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STATE OF MINNESOTA

COUNTY OF RAMSEY

DISTRICT COURT

SECOND JUDICIAL DISTRICT

CASE TYPE: OTHER CIVIL

BREMER FINANCIAL CORPORATION, RONALD JAMES, JEANNE H. CRAIN, MARY BRAINERD, GLENN D. MCCOY, KEVIN A. RHEIN, WENDY SCHOPPERT, and CHARLES WESTLING,

Plaintiffs,

-v.-

S. BRIAN LIPSCHULTZ, DANIEL C. REARDON, and CHARLOTTE S. JOHNSON, individually and in their capacities as current or former trustees of the Otto Bremer Trust and former directors of Bremer Financial Corporation, and FRANCIS M. MILEY, in his capacity as current trustee of the Otto Bremer Trust,

Defendants.

Court File No. 62-CV-19-8203

SECOND AMENDED COMPLAINT

INTRODUCTION

1. Otto Bremer was a community banker. He created a network of local banks serving Minnesota and surrounding states, with a focus of supplying affordable capital to small and agricultural businesses. He dedicated his life to that purpose, ultimately aggregating his community bank holdings into a holding company.

2. Near the end of his life, in 1944, Otto created the Otto Bremer Foundation, now called the Otto Bremer Trust. He donated his holding company interests to the Trust, directing in its foundational document that the Trust continue to own those shares in perpetuity, even if the Trust might more profitably deploy its assets elsewhere. By memorializing this command in the controlling Trust Instrument, Otto ensured that after his death, the community banks he'd established would enjoy the stability afforded by the Trust's permanent capital investment.

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3. The holding company, now plaintiff Bremer Financial Corporation, has operated continuously ever since, fulfilling Otto's directive to operate in a responsible manner and provide capital to underserved areas of the Upper Midwest. Bremer Financial has adhered to these principles for decades. With its steadfast focus on building relationships with its customers and serving local communities, steadily Bremer has grown its asset base, providing its shareholders, including the Trust, with a reliable return on their capital in the form of dividends. Bremer has operated in this way in reliance on the expectation, enshrined in the Trust Instrument, that the Trust would maintain its investment in the bank, through good times and bad, thereby preserving Bremer as an independent community bank.

4. In 1989, following a change in the federal tax laws, Bremer Financial entered into a Plan of Reorganization with the Trust. The reorganization was designed to bring Bremer and the Trust into compliance with law, but also to ensure that Otto Bremer's legacy continued. The Plan of Reorganization provided that voting control, and therefore the ability to elect the directors who determine Bremer Financial's strategy and oversee its day-to-day operations, would rest with Bremer's employee-shareholders. At the same time, the Trust would retain a significant economic interest in Bremer, just as Otto Bremer intended. This would allow Bremer Financial to continue to operate as a community bank, while providing the Trust with a steady dividend stream to facilitate its philanthropic activity.

5. In the 34 years since Bremer and the Trust entered into the Plan of Reorganization, Bremer Financial has continued to fulfill its founder's vision of providing reliable community banking services throughout Minnesota and surrounding states. And throughout all this time, as established by the Plan of Reorganization, Bremer has operated under the direction of its employee-elected board, generating steady returns for all of its shareholders,

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prominently including the Trust, and serving communities throughout Minnesota that other banks often leave behind.

6. In derogation of Otto Bremer's legacy, a new generation of trustees, more concerned with profit and influence than the wishes of the Trust's founder, has decided that this community banking success story has run its course. These trustees want to seize control of Bremer Financial, sell it off to a larger national or international bank, and, in the process, eliminate the jobs of hundreds of Bremer employees and potentially dozens of Bremer branches in underserved areas. This result is exactly what Otto Bremer sought to avoid, and it is contrary to the operating philosophy that Bremer Financial has adhered to for decades, in reliance on Otto's vision. Otto's plan was to guarantee the continuity of community banking in this State and the surrounding states. Bremer Financial and its employee-shareholders have executed the plan with fidelity. The Trust aims to destroy it. That's what this lawsuit is about.

7. In 2019, the trustees then in power orchestrated a series of maneuvers all designed to force a sale of Bremer—and thus the independent community banking institution Otto Bremer had sought to ensure. Defendants' implausible claim is that events beyond the trustees' control caused Bremer Financial's value to essentially double overnight, making compliance with the Trust's charitable-distribution requirements impossible (as those requirements are keyed to Bremer's value). But the truth is that these trustees had been preparing for years to liquidate the Trust's Bremer investment as soon as the opportunity presented itself, and they seized on events in early 2019 as a pretext to justify their long-desired outcome.

8. To achieve their objective, these trustees deceived their fellow board members, divulged Bremer's confidential information to competitors without authorization, and disregarded the Bremer board's determination that a sale was not in the best interests of the

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company or its constituents. And when none of that worked, they took the final and most brazen step: In October 2019, the trustees purported to sell some of the Trust's Bremer shares to 19 out-of-state hedge funds in transactions that were designed to deprive Bremer's employee-shareholders of the voting control they have held for more than three decades, and, in turn, pave the way for an outright sale of the bank.

9. The trustees undertook these actions because selling Bremer Financial would have benefited them personally, and because they believed they had finally found a plausible excuse to sever the Trust's longstanding relationship with the bank. In addition to a multimillion-dollar financial incentive, cutting Bremer loose would afford the trustees unfettered control over the Trust's assets, increase their public profiles, and present opportunities for the trustees to exert greater influence in the region served by the Trust. But it would also defy the explicit instructions of Otto Bremer, the settlor of the Trust, who commanded in the governing Trust Instrument that the trustees maintain the Trust's investment in Bremer Financial unless "unforeseen circumstances" arose that made selling the Trust's Bremer shares "necessary or proper."

10. By this action, plaintiffs seek to set aside the October 2019 hedge fund sales on four distinct grounds: *First*, just as the trustees themselves have long acknowledged, the Trust Instrument forbids the trustees from selling the Trust's Bremer shares absent "unforeseen circumstances" that do not remotely exist here. For this reason, the Trust may not transfer its shares, and, pursuant to its bylaws, Bremer is not permitted to record the purported transfers of shares on its register. *Second*, the trustees' scheme to sell Bremer has been undertaken in breach of their fiduciary duties to Bremer. *Third*, the trustees' scheme constitutes oppression of

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Bremer's other shareholders, who hold 80 percent of the company's voting power. *Fourth*, the purported transfers would violate Minnesota's Control Share Acquisition Act.

PARTIES

A. Bremer Financial Corporation

11. Plaintiff Bremer Financial Corporation ("Bremer" or "Bremer Financial") is a Minnesota corporation headquartered in Saint Paul. Otto Bremer founded Bremer Financial (then called the Otto Bremer Company) in 1943. Bremer has approximately $16 billion in assets and provides a wide range of banking, mortgage, investment, wealth management, trust, and insurance products and services throughout Minnesota, North Dakota, and Wisconsin.

12. Bremer Financial is the parent company of Bremer Bank, National Association ("Bremer Bank"), a nationally chartered bank. Bremer Bank currently operates approximately 70 branches across the Upper Midwest, with many of them located in small communities that Otto Bremer's banks once served. It holds more than 40 percent of the local deposits in numerous small towns across this State, and in several of these communities, Bremer Bank is the only community bank with a local branch. Bremer Bank's clients include small businesses, farmers and agribusinesses, nonprofits, and public and government entities, as well as individuals and families.

13. Bremer Financial has two classes of common stock: Class A and Class B. Class A shares are entitled to vote on all matters submitted to shareholders, including the election of Bremer's board of directors. Class B shares may vote only on certain extraordinary transactions. There are 1.2 million Class A shares outstanding and 10.8 million Class B shares outstanding. Neither class of stock is registered to trade on a securities exchange.

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B. The Otto Bremer Trust and the Defendant Trustees

14. The Otto Bremer Trust (the "Trust") is a Minnesota trust created by Otto Bremer in 1944. The Trust is headquartered in Saint Paul. Until 2015, its name was the Otto Bremer Foundation. The Trust is a tax-exempt organization subject to the private-foundation provisions of the Internal Revenue Code.

15. The Trust owns 20 percent of Bremer Financial's outstanding Class A shares and all of its outstanding Class B shares. On its 2018 federal tax return, which covered the last fiscal year before the current dispute emerged, the Trust reported assets with a total book value of approximately $1.19 billion and a total fair market value of approximately $1.03 billion. At that time, approximately 88 percent of the Trust's assets by book value (87 percent by market value) consisted of Bremer stock.

16. The Trust has three trustees. During the period relevant to this dispute, defendants Brian Lipschultz, Daniel Reardon, and Charlotte ("Shotsy") Johnson served as trustees and co-CEOs of the Trust as well as members of Bremer Financial's board of directors.

17. None of these individuals were selected for their positions as trustees on the basis of experience in the philanthropic sector or otherwise on the basis of qualification. Instead, each was appointed to their position as trustee by their own parents.

18. Defendant Lipschultz was a trustee of the Trust from 2012 to 2022, and a Bremer director from 2012 to 2021. Lipschultz inherited his trustee position from his father, who had inherited it from his father. On April 29, 2022, as part of the long-running probate court proceeding related to the Trust, the court (Hon. Robert A. Awsumb) issued an order that resolved a petition brought by the Attorney General of the State of Minnesota and removed Lipschultz as a trustee. Bremer Financial was not a party to that removal proceeding and was not permitted to participate in it in any way. Lipschultz's service on Bremer's board ended in April 2021, when,

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in the wake of continuing acts of disloyalty (including in light of repeated violations of Bremer's Code of Conduct), the board determined that neither he nor Reardon met the standard of probity necessary to serve as directors. The board accordingly declined to include them on the list of nominees for reelection to the board at the 2021 shareholders meeting. Lipschultz and Reardon applied for a court order requiring their continued appointment to the board. That application was refused.

19. Defendant Reardon has been a trustee since 1995, and was a Bremer director from 1996 to 2021. Reardon inherited his trustee position from his father, who inherited it from his father-in-law. Reardon has conditionally appointed his brother as his successor trustee, and his ex-wife as an alternative successor, in the event Reardon is no longer able to serve as a trustee. As noted, Reardon's service on Bremer's board ended in April 2021.

20. Defendant Johnson has been a trustee since 1991, and was a Bremer director from 1993 until she retired in 2020. Johnson inherited her trustee position from her father. Johnson has conditionally appointed her husband as her successor trustee, her daughter as an alternative successor to her husband, and her son as an alternative successor to her daughter, in the event Johnson is no longer able to serve as a trustee. Johnson's service on the board ended in April 2020, after she decided she did not wish to be included on the list of nominees for reelection to the board at the 2020 shareholders meeting.

21. On March 8, 2023, the probate court (Hon. Robert A. Awsumb) granted a petition to confirm Francis Miley as a new trustee of the Trust, filling the vacancy that had been created by Lipschultz's removal. Upon information and belief, Miley played no role in the events in 2019 that gave rise to this dispute. Accordingly, Miley is named solely to ensure that all of the

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current trustees are parties to this action, which seeks, *inter alia*, prospective injunctive relief related to the Trust.

C. Bremer Financial's Board of Directors

22. In 2019, Bremer's board of directors had ten members, including defendants Lipschultz, Reardon, and Johnson. The seven non-trustee directors all hold shares of Bremer Class A stock and are plaintiffs in this action. With the exception of Bremer's President and CEO, Jeanne H. Crain, all of the non-trustee directors are outside, independent directors.

23. Plaintiff Ronald James has been a Bremer Financial director since 2004, a director of Bremer Bank since October 2014, and has served as Chair of Bremer's board since 2015. James served as president, CEO, and a director of the Center for Ethical Business Cultures from 2000 to 2017. James is an adjunct professor of business ethics at the University of St. Thomas. James currently serves as a board member of RBC Funds (a registered investment company of the Royal Bank of Canada) and serves on the Quality and Population Health Committee of Allina Health. James previously served as an advisory board member and special advisor to the executive director for the Center for Ethical Practices. James has been recognized with international awards for thought leadership, training, and development in the field of business ethics, including receiving an award from the Society for Corporate Compliance and Ethics for his work developing behaviors to improve corporate citizenship and develop corporate culture. James has also been recognized locally with a lifetime achievement award from *Twin Cities Business* in the field of corporate governance, and was inducted into the Junior Achievement Hall of Fame. James owns 6,000 shares of Bremer Financial Class A stock.

24. Plaintiff Jeanne H. Crain joined Bremer Financial in 2012. Crain became Bremer Financial's President and CEO and joined Bremer Financial's and Bremer Bank's board of directors in November 2016. Crain brought 30 years of banking industry experience to Bremer,

having previously held positions in commercial and private banking at First Bank Systems and Bank One, and regional president roles at Marquette Banks, M&I Bank, and BMO Harris Bank. Crain serves on the boards of the Minneapolis Federal Reserve Bank, serving as chair of the Audit Committee; the Saint Paul Downtown Alliance, serving as first vice chair; the YMCA of the Greater Twin Cities, serving as chair of the Finance Committee; the Minnesota Business Partnership, serving on the executive committee; and the Otter Tail Corporation. She is a member of the Itasca Project and the Minnesota Women's Economic Roundtable. Crain co-chaired the Governor's Task Force on Housing, was awarded the highest honor given by the University of North Dakota Alumni Association, was recognized by the *Minneapolis/St. Paul Business Journal* as a Most Admired CEO, and was selected as a Business Hall of Fame Laureate by Junior Achievement North. Crain owns 19,776 shares of Bremer Financial Class A stock.

25. Plaintiff Mary Brainerd has been a Bremer Financial director since January 2014 and a director of Bremer Bank since October 2014. Brainerd served as President and CEO of HealthPartners from 2002 until her retirement in 2017. She previously served in executive positions, including Chief Marketing Officer, at Blue Cross and Blue Shield of Minnesota. Brainerd is a former chair of the board of directors of the Federal Reserve Bank of Minneapolis and the Saint Paul & Minnesota Community Foundations. She serves as a director of the Bush Foundation, Securian Financial, Minnesota Public Radio, Stryker Inc., Opus Corporation, and The Nature Conservancy. She serves as board chair for The Nature Conservancy, and chairs Securian's Audit Committee and the Governance Committee for both Opus and Stryker, Inc. Brainerd has been named CEO of the Year by the *Minneapolis/St. Paul Business Journal*, named

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to the Minnesota Business Hall of Fame, and given the Ethical Leadership Award by the University of St. Thomas. Brainerd owns 1,000 shares of Bremer Financial Class A stock.

26. Plaintiff Glenn D. McCoy has been a director of Bremer Financial and Bremer Bank since June 2016. McCoy retired as chief financial officer of First Citizens BancShares, Inc. in 2014. From 2009 to 2012, he was chief financial officer at RBC Bank USA (now PNC Financial Services). From 1981 to 2009, he held a variety of leadership roles at Wachovia (now Wells Fargo). McCoy owns 1,000 shares of Bremer Financial Class A stock.

27. Plaintiff Kevin A. Rhein has been a director of Bremer Financial and Bremer Bank since May 2017. Rhein retired from Wells Fargo in 2016 after nearly four decades with the company. He was responsible for enterprise-wide information technology, data, analytics, and operations, as well as several consumer-lending and payment-services business areas. Rhein has served on the boards at the National Foundation for Credit Counseling, the Center for Financial Services Innovation, First Children's Finance, and the United Negro College Fund, and he has also served on the Federal Reserve's Consumer Advisory Council. Rhein currently serves on the Finance Committee, the Lay Leadership Committee, the Awards and Allocations Committee, the Grants and Opportunities Committee, and as a board member of Network of Jewish Human Service Agencies. Rhein owns 3,000 shares of Bremer Financial Class A stock.

28. Plaintiff Wendy Schoppert has been a director of Bremer Financial and Bremer Bank since May 2017. Schoppert retired in 2014 as chief financial officer of Sleep Number Corporation, where she also served as chief information officer, head of new channel development and international, head of digital, and interim chief marketing officer. Before Sleep Number, she held several leadership positions at U.S. Bank, America West Airlines, Northwest Airlines, and American Airlines. Schoppert serves on the boards of The Hershey Company, Big

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Lots, Inc., and ODP Corporation. She is a Board Governance Fellow with the National Association of Corporate Directors and a member of the Cornell University Council. Previously, she served as co-chair of the Minnesota chapter of Women Corporate Directors, vice chair of the President's Council of Cornell Women, and a member of the Breck School Board of Trustees. Schoppert was recognized in 2018 at the national level as an NACD Directorship 100 Honoree and at the local level with a *Twin Cities Business* Outstanding Director Award. Schoppert owns 1,000 shares of Bremer Financial Class A stock.

29. Plaintiff Charles B. Westling has been a Bremer Financial director since April 2015 and a director of Bremer Bank since 2010. Westling is the former CEO and current board chair of Computype, Inc., a global manufacturer of custom barcode labels and smart identification solutions for the healthcare and automotive industries. Previously, he was the CEO of Datalink Corporation, a publicly held technology infrastructure and IT services company. Westling served as a board member of Dunwoody College of Technology from 2008 to 2019, including as chair of the board of trustees. Westling currently serves on the board of National Checking Company. Westling owns 1,000 shares of Bremer Financial Class A stock.

JURISDICTION AND VENUE

30. This Court has subject-matter jurisdiction under Minn. Stat. § 484.01, subd. 1.

31. This Court has personal jurisdiction over defendants because they are residents of Minnesota.

32. Venue is proper in Ramsey County under Minn. Stat. § 542.09 because this action arose in Ramsey County, where both Bremer Financial and the Trust are headquartered.

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FACTUAL ALLEGATIONS

I. Otto Bremer, Bremer Financial, and the Otto Bremer Trust

A. Otto Bremer's Founding of Bremer Financial and the Trust

33. Otto Bremer emigrated to Minnesota in 1886 and lived his entire adult life in Saint Paul, Minnesota. He spent most of his career building and supporting community banks in the Upper Midwest and came to believe fervently in the "independence" of "home banks." Ex. 1 at -712.

34. As described in a 1994 presentation prepared by the Trust commemorating his life, "Otto Bremer wanted small town banks to thrive, separate from gigantic holding companies that set guidelines from afar and didn't know the families who sat by loan officers' desks." *Id.* He believed that the existence of community banks was central to enhancing rural and underserved communities around the Upper Midwest:

> They provide the necessary loans which enable farmers, merchants and industrialists to carry on their affairs on a profitable basis. They encourage their patrons and citizens of their communities with their advice and money to make progress, to grow, to make their cities and villages more attractive, better places in which to live and do business.

Ex. 2 at -346.

35. At the same time, Otto Bremer distrusted large banks and believed their emergence was detrimental to local communities. Otto's core banking philosophy was "[t]o put the interests of the country banks and their depositors first," and to focus on a "gradual but slow increase of invested capital . . . rather than a policy of higher, temporary return in dividends or interest." Ex. 1 at -728. In his experience, that is not how large banks operated. As Otto explained in a 1923 letter to the Chairman of the Federal Reserve Bank, he saw the rise of national bank holding companies as "seriously hindering" community banks "from being of real

service to their localities," which he regarded as the "primary reason for the existence of the banks." Ex. 3 at -163-64.

36. Otto Bremer elaborated on these views in congressional testimony he gave in 1931. In his testimony, Otto criticized large-scale banking operations as infringing on local banks' independence, and offered his own, community-oriented view of banking:

> Coming back to my idea about the home bank: My idea about the banks is this: The home district comes first. . . . I am, if you will permit the expression, an old-fashioned banker who takes deposits from the people who trust us with them and lend them out at a slightly larger return, and that is our bread and butter.

Ex. 4 at 3.

37. To Otto Bremer, community banks were civic cornerstones worth preserving. So he spent his life preserving them. He first began investing in community banks in approximately 1903. Ex. 5 at -815. As recounted in biographical materials published by the Trust, "Bremer's earliest participation in the country banks was stimulated largely by some lean crop years, which adversely affected many banks. . . . Bankers and other business leaders became familiar with Bremer and at crucial times, e.g., when a bank was organizing or needed additional capital, called on him for help." *Id.*

38. When the Great Depression arrived, Otto Bremer became a real-life George Bailey from "It's a Wonderful Life." He used his own money to rescue more than 50 "shaky small town banks" in the Upper Midwest, which brought him to the brink of personal bankruptcy. He even sold some of his other investments to strengthen the weakened banks. But all of those banks came through the Great Depression "without loss of a dollar to depositors . . . as [Otto] poured thousands upon thousands into some of them out of [h]is personal fortune to keep the doors open." Ex. 2 at -345. Otto reflected on these decisions years later, stating: "It is a source of great satisfaction to me . . . that we went through that period successfully and,

looking back now to know that all those banks are there, more prosperous than ever—and that my good name still stands." *Id.*

39. In return, Otto Bremer received bank stock that was often virtually worthless at the time. Nonetheless, Otto never insisted on taking control of the banks he rescued. Instead, he "worked to keep each institution under the control of local people best equipped to serve local needs." Ex. 5 at -823. His self-described management philosophy was that "each bank must stand on its own footing, employing its own resources, but at times of need and in order to get desirable business, supplemented by my own capital." Ex. 3 at -162.

40. Consistent with that philosophy, Otto did not pressure the banks in which he invested to seek a higher, short-term return on his capital at the expense of long-term stability. Rather, he encouraged his community banks to pursue a conservative business strategy designed to ensure the institution's ability to weather difficult times and continue to serve local citizens. As defendant Johnson once observed, Otto Bremer's actions during the Great Depression "clearly illustrated his personal commitment to these banks and their role in providing resources to the communities and the people who lived within them." Ex. 6 at -900.

41. Otto Bremer "valued his investments in these independent banks so much that, nearing retirement, he looked for ways to protect the small-town banks from being gobbled up by another entity." Ex. 7 at -275. As his biographical materials explain, "Otto's estate planning centered primarily on the country banks," as he was fixated on finding the best solution "to avoid their sale after his death." Ex. 5 at -839; Ex.1 at -735.

42. He found that solution in the early 1940s. Otto completed the first step in 1943, when he consolidated his community banking investments into the Otto Bremer Company, now known as Bremer Financial Corporation. He completed the second step the following year,

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creating the Otto Bremer Foundation (now known as the Otto Bremer Trust) to hold the shares of the bank holding company in perpetuity and thereby ensure the continued operation of the community banks to which he had devoted his professional life.

43. From the inception of the Trust, and continuing to this day, Bremer Financial has been its most significant beneficiary. In the words of one Bremer public filing, which was signed by all three trustees in place at the time, including defendants Reardon and Johnson: "[Otto] Bremer formed the Otto Bremer Foundation in 1944 to own Bremer Financial Corporation's stock." Former trustee Bill Lipschultz expressed a similar sentiment in 2012: "[Otto] was one of the most generous men I ever met. He voluntarily put all of his assets in trust for the benefit of many stakeholders. He asked for nothing in return other than for his trustees to execute the vision and care for the legacy of the Bremer enterprise." Ex. 8 at -740-41.

44. Otto was originally the sole shareholder of Bremer Financial. He transferred 51 percent of Bremer's stock to the Trust upon its formation. He transferred more Bremer stock to the Trust in 1949 and the remainder of it upon his death in 1951. From 1951 through 1989, the Trust was Bremer's sole shareholder.

45. Bremer Financial's unique ownership structure has allowed it to operate as a community-oriented institution, just as Otto Bremer intended. Bremer maintains branches in underserved communities, employs local residents, and extends credit and offers financial products to small businesses and farmers that help grow the local economy and better the lives of the people who live in the vicinity. The Trust then distributes some of the earnings it receives from Bremer Financial (in the form of dividends on its Bremer stock) back into these same communities in pursuit of its charitable mission.

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46. As a result of this structure, Otto Bremer's "good name still stands" in the banking industry, and his banks remain "more prosperous than ever," just as he wished.

B. The Trust Instrument Directs the Trust to Retain Its Bremer Shares

47. The Trust is governed by the Otto Bremer Foundation Trust Instrument, dated May 22, 1944, attached hereto as Exhibit 9.

48. Otto Bremer's chief objective in creating the Trust was to ensure that his bank holdings could not be sold to outside interests with no regard for the welfare of the local communities. Paragraph 16 of the Trust Instrument is the central expression of Otto's intent. It instructs the trustees to retain the Trust's Bremer shares in perpetuity and under nearly every conceivable circumstance, including where other potential investments might generate a higher return for the Trust. More specifically, the trustees are authorized to sell the Trust's Bremer shares only if both "unforeseen circumstances" exist and a sale is "necessary or proper" to address them.

> The Trustee is directed to retain the shares of stock in the Otto Bremer Company hereinbefore described and any additional shares of stock in said company purchased on the exercise of stock rights or which Trustor may hereafter make a part of the Trust Estate herein created even though the same be unproductive of income or be of a kind not usually considered suitable for trustees to select or hold or be a larger proportion in one investment than a trust estate should hold, and any securities or stock received in exchange for said shares of stock shall also be so held.
>
> Such stock or any part thereof may only be sold if, in the opinion of the Trustee, it is necessary or proper to do so owing to unforeseen circumstances, and the opinion of the trustee shall not be questioned by reason of the fact that the trustee may personally own stock in said company. . . .

Id. at -865.

49. This provision of the Trust Instrument makes plain that Otto's desire to preserve the community banks that he had built and maintained should take precedence over the

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possibility of increased charitable distributions. It thus commands that the trustees may not sell Bremer shares on the ground that they pay insufficient dividends ("be unproductive of income"), or are too risky ("be of a kind not usually considered suitable for trustees to select or hold"), or because the Trust's assets are overly concentrated in Bremer stock ("be a larger proportion in one investment than a trust estate should hold").

50. The Trust Instrument's transfer restriction was intended to provide, and has provided, Bremer Financial economic and business stability that has redounded to the benefit of the communities it serves. It ensures that Bremer Financial will always be owned by a steady and dependable shareholder that supports the bank's community-oriented approach, and insulates Bremer from the risk of being sold off to a larger financial institution. In this way, Paragraph 16 of the Trust Instrument has enabled Bremer to focus on long-term value creation and to continue operating in the "home bank" model that Otto Bremer championed.

51. As its former CEO once explained, Bremer Financial's access to permanent investment capital via the Trust "gives Bremer an advantage over publicly trading holding companies." Because Bremer's "main shareholder [*i.e.*, the Trust] is not pounding on the table for higher dividends," the bank "can think a little more strategically" and "take actions designed for long-term benefit." Ex. 10 at 1.

C. The Trust Relinquishes Voting Control—But Maintains Economic Ownership—in the 1989 Reorganization

1. The Plan of Reorganization

52. In 1969, Congress enacted legislation that included extensive new rules governing private charitable foundations. Seeking to eliminate disloyal conduct and related abuses that often resulted when charitable trusts owned private corporations, the law provided that private foundations would face substantial excise taxes if they (a) held more than 20 percent of the

voting stock of a for-profit company after 1989, or (b) failed to distribute at least five percent of their assets' fair market value to charitable causes annually. 26 U.S.C. §§ 4942, 4943.

53. Over the ensuing two decades, the Trust, Bremer Financial, and their advisors explored multiple avenues for either complying with these amendments or being excused from doing so. The solution they landed on is documented in a Plan of Reorganization, dated February 8, 1989, and related amendments to Bremer's articles of incorporation. Exs. 11-12.

54. The reorganization satisfied three principal objectives. *First* and foremost, it preserved the Trust's economic ownership of Bremer Financial. The alternative was an outright sale of Bremer that would have severed the permanent relationship that Otto created and jeopardized Bremer's ability to continue to operate in accordance with its founder's community banking philosophy. Thanks to the Plan of Reorganization, all of this was avoided.

55. Although the Trust sold a small number of shares as part of the reorganization to effectuate a reduction of its voting control, those shares remained—and will continue to remain—within the "Bremer family." They are owned by the bank's employees and directors, and Bremer has a right to buy them back when a shareholder dies, retires, or wishes to exit the investment. Ex. 11 ¶ 7(a). As a publication commissioned by the Trust in 1996 acknowledged, this solution has protected Bremer's ability to function as a community institution:

> When the stock was offered, many Bremer bank employees bought shares . . . . The results have been very positive: the company did not have to sell to an outside entity; employees have gained a stake in their company; and funds to the Foundation continued uninterrupted.

Ex. 7 at -292-93.

56. *Second*, the Plan of Reorganization achieved the statutorily required reduction in the Trust's voting power by placing the majority of Bremer Financial's voting stock in the hands of its employees.

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57. To implement this new governance arrangement, the Trust recapitalized Bremer's share capital into two classes of common stock: Class A shares, which vote on all matters, and Class B shares, which vote only on "Extraordinary Transactions" (defined as (a) mergers or similar fundamental corporate transactions, or (b) amendments to Bremer's articles of incorporation that affect its capital structure or the voting power of its shares). Ex. 11 ¶ 3; Ex. 12 ¶¶ 4-5. The Trust then exchanged its existing Bremer shares for 1.2 million Class A shares and 10.8 million Class B shares, and sold 80 percent of the Class A shares to Bremer employees and directors. Ex. 11 ¶ 2. Following these steps, the Trust retained a 92 percent economic interest in Bremer, but held only 20 percent of the bank's voting power with respect to most matters that might come before the shareholders—including director elections.

58. *Third*, to facilitate the Trust's compliance with the new annual charitable distribution requirement, the Plan of Reorganization contemplates that Bremer Financial will pay the Trust annual dividends equal to at least 5 percent of Bremer's consolidated net book value for the prior year. Should Bremer's employee-elected board of directors fail to authorize this minimum dividend, the Trust has an explicit remedy under the Plan. Only in that specific circumstance can the Trust regain voting control of Bremer by converting its nonvoting, Class B shares into voting, Class A shares. Ex. 11 ¶ 4(b); Ex. 12 ¶ 6(b).

59. There is no other provision in the Plan of Reorganization that permits the Trust to take back voting control of Bremer Financial and relegate Bremer's employees to the status of minority shareholders. In particular, there is nothing in the Plan that authorizes the Trust to take action to deprive the employee-shareholders of their right to determine the election of directors simply because the Trust disagrees with the collective business judgment of the directors whom the employees elected.

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60. In 2014, a quarter-century after the Plan of Reorganization went into effect, the Bremer Financial board adopted resolutions reaffirming that the power to determine Bremer's strategy and oversee the company's management was vested in the employee-elected directors. The purpose of these resolutions was to make clear that the three trustees then seated on Bremer's board had no greater authority than any other director, a clarification that the board deemed appropriate in light of statements made by defendant Lipschultz that suggested otherwise. Therefore, on July 29, 2014, the board resolved that "each BFC Director has one equal vote with each of the other BFC Directors"; "each BFC Director shall exercise independent judgment . . . and shall not be unduly influenced by any other BFC Director so as not to exercise independent judgment"; and "[e]ach BFC director shall act in the best interests of BFC including all its shareholders." All the Bremer directors at that time—including defendants Lipschultz, Reardon, and Johnson—approved these resolutions.

61. These resolutions reconfirmed the long-held understanding between Bremer, its directors, its employee-shareholders, and the trustees that the Trust would respect and adhere to the decisions of the employee-elected board and would not take action to thwart the directors' collective business judgment if the trustees disagreed with that judgment.

2. The Trust Instrument Remains Intact

62. The Plan of Reorganization was designed and adopted with the understanding that the Trust and the trustees would continue to be bound by the Trust Instrument. The Plan was never intended to (and legally could not) override the terms of the Trust Instrument, including its mandate in Paragraph 16 that the trustees maintain the Trust's holdings of Bremer stock barring "unforeseen circumstances" that made a sale of that stock "necessary or proper." Indeed, the most significant objective of the Plan was ensuring that the Trust's economic ownership of Bremer Financial could endure under the new statutory regime.

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63. It is for this reason that the Trust's representatives, including defendants, have publicly acknowledged—over and over again since 1989—that the provisions of Paragraph 16 of the Trust Instrument remain in effect and continue to restrict any proposed sale of the bank:

a. In 1996, defendant Johnson acknowledged that through the solution memorialized in the Plan of Reorganization, the Trust remained faithful to Otto Bremer's vision: "'While the arrangement has unique challenges,' says Charlotte Johnson, 'Otto Bremer indicated that the Foundation should remain invested in the bank holding company in good and bad times.'" Ex. 7 at -293. Indeed, Johnson recognized at this time that Otto Bremer's purpose in creating the Trust was "to protect his estate and his bank holding company." *Id.* at -275.

b. In 2008, then-trustee Bill Lipschultz (father to defendant Lipschultz) emphasized in an interview that "[t]he sale of the banks is a non-negotiable because it's clear in the Trust Instrument that trustees are directed to hold all of the stock." In the same interview, defendant Reardon remarked that Otto Bremer "built [a] banking empire and to preserve [it] created this Foundation."

c. In 2009, Reardon recalled his grandfather's assurances to Otto Bremer that "[t]he banks will remain intact" and that his "legacy will continue" because "[t]he foundation is set up into perpetuity" and the trustees "are never to sell the bank holding company." In the same video, Johnson remarked: "The banks are *still* community-based banks, and they *still* have community leadership, and *that* is the legacy [Otto Bremer] left behind."[1]

d. In each of the Trust's annual reports until 2016, the trustees explained that "[i]n creating the Foundation, [Otto Bremer] sought to ensure the perpetuation of the Bremer banks and the ultimate return of his personal wealth to his 'family' of communities." *See, e.g.*, Exs. 13-15.

64. The trustees now take the opposite view, and assert that the Plan of Reorganization affords them the right to pursue opportunities to sell the Trust's Bremer shares as long as they deem the offered price to be sufficiently attractive. But that notion is inconsistent with the trustees' repeated acknowledgments over many years since the Plan was adopted that

[1] *See* Junior Achievement N., *Otto Bremer – Hall of Fame 2008 – Junior Achievement of the Upper Midwest*, YOUTUBE (Feb. 6, 2009), https://www.youtube.com/watch?v=ZVHkvNutL5M (last visited Apr. 27, 2023).

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the Trust was created to protect and preserve the bank holding company and that they are duty bound by the Trust Instrument to maintain the Trust's economic ownership of Bremer Financial—even if that investment was "unproductive of income."

65. The trustees' current position is also inconsistent with the understanding of the people who actually negotiated the Plan of Reorganization. Terry Cummings was Bremer Financial's CEO from 1988 to 1998 and signed the Plan of Reorganization on behalf of Bremer. Unlike any of the defendants, Cummings was actually involved in the Plan's design and negotiation and thus has firsthand knowledge of the circumstances and intent of its drafting. Cummings thus speaks (and will testify) with direct, firsthand knowledge regarding the trustees' novel and self-serving interpretation of the Trust Instrument and Plan of Reorganization.

66. Cummings will testify that there was never any discussion, contemplation, or belief on behalf of any person involved in the creation or negotiation of the Plan of Reorganization that the Plan would or could allow the Trust to sell its Bremer shares even if such a sale were not permitted under the Trust Instrument. This overarching restriction on transfer—the prerequisite of "unforeseen circumstances" making a sale "necessary or proper"—was a premise of all discussions related to the creation and negotiation of the Plan.

67. Thus, after the Plan of Reorganization was executed, the fundamental relationship between the Trust and Bremer remained the same: Bremer Financial continued to operate as a community bank and provide important financial services to often-underserved communities; Bremer shared its steady profits with the Trust through significant dividends; and the Trust redistributed those dollars to the "Bremer communities" through its charitable endeavors.

68. The relationship was unchanged from a legal perspective as well. The trustees represented to the Federal Reserve in 1989 that the Trust "intends to continue to exercise control

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over [Bremer] within the meaning of the [Bank Holding Company Act] and to serve as a source of financial strength to [Bremer] and its bank subsidiaries." The Federal Reserve has accordingly designated the Trust as a bank holding company that must "serve as a source of financial and managerial strength to its subsidiary banks and shall not conduct its operations in an unsafe or unsound manner." 12 C.F.R. § 225.4(a)(1). Defendants have repeatedly confirmed these obligations, including in a 2014 submission to the Minnesota Attorney General. But if the trustees are successful in their current plan to sell off Bremer, the Trust will no longer have these obligations.

D. Following the Reorganization, Bremer Financial Flourishes, and Enables the Trust to Consistently Meet Its Charitable Distribution Requirements

69. For more than 30 years, the structure implemented in the 1989 reorganization has allowed Otto Bremer's vision to endure. While many of its peers have been absorbed by larger institutions, Bremer Financial has remained independent and maintained its historical commitment to community banking. Over the same time period, Bremer has achieved tremendous success, allowing it to serve as an even more powerful financial engine for the Trust's charitable work.

70. In the 30-plus years since the Plan of Reorganization, Bremer has consistently produced steady returns for the Trust. Those three decades included, among other things, the 2001 stock market crash, the Great Recession, the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act, and the Covid-19 global pandemic. Yet in that time, the book value of the Trust's Bremer shares has grown more than nine-fold, from $131 million to $1.27 billion (a 7.03 percent compound annual growth rate).

71. Thanks to Bremer's consistently impressive results following the reorganization, the Trust has always been able to meet its charitable distribution obligations under federal tax

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law. Between 1989 and 2019, Bremer contributed nearly $1 billion to the Trust's assets through its payment of dividends, including $70.3 million in dividends in 2018 alone.

72. Before this dispute, the Trust had never claimed that these amounts were insufficient to allow it to meet its obligations. Nor did the trustees ever conclude, in the three decades between 1989 and 2019, that selling the Trust's shares had become "necessary or proper . . . owing to unfor[e]seen circumstances."

73. To the contrary, following the 1989 reorganization, the trustees have repeatedly affirmed in court that there were no "unforeseen circumstances." Under Minnesota law, the Trust must file annual accountings with the probate division of the Ramsey County District Court and periodically petition for the court to approve them. In these petitions, the trustees told the court that there were no "unforeseen circumstances," and one of them, defendant Johnson, so testified in November 2017.

74. Based on these representations from the trustees, the court has repeatedly approved and ratified the Trust's retention of its Bremer shares. The court's most recent decision doing so, from December 2017, is attached hereto as Exhibit 16.

75. Throughout all this time, Bremer has continued to follow its service-oriented mission consistent with its founder's intent. Bremer still today defines its purpose as "cultivating thriving communities" and continues to operate like an independent, home bank with a strong connection to local communities. Many of Bremer Bank's branches are located far from metropolitan centers and serve rural communities that would have limited access to financial services without Bremer's presence. Indeed, in seven small towns across Minnesota, including rural communities like Brandon and Crookston, Bremer Bank is the only Minnesota community

bank with a local branch. In another six towns across this State, Bremer Bank is one of only two Minnesota community banks with local branches.

76. As one recent article noted: "If only deposits mattered, national banks would be all you need. But for farmers, start-ups, small businesses and companies in certain sectors, what matters most is the ability to get a loan."[2] Community banks are especially important in agricultural states like Minnesota, which was home to more than 67,000 farms as of the end of 2022. Indeed, while community banks hold only about a quarter of total banking industry assets, they are responsible for nearly 90 percent of the industry's farm loans nationwide.

77. Bremer itself is a leading provider of loans to farmers in Minnesota and its neighboring states. Although it is only the 102nd largest lender in the country overall, Bremer is the ninth largest agricultural lender in the United States.[3]

78. Bremer is also a leader in small business lending. It has an "outstanding" Community Reinvestment Act rating—the highest score possible—with bank regulators specifically noting that Bremer "is a leader in making community development (CD) loans" and offers retail services that are "readily accessible," particularly to low- and moderate-income people.[4] Indeed, in September 2022, Bremer was recognized by the U.S. Small Business Administration's Minnesota District Office for its small businesses lending program.[5]

79. During the pandemic, Bremer "handed out more money to small business owners in the Paycheck Protection Program (PPP) than anyone else in Minnesota," saving thousands of

[2] *See* Joe Nocera & Michael J. de la Merced, *The Value of Regional Banks*, N.Y. TIMES (Apr. 1, 2023), https://www.nytimes.com/2023/04/01/business/dealbook/regional-banks-economy.html.
[3] *See Agriculture Banking*, Bremer, https://www.bremer.com/agriculture (last visited Apr. 27, 2023).
[4] *See* Press Release, Bremer, *Bremer Bank Receives 'Outstanding' Rating in Latest CRA Exam* (Sept. 20, 2022), https://www.bremer.com/company/newsroom/2022-09-20-bremer-bank-receives-outstanding-rating-in-latest-cra-exam.
[5] *See* Press Release, Bremer, *Bremer Bank recognized for SBA lending* (Sept. 7, 2022), https://www.bremer.com/company/newsroom/2022-09-07-bremer-bank-recognized-for-sba-lending.

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local jobs. And even now, in a time of contracting credit across the country, Bremer is the most active community-based lender to small businesses and farms in Minnesota. Based on the recent public data, Bremer was the leading lender to small farms in 13 Minnesota counties, and accounted for more than 50 percent of the reported loans in seven of these counties. For small businesses, Bremer was the leading lender in 17 counties, and accounted for more than 50 percent of the reported loans in six counties.

80. Bremer has also demonstrated an industry-leading commitment to diversity. The Chairman of the Bremer Board is an African-American business leader and scholar of ethics, and three of its seven directors are women. Bremer's President and CEO is a woman, and the most senior executives of the company are evenly split between men and women. As part of its banking practices and charitable giving, Bremer has consistently focused on supporting minority-owned and minority-led businesses.

81. In February 2022, Bremer was honored by the North Dakota Housing Finance Agency for its outstanding delivery of homeownership programs.[6] And in September 2022, Bremer received a national award from the American Bankers Association Foundation for its affordable housing efforts.[7] These achievements reflect Bremer's ongoing commitment to its founder's banking philosophy, as recently echoed by the current CEO: "Creating greater opportunities for individuals and families of all income levels to participate in homeownership is foundational to thriving communities."[8]

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[6] *See* Press Release, Bremer, *Bremer Bank recognized with prestigious North Dakota affordable housing award* (Feb. 22, 2022), https://www.bremer.com/company/newsroom/2022-02-18-bremer-bank-recognized-with-prestigious-north-dakota-affordable-housing-award.

[7] *See* Press Release, Bremer, *Bremer Bank receives national award for affordable housing efforts* (Sept. 19, 2022), https://www.bremer.com/company/newsroom/2022-09-19-bremer-bank-receives-national-award-for-affordable-housing-efforts.

[8] *See* Press Release, Bremer, *Bremer Bank recognized with prestigious North Dakota affordable housing award* (Feb. 22, 2022), https://www.bremer.com/company/newsroom/2022-02-18-bremer-bank-recognized-with-prestigious-north-dakota-affordable-housing-award.

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82. This is the bank the trustees want to sell out of existence.

II. The Trustees Attempt to Orchestrate an Unlawful Sale of Bremer Financial

A. The Trustees' Financial Incentive to Sell the Bank

83. The Otto Bremer Trust has a highly unusual governance structure. Nearly universally, all other comparable foundations have an independent board of directors or trustees who oversee a full-time staff responsible for grant-making and investment activities. In this model of trust governance—adhered to by essentially every responsible substantial charitable trust—trustees do not rely on the foundation for their livelihood but instead oversee philanthropic professionals, thus avoiding conflicts of interest and ensuring effective resource allocation.

84. The Otto Bremer Trust does not have an independent board. Its three trustees work full-time for the Trust and do not have other jobs. The trustees decide what their roles should be and how much they should be compensated. Using this unchecked power, the trustees have appointed themselves co-CEOs and investment advisors to the Trust, and over the years have paid themselves millions of dollars of charitable money.

85. As recently as 2004, each trustee's annual salary was $41,500. Within 15 years, the trustees' total compensation had increased more than eleven-fold. In 2019, defendant Lipschultz paid himself $543,317 in charitable money; defendant Reardon paid himself $549,785; and defendant Johnson paid herself $357,174. On top of these amounts, they each earned between $110,000 and $120,000 from Bremer Financial for performing their roles as directors.

86. As part of their annual compensation, starting by 2010 and continuing through at least 2019, two of the trustees paid themselves an "investment advisory fee" of 0.30 percent (0.15 percent each) per year for managing the Trust's non-Bremer investments. Defendant

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Reardon was a recipient of this advisory fee from the beginning, and after he became a trustee in 2012, defendant Lipschultz received the fee as well. The trustees also hired outside advisors to manage the Trust's non-Bremer investments, including defendant Johnson's husband's company, Tealwood Asset Management.

87. As an expert retained by the trustees has testified, this advisory fee created a "conflict of interest" when it came to a potential sale of the Trust's Bremer Financial stake, because it created an opportunity for "a windfall for the trustees." By liquidating that stake, and turning the Trust's Bremer shares into a pool of cash and marketable securities, defendants Lipschultz and Reardon were positioned to increase their total annual compensation by potentially millions of dollars per year:

	Status Quo	**Replace BFC Stock with Other Assets**
BFC stock	$899 million	$0
Other assets	$132 million	$1.03 billion
Reardon/Lipschultz annual advisory fee (each)	$197,000	$1,547,000
Reardon/Lipschultz total annual compensation (each)	$544,000	$1,894,000

88. Lipschultz has admitted that the trustees' campaign to sell off Bremer in 2019 was motivated by their financial self-interest. As he starkly put it to Reardon and Johnson in a text message sent right when this litigation started: "Maybe the trustees are motivated by money. But isn't this a free society where the individual can make their own choices?" Ex. 17 at -940. (Notably, Lipschultz allowed months' worth of his text messages to be deleted, even after this litigation started, and then dropped his cell phone in a lake. This message was recovered from a recipient's device.)

89. After Bremer Financial and its directors filed this lawsuit, the trustees terminated Tealwood's contract and agreed to freeze Lipschultz and Reardon's investment advisory fee—

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but only for two years. When asked in a deposition why the freeze was so limited, Johnson explained that forever is a "long time," and admitted that the trustees intended to revisit the investment advisory fee after "things are settled."

90. To "eliminate all controversy surrounding the ethics of a separate investment advisory fee agreement," the probate court canceled the investment advisory fee in April 2022 and determined that going forward, any investment advisory work should be reflected in the trustees' base salaries. This ruling leaves open the potential for the trustees to increase their annual compensation from the Trust, and to justify that increase by reducing Otto Bremer's legacy to a pile of cash and then claiming that the trustees have frontline responsibility for managing a substantially larger pool of assets. On information and belief, that is precisely what the trustees plan to do.

B. The Trustees Lay the Groundwork for a Sale of Bremer

91. Substantial discovery remains to be completed in this case. Nonetheless, even on the limited existing record, it is clear that defendants have been secretly contemplating a sale of Bremer for years—and long before the events of March and April 2019 that the trustees now say forced them to pursue such a transaction. Indeed, in one candid text message sent to defendant Lipschultz in October 2019, the investment banker the Trust hired to help sell the bank recounted his understanding that Lipschultz and Reardon had been thinking about liquidating the Trust's investment in Bremer "for a long time." Ex. 18 at -052.

92. Shortly after Lipschultz succeeded his father as a trustee in August 2012, he began to systematically revise Trust documents to remove language highlighting the perpetual relationship between the bank and the Trust as well as the bank's community-oriented focus, even though the Trust had used similar language for decades. For example, in a draft internal communication from 2014, Lipschultz deleted all references to the benefits to Bremer that the

Trust's "commitment to private ownership" provides. Ex. 19. Similar changes also began to appear in the Trust's public-facing communications. In 2016, the Trust removed from its annual report a statement that it had used in those reports for decades acknowledging that Otto Bremer created the Trust "to perpetuate his life's work of growing his investments in community banks."

93. Simultaneous with their efforts to downplay the importance of the Trust's permanent relationship with Bremer Financial in its public-facing communications, the trustees began to take concrete steps to explore a potential sale. For example, in early 2014, Lipschultz and Reardon attended a banking conference in Arizona titled "Acquire or be Acquired," which was focused on recent bank merger activity. After the conference, they circulated to various members of Bremer's management and board slide decks from that conference. One of the decks described the median trading multiple for banks similar to Bremer in 2013 as more than twice the median tangible book value for such banks.

94. Not long after the banking M&A conference, Lipschultz caused the Trust to hire a financial consulting firm to study, among other things, the "risks and benefits" of the Trust's "present portfolio strategy—including its holdings of Bremer Financial shares." Ex. 20 at -883. Over the next several years, the trustees remained focused on the Trust's investment in Bremer Financial. Thus, for example, in October 2018, the trustees met to discuss "[t]he persistent question of the BFC holding," i.e., as Lipschultz once testified, "[w]hether or not to sell our shares in BFC."

95. In this litigation, defendants have repeatedly claimed that they are "not aware of any serious consideration given to selling the Trust's BFC shares [] until 2019." In fact, defendants were put in contact with investment bankers at Keefe, Bruyette & Woods ("KBW") in May 2018, nearly a full year before the events they claim triggered their need to sell off the

bank. KBW was recommended to Reardon because it "cover[s] the Midwest markets" and "take[s] confidentiality seriously," and Reardon shared KBW's contact information with Lipschultz later in 2018. Ex. 21. KBW is the very same investment bank that worked alongside the trustees throughout 2019 as they tried to orchestrate a sale of Bremer Financial.

96. The trustees even previewed for Bremer Financial's board their plan for wresting voting control away from the employee-shareholders to pave the way for an outright sale of Bremer, long before anyone else on the board had any idea this dispute loomed on the horizon. In connection with a January 2019 meeting designed to educate the board about the history of the Trust and its governing documents, the Trust's advisors provided a memorandum which claimed that the Plan of Reorganization had embedded within it a secret path by which the Trust could regain voting control if the employee-elected directors "were no longer acting in a way consistent with [the Trust's] wishes." Ex. 22 at -016. In particular, the memorandum characterized the provisions of the Plan of Reorganization relating to share transfers and conversions of Class B shares as "safeguards" that would supposedly allow the Trust to "sell as little as 720,001 [Class B] shares" to a third party, and regain voting control. *Id.* Notably, neither the incumbent trustees nor the authors of this memorandum had any involvement in the drafting or negotiation of the Plan of Reorganization.

97. At the time of this board meeting, the reorganization had been in effect for three decades, and no one affiliated with the Trust had ever before suggested that it could override the business judgment of Bremer's employee-elected directors in this way. This presentation was a clear threat that was designed to influence the board's decision-making, and it was made at this precise time for a reason: The trustees knew what was coming in the months to follow.

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C. The Trustees' Disloyal Efforts to Find a Buyer for Bremer

1. The Trustees Seize on Preliminary Merger Discussions as a Pretext to Push for a Sale of Bremer

98. In April 2019, the defendants found their opening to finally pursue a sale of the bank. Around that time, a regional bank of roughly Bremer Bank's size ("Company A") approached Bremer to ascertain whether management would be interested in discussing a potential stock-for-stock "merger of equals." In this merger, Bremer would have been the surviving company and would have remained part of the "Bremer Family," still funded the Trust, and still committed to honoring Otto Bremer's community banking vision.

99. Bremer's CEO reported this approach to Bremer's board and, with the board's full knowledge and authorization, engaged in preliminary conversations with Company A's CEO to determine whether a transaction might be in the best interests of Bremer and its stakeholders. Company A never provided an actual offer to Bremer, the financial aspects of the potential transaction were never discussed, and Bremer's CEO made clear to Company A's CEO throughout discussions that a transaction might not be possible in light of the restrictions set forth in the Trust Instrument.

100. The trustees seized on these preliminary discussions as giving rise to "unforeseen circumstances" that justified the trustees' self-interested and long anticipated plan to sell Bremer. The trustees claimed that these discussions caused them to suddenly realize that the bank's fair market value was significantly higher than its book value and thus required them to nearly double the reported valuation of the Trust's Bremer shares in its federal tax returns. The trustees' proffered excuse is pretext: a made-up litigating position.

101. Documents produced in discovery confirm that the trustees were using the preliminary discussions with Company A to justify the sale they had long hoped to effectuate.

In the words of one document retrieved from the files of a purported hedge fund purchaser that memorialized a call with the Trust's representatives, "OBT's [Otto Bremer Trust] legal counsel has determined that the interest in the bank and resulting, potential valuation create an *'allowable moment'* for the trust to liquidate its shares in the bank."

102. As this document alludes to, the keystone of the trustees' case for selling off Bremer Financial is that the events of early 2019 forced them to nearly double the reported value of the Trust's Bremer investment, which in turn would make it impossible for the Trust to satisfy its annual charitable-distribution requirements. This story is entirely pretextual.

103. Every year since 1989, the trustees have filed tax returns with the Internal Revenue Service reporting on the fair market value of the Trust's holdings, including the value of its Bremer shares. Every year, the Trust retains a team of accountants and lawyers, often aided by additional valuation experts, to undertake this valuation exercise and ensure its accuracy. And every year, for 30 years, on the basis of this expert advice, the Trust reported that the fair market value of its Bremer shares was lower than their book value. In ascertaining the fair market value of the Trust's Bremer shares for reporting purposes, the trustees applied various discounts to the book value of those shares to account for their lack of marketability and control.

104. Throughout this time, the trustees understood there were several reasonable ways to measure the fair market value of the Trust's Bremer stake; how you do so is "a choice," as defendant Lipschultz would later acknowledge. In the words of the Trust's advisors, the "valuation is as much art as science," and the trustees have "significant latitude regarding the valuation method." Thus, before 2019, the trustees made the eminently appropriate decision to value the Trust's Bremer shares at a discount to book value, which ensured that the Trust could

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meet its annual charitable-distribution requirements and in turn preserve its investment in Bremer Financial. And they made this decision knowing full well that Bremer Financial would likely fetch more than its book value if it could be sold.

105. Then-trustee Robert Reardon (father to defendant Reardon) explained the Trust's reasons for adopting this valuation approach in a letter to defendant Johnson, a copy of which was sent to Bremer's then-CEO, Terry Cummings. Chief among them was avoiding "a required sale of stock in [Bremer Financial]," resulting in a "complete divorcement" in derogation of "Otto Bremer's intention":

> To involuntarily increase the grant payout of the Foundation by changing the fair market value would jeopardize the continued interrelationship between the Foundation and the company. We have seen on several occasions in the past where the vagaries of economics would make it impossible to pay greater dividends which would jeopardize the Foundation's ownership of stock in the company. *It could trigger a required sale of stock in the company which, in turn, would result in subsequent sale and dilution of the Foundation's ownership of the company which ultimately could result in complete divorcement of the two. I really do not feel that this was Otto Bremer's intention, nor is it something that we should do at this time*.

106. For the next 25 years after Robert Reardon sent this letter, the Trust maintained the same valuation approach. The Trust's decision to mark its Bremer stock around or below book value has never been challenged or rejected by the IRS, even following multiple audits of the Trust.

2. The Trustees Aggressively Shop Bremer to Potential Buyers Without Board Authorization

107. The trustees seized upon Company A's inbound inquiry regarding a potential merger of equals transaction as the excuse that would allow them to pursue the transaction that they had long desired. They immediately instructed KBW to pursue what Lipschultz described as the only "agenda" that mattered: selling the bank. And Lipschultz informed KBW that he had

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"no interest in an MOE," and made clear that KBW's mandate was to "open the door to [an] outright sale" of the company. The trustees named this plan "Project Smash Mouth."

108. At the same time, in meetings with Bremer's management and the board, the trustees pretended to be genuinely interested in learning more about Company A's outreach and discussing it with the Bremer board. Defendants played this game because they wanted Bremer and its advisors to help create a record that defendants could use to achieve their desired outcome—an outright sale. Thus, for example, on May 17, 2019, Lipschultz emailed KBW to report that "Dan, Shotsy, and I plan to continue to reveal no OBT [Otto Bremer Trust] opinion on this [Company A] matter to BFC management or Board," while noting that he would "highlight" to Bremer that "a critical path item is valuation of such a deal." But defendants were not actually interested in knowing how Bremer would be valued in the potential merger of equals, as they had already decided the Trust would reject any such transaction. Rather, they planned to use Bremer's analysis offensively to help defendants support their claim that the bank was actually worth far more than the Trust had ever realized.

109. Although defendants have claimed in court that a presentation created by Bremer's financial advisor in this time period contained information that obligated them to dramatically revalue the Trust's Bremer investment, at the time, Lipschultz privately acknowledged that the board materials related to the inbound merger-of-equals opportunity were unremarkable. As he wrote to the Trust's banker, "I was hoping (not expecting) [the presentation] would be more 'M&A or die,' which would make it easier for us to get a sale approved with the court."

110. The trustees responded by ratcheting up their efforts to manufacture a record that would justify an outright sale of Bremer Financial. Beginning in June 2019, the trustees

instructed KBW to shop Bremer as a sale candidate to other banks, even though the board had never considered such an action, let alone approved it. Acting on the trustees' instructions, KBW informed Bremer's competitors that Bremer was for sale and that KBW had a "mandate" to find a buyer. The trustees did not tell Bremer's other directors that they had unilaterally decided to surreptitiously place the bank for sale. The trustees' determination to commence a clandestine sales process to serve their own interests, and their failure to advise the board of these actions, each constitute a breach of fiduciary duty.

111. Starting in early June, KBW contacted at least ten large banks about potentially acquiring Bremer. To arm KBW in these discussions, the trustees funneled Bremer's sensitive proprietary information to KBW, including detailed board materials, financial projections, and strategic plans. KBW then shared this proprietary information with the banks it was pitching. None of the banks with whom the trustees discussed a potential transaction were bound by a nondisclosure agreement or otherwise required to keep confidential the Bremer-related information provided to them by the trustees or KBW. These banks were accordingly free to use this information in competition with Bremer. The trustees' determination to disclose confidential Bremer information to other banks constitutes a breach of fiduciary duty and violates Bremer's Code of Conduct, which, among other things, requires that directors preserve the confidentiality of Bremer's "strategic plans" and "financial information."

112. When the Bremer board next met on June 25, 2019, the trustees finally said aloud what they had long ago decided—that the Trust would veto any stock-for-stock merger. Such a merger would permit the bank to survive and would maintain Otto Bremer's legacy, but would not achieve the complete separation the trustees desired.

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113. And so at this meeting the trustees unveiled their demand that the board pursue an outright sale of Bremer. This path would ensure the destruction of the bank and Otto Bremer's "good name" but massively enrich the trustees. The trustees also revealed that KBW had commenced discussions with potential buyers. The trustees declined to disclose who those potential buyers were. But they claimed that KBW's discussions confirmed that a sale would be financially attractive. The board was stunned to learn that the trustees and KBW had been having unauthorized discussions about selling the bank with potential buyers and decided to further evaluate the situation at its next meeting in late July.

114. On July 12, 2019, the trustees passed a resolution to sell their Bremer shares. The Trust's resolution uttered the conclusion that "unforeseen circumstances" made a sale "necessary or proper," but said nothing about what those circumstances were.

3. The Trustees Continue to Threaten the Board

115. At the Bremer board's next meeting on July 23-24, 2019, Lipschultz declared that if the board did not immediately resolve to pursue a sale, the trustees would move forward with a sale of the Trust's shares independently. Lipschultz also insisted that the trustees' advisor, KBW, should "lead the transaction process" on behalf of Bremer, as the Trust was looking for an advisor that would "fully represent the value of its shares." As Lipschultz knew, KBW was loyal to the trustees and would recommend an outright sale to the other directors even if it was not in the best interests of Bremer or its other shareholders and constituents. The trustees also agreed that KBW would be paid millions of dollars if it engineered the transaction the trustees desired.

116. The board refused to accede to Lipschultz's demand but agreed to consider the best path forward for Bremer. Because that question could not be answered without independent financial advice, the board resolved to retain an independent financial advisor to evaluate the situation. To allow enough time for the board's financial advisor to complete its work and for

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the board to deliberate about the proper course for the future, the board asked the trustees to instruct KBW to cease its unauthorized outreach to potential acquirers. Lipschultz promised he would do so.

117. The board also sought to understand how a sale of the Trust's Bremer shares was permissible under the Trust Instrument. Lipschultz stated that the trustees "have been advised by their own counsel not to divulge details" but agreed that he would authorize the Trust's outside counsel to meet with Bremer's outside counsel to explain the trustees' position.

118. Lipschultz reneged on both of these pledges.

4. The Trustees and KBW Continue Shopping Bremer

119. On August 5, 2019, the Trust's lawyers met with Bremer's outside counsel. The Trust's lawyers conveyed no information. They said only that the trustees had discretion to declare that "unforeseen circumstances" existed. They refused to disclose the basis for the trustees' determination that "unforeseen circumstances" had occurred. All they said was that the Company A discussions supposedly led the trustees to reevaluate the fair market value of the Trust's Bremer shares, and thus to question whether Bremer's dividends were adequate to meet the Trust's charitable-distribution requirements.

120. Meanwhile, contrary to his promise to the board, Lipschultz authorized KBW to continue talks with other banking institutions that Lipschultz hoped to recruit as buyers. KBW and the trustees communicated with at least four potential acquirers before the next board meeting.

121. Thus, on July 31, 2019, the trustees and KBW met with representatives of a larger financial institution ("Company B"). During the July 31 meeting, KBW provided Company B with confidential Bremer information that the trustees had received in their capacities as Bremer directors. KBW emails show that Company B's representatives asked a series of questions on a

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pre-meeting call that could not be answered based on publicly available information. KBW disclosed confidential Bremer information in answering Company B's questions about credit losses, deposit trends, and net interest margin, among other confidential subjects. These are among the most sensitive kinds of information of any banking institution, including Bremer. After the meeting, KBW funneled further confidential Bremer information to Company B to answer follow-up questions regarding financial modeling and tax assumptions. Throughout these discussions, KBW led Company B to believe that the discussions were authorized and that management and the board were interested in a sale transaction. KBW did all of this at the trustees' direction.

122. On August 8, 2019, based on falsehoods from KBW and improperly received confidential Bremer information, Company B sent KBW a preliminary, nonbinding indication of interest for a potential acquisition of Bremer. The indication of interest was much lower than the trustees expected and caused the trustees to "blow a gasket" because it frustrated their campaign to force the board to accept a sale. KBW told Lipschultz that the offer reflected the poor market conditions for bank mergers. Undeterred, Lipschultz told KBW to tell buyers that they could afford to pay a higher price because they could generate cost savings by firing Bremer employees and closing branches following the transaction:

> I can tell you there are tens of millions of dollars per year of expense takeout. We have an HQ org that can be largely eliminated. Service center with 500ish employees not necessary at all. And branches can be evaluated on case by case basis . . . Obviously we'd pay for transition but after that I'd favor eliminating as much as possible and just paying us for it.

Ex. 23.

123. In reflecting on the discussions that KBW and the trustees had with other prospective bidders, Lipschultz told KBW: "It's interesting, though not altogether surprising,

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that everyone seems intent on telling us how wonderful and benevolent their organizations are. As if we're going to sell to the people who are most ethical and philanthropic." Lipschultz added that it was "ridiculous" to view Bremer as important to the communities it serves: "Bremer is just a bank. That's it."

124. Despite their disappointment with the terms of Company B's indication of interest, the trustees tried to leverage the indication they had received from Company B by quickly sharing it with the rest of Bremer's board. When the other directors reminded Lipschultz that he had agreed to have KBW stop soliciting offers to allow the board time to deliberate, he falsely denied that he had made any such pledge and falsely claimed that, in any event, Company B's indication was "unsolicited." Without citing any basis for urgent action, Lipschultz demanded to hold a board meeting as soon as possible and again threatened to sell the Trust's shares unilaterally if the board did not move quickly enough. The board scheduled a meeting for August 29. Despite Lipschultz's disappointment with the size of Company B's indication of interest, Lipschultz assured KBW that he would nonetheless "present it as a reasonably strong offer" at the board meeting.

5. The Board Determines Not to Pursue a Sale of Bremer

125. Bremer's board met on August 29, 2019. The board received advice from its independent financial advisor and independent outside counsel. The board and its advisors discussed Bremer's financial strength and the fact that Bremer's "comparatively low credit risk and consistent returns" and "lack of asset sensitivity" positioned the bank well in the market. The board's advisors explained that the primary focus of investors is "on a higher quality balance sheet that can perform well in an economic downturn" and the banks that are doing well "are less asset sensitive and have a strong track record with credit."

126. The board and its advisors also discussed the fact that the M&A environment was difficult for banks, and that only a handful of potential acquirers could likely afford to acquire Bremer at an attractive price. They also discussed the "synergies" that any acquirer would seek to achieve, which would likely include firing employees, closing branches, and taking other steps that would adversely affect the communities that Bremer serves. Relatedly, they discussed the fact that Company B does not generally have a presence in agricultural lending and rural markets—the markets and customers that Bremer serves.

127. The board's financial advisor presented an illustrative valuation showing that Bremer's standalone value was almost exactly the same as the price that would be expected in a sale of the bank. But in a sale scenario, Bremer would certainly lose its brand and culture, and it would also lose the opportunity for future upside.

128. The board and its advisors also discussed the risks of a failed sale process, including distraction from Bremer's strategic plan, employee attrition, and reputational damage. They also discussed the Trust Instrument's "unforeseen circumstances" standard, the requirement that a sale be "necessary or proper," and the risk that a court might enjoin a sale if the board determined to pursue one.

129. The trustees had no patience for these deliberations and continued to push forcefully for a sale throughout the meeting. Lipschultz told the other directors that the Trust needed more cash and that Bremer's board should defer to the Trust's purported needs—ignoring his duty as a director to act in the long-term interest of Bremer and its other shareholders and constituents. Lipschultz justified this extraordinary demand by claiming that the Trust had decided it had been undervaluing its assets by almost 50 percent on its tax returns.

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130. The board had difficulty understanding this radical change of position, particularly given Lipschultz's representations that the Trust's prior valuations were based on multiple recognized benchmarks and informed by the advice of counsel and third-party experts. The trustees, however, refused to explain how they had arrived at their new valuation, beyond stating in conclusory fashion that it was based on the advice of their advisors.

131. Despite its skepticism, the board explored options that would address the trustees' purported concerns. For instance, the board discussed the possibility of paying a higher dividend to allow the Trust to satisfy its purportedly higher charitable-distribution obligations. The trustees remained singularly focused on an outright sale of Bremer.

132. At the end of the meeting, after considering the long-term interests of Bremer and its stakeholders, the board determined that a sale of the company was not advisable. The board thus resolved to terminate any further discussion regarding a sale transaction and directed Bremer's management not to participate in any further sale discussions without explicit approval by the board. All six non-trustee directors present at the meeting voted for this resolution. All three trustees voted against it.

133. After the meeting, the board's financial advisor called Company B to report that the board had determined not to pursue a sale. Company B responded that it had contacted KBW to withdraw its nonbinding indication of interest several days earlier. The Company B indication was therefore another mirage, an invention of the trustees. The trustees never told the rest of the board that Company B had withdrawn its indication. The trustees had pretended there was a deal available when they knew there was not—with the intention of duping their fellow directors to approve a sale on the basis of bad information. Indeed, after this litigation began, Lipschultz confided in KBW that the Company B offer "was a keystone to this whole story"—that is, the

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narrative the trustees have sought to manufacture to justify their actions—"the fact it was retracted and not reissued has been devastating to our story line."

III. The Trustees' Unlawful Effort to Usurp the Board's Authority

134. The trustees decided to disregard the board's decision not to pursue a sale—exactly as they had threatened to do at the January 2019 board meeting.

A. Project Raptor

135. Less than two weeks after the August 29 board meeting, the trustees met with another potential acquirer. The trustees also began to activate their backup plan—aptly named "Project Raptor"—which would ultimately culminate in "D-Day." As Lipschultz succinctly described it in a text message, "D-Day = buh bye board."

136. Project Raptor would involve two separate transactions to effect an outright sale of the bank: *First*, instead of one buyer for all of the Trust's shares, KBW would identify multiple buyers who were each willing to purchase a smaller number of Class B shares as part of a coordinated takeover scheme. Once transferred, the nonvoting Class B shares could be converted to Class A shares and could therefore be voted in the hands of the Trust's coconspirators. In this way, the trustees could assemble a bloc with enough voting power, acting in concert, to remove all of Bremer's disinterested directors and give the trustees complete control of the board in contravention of the purpose and spirit of the Plan of Reorganization. As KBW's talking points for meetings with potential buyers succinctly put it:

> [T]he Trust and the new investors will own, in the aggregate, approximately 50.1% of the Class A shares of Bremer Financial.
>
> Immediately following the sale of Class B shares, the trustee directors of Bremer Financial intend to call a special meeting of the shareholders for the purpose of removing the directors of Bremer Financial (other than the trustee directors) and will solicit all Class A shareholders for their support.

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137. *Second*, unchecked by any disinterested directors to represent the interests of Bremer, its employee-shareholders, or its other constituencies, the trustees could then use their board positions to force a sale of Bremer to the highest bidder—a sale that the employee-elected board already determined was not in the best interests of the bank.

138. The trustees' proposed sale would be predicated on the potential "synergies" to be achieved through firing employees and shutting branches. The hedge-fund buyers of the Trust's Class B shares would benefit from a substantial short-term profit when the trustees flipped the bank. The deal was a win-win for the hedge funds and trustees. Bremer, its employees, the communities they serve, and Otto Bremer's vision would be the losers.

139. The plan was so brazen that Johnson initially refused to support it. Knowing that Johnson was deeply troubled by their conduct, Lipschultz and Reardon kept her in the dark for as long as possible, fearing that she would "toss her cookies" when she learned that they were scheming with KBW to "toss[] the current Board in essentially a hostile takeover." When they revealed the plot at last, Johnson did oppose it—just as Lipschultz and Reardon had anticipated. But they worked furiously at the eleventh hour to "cram[] the genie back in the bottle" and persuade Johnson to support the coup, including by offering her increased grant-making authority at the Trust. As Lipschultz would later write when expressing his frustration at Johnson's hesitance to support the plan: "Every day I have to go through this shit with [Johnson], my exit price goes up."

B. The Trustees and KBW Enlist Multiple Hedge Funds as Accomplices in Their Scheme to Sell Bremer

140. Beginning no later than October 2, 2019, KBW contacted a curated group of potential allies. At Lipschultz's direction, KBW looked for people "that only care about making money and are willing to do whatever is necessary." Ex. 24 at -515. KBW ultimately enlisted

11 hedge funds (acting through 19 entities) in the trustees' scheme—primarily small hedge funds with names such as "Financial Hybrid Opportunity SPV," "Malta Offshore Fund," and "Banc Fund X."

141. On October 25, the trustees executed purchase agreements with all of these hedge funds. Collectively, the funds purportedly purchased 725,000 of the Trust's Class B shares, enough to give them and the Trust 50.13 percent of Bremer's voting power if the shares were converted into Class A shares (with the Trust holding approximately 12.5 percent and the hedge funds collectively holding the remaining 37.63 percent). The purchase price paid by the hedge funds reflected the possibility that the Bremer board would take action to prevent the sale.

142. On October 28, the trustees sent a letter to Bremer's board, which stated that "on October 25, 2019, [the Trust] sold approximately seven percent of [Bremer's] Class B common stock to a number of investors in separate, independent transactions." Ex. 25. The trustees also sent Bremer a purported "Stock Transfer Notification," which documented their purported sales of 725,000 Class B shares to the hedge funds. Ex. 26. Nearly simultaneously, all of the purported purchasers separately wrote to Bremer seeking to convert their Class B shares into Class A shares.

143. To complete the sale agreements with the hedge funds, the trustees again improperly disclosed confidential Bremer information. At the trustees' direction, KBW told the purported hedge fund buyers that Bremer had received a merger proposal from "a large banking organization" and that Bremer's board had taken action to prevent Bremer from pursuing a sale. Neither of these facts was known publicly, and the hedge funds would not have agreed to participate in the trustees' scheme without receiving this and other confidential information. KBW also discussed confidential Bremer financial information with investors.

144. The trustees knew all along that the hedge funds would vote in support of the trustees' plan to sell the bank—that was the whole point. Lipschultz told KBW to find investors who were looking for a "quick flip" on their investment. And in their October 28 letter, the trustees specifically explained that they sold their shares for the purpose of "resolv[ing]" the "impasse" between the trustees and the other directors, reflecting that the trustees and the hedge funds planned to act together to remove the non-trustee directors. Ex. 25. The trustees further said that "we, in our roles as Directors" and, separately, "[the Trust] as the 86-percent shareholder of BFC," were calling a special meeting of Bremer shareholders, the purpose of which was "to remove the non-[trustee] Directors." *Id.* The letter went on to say that "[t]he remaining Directors [*i.e.*, the trustees] will then direct the management team to commence a meaningful exploration of strategic options for [Bremer], including a potential sale or merger, under the oversight of the new Board [*i.e.*, the trustees]." *Id.* The trustees separately sent the company a "Demand for Special Meeting." Ex. 27.

145. Despite the obviously coordinated nature of the trustees' and hedge funds' actions, they have insisted that they were acting independently. These statements are untrue. The trustees and hedge funds were all acting pursuant to a common plan and agreement, coordinated by KBW, to convert the Class B shares into Class A shares, vote out the disinterested directors, put the trustees in control of the board, and pursue a sale of Bremer. Common economic sense requires this conclusion:

a. The trustees tried to sell just enough Class B shares so that the Trust and its accomplices could control a majority of Bremer's voting power (50.13 percent), and all of the purported purchasers knew exactly how many shares the trustees were selling in total. The trustees would not have left themselves zero margin for error if they were not sure that the hedge funds would support them.

b. All of the purported share transfers were entered into simultaneously, pursuant to substantially identical stock purchase agreements, and for the same price ($120 per share). All of the hedge funds then contacted Bremer roughly

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simultaneously to purportedly convert the shares, and the operative language in most of these communications was identical. Documents produced in the litigation have shown why these communications were identical: KBW dictated the message to the hedge funds.

c. The purported purchases and conversions would make no economic sense in the absence of a coordinated plan and understanding because the hedge funds would be left holding Class A shares in an independent Bremer. The hedge funds paid more than book value to the Trust in the purported sales. Absent a corporate sale, they would be unable to sell the shares at more than book value due to a provision in the Plan of Reorganization. These purported transactions were all against the hedge funds' economic interest unless they all knew about and agreed to support the trustees' plan to take over the board and then force a sale of Bremer.

d. The trustees agreed to accept less than what they have claimed is full value for the Trust's shares. The purported purchase price of $120 per share implies a $1.44 billion valuation for the bank. Yet the trustees have maintained that Bremer would fetch far more than that in an acquisition. If that were true, then the trustees in effect agreed to pay the hedge funds, out of the corpus of the Trust, to help them vote out the board and effectuate a sale of Bremer.

146. Simply put, this was a hub-and-spoke conspiracy with KBW (and the trustees) at its center. In soliciting interest from the hedge funds, KBW distributed a pitch deck that presented the "Pro Forma Ownership Structure" and showed that the Trust and the "New Investors" would collectively control exactly 50.1 percent of Bremer's voting power after the purported share sales and conversions. After distributing this deck, KBW had phone calls with each hedge fund to explain the trustees' plan. The script for these calls read: "Immediately following the sale of Class B shares, the trustee directors of Bremer Financial intend to call a special meeting of the shareholders for the purpose of removing the directors of Bremer Financial (other than the trustee directors) and will solicit all Class A shareholders for their support." Indeed, the investment memorandum that one of the hedge funds prepared in connection with the transaction even stated that the Trust was selling the minimum amount needed to ensure that the Trust and the new investor group control 50.1 percent of Bremer's voting power.

147. The entire premise for the sales was obvious: Once the trustees were in control of the board, they would use their director positions to cause Bremer to pursue a sale, and the hedge funds would make a near-guaranteed short-term profit. The trustees' director positions were thus a crucial enticement for the hedge funds to join the plan; they never would have agreed to participate without assurance that the trustees would use their positions as directors to pursue the hedge funds' agenda of making a short-term profit from a quick sale of Bremer, even though that was not in the interests of Bremer, its employee-shareholders, or other constituencies.

148. The hedge funds' conduct in the negotiations with KBW confirms that they understood that the transactions were designed to facilitate a hostile takeover through concerted action by the trustees and the hedge funds. According to notes from KBW's calls with the purported purchasers, one of them asked, "What can the [board] and its advisors do to counter this?" Another asked, "What if things don't go according to *plan*?" And a third asked, "What is litigation risk?" One purported purchaser unsuccessfully sought representations from the trustees in the stock purchase agreement that there were "no other documents or agreements that would interfere with the execution of *the plan*," and that the Trust was "not aware of any facts that would interfere with the execution of *the plan*."

149. The trustees also directly coordinated with the hedge funds on the takeover plan. On October 11, 2019, Lipschultz told KBW "we need Directors asap" to replace those that the trustees and the hedge funds planned to remove. But the trustees did not want to find directors that would act independently and faithfully in the interests of Bremer; they planned instead to vote as Bremer directors to appoint stooges that would implement the trustees' and the hedge funds' short-term agenda. Lipschultz told KBW: "I don't care where they come from. Only that they are up for the job and know what needs to be done." KBW thereafter discussed the

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subject with the hedge funds, and some (such as Maltese Capital) suggested replacement directors fitting Lipschultz's description. Five days after signing the stock purchase agreements, Lipschultz and Reardon had dinner with representatives from another of the hedge funds (Patriot Financial Partners) to discuss the composition of the new board.

150. After this litigation was filed, the trustees encouraged the hedge funds to bring their own lawsuits against Bremer. When two of the hedge funds affiliated with FJ Capital did so in December, the trustees claimed that they "were unaware of this filing." This was another lie. Hours before FJ Capital filed its lawsuit, Lipschultz texted KBW that "[t]his is going to be a great day!" and "we affectionately say FJ=Fuck Jeanne," referring to Bremer's CEO, Jeanne Crain. Ex. 28. Lipschultz urged KBW to drum up more lawsuits, explaining that while the trustees had "years of reserves" of charitable funds to devote to a litigation, "if anyone wants [a] relatively quick resolution, they will need to file suit in Ramsey County and pile in." Ex. 29 at -846. KBW assured Lipschultz that he would call the hedge funds' representatives to urge them to "get off their ass" and sue. *Id.* at -840.

C. The Trustees Issue a Press Release Purporting to Put Bremer "In Play" and Denigrating the Bank's Business

151. In connection with the purported share sales, the trustees issued a press release announcing that they had purportedly "commenced a process to explore strategic options for [Bremer]" and would be seeking a "strategic combination with a larger financial institution." This announcement was directly contrary to the August 2019 resolutions the board as a whole had adopted in the interest of Bremer and all its stakeholders.

152. The press release quoted Lipschultz as stating that Bremer's position as "a stand-alone regional bank" was daunting and implied that its success was in jeopardy (notwithstanding its recent record results). The press release was intended to pressure Bremer to accede to a sale.

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It was a gross breach of fiduciary duty for Lipschultz and his fellow trustees—who served on Bremer's board at the time and thus owed it unremitting fidelity—to issue public statements undermining its market position and prospects to advance their own interests.

153. The trustees then made public statements on the Trust's website that compounded the breach of their fiduciary duties to Bremer. Again ignoring Bremer's strong financial performance, the trustees claimed that Bremer employees' jobs were at risk if the bank was not sold. (In fact, as his documents demonstrate, Lipschultz was urging potential buyers to fire as many Bremer employees as possible to drive up the amount the Trust would receive in a sale.) And the trustees again recklessly disclosed confidential information for their own benefit, asserting that the Trust "has no Matters Requiring Attention (MRAs) outstanding." This is confidential supervisory information that federal law prohibits the Trust from disclosing. *See* 12 C.F.R. § 261.22(e).

154. Bremer has already suffered harm from the trustees' actions. Among other things, the trustees' actions have resulted in the disclosure of Bremer's confidential information to its competitors and undermined Bremer's ability to attract and retain customers and employees.

155. If the trustees and their hedge fund allies gain control of Bremer's board, they intend to sell the bank as soon as they possibly can. Any sale on such an accelerated timeframe would be a value-destroying fire sale, particularly since the trustees have publicly proclaimed their commitment to sell the bank, severely undermining their bargaining power in any sale negotiations.

IV. The Trustees' Purported Share Transfers Are Invalid Under Bremer's Bylaws and the Trust Instrument

156. Minnesota law requires Bremer to maintain the official register of its shares. Minn. Stat. § 302A.461, subd. 1(a). To effectuate a share transfer, the proposed transferor must

surrender to Bremer or its transfer agent a stock certificate evidencing the transferred shares. Bremer then must confirm that the transfer is valid. If the transfer is valid, Bremer may issue a new stock certificate to the transferee and record the transfer on its register.

157. Like many companies, Bremer's shares are subject to restrictions that limit shareholders' ability to sell them to outsiders. These restrictions include Paragraph 16 of the Trust Instrument, as well as a provision in the Plan of Reorganization that gives Bremer the right to buy back Class A shares if a shareholder dies, retires from Bremer, or proposes to transfer its shares to a third party. Ex. 11 ¶ 7(a). By virtue of these restrictions, Bremer's only shareholders in its history have been the Trust and the bank's employees and directors.

158. Bremer's Amended and Restated Bylaws, attached hereto as Exhibit 30, give Bremer a central role in ensuring compliance with these restrictions. As directors of Bremer at the time, defendants Lipschultz, Reardon, and Johnson voted for and approved these bylaws, which date to 2014 and were approved by Bremer's shareholders. Section 4.5 of the bylaws provides that Bremer must receive for each proposed transfer "proper evidence of succession, assignment or authority to transfer," and must confirm that the proposed transfer "complies with the Corporation's Articles of Incorporation, Bylaws and any and all other plans and agreements applicable to the transfer of the Corporation's shares."

159. The requirements of Section 4.5 were designed and intended to protect Bremer and its shareholders in two important ways. *First*, Section 4.5 ensures compliance with the transfer restrictions meant to keep the bank's shares within the "Bremer family," such as those in the Trust Instrument and the Plan of Reorganization. *Second*, it protects against the disruption and uncertainty that might occur if Bremer were to register a proposed transfer that was subsequently challenged and found to be unlawful. Without such evidence and confirmation,

Bremer may not issue a new certificate to the transferee or record the transfer on its register. Bremer would be substantially injured were the bank to register a transfer that violated the Trust Instrument, only for a court to determine later that the transfer was invalid.

160. The purported Stock Transfer Notification sent by the trustees to Bremer on October 28, 2019 claimed to surrender the Trust's Class B stock certificate and requested that Bremer (a) issue stock certificates to the purported transferees, (b) issue a new certificate to the trustees evidencing the Trust's Class B shares that were not purportedly transferred, and (c) record these transactions on Bremer's share register. Separately, all of the purported transferees have asked Bremer to convert the purportedly transferred Class B shares into Class A shares and to send them new stock certificates evidencing such Class A shares. After Bremer and its disinterested directors filed this action, the trustees filed counterclaims seeking to compel Bremer to recognize the purported transfers and conversions and a declaration that they were valid.

161. Under Section 4.5 of its bylaws, Bremer cannot comply with these requests. The purported share transfers do not comply with all "plans and agreements applicable to the transfer of the Corporation's shares." The Trust Instrument is one of those "plans and agreements." Paragraph 16 of the Trust Instrument commands the trustees to retain the Trust's shares of Bremer Bank stock unless, "in the opinion of the Trustee, it is necessary or proper to [sell them] owing to unfor[e]seen circumstances." And that same provision explicitly obligates the trustees to retain those shares even if they are "unproductive of income."

162. The trustees told the board that the discussions with Company A caused them to believe that "unforeseen circumstances" had occurred and that it was "necessary or proper" for the Trust to sell its shares. This is because, as the trustees asserted, the Company A discussions

caused them to realize that the fair market value of their Bremer shares was higher than they had previously understood.

163. No "unforeseen circumstances" have occurred to support the trustees' position. In 2017, the trustees testified to the probate court that no "unforeseen circumstances" existed that could possibly justify a sale of the Trust's Bremer shares. The court accepted the trustees' testimony and entered an order confirming the lack of "unforeseen circumstances."

164. No new circumstances have arisen since 2017 that made it necessary or proper for the Trust to sell its shares in 2019. Bremer has had excellent financial performance since 2017, as it did before then. In 2018 and 2019, Bremer substantially expanded its asset base and generated record earnings. In that same period, Bremer successfully executed its commercial and agriculture strategy and adapted to the digital banking environment, as its record performance demonstrates.

165. Bremer has continued to provide the Trust a double-digit return on average equity every year since at least 2003. Bremer's dividends will allow the Trust to comfortably meet its charitable-distribution obligations for years to come. In 2019, for example, Bremer paid the Trust $80.6 million in dividends, but the Trust only awarded $56.8 million in grants and program-related investments.

166. The discussions with Company A do not and cannot constitute an "unforeseen circumstance." Preliminary discussions between companies are not unforeseen at all but a common occurrence. The discussions with Company A did not yield an offer and have no bearing on the valuation of Bremer shares. Indeed, Lipschultz has conceded that those discussions did not cause the bank to double in value.

167. Since 2017, when the Trust confirmed an absence of "unforeseen circumstances," it continued to aver in sworn IRS filings and elsewhere that the value of its Bremer shares is below book value—as it has for decades. That valuation was supported by third-party analysis, reviewed by the Trust's independent auditors, and never challenged by the IRS.

168. The reason for this continuing valuation methodology is clear. The price that an investor would pay for the Trust's shares is less than what an acquirer would pay for all of Bremer's shares in a strategic transaction. Because there is no public market for Bremer shares, and because the Trust Instrument restricts their sale, the Trust's shares are worth less than their pro rata share of Bremer as a whole. That explains why, until 2019, the Trust always valued its Bremer shares internally by starting with book value and discounting for factors including the lack of marketability and control.

169. It also explains why the outside appraisals that the trustees periodically commissioned to confirm their internal valuations likewise valued the Trust's shares at below book value. In one such appraisal from 2014, the appraiser concluded that the Trust's Class B shares should not be given a control premium, that is, the additional value that a third-party acquirer might pay to acquire control of Bremer. Rather, the appraiser concluded that the Trust's Bremer shares should be valued on a minority interest basis because of the Trust Instrument's directive that the trustees retain the shares. Based on this report, the trustees on their tax return that year certified that the Trust's Bremer shares had a fair market value of $774 million (as compared with a book value of $814 million).

170. The trustees themselves adopted and confirmed this valuation approach in evaluating the price paid by the hedge funds in the purported share sales. The price of those purported sales ($120 per share) is far less than what the trustees claim all of Bremer's shares

would command in an acquisition. But KBW nonetheless concluded that a price as low as $106 per share would be fair to the Trust because, among other reasons, the value of the Trust's shares should be discounted by 26 percent to reflect their lack of liquidity.

171. The trustees are knowledgeable about the financial services merger market. It did not take preliminary discussions with Company A for them to know that transactions are often done at a premium to book value. Since at least 2014, they have received multiple investment banking analyses showing that transaction valuations often exceed book value. They have attended conferences focused on these very issues. Still, year after year, with the assistance of expert advice, in sworn testimony and regulatory filings, they have reaffirmed their conviction that the proper valuation of the Trust's Bremer shares is below book value.

172. Nor is there any basis to conclude that the purported share transfers are necessary or proper. Bremer continues to serve its constituents throughout the Upper Midwest. Bremer continues to generate income for the Trust sufficient to allow the Trust to pursue its charitable work. The Trust and the bank continue to serve the same communities effectively, precisely as Otto Bremer intended. No legal, practical, or logistical difficulties exist to the continuing function of both institutions as good neighbors or suggest that Otto Bremer's vision cannot be sustained.

173. Nor is it even the "opinion of the Trustee[s]" that a sale of Bremer shares is necessary or proper owing to unforeseen circumstances. To be sure, the trustees assert that as their opinion, to advance their personal interests, as detailed in this complaint. But that is a litigation position, not an opinion. While the trustees told the board that the Company A discussions constituted "unforeseen circumstances" in August 2019, months later, in November 2019, they told their public relations advisors that they had not yet determined what the

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"unforeseen circumstances" were. In an email, the trustees explained that they would not make "a final decision" on what to call an unforeseen circumstance until they finally determined how they wanted to defend their position in court.

COUNT ONE

Declaratory Judgment
(by all Plaintiffs)

174. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 173 of this complaint as if fully set forth herein.

175. Minnesota corporations are obligated to adhere to their own bylaws. Under Section 4.5 of Bremer Financial's Amended and Restated Bylaws, transfers of Bremer shares are valid only "upon confirmation that the proposed transfer of shares complies with the Corporation's Articles of Incorporation, Bylaws and any and all other plans and agreements applicable to the transfer of the Corporation's shares." The Trust Instrument is a "plan[] and agreement[] applicable to the transfer of the Corporation's shares," and therefore Bremer Financial cannot recognize or give effect to a purported transfer of Bremer's shares that does not comply with the Trust Instrument.

176. Bremer Financial also has standing to enforce Paragraph 16 of the Trust Instrument directly, because Bremer is an "interested person" in the Trust, at least with respect to that provision. Minn. Stat. § 501C.0201(a)-(b). Among other reasons, Paragraph 16 of the Trust Instrument provides Bremer Financial with an explicit and distinct benefit, and a special interest in the Trust, by affording Bremer permanent investment capital and ensuring that it will not be sold to a larger financial institution (absent extraordinary circumstances that make such a sale necessary or proper), thereby preserving Bremer's ability to continue to operate in accordance with Otto Bremer's community banking philosophy. In conducting its business for more than

75 years, Bremer Financial has relied on its permanent relationship with the Trust, as mandated by the Trust Instrument, and the transactions at issue in this lawsuit are part of a scheme that would, if consummated, sever that relationship. Bremer Financial also has "a property or other right in or claim against the assets of the trust," within the meaning of the Minnesota Trust Code, because the Trust is obligated to maintain its permanent capital investment in Bremer, even if that investment is "unproductive of income," and depriving Bremer of the stability provided by the Trust's investment would destroy Bremer's ability to operate as an independent community bank. Bremer Financial also has a property or other right in or claim against the assets of the Trust because it has contributed nearly $1 billion to the Trust since 1989, including in the form of supplemental dividends over and above the amount contemplated by the Plan of Reorganization, based on its reasonable expectation that the Trust's capital investment would be perpetual in nature, and because of the Trust's status as a bank holding company for Bremer.

177. The individual plaintiffs also have standing to enforce Paragraph 16 of the Trust Instrument in their capacities as Bremer shareholders. Among other reasons, the individual plaintiffs have a special interest in the enforcement of the Trust Instrument and/or are interested persons because they have "a property or other right in or claim against the assets of the Trust" within the meaning of the Minnesota Trust Code and would be adversely affected if the purported share transfers were given effect. Bremer Financial is an asset of the Trust, and the individual plaintiffs and Bremer's employee-shareholders collectively own 80 percent of Bremer's Class A voting shares, giving them control over the election of the directors. The purported share transfers at issue in this lawsuit would, if deemed valid and enforceable, strip the non-Trust Class A shareholders of the voting control they have enjoyed since 1989, relegating

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them to the status of minority shareholders and significantly reducing the value of their investment in Bremer Financial.

178. There have been no "unforeseen circumstances" that make it "necessary or proper" for the Trust to transfer its Bremer shares. The trustees' purported determination that unforeseen circumstances exist was arbitrary and capricious, not made in good faith, and is therefore invalid. The trustees' true purpose in declaring that unforeseen circumstances exist is to effectuate a disloyal scheme to usurp the employee-elected board's authority to manage Bremer, so that they can remove the disinterested directors and force through a self-interested transaction at the expense of Bremer's other shareholders and constituencies.

179. Because the purported share transfers are prohibited by the Trust Instrument, the purported share transfers are impermissible under Bremer's bylaws and of no force and effect, and Bremer may not issue a new certificate to the purported transferees or record the transfers on its register.

180. The existing controversy regarding the effectiveness of the purported share transfers under Bremer's bylaws and the Trust Instrument is substantial, justiciable, and of sufficient immediacy to warrant the issuance of a declaratory judgment. The judgment will terminate the controversy and remove any uncertainty regarding the enforceability of the purported share transfers.

181. Plaintiffs have no adequate remedy at law.

COUNT TWO

Breach of Fiduciary Duty
(by all Plaintiffs)

182. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 181 of this complaint as if fully set forth herein.

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183. Throughout the relevant period, defendants Lipschultz, Reardon, and Johnson owed fiduciary duties of care and loyalty, in their capacities as Bremer Financial directors, to Bremer and all of its shareholders. For so long as they served as Bremer directors, defendants were obligated to discharge their duties in a manner they reasonably believed to be in the best interests of Bremer and its shareholders, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

184. Throughout the relevant period, defendants Lipschultz, Reardon, and Johnson owed these same fiduciary duties as controlling shareholders (and the current trustees continue to owe them in that capacity). Minnesota law presumes that a shareholder with 10 percent or more of a corporation's voting power in director elections has direct or indirect power to direct or cause the direction of the management and policies of a corporation and is therefore a controller of the corporation. Minn. Stat. § 302A.011, subd. 48. Moreover, among other reasons, the trustees control 20 percent of Bremer's Class A voting power and all of Bremer's Class B shares, combined with certain veto rights in Bremer's governing documents that the Trust obtained when it controlled a majority of Bremer's voting power (including the right to block extraordinary transactions, such as mergers). Furthermore, the Trust is deemed to control Bremer Financial under the Bank Holding Company Act, and the trustees of the Trust have repeatedly represented that the Trust controls Bremer.

185. Throughout the relevant period, defendants Lipschultz, Reardon, and Johnson abused their positions as directors and controlling stockholders and breached their fiduciary duties in an effort to advance their agenda to force a sale of the bank.

186. These defendants' breaches began no later than January 2019, when the Trust's advisors claimed during a Bremer Financial board meeting that, despite its lack of affirmative

voting control, the Trust could at any time replace any Bremer directors that did not "act[] in a way consistent with [the Trust's] wishes." This was a clear threat that was designed to influence the decision-making of Bremer's employee-elected board of directors.

187. Thereafter, and throughout 2019, these defendants misused their positions of trust and confidence as directors of Bremer to advance their self-interested objective of selling the bank. Among other things, defendants Lipschultz, Reardon, and Johnson (a) feigned interest in learning more about a potential merger-of-equals transaction in the hope that Bremer and/or its advisors would create documents that the Trust could use to support a claim that "unforeseen circumstances" made a sale of the Trust's Bremer shares "necessary or proper," as required by the Trust Instrument; (b) shared confidential Bremer information with third parties, including Bremer competitors, in an effort to generate a bid for Bremer that could likewise be used to justify a sale under the Trust Instrument; (c) held discussions with potential acquirers without board authorization, and indeed despite an express instruction from the board to cease such discussions, in pursuit of a self-interested transaction; and (d) publicly denigrated Bremer's business prospects in a further attempt to justify their attempt to sell Bremer Financial out of existence.

188. These trustees' efforts to engineer an outright sale of Bremer were temporarily thwarted in August 2019, when Bremer's employee-elected board of directors determined that a sale of Bremer at that time was not in the best interests of Bremer or its shareholders or other constituents and resolved to terminate any further discussion regarding a sale transaction.

189. Defendants Lipschultz, Reardon, and Johnson responded by misusing their positions as controlling shareholders of Bremer Financial (albeit controllers that lacked actual voting control) to wrest voting control back from the employee-shareholders, who had held it for

more than 30 years, in contravention of the purpose and spirit of the Plan of Reorganization, and without the payment of any control premium to those same employee-shareholders. More specifically, these trustees caused the Trust to sell its Bremer shares to a group of handpicked hedge funds so that defendants, voting in lockstep with their confederates, could exert voting control and use it to remove Bremer's disinterested directors and force a sale of the bank—thereby circumventing the business judgment of the incumbent employee-elected board. This scheme was only possible because the trustees promised their hedge fund allies that they would act as directors to cause Bremer to immediately pursue an outright sale of the bank, and then vote the Trust's shares in favor of such a transaction.

190. The foregoing actions have already injured plaintiffs. Among other things, they have resulted in the disclosure of Bremer's confidential information to its competitors, undermined Bremer's ability to attract and retain customers and employees, created a massive distraction, and required the expenditure of legal fees and litigation expenses. Moreover, the individual plaintiffs have suffered harm as a result of the threats of having their voting interests diluted and losing their ability to exercise their rights as shareholders with majority voting power.

191. Absent appropriate equitable relief, Bremer Financial and its non-Trust shareholders (the individual plaintiffs in this action and Bremer's employee-shareholders) face even more significant prospective harm. Bremer's incumbent, employee-elected board of directors has concluded that a sale of the bank is not in the best interests of Bremer, its shareholders, or other constituents. The trustees have made clear that they intend to complete the unlawful scheme to seize voting control from Bremer's employee-shareholders and use it to force an outright sale of the bank. Such a transaction will forever destroy the prospect of greater

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long-term value for Bremer's other shareholders, as well as Bremer's unique relationship with its employees and the community that defines Otto Bremer's legacy.

COUNT THREE

Minn. Stat. § 302A.751, Subd. (1)(b)(3): Shareholder Oppression (by the Individual Plaintiffs)

192. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 191 of this complaint as if fully set forth herein.

193. The individual plaintiffs are shareholders of Bremer Financial.

194. Bremer is not a publicly held corporation as defined in Minn. Stat. § 302A.011, subd. 40.

195. As alleged above, throughout the relevant period, the trustees were directors of Bremer and exercised control over Bremer.

196. Defendants have acted in an unfairly prejudicial manner towards the individual plaintiffs in their capacities as controlling shareholders and/or directors of Bremer. Based on the Plan of Reorganization, the individual plaintiffs had a reasonable expectation that Bremer's employee-shareholders (not the Trust) would have the power to elect and remove the board, and that the trustees would follow board directives and respect the board's authority to manage Bremer on behalf of all shareholders, including with respect to a potential sale of the bank. Moreover, based on the Plan of Reorganization and the Trust Instrument, the individual plaintiffs had a reasonable expectation that the trustees would not declare in bad faith that "unforeseen circumstances" existed to manipulatively transfer Class B shares to remove independent directors, dilute the individual plaintiffs' voting power with respect to board elections, take voting control for themselves, and force through a self-interested transaction opposed by an independent employee-elected board. Nor did the individual plaintiffs reasonably expect the

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trustees to breach their fiduciary duties in all the ways described above or to attempt share transfers that are invalid under Bremer's bylaws and the Trust Instrument.

197. Defendants' unlawful and inequitable actions threaten irreparable harm to Bremer, its shareholders, and its constituencies. Bremer's incumbent directors have concluded that a sale of the bank at this time is not in the best interests of its shareholders and other constituencies. If not enjoined, the trustees have made clear that they nonetheless intend to seize voting control, complete a hostile takeover of Bremer's board, and unilaterally force through a sale transaction for disloyal reasons. Such a transaction will forever destroy the prospect of greater long-term value for Bremer's other shareholders, as well as Bremer's unique relationship with its employees and the communities it serves that defines Otto Bremer's legacy.

COUNT FOUR

Minn. Stat. § 302A.671: Control Share Acquisition Act
(by all Plaintiffs)

198. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 197 of this complaint as if fully set forth herein.

199. Bremer is an "issuing public corporation" under Minnesota's Control Share Acquisition Act because it is a corporation with at least 100 shareholders. Minn. Stat. § 302A.011, subd. 39; Minn. Stat. § 302A.671, subd. 1. Bremer has 1,440 shareholders registered on its books and records as owners of Bremer shares. Bremer's registered shareholders include those who own their shares directly and others who own their shares through Bremer's ESOP and 401(k) plan. Approximately 72 percent of Bremer's Class A voting shares are held by shareholders who own their shares through the ESOP and 401(k) plan. All of Bremer's 1,440 shareholders, including those who own their shares through Bremer's ESOP and 401(k) plan, receive notice of shareholder meetings and have the right to vote their shares

individually in any vote of Bremer shareholders. They all receive proxy materials directly from Bremer to permit them to exercise the corporate franchise, and they all cast their votes directly with Bremer. All of Bremer's shareholders, including those who own their shares through Bremer's ESOP and 401(k) plan, likewise possess full economic rights of Class A shareholder ownership. Shares held in the ESOP and 401(k) plan are allocated to individual accounts assigned to each participating employee, and dividends paid on the shares are credited to those individual accounts.

200. The Trust and the hedge funds that purportedly purchased shares from the Trust are each "acquiring persons" under the Minnesota Control Share Acquisition Act because they are acting in concert pursuant to a "written or oral agreement, arrangement, relationship, understanding, or otherwise for the purpose of acquiring, owning, or voting shares of an issuing public corporation." Minn. Stat. § 302A.011, subd. 37.

201. If the purported transfers and conversions of Class B shares were successful, the Trust would become the "beneficial owner" of the new Class A shares under Minnesota's Control Share Acquisition Act because it "directly or indirectly through any written or oral agreement, arrangement, relationship, understanding, or otherwise, has or shares the power to vote, or direct the voting of, the shares." Minn. Stat. § 302A.011, subds. 41(a), (c).

202. The Trust's purported transfers of Class B shares to the hedge funds, with the purpose of having those shares converted into Class A shares and then voted in concert with the Trust, constitute a "control share acquisition" under the Minnesota Control Share Acquisition Act because they would increase the Trust's voting power from just 20 percent to over 50 percent. Minn. Stat. § 302A.011, subd. 38; Minn. Stat. § 302A.671, subd. 2(d).

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203. Despite its attempted control share acquisition, the Trust has not submitted an information statement to Bremer, as required by Minn. Stat. § 302A.671, subd. 2, and has not afforded Bremer's shareholders, including the individual plaintiffs, their right to determine the Trust's voting power under Minn. Stat. § 302A.671, subd. 3.

204. Plaintiffs are entitled to a declaration that the purported transfers of Class B shares to the hedge funds, if otherwise valid, would constitute a "control share acquisition," and that the trustees have violated the Minnesota Control Share Acquisition Act. Plaintiffs are also entitled to a permanent injunction, under Minn. Stat. § 302A.671, subd. 5, voiding the purported transfers of Class B shares to the hedge funds.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully pray this Court enter an Order:

a. Declaring that the purported share transfers are void and unenforceable because they are invalid under the Trust Instrument and Bremer's bylaws, were undertaken by defendants Lipschultz, Reardon, and Johnson in breach of their fiduciary duties, were the product of unlawful shareholder oppression, violate the Minnesota Control Share Acquisition Act, and/or are otherwise unenforceable in law or equity.

b. Enjoining defendants and each of their agents, servants, employees, attorneys, advisors, and persons in active concert or participation with them, from attempting to deprive Bremer's employee-shareholders of the voting control they have enjoyed, pursuant to the Plan of Reorganization, since 1989.

c. Enjoining defendants and each of their agents, servants, employees, attorneys, advisors, and persons in active concert or participation with them, from attempting further transfers of the Trust's Bremer shares absent approval by the Court.

d. Enjoining defendants and each of their agents, servants, employees, attorneys, advisors, and persons in active concert or participation with them, from engaging in discussions with potential acquirers of Bremer or the Trust's Bremer shares without express authorization from the board.

e. Enjoining defendants and each of their agents, servants, employees, attorneys, advisors, and persons in active concert or participation with

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them, from sharing confidential Bremer information with third parties without express authorization from Bremer's board.

f. Awarding plaintiffs their attorneys' fees and costs from prosecuting this action.

g. Granting plaintiffs such other and further relief as this Court deems just and appropriate.

Dated: April 28, 2023

LOCKRIDGE GRINDAL NAUEN P.L.L.P.

s/Charles N. Nauen

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ACKNOWLEDGMENT

The undersigned hereby acknowledges that, pursuant to Minn. Stat. § 549.211, subd. 2, costs, disbursements, and reasonable attorney and witness fees may be awarded to the opposing party in this litigation if the Court should find that the undersigned acted in bad faith, asserted a claim or defense that is frivolous and that is costly to the other party, asserted an unfounded position solely to delay the ordinary course of the proceedings or to harass; or committed a fraud upon the Court.

s/Charles N. Nauen
Charles N. Nauen (#121216)