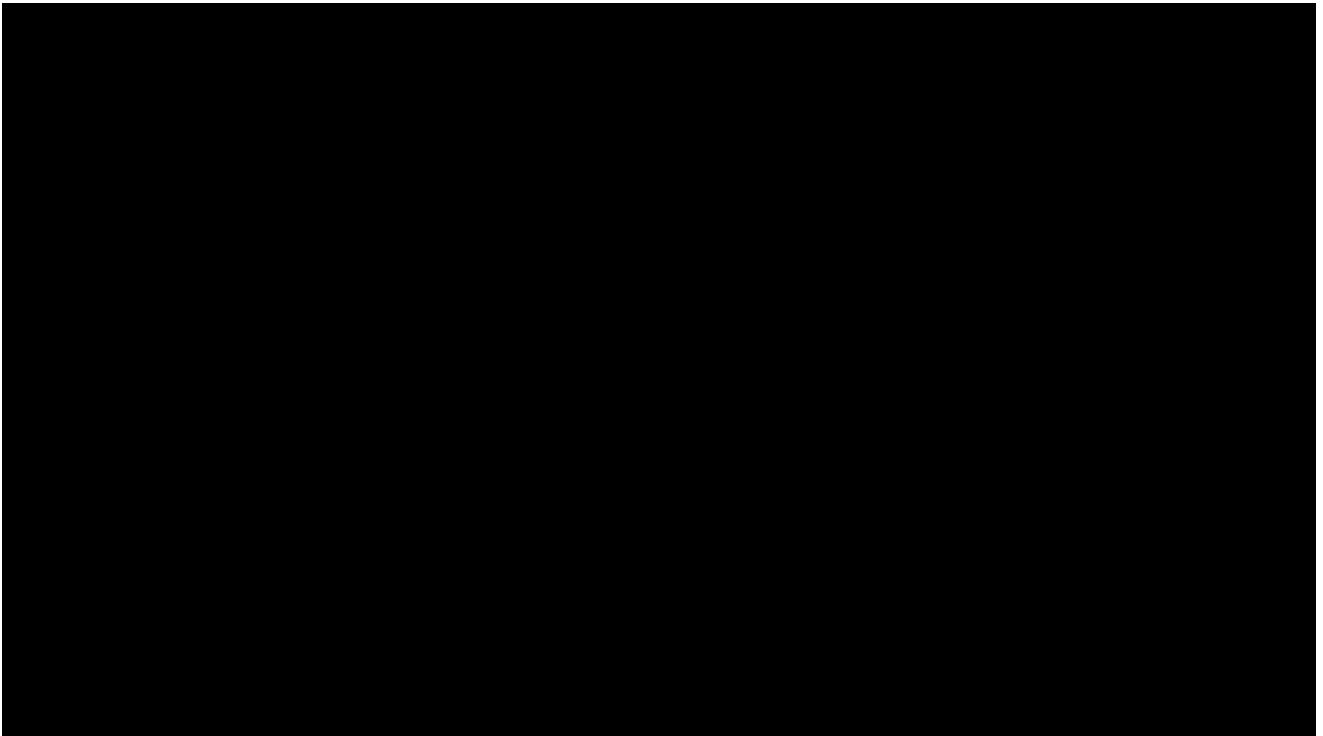
[REDACTED].²⁷

²⁴ SMARTRENT-220-0000058 at 0053, 0058.

²⁵ The Fifth Wall minutes do not reflect that anyone asked any questions about these plans. Thus, Plaintiff is entitled to a pleading stage inference that such questions were not asked. *See supra* n.18.

²⁶ SMARTRENT-220-0000058 at 0054.

²⁷ SMARTRENT-220-0000001 at 0060.



When the Proxy Projections were subsequently disseminated to Fifth Wall's investors in the Proxy, Defendants did *not* disclose that the Proxy Projections “contemplated the impact that up to \$500M of proceeds could have on the Company.”

68. According to the April Board Presentation, the modifications made to the Legacy SmartRent Projections to create Proxy Projections were meant to transform them from a “Steady State Case” to a “Transaction Case.” The Proxy Projections were substantially more bullish than the “Steady State Case,” increasing projected revenue by [REDACTED]. To fuel this outsized growth, the Proxy Projections assumed that Legacy SmartRent would

[REDACTED]

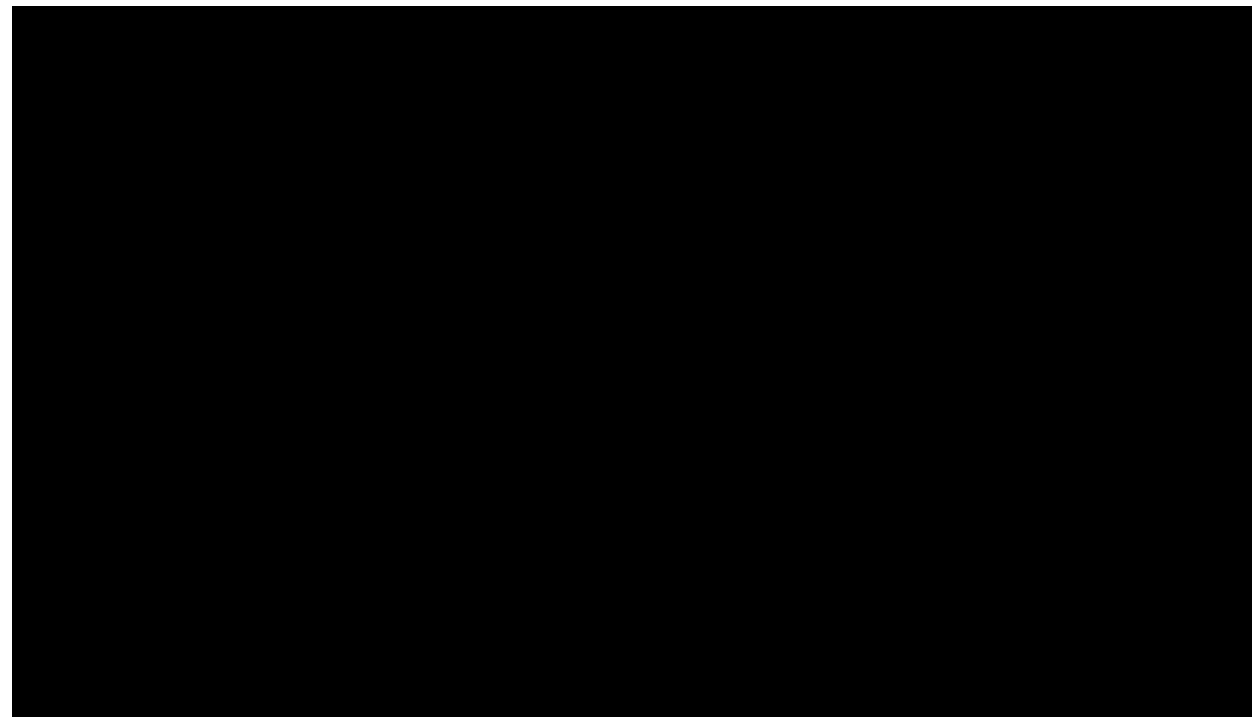
[REDACTED].²⁸

[REDACTED]

[REDACTED]

²⁸ SMARTRENT-220-0000001 at 0062-63.

69. In addition, Macfarlane told the Board that the Legacy SmartRent Projections would be modified to change Operational P&L to GAAP P&L:²⁹



70. On April 19, 2021, the Board met again to hear an update on the Merger process. Moelis told the Board that Legacy SmartRent’s proposed enterprise value had been reduced from \$1.833 billion to \$1.65 billion “as a result of [unspecified] discussions and negotiations with” potential PIPE investors. Management did not tell the Board the specific bases for the reduction, but instead provided a presentation that included a table of the valuation revisions.

71. In discussing the Proxy Projections, Moelis told the Board that “ of the 2021 new units and  of the 2022 new units” underlying Legacy

²⁹ SMARTRENT-220-0000001 at 0061.

SmartRent’s projected growth “[were] already committed by existing customers.”

When asked to explain what “committed units” were, [REDACTED]

[REDACTED]

[REDACTED] Moelis’s presentation from this meeting (the “April Moelis Presentation”) made clear in no uncertain terms that [REDACTED]

[REDACTED]

[REDACTED]³⁰

[REDACTED]

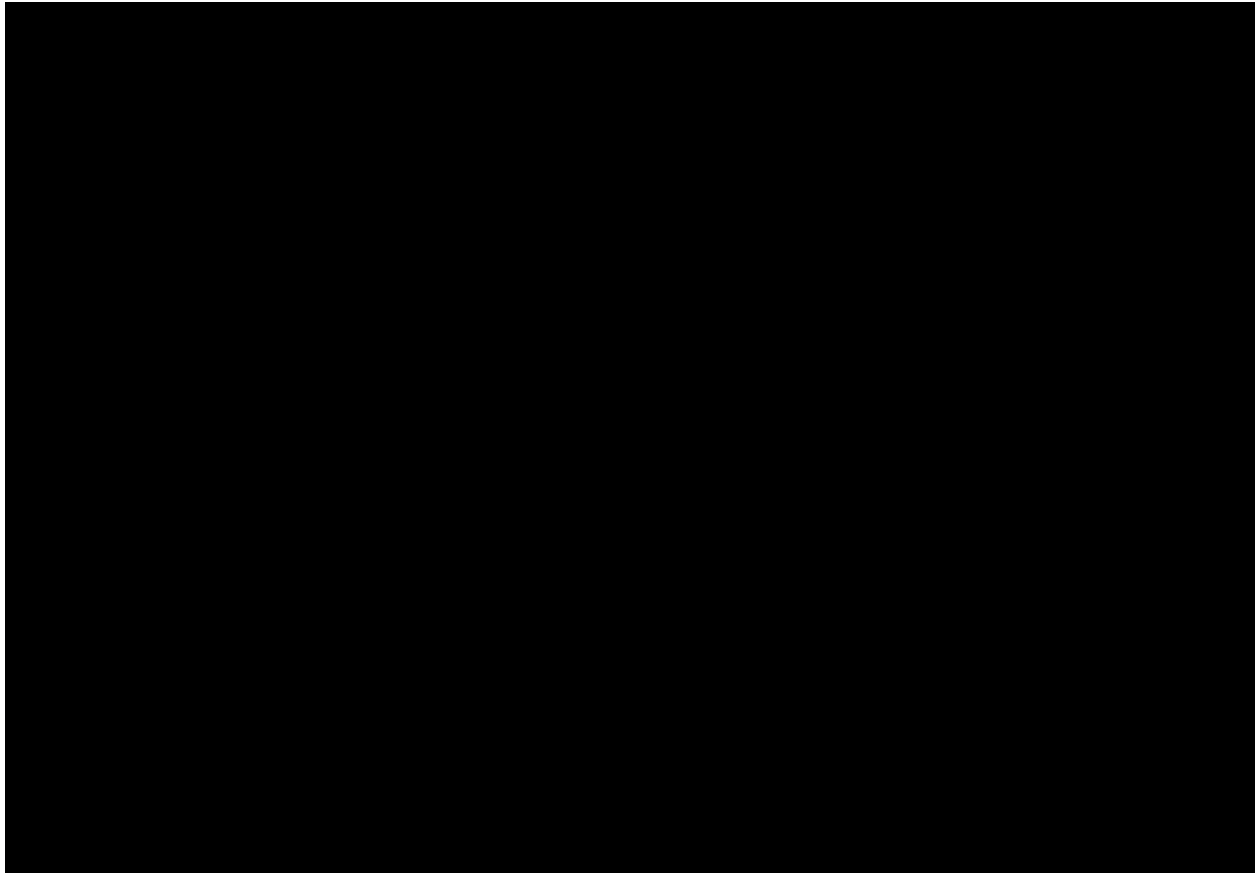
Confidential

SMARTRENT-220-0000075

³⁰ SMARTRENT-220-0000001 at 0075.

This material fact was not disclosed in the Proxy.

72. Likewise, the Board was informed in the April Moelis Presentation that the Proxy Projections “include[d] \$500m of capital raised through contemplated transaction with FWA[M]”:³¹



Confidential

SMARTRENT-220-0000074

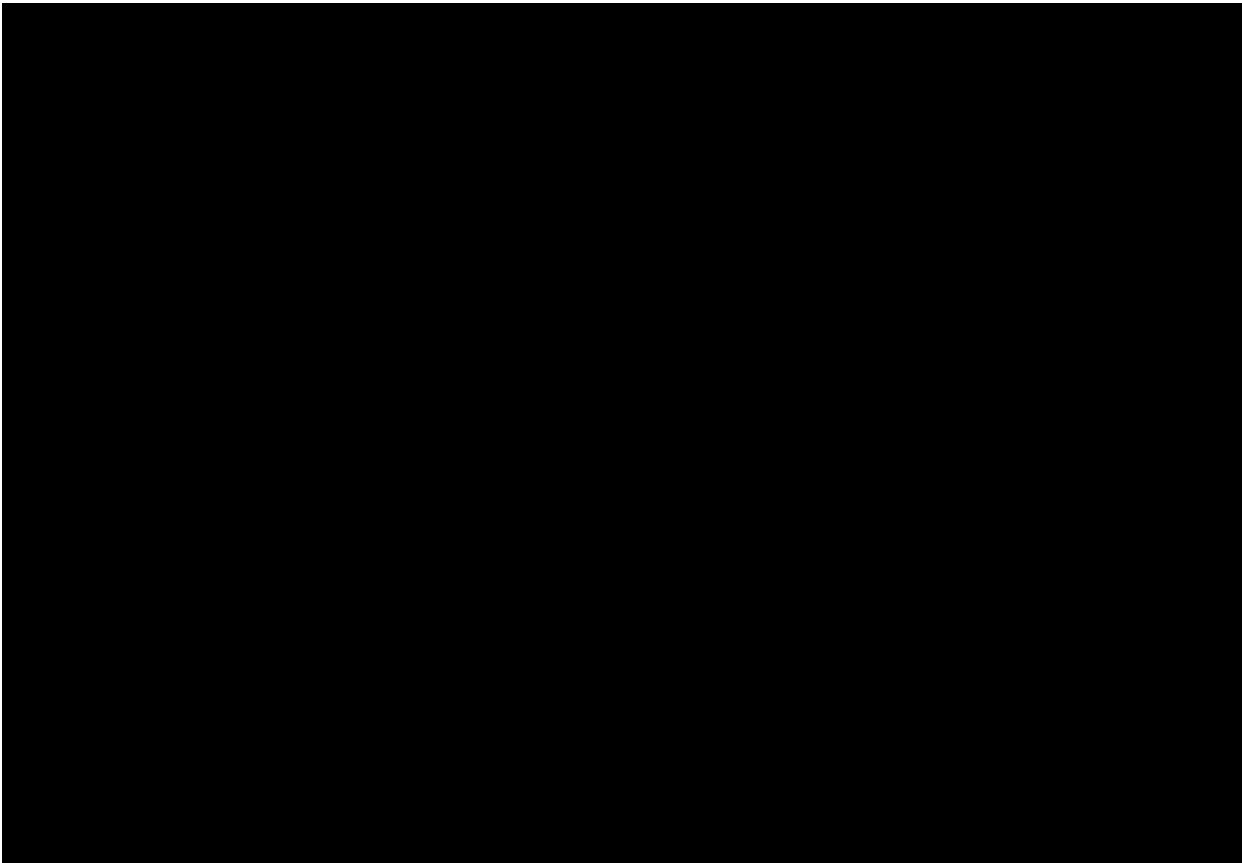
The Proxy did *not* disclose that the Proxy Projections assumed a \$500 million cash infusion provided by the Merger. Nor did the Proxy disclose the fact that if more than a minuscule number of shares were redeemed, the Merger could not have

³¹ SMARTRENT-220-0000001 at 0074.

resulted in a \$500 million cash infusion. Because the Trust held \$345 million and only \$155 million in PIPE investments were forthcoming, New SmartRent would not have the \$500 million in cash upon which the Proxy Projections depended if Fifth Wall investors exercised their redemption rights. To deter redemptions, Defendants would opt to issue a Proxy that was replete with material omissions and misrepresentations.

73. In the April Moelis Presentation, Moelis presented a DCF analysis based on the Proxy Projections, valuing New SmartRent at a range of \$3.059 billion to \$6.784 billion:³²

³² SMARTRENT-220-0000001 at 0086-87.



Confidential

SMARTRENT-Z20-0000086

Confidential

SMARTRENT-220-0000087

74. On April 20, 2021, Houlihan Lokey gave Fifth Wall a due diligence report that made certain findings regarding Legacy SmartRent’s business. Among other things, Houlihan Lokey’s report raised questions about the nature of Legacy SmartRent’s customer base, [REDACTED]

[REDACTED]³³ Houlihan Lokey flagged that these customers “ [REDACTED] [REDACTED]” and Legacy SmartRent “ [REDACTED]

³³ SMARTRENT-220-0000991 at 1006.

[REDACTED]³⁴ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]³⁵

75. Moreover, Houlihan Lokey’s report noted that Legacy SmartRent [REDACTED] to [REDACTED] to induce them to buy Legacy SmartRent products.³⁶ [REDACTED]

[REDACTED] Thus, Legacy SmartRent built its customer base on the flimsy foundation of unsustainable perks for its own investors.

76. On April 21, 2021, the Board met for 30 minutes. Houlihan Lokey representatives did not attend the meeting, but Fox presented the “public company readiness assessment performed by Houlihan Lokey.”³⁷ Despite Houlihan Lokey’s analysis calling into questionable the reasonableness and reliability of the Proxy Projections, Moelis proceeded to deliver its Fairness Opinion, which relied on analyses that utilized the Proxy Projections. At the end of the meeting, the Board approved the Merger. The parties executed the Merger Agreement later that day.

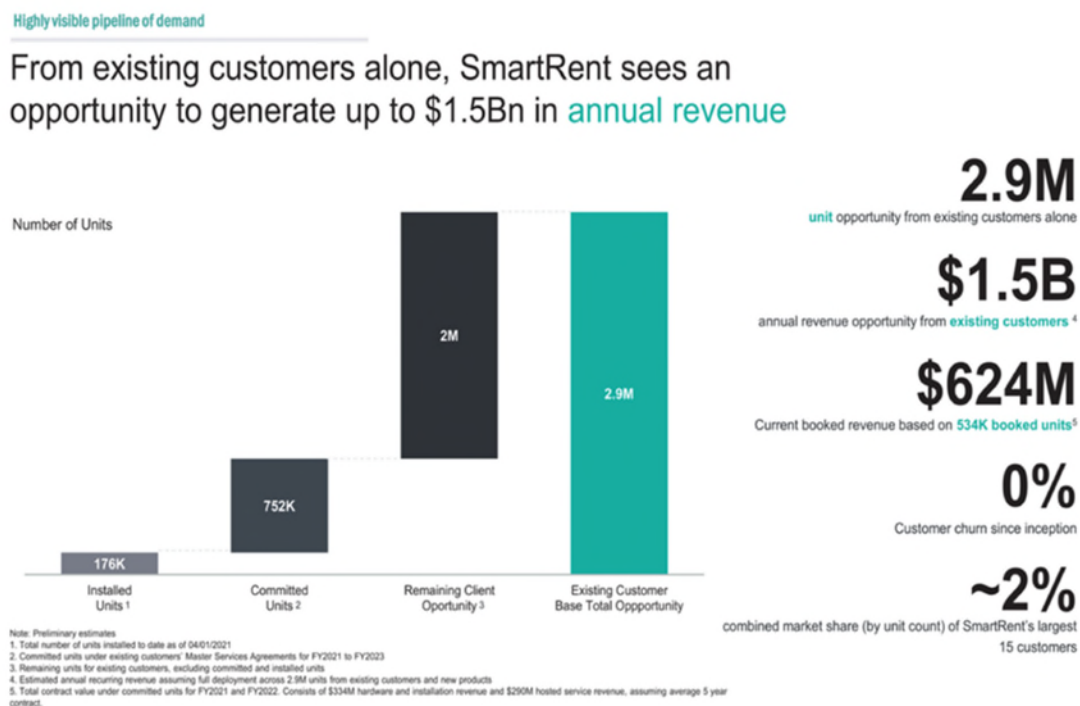
³⁴ SMARTRENT-220-0000991 at 1006.

³⁵ SMARTRENT-220-0000991 at 1025.

³⁶ SMARTRENT-220-0000991 at 1023.

³⁷ SMARTRENT-220-0000001 at 0103.

77. On April 22, 2021, Fifth Wall announced the Merger and disseminated the Investor Presentation to its stockholders. The Investor Presentation touted \$752 million in “customer commitments” to the purchase and installation of units that, combined with other opportunities, could “generate up to \$1.5Bn in annual revenue”:³⁸

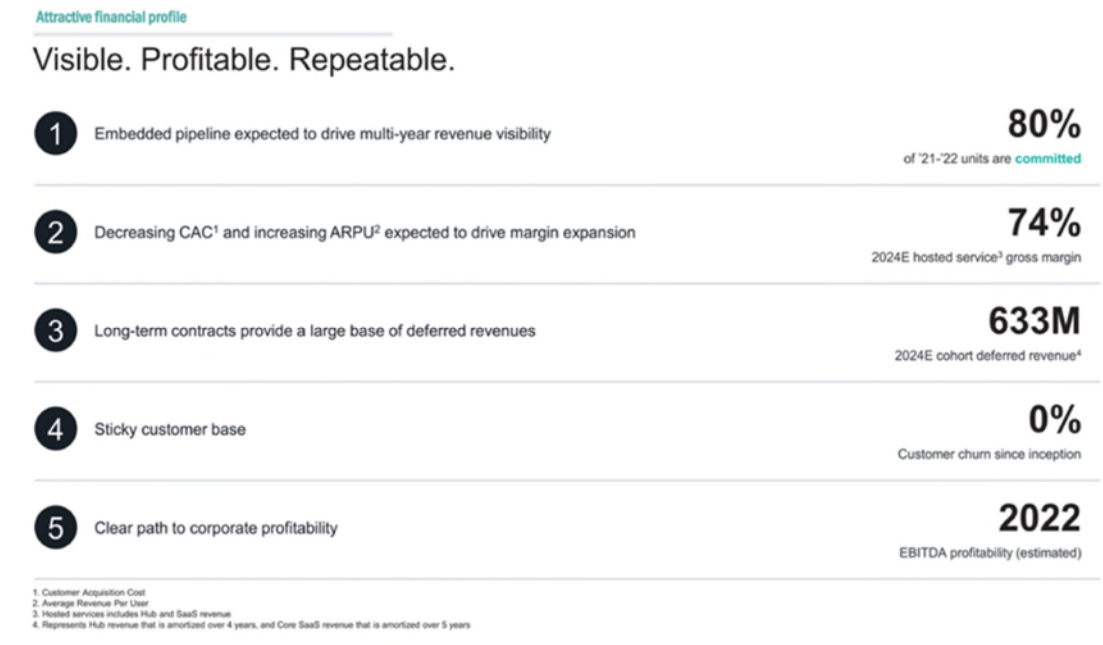


The Investor Presentation did not disclose that [REDACTED]

³⁸ SMARTRENT-220-0000170 (slide 18).

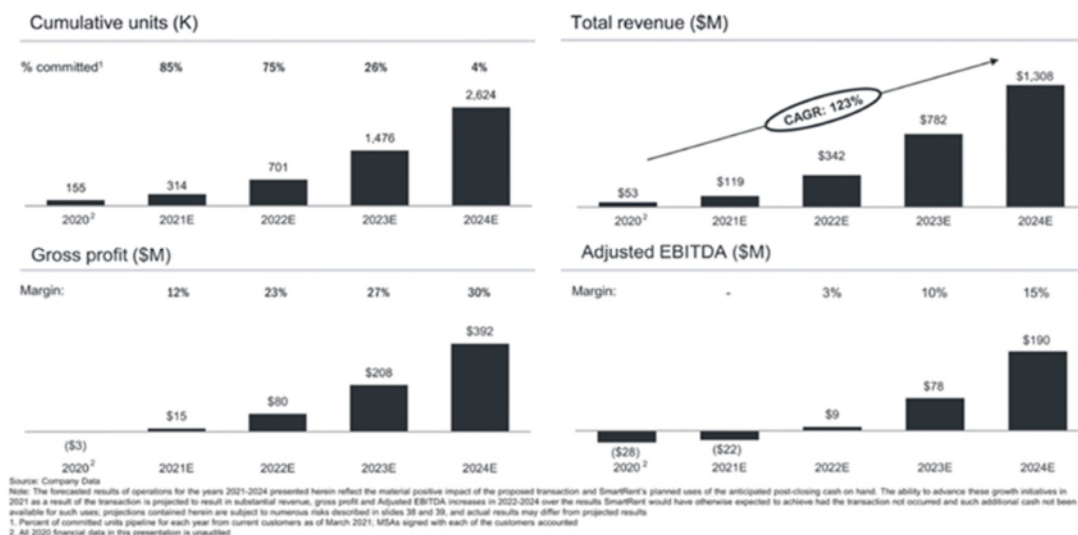
78. Another page in the Investor Presentation reiterated customer commitments, stating that 80% of 2021 and 2022 “units are committed” [REDACTED]

[REDACTED]:



79. The Investor Presentation included a summary of the Proxy Projections that again emphasized the committed pipeline, but did not disclose the fact that the “[p]rojections based on organic growth” assumed a huge cash infusion of \$500 million to support projected results:

Financial performance highlights



80. On August 6, 2021, Fifth Wall disseminated the Proxy to stockholders. The stockholder vote was set for August 23, 2021.

81. Based on the \$345 million that was held in trust for the benefit of Fifth Wall's public stockholders, the redemption value as of the date of the Proxy was approximately \$10 per share. Stockholders were entitled to redeem their shares regardless of how they voted on the Merger.

82. On August 23, 2021, Fifth Wall's public stockholders approved the Merger. Armed with the materially false and misleading Proxy, only 246 Fifth Wall shares were redeemed—a miniscule 0.0007% of the shares eligible for redemption. On August 24, 2021, the Merger closed.

D. THE FALSE AND MISLEADING PROXY

83. The Fifth Wall Defendants, aided and abetted by FWAM, published a false and misleading Proxy that omitted material information that was known to or reasonably available to Defendants.

84. The Board had an affirmative duty to provide materially accurate and complete information to public stockholders in connection with the redemption decision and Merger vote. It failed to do so.

1. The Proxy Made Misleading Statements About The Value Of Fifth Wall Shares Exchanged In The Merger

85. In deciding whether to redeem their stock or invest in the post-Merger company, a member of the Class (as defined herein) would compare what she was giving up (*i.e.*, a redemption right worth \$10 per share plus interest) to what she would receive if she chose to invest in the post-Merger company (*i.e.*, a share of New SmartRent). Although New SmartRent did not yet exist at the time members of the Class were called upon to make this decision, a Class member would reasonably expect that the New SmartRent shares she would receive would be of equal value to the Fifth Wall shares she would be giving up in deciding to redeem. Thus, the intrinsic value of a Fifth Wall share was of vital importance to members of the Class.

86. Fifth Wall’s sole asset prior to the Merger was cash and its sole contribution to the Merger was cash. Thus, the value of each share of Fifth Wall was equal to the net cash underlying that share—its net cash per share.

87. To calculate the net cash per share that Fifth Wall would contribute to the Merger, a Fifth Wall stockholder would begin with the total cash Fifth Wall would bring to the Merger, subtract the costs to arrive at the total net cash, and then divide the net cash by Fifth Wall’s pre-Merger outstanding shares. The calculation can be expressed as an equation as follows:

$$\text{Net Cash per Share} = \frac{\text{Cash} - \text{Costs}}{\text{Pre-Merger Shares}}$$

88. Information that could be gleaned from various places in the Proxy—if a Fifth Wall stockholder had any reason to know that she would be expected to participate in a game of “Clue” to decide whether to redeem or to invest—yields a reasonable estimate of Fifth Wall’s net cash per share of approximately \$7.50. This is the value Fifth Wall would contribute to the Merger—not \$10.00. Thus, Fifth Wall’s public stockholders who invested in the Merger instead of exercising their redemption rights could not reasonably expect to receive \$10.00 per share worth of New SmartRent in the share exchange with Fifth Wall stockholders—and therefore could not expect \$10.00 in value upon the Merger’s consummation.

89. Defendants did not disclose this highly material fact. Instead, the Proxy repeatedly suggested that the Fifth Wall shares to be issued to Legacy SmartRent stockholders were worth \$10.00 per share. For example, in explaining what “SmartRent stockholders [will] receive in the business combination,”³⁹ the Proxy stated:

Q: WHAT WILL SMARTRENT STOCKHOLDERS RECEIVE IN THE BUSINESS COMBINATION?

A: As part of the Business Combination, SmartRent equityholders (including holders of warrants, options and RSUs) will receive aggregate merger consideration of 157,678,300 newly issued shares of FWAA Class A common stock. Assuming a value of \$10.00 per FWAA Class A share, which is the price at which FWAA completed its initial public offering in February 2021, the aggregate merger consideration implies an aggregate equity value for SmartRent of approximately \$1.58 billion.

90. Similarly, in the “Summary” of the Merger,⁴⁰ the Proxy stated:

Merger Consideration (page 215)

As part of the Business Combination, SmartRent equityholders (including holders of warrants, options and RSUs) will receive aggregate merger consideration of 157,678,300 newly issued shares of FWAA Class A common stock. Assuming a value of \$10.00 per FWAA Class A share, which is the price at which FWAA issued its shares of Class A common stock in its initial public offering in February 2021, the aggregate merger consideration implies an aggregate equity value for SmartRent of approximately \$1.58 billion.

91. In explaining Fifth Wall’s financial interests in the Merger, the Proxy again suggested that the Fifth Wall shares were worth \$10.00, making this assumption to calculate both the value of FWF II’s Legacy SmartRent investment and the amount of carried interest FWF II’s general partner would earn in connection with FWF II’s Legacy SmartRent investment:

³⁹ Proxy at v.

⁴⁰ Proxy at 1.

- Fifth Wall Ventures II LP, a Fifth Wall Fund with approximately \$503 million in committed capital (“Fifth Wall Fund II”), invested \$10.0 million in the SmartRent Series C Preferred Stock financing round on March 11, 2020 at a \$340.0 million valuation, resulting in Fifth Wall Fund II’s current ownership of approximately 3% of SmartRent’s outstanding equity on a fully diluted basis. At a value of \$10.00 per share for the post-closing combined company, the proposed business combination transaction would result in an approximate 5x step-up in valuation for SmartRent (post to pre basis) before taking into account full dilution from FWAA’s initial business combination and the PIPE Transaction. Therefore, following the transaction and assuming a \$10.00 per share market value for the Post-Combination Company, Fifth Wall Fund II’s stake in SmartRent would have a value of approximately \$50.0 million. The general partner of Fifth Wall Fund II has made a commitment to Fifth Wall Fund II and participates in a portion of such investment by Fifth Wall Fund II. Furthermore, assuming Fifth Wall Fund II’s performance has satisfied all the criteria under its waterfall such that its general partner would be entitled to take carried interest on subsequent distributions, Fifth Wall Fund II’s general partner would earn approximately \$8.0 million of carried interest before taking into account fees, expenses or the performance of its other investments (i.e., 20% carried interest on the \$40.0 million gain) in respect of a disposition of Fifth Wall Fund II’s stake in SmartRent at such value. Mr. Wallace and Mr. Mykhaylovskyy are beneficial owners of the general partner of Fifth Wall Fund II, and as such would be entitled to receive a share of profits of the general partner, including its investment in, and carried interest from, Fifth Wall Fund II.

92. Because the value of Fifth Wall’s shares was directly related to the value that public stockholders could reasonably expect to receive in the Merger, the failure to disclose their true value was a material omission and the Proxy’s repeated suggestions that these shares were worth \$10.00 were material misstatements.

93. Notably, the SEC recently adopted a SPAC Disclosure Mandate explicitly requiring that SPACs disclose—both at the IPO and de-SPAC stages—the extent to which SPAC equity is diluted and cash dissipated.⁴¹

94. In adopting the SPAC Disclosure Mandate, the SEC *explicitly acknowledged* that information relating to the actual amount of cash underlying a SPAC share of the very type Defendants omitted here is material to a SPAC investor faced with the decision of whether to redeem or invest in the merger. In discussing

⁴¹ See generally SPAC Disclosure Mandate, *supra* n.2.

the importance of the new SPAC Disclosure Requirement, including the “dilution” disclosures, SEC Chair Gary Gensler explained, “Just because a company uses an alternative method to go public does not mean that its investors are less deserving of time-tested investor protections.”⁴²

2. The Proxy Omitted The Legacy SmartRent Projections

95. At the time the Merger process was initiated, Legacy SmartRent had an existing set of standalone financial projections—the Legacy SmartRent Projections. On March 17, 2021, the Board was given the Legacy SmartRent Projections. The Legacy SmartRent Projections were not materially revised⁴³ during the Merger process. The Legacy SmartRent Projections were not disclosed in the Proxy. Instead, the Proxy contained only the Proxy Projections—which were **not** a standalone financial model for Legacy SmartRent. Instead, the Proxy Projections reflected a combined company post-Merger financial model that assumed a \$500 million cash infusion from the Merger.

96. Without access to a set of standalone financial projections for Legacy SmartRent, Fifth Wall stockholders had no insight into how Legacy SmartRent

⁴² Press Release, *SEC Adopts Rules to Enhance Investor Protections Relating to SPACs, Shell Companies, and Projections*, U.S. Sec. & Exch. Comm’n (Jan. 24, 2024) (<https://www.sec.gov/news/press-release/2024-8>).

⁴³ Minor revisions were made to the Adjusted EBITDA and the P&L Statement within the Legacy SmartRent Projections was revised to conform to GAAP standards.

would be projected to perform in the event less than \$500 million in cash were rolled into New SmartRent—an eventuality that was certain to occur if Fifth Wall stockholders exercised their redemption rights. Because SmartRent only needed to have \$250 million for the Merger to close, any Fifth Wall stockholder who elected not to redeem faced a real risk that the Merger would close with SmartRent having substantially less than the \$500 million in cash assumed in the Proxy Projections. To make an informed decision, stockholders should have been provided with the standalone Legacy SmartRent Projections. The failure to disclose the Legacy SmartRent Projections was a material omission.

3. The Proxy Contains Misstatements And Omissions Concerning The Proxy Projections

97. The Proxy contained material omissions about Legacy SmartRent’s expected future performance. According to the Proxy, Legacy SmartRent was projected to perform in accordance with the Proxy Projections:

(amounts in thousands)	Forecast Year Ended December 31,			
	2021E	2022E	2023E	2024E
Total Units Booked ⁽¹⁾	205	518	838	1,261
Units Deployed ⁽²⁾	161	391	786	1,175
Revenue ⁽³⁾ :				
Hardware	\$ 65,643	\$ 175,150	\$ 372,809	\$ 585,278
Professional services	29,217	99,396	237,914	402,187
Hosted services	24,099	67,766	171,245	320,670
Total Revenue ⁽³⁾	<u>\$ 118,959</u>	<u>\$ 342,312</u>	<u>\$ 781,968</u>	<u>\$ 1,308,135</u>
Adjusted EBITDA ⁽⁴⁾	\$ (22,428)	\$ 8,945	\$ 78,262	\$ 190,188

The Proxy did not disclose that the Proxy Projections assumed a \$500 million cash infusion. To the contrary, the Proxy created the materially misleading impression that the Proxy Projections assumed that only \$100 million in cash would be provided in the Merger. The Proxy disclosed certain of the assumptions on which the Proxy Projections were based, including:

- assumptions related to SmartRent’s cash available for investment, including the \$100.0 million provided by the Business Combination (a number that excludes the potential impact of redemptions) that is expected to be available to deploy on specified growth initiatives, including substantially increasing the Post-Combination Company’s salesforce to drive new customer growth and additional sales to existing customers, and funding new product development; and

The reference to the “cash available for investment” as “the \$100.0 million provided by the Business Combination” creates the misleading impression that the Business Combination would provide *only \$100 million* when—in reality—the Proxy Projections assumed the Merger would provide *\$500 million* in cash. The Proxy disclosure stands in stark contrast to the April Moelis presentation, in which the Board was explicitly told that the Proxy Projections “include[d] \$500m of capital raised through contemplated transaction with FWA[M],” \$100 million of which would be allocated to [REDACTED] and the remaining \$400 million of which would be available for [REDACTED]⁴⁴ Had Fifth Wall stockholders been told that the Proxy Projections were predicated on the Company getting an additional \$500 million in cash from the Merger, it would have

⁴⁴ SMARTRENT-220-0000001 at 0074.

been readily apparent that—if more than a miniscule number of Fifth Wall investors redeemed—the pro forma company would not have the \$500 million cash on which the Proxy Projections were predicated. Disclosing this would have called the company’s ability to meet the Proxy Projections into question.

98. The Proxy also failed to disclose material information relating to the achievability of the “Total Units Booked” contained in the Proxy Projections, as discussed in more detail *infra*. The Proxy stated that Total Units Booked were associated with MSAs or “binding purchase orders.” The Proxy did not disclose that

[REDACTED]

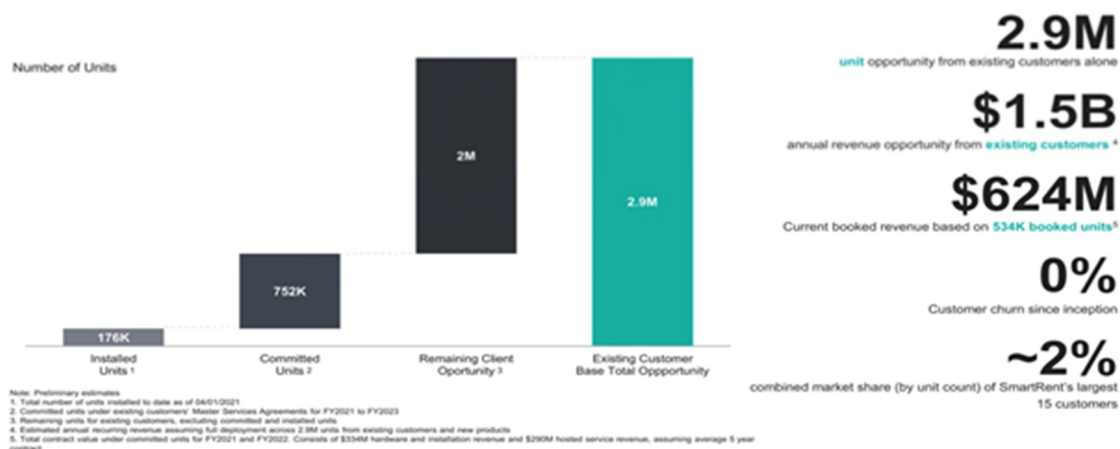
[REDACTED] Had the Proxy disclosed this fact, a Fifth Wall investor might have more sharply questioned the reliability of the Proxy Projections.

4. The Proxy Materially Misrepresented Customer Commitments

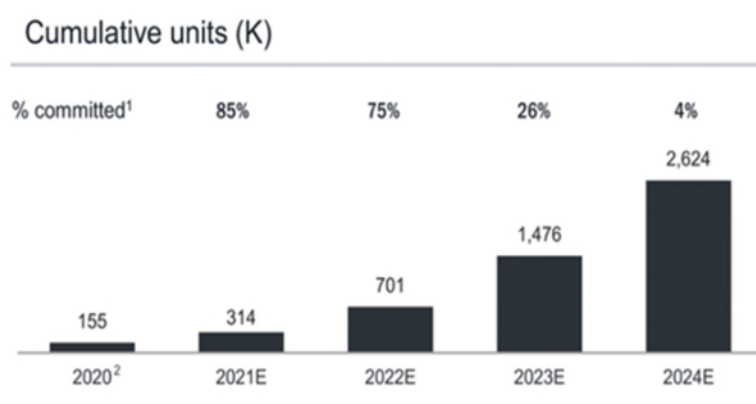
99. The Proxy and the Investor Presentation materially misrepresented to stockholders that Legacy SmartRent had contractually firm customer commitments that supported “an opportunity to generate up to \$1.5Bn in annual revenue”:

Highly visible pipeline of demand

From existing customers alone, SmartRent sees an opportunity to generate up to \$1.5Bn in **annual revenue**



100. The Investor Presentation further stated that the overwhelming majority of “’21-’22 units are committed” (*i.e.*, 85% for 2021 and 75% for 2022) and provided a chart laying out the percent of the projected pipeline that was committed:



101. The Proxy similarly stated that “Total Units Booked” were based on MSAs and “binding purchased orders.”

102. The Investor Presentation further represented Legacy SmartRent benefitted from a “[s]ticky customer base,” “meaningful ongoing customer

relationships,” “0% customer churn,” and “industry leaders have chosen SmartRent.”

103. These statements were misleading. As set forth *supra*, [REDACTED]

[REDACTED]. Moreover, affiliates of [REDACTED]
[REDACTED] were among Legacy SmartRent’s largest customers. [REDACTED]

[REDACTED] The omission of this material information rendered the Proxy materially misleading.

5. The Proxy Did Not Disclose The Merger Process Was Effectively Run By Conflicted FWAM Personnel, With Limited Board Involvement

104. The Proxy did not disclose that FWAM – via its partners and financial advisors, including Fox, Chawla, and Macfarlane – effectively ran the Merger process. This included conducting due diligence and performing valuations of Legacy SmartRent, and negotiating the Merger terms. The Proxy does not disclose that the Board:

- played no role in formulating the initial offer (and, in fact, was not even told about it until two days after it was made);
- was not informed of or asked to approve the revised Merger terms that dropped the valuation from a \$2.4 billion midpoint down to \$1.75 billion, reduced the PIPE investment to \$155 million, and reduced the “minimum cash condition” to \$250

million before these revised Merger terms were submitted to Legacy SmartRent;

- effectively played no role in the due diligence process; and
- was not informed about – nor asked to approve—Fifth Wall’s and FWAM’s revision of the Legacy SmartRent Projections to create the Proxy Projections *before* the process was undertaken.

The foregoing facts would have been material to an investor faced with the decision of whether to redeem his shares or roll over into the Merger.

6. The Proxy Omitted Material Information Bearing On The Reliability Of The \$1.75 Billion Pre-Money Equity Valuation Of Legacy SmartRent

105. The Proxy omits material facts bearing on the reliability of the \$1.75 billion pre-money equity valuation ascribed to Legacy SmartRent in the Proxy. In March 2020, FWF II invested in Legacy SmartRent at an implied [REDACTED] valuation. Although the Proxy disclosed the existence of the investment, it failed to disclose the [REDACTED] valuation or otherwise explain what could have accounted for a nearly [REDACTED] in the 12 months that had elapsed between these two valuations. These widely divergent valuations of Legacy SmartRent would have altered the mix of information available to a Fifth Wall stockholder faced with deciding whether to redeem its shares or rolling over into Legacy SmartRent.

E. THE POST-MERGER REALITY SETS IN

106. Although New SmartRent’s stock price initially traded above the redemption price, it began a steady decline once it became apparent that New

SmartRent’s business could not support the fanciful results contemplated by the Proxy Projections.

107. After the markets closed on November 10, 2021, New SmartRent “revis[ed its] expectations for revenue in 2021 to a range of \$100 to \$105 million,” lower than the \$119 million contained in the Proxy Projections. In addition, New SmartRent disclosed a discomfoting increase in income losses, reporting a negative quarterly adjusted EBITDA of \$16.1 million. These disclosures immediately caused New SmartRent’s stock to plummet by ~30%, falling from a \$12.35 close on November 10, 2021 to a \$10.18 close on November 11, 2021.

108. On March 24, 2022, New SmartRent announced lowered guidance for 2022. New SmartRent disclosed 2022 revenue guidance of \$220 to \$250 million, substantially lower than the \$342 million projected 2022 revenue laid out in the Proxy Projections. Similarly, New SmartRent disclosed adjusted EBITDA guidance of negative \$50 to negative \$35 million, substantially lower than the positive \$8.9 million Adjusted EBITDA contained in the Proxy Projections. On this news, New SmartRent’s stock dropped from its \$6.30 close on March 24, 2022 to a \$5.51 close on March 25, 2022.

109. After the markets closed on August 11, 2022, New SmartRent once again lowered its 2022 revenue and adjusted EBITDA guidance. New SmartRent lowered revenue guidance to \$155-\$180 million—a further 30% reduction from the

March 2022 lowered guidance and bringing the company's projected 2022 revenue down to only 44%–53% of the projected 2022 revenue contained in the Proxy Projections. Legacy SmartRent dropped Adjusted EBITDA guidance from a range of negative \$50 million to negative \$35 million to a revised range negative \$75 million to negative \$70 million, bringing projected 2022 EBITDA to between \$77 million—and \$82 million less than the 2022 EBITDA projected in the Proxy Projections. New SmartRent stock dropped from its \$5.61 per-share close on August 11, 2022 to a \$3.82 per-share close on August 12, 2022.

110. On March 8, 2023, New SmartRent reported its 2022 results. For 2022, New SmartRent reported \$167.8 million in revenue, negative adjusted EBITDA of \$74.7 million, and a net loss of \$96.3 million. New SmartRent also announced lowered booked and deployed units: (i) booked units were 282,512, only 54.5% of projected booked units for 2022; and (ii) deployed units were 207,711, only 53% of projected deployed units for 2022.

111. In addition, New SmartRent lowered 2023 revenue guidance to \$225 to \$250 million—only 28.7% to 32% of 2023 revenue projected in the Proxy Projections. And New SmartRent disclosed Adjusted EBITDA guidance of negative \$25 million to negative \$15 million, massively below the \$78 million 2023 projected Adjusted EBITDA contained in the Proxy Projections. After this news, New

SmartRent's stock price was traded down from \$2.74 per share on March 8, 2023 to \$2.57 on March 9, 2023.

112. Results would continue to spiral downward. On November 7, 2023, for the first three quarters of 2023, New SmartRent reported: (i) total 2023 revenue of \$176.6 million, and (ii) total 2023 booked units of 131,347; and (iii) total 2023 deployed units of 682,632. These results were set to fall short of the targets outlined in the Proxy Projections, which anticipated 2023 revenues of \$782 million, 838,000 units booked, and 786,000 units deployed.⁴⁵

113. By February 1, 2024, New SmartRent's stock was trading at \$3.01, substantially below the \$10.00, plus interest, that Fifth Wall stockholders would have received by exercising their redemption rights.

CONSPIRACY, AIDING AND ABETTING, AND CONCERTED ACTION

114. In committing the wrongful acts alleged herein, Defendants have pursued, or joined in the pursuit of, a common course of conduct and have acted in concert with and conspired with one another in furtherance of their common plan or design. In addition to the wrongful conduct alleged herein as giving rise to primary liability, Defendants further aided and abetted and/or assisted each other in the Fifth Wall Defendants' breaches of their respective duties.

⁴⁵ Fifth Wall Acquisition Corp., Prospectus Supplement (Form 425) (Aug. 17, 2021), at 4.

115. During all times relevant hereto, Defendants, collectively and individually, initiated a course of conduct that was designed to and did: (i) deceive the investing public, including public stockholders of Fifth Wall, regarding Legacy SmartRent's business, operations, and prospects; and (ii) enhance the value of Defendants' Founder Shares, Private Placement Shares, and investments in FWF II. In furtherance of this plan, conspiracy, and course of conduct, Defendants, collectively and individually, took the actions set forth herein.

116. The purpose and effect of Defendants' conspiracy, common enterprise, and/or common course of conduct was, among other things, to disguise Defendants' violations of law, breaches of fiduciary duty, and unjust enrichment, and to mislead Fifth Wall's public stockholders concerning Legacy SmartRent's business, operations, and prospects.

117. Defendants accomplished their conspiracy, common enterprise, and/or common course of conduct by causing Fifth Wall to release improper and false and misleading statements. Because the actions described herein occurred under the authority of the Board, each of Defendants was a direct, necessary, and substantial participant in the conspiracy, common enterprise, and/or common course of conduct complained of herein.

118. FWAM aided and abetted and rendered substantial assistance in the wrongs complained of herein. In taking such actions to substantially assist the

commission of the wrongdoing complained of herein, FWAM acted with knowledge of the primary wrongdoing, substantially assisted in the accomplishment of that wrongdoing, and was aware of its overall contribution to and furtherance of the wrongdoing.

119. FWAM is controlled by Wallace and Mykhaylovskyy. FWAM was responsible for conducting due diligence and financial valuations, and for submitting Merger proposals to Legacy SmartRent on behalf of the Board. FWAM attended and led Board meetings and delivered the March and April Board Presentations, which, as stated above, contained a number of material facts that were not disclosed in the Proxy.

CLASS ACTION ALLEGATIONS

120. Plaintiff brings this action individually and as a class action pursuant to Rule 23 of the Rules of the Court of Chancery on behalf of themselves and holders of Fifth Wall Class A common stock (the “Class”) who held such stock as of the redemption deadline and who elected not to redeem all or some of their stock (except the Defendants herein, and any person, firm, trust, corporation, or other entity related to, or affiliated with, any of the Defendants) and their successors in interests.

121. This action is properly maintainable as a class action.

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

123. The Class is so numerous that joinder of all members is impracticable. The number of Class members is believed to be in the thousands, and they are likely scattered across the United States. Moreover, damages suffered by individual Class members may be small, making it overly expensive and burdensome for individual Class members to pursue redress on their own.

124. There are questions of law and fact that are common to all Class members and that predominate over any questions affecting only individuals, including, without limitation:

- (a) whether Defendants owed fiduciary duties to Plaintiff and the Class;
- (b) whether the Controller Defendants controlled Fifth Wall;
- (c) whether “entire fairness” is the applicable standard of review;
- (d) which party or parties bears the burden of proof;
- (e) whether Defendants breached their fiduciary duties to Plaintiff and the Class;
- (f) whether the FWAM aided and abetted the Defendants’ breaches of their fiduciary duties;
- (g) the existence and extent of any injury to the Class or Plaintiff caused by any breach; and
- (h) the proper measure of the Class’s damages.

125. Plaintiff’s claims are typical of the claims of other Class members, and Plaintiff has no interests antagonistic or adverse to the interests of other Class members. Plaintiff will fairly and adequately protect the interests of the Class.

126. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature.

127. Defendants have acted in a manner that affects Plaintiff and all members of the Class alike, thereby making appropriate injunctive relief and/or corresponding declaratory relief with respect to the Class as a whole.

128. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for Defendants; or adjudications with respect to individual members of the Class would, as a practical matter, be dispositive of the interests of other members or substantially impair or impede their ability to protect their interests.

FIRST CAUSE OF ACTION

(Direct Claim for Breach of Fiduciary Duty Against the Director Defendants)

129. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

130. As fiduciaries of Fifth Wall, the Director Defendants, in their capacities as directors of Fifth Wall, owed Plaintiff and the Class the utmost fiduciary duties of care and loyalty, which subsume an obligation to act in good faith, with candor, and to make accurate and complete material disclosures to Fifth Wall stockholders.

131. These duties required the Director Defendants to place the interests of Fifth Wall stockholders above their personal interests and the interests of the Controller Defendants.

132. Through the events and actions described herein, the Director Defendants breached their fiduciary duties to Plaintiff and the Class by prioritizing their own personal, financial, and reputational interests above those of Fifth Wall's stockholders. The Director Defendants also breached their fiduciary duties by approving the unfair Merger and by failing to inform stockholders of the material information necessary to allow them to make an informed redemption decision.

133. Plaintiff and the Class were harmed as the Proxy contained false or misleading disclosures or omitted material information necessary for Fifth Wall's stockholders to make an informed decision whether to exercise their redemption rights or invest in the Merger.

134. The Merger was not fair, and the Director Defendants will be unable to carry their burden under entire fairness.

135. The Class chose not to redeem their stock based on false and misleading information.

136. Plaintiff and the Class suffered damages in an amount to be determined at trial.

SECOND CAUSE OF ACTION

(Direct Claim for Breach of Fiduciary Duty Against the Officer Defendants)

137. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

138. As fiduciaries of Fifth Wall, the Officer Defendants, in their capacities as officers of Fifth Wall, owed Plaintiff and the Class the utmost fiduciary duties of care and loyalty, which subsume an obligation to act in good faith, with candor, and to make accurate and complete material disclosures to Fifth Wall stockholders.

139. These duties required the Officer Defendants, in their capacities as officers of Fifth Wall, to place the interests of Fifth Wall's stockholders above their personal interests and the interests of the Director Defendants and/or Sponsor. The Officer Defendants are not exculpated from the breach of their duty of care for actions taken in their capacity as an officer (which include all actions set forth herein except their formal vote on the Merger).

140. Through the events and actions described herein, the Officer Defendants breached their fiduciary duties to Plaintiff and the Class by prioritizing their own personal, financial, and/or reputational interests, failing to adequately inform stockholders of material information necessary to allow them to make an informed redemption decision, and approving the Merger, which was unfair to Fifth Wall's Class A stockholders.

141. The Merger was not fair, and the Officer Defendants will be unable to carry their burden under entire fairness.

142. The Class chose not to redeem their stock based on false and misleading information.

143. Plaintiff and the Class suffered damages in an amount to be determined at trial.

THIRD CAUSE OF ACTION

(Direct Claim for Breach of Fiduciary Duty Against the Controller Defendants)

144. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

145. The Controller Defendants were Fifth Wall's controlling stockholders. Specifically, the Controller Defendants controlled all of the Founder Shares, elected (and could remove at any time) the other members of the Board, and/or held officer roles at Fifth Wall.

146. The Controller Defendants owed Plaintiff and the Class fiduciary duties of care and loyalty, which included an obligation to act in good faith, with candor, and to provide complete and accurate material disclosures to Fifth Wall stockholders.

147. At all relevant times, the Controller Defendants had the power to control, influence, and cause—and actually did control, influence, and cause—the company to enter into the Merger.

148. The Merger was unfair, reflecting an unfair price and unfair process.

149. Through the events and actions described herein, the Controller Defendants breached their fiduciary duties to Plaintiff and the Class by failing to adequately inform public stockholders of material information necessary to allow them to make an informed redemption decision and by agreeing to and entering into the Merger without ensuring that it was entirely fair to Plaintiff and the Class.

150. As a result, Plaintiff and the Class were harmed when, having been deceived by the false and misleading disclosures and the Board's approval of the Merger, they did not exercise their redemption rights prior to the Merger.

151. In addition, the majority of the Class approved the Merger based on false and misleading information.

152. Plaintiff and the Class suffered damages in an amount to be determined at trial.

FOURTH CAUSE OF ACTION

(Direct Claim for Aiding and Abetting Breaches of Fiduciary Duties Against FWAM)

153. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

154. FWAM was aware that the Fifth Wall Defendants' fiduciary duties, as set forth above, required that the Fifth Wall Defendants ensure that Fifth Wall's public stockholders' ability to make an informed redemption decision not be impaired.

155. FWAM knowingly participated in the Fifth Wall Defendants' breaches of their fiduciary duties (and any exculpated care breaches by the Director Defendants), including the fiduciary duties of care and loyalty, which included an obligation to act in good faith, with candor, and to provide accurate material disclosures to stockholders.

156. FWAM was responsible for conducting the due diligence in connection with the Merger process and provided the Director Defendants with the March and April Board Presentations. As a result, FWAM was aware of the material issues with Legacy SmartRent's business prospects, the fact that [REDACTED]
[REDACTED]
[REDACTED], the existence of the Legacy SmartRent Projections, and the failure to disclose that the Proxy Projections assumed a \$500 million cash infusion. Despite being aware of these material facts, FWAM chose to assist the Fifth Wall Defendants in breaching their fiduciary duties by failing to disclose these facts to Fifth Wall's public stockholders and thereby impairing Fifth Wall's public stockholders right to make their redemption decision on a fully informed basis.

157. As a result of the FWAM's aiding and abetting the Fifth Wall Defendants' breaches of fiduciary duty, Plaintiff and the Class were harmed by not exercising their redemption rights prior to the Merger.

158. Plaintiff and the Class suffered damages in an amount to be determined at trial.

FIFTH CAUSE OF ACTION

(Direct Claim for Unjust Enrichment Against the Controller Defendants and the Director Defendants)

159. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

160. As a result of the conduct described above, the Controller Defendants and the Director Defendants breached their duties to the Class and put their own interests ahead of those of the Class.

161. The Controller Defendants and the Director Defendants were unjustly enriched by the wrongful conduct detailed above.

162. All unjust profits realized by the Controller Defendants and the Director Defendants should be disgorged and recouped by the Class.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment and relief in his favor and in favor of the Class, and against Defendants, as follows:

A. Declaring that this action is properly maintainable as a class action;

B. Finding the Director Defendants liable for breaching their fiduciary duties owed to Plaintiff and the Class;

C. Finding the Officer Defendants liable for breaching their fiduciary duties owed to Plaintiff and the Class;

D. Finding the Controller Defendants liable for breaching their fiduciary duties, in their capacity as Fifth Wall's controlling stockholders, owed to Plaintiff and the Class;

E. Finding FWAM liable for aiding and abetting the Fifth Wall Defendants' breaches of fiduciary duty owed to Plaintiff and the Class by the Fifth Wall Defendants;

F. Finding that the Fifth Wall Defendants were disloyal fiduciaries that were unjustly enriched;

G. Certifying the proposed Class;

H. Awarding Plaintiff and the other members of the Class damages in an amount to be proven at trial, together with interest thereon;

I. Awarding rescission or rescissory damages to Plaintiff and the Class;

J. Ordering disgorgement of any unjust enrichment to the Class;

K. Awarding Plaintiff and the members of the Class pre-judgment and post-judgment interest, as well as their reasonable attorneys' and experts' witness fees and other costs; and

L. Awarding Plaintiff and the Class such other relief as this Court deems just and equitable.

Dated: February 9, 2024

OF COUNSEL:

GRANT & EISENHOFER P.A.

David Wissbroecker
(*pro hac vice* application to be filed)
2325 3rd Street, Suite 329
San Francisco, CA 94107
Tel: (302) 622-7000
Fax: (302) 622-7100

**SCOTT+SCOTT
ATTORNEYS AT LAW LLP**

Maxwell R. Huffman
(*pro hac vice* application to be filed)
600 W. Broadway, Suite 3300
San Diego, CA 92101
Tel: (619) 233-4565

**SCOTT+SCOTT
ATTORNEYS AT LAW LLP**

Justin O. Reliford
(*pro hac vice* application to be filed)
The Helmsley Building
230 Park Avenue, 17th Floor
New York, NY 10169
Tel: (212) 223-6444

GRANT & EISENHOFER P.A.

/s/ Christine Mackintosh

Christine M. Mackintosh (#5085)
Kelly L. Tucker (#6382)
123 Justison Street
Wilmington, DE 19801
Tel: (302) 622-7000
Fax: (302) 622-7100

Counsel for Plaintiff