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STATE OF MINNESOTA

COUNTY OF RAMSEY

DISTRICT COURT

SECOND JUDICIAL DISTRICT

CASE TYPE: OTHER CIVIL

KIMBERLY L. ELLINGSON, TAMARA L. PETERSON, KEVIN E. BEITO, TERESA J. BISS, DAWN C. BREMER, CAROL O. DOWNHOUR, and SHERRI M. MATUKE, on behalf of themselves and all others similarly situated,

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-20-159

SECOND AMENDED CLASS ACTION COMPLAINT

INTRODUCTION

1. Since 1989, voting control over Bremer Financial Corporation has rested with its employee-shareholders. Under the stewardship of its employee-elected board of directors, Bremer Financial has built and maintained a rock-solid banking franchise serving otherwise underserved communities across Minnesota and the surrounding states. At the same time, Bremer Financial has generated consistent returns for all of its shareholders, prominently including its 92 percent economic owner, the Otto Bremer Trust, while providing a stable source of employment for generations of Bremer employees.

2. The trustees of the Otto Bremer Trust now want to seize voting control of Bremer Financial from its employee-shareholders and dismantle this community-banking success story.

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The justifications for this unlawful seizure of voting control are pretextual, and the motivations admittedly selfish. The named plaintiffs thus bring this action on behalf of Bremer's Class A employee-shareholders to stop the trustees from implementing their inequitable scheme.

3. Bremer's current structure dates to a 1989 Plan of Reorganization, in which the Trust relinquished voting control of the bank to bring the Trust into compliance with amended tax law requirements. Since that time, Bremer's employees have controlled its destiny. Employees hold 80 percent of Bremer's Class A voting shares, and thus wield 80 percent of the voting power over most matters, including director elections.

4. Led by Bremer's employee-shareholders and their elected representatives on Bremer's board of directors, Bremer Financial has thrived, contributing to the prosperity of the Minnesota, Wisconsin, and North Dakota communities that it serves. Bremer has grown into a regional banking powerhouse, but Bremer's employee ownership makes it an unusually community-oriented one, with a unique focus on rural markets and agricultural customers too often neglected by other banks. And because the Trust continues to receive the bulk of Bremer's dividends through its ownership of nonvoting Class B shares, Bremer has been the economic engine behind the Trust's charitable giving, paying it nearly $1 billion in dividends since 1989.

5. Otto Bremer, a community banker, created Bremer Financial and the Trust more than 75 years ago. He formed Bremer Financial in 1943 to aggregate his community bank stockholdings and ensure that the community banks he'd devoted his life to protecting would not be sold off after his death. And he formed the Trust the following year to hold his Bremer Financial shares and reinvest the dividends in the community. The Trust's founding document, the Trust Instrument, directs the trustees to permanently retain all of the Trust's Bremer shares, even if the Trust might more profitably deploy its assets elsewhere. By memorializing this

command in the controlling Trust Instrument, Otto ensured that Bremer would enjoy the stability afforded by the Trust's permanent capital investment and remain an independent community bank.

6. In recent years, however, a new generation of trustees, more concerned with profit and influence than the wishes of the Trust's founder, has decided that it wants to seize control of Bremer Financial from the employee-shareholders, 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. By the trustees' design, a sale of Bremer would yield "tens of millions of dollars per year of expense takeout," achieved by eliminating Bremer jobs and Bremer branches and depriving agricultural customers and customers in rural markets of an important economic lifeline. Ex. 1. 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.

7. In 2019, defendants Brian Lipschultz, Daniel Reardon, and Charlotte Johnson—all of whom were both trustees and Bremer directors at the time—orchestrated a series of maneuvers designed to force a sale of Bremer to the highest bidder and, in turn, terminate the bank's 77-year independent existence and Otto Bremer's legacy. 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 long-standing relationship with the bank. But the trustees' efforts were temporarily thwarted in August 2019, when the board of directors that plaintiffs elected determined that a sale of Bremer was not in the best interests of Bremer or its shareholders or other constituents and resolved to terminate any further discussions regarding a sale transaction.

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8. These trustees responded by enacting a scheme to take back voting control from the employee-shareholders who have held it for decades, in contravention of the purpose and spirit of the Plan of Reorganization and without the payment of any control premium to the employee-shareholders. In October 2019, the trustees strategically purported to sell a small portion of the Trust's nonvoting shares to 19 investment vehicles so that the trustees, voting in lockstep with their confederates, could exert voting control and use it to remove the employee-elected directors and pursue 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. Because the Trust's purported sales of its shares are prohibited by the Trust's governing documents and were undertaken in breach of the trustees' fiduciary duties, Bremer's unaffiliated directors have rightly refused to recognize their validity. On November 19, 2019, those directors and Bremer brought suit in this Court seeking a declaration that the sales were invalid and an injunction against further unlawful actions by the trustees. *Bremer Fin. Corp.* v. *Lipschultz*, Court File No. 62-CV-19-8203 (Minn. Dist. Ct.) (the "Bremer Action").

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11. Plaintiffs support Bremer and their elected representatives on the board in the Bremer Action. Plaintiffs bring this separate suit on behalf of Bremer's Class A employee-shareholders because the trustees' actions, if valid, would inflict unique and direct harms on Bremer's employee-shareholders. By manipulating the corporate machinery, the trustees are attempting to seize voting control of Bremer from plaintiffs for the trustees and their hedge-fund cohorts and force a sale of the bank that would be disastrous for Bremer's employee-shareholders. Their actions are prohibited by the Trust Instrument; constitute a breach of fiduciary duty; result in shareholder oppression; and violate Minnesota's Control Share Acquisition Act. Plaintiffs are accordingly entitled to equitable relief enjoining the trustees' purported share transfers and declaring them void and unenforceable.

PARTIES AND RELEVANT NONPARTIES

A. Bremer Financial Corporation

12. In 1943, Otto Bremer founded nonparty Bremer Financial Corporation ("Bremer" or "Bremer Financial") under the name "Otto Bremer Company." Headquartered in St. Paul, Minnesota, Bremer Financial is a financial services company with approximately $16 billion in assets.

13. Bremer Financial is the parent company of Bremer Bank, National Association ("Bremer Bank"), a nationally chartered bank through which Bremer Financial provides a wide range of banking, mortgage, investment, wealth management, trust, and insurance products and services throughout Minnesota, North Dakota, and Wisconsin. 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. Bremer Bank holds more than 40 percent of the local deposits in numerous small towns across this State, and in several of these towns, Bremer Bank is the only community bank with a local branch. Bremer Bank's clients include

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small businesses, farmers and agribusinesses, nonprofits, and public and government entities, as well as individuals and families.

14. 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 and are the only class of Bremer shares entitled to vote in director elections. Class B shares may vote on certain extraordinary transactions only. 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.

15. In 2019, Bremer's board of directors had ten members, including defendants Lipschultz, Reardon, and Johnson. The seven non-trustee directors were (and remain) nonparties Ronald James, Jeanne H. Crain, Mary Brainerd, Glenn D. McCoy, Kevin A. Rhein, Wendy Schoppert, and Charles B. Westling. Crain is Bremer's President and CEO. The remaining non-trustee directors are all outside, independent directors. James serves as Chairman of the board.

B. The Employee-Shareholder Plaintiffs

16. Plaintiff Kimberly L. Ellingson is a Specialized Solutions Director at Bremer and works at the Bremer branch located in Brainerd, Minnesota. She has worked for Bremer for 24 years. She is the direct owner of 934 Bremer Class A shares and owns an additional 4,495 Class A shares through Bremer's ESOP and 401(k) plan.

17. Plaintiff Tamara L. Peterson is Director of Agriculture Banking at Bremer and works at a Bremer branch located in Grand Forks, North Dakota. She has worked for Bremer for 26 years. She is the direct owner of 245 Bremer Class A shares and owns an additional 4,364 Class A shares through Bremer's ESOP and 401(k) plan.

18. Plaintiff Kevin E. Beito is a Senior Business Banking Manager at Bremer and works at a Bremer's Grand Forks branch. He has worked at Bremer for 14 years. He is the

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direct owner of 110 Bremer Class A shares and owns an additional 3,191 Class A shares through Bremer's ESOP and 401(k) plan.

19. Plaintiff Teresa J. Biss is Director of Organizational Effectiveness and Training at Bremer and works at Bremer Financial's corporate headquarters in the City of Saint Paul, Minnesota. Biss has worked at Bremer for 27 years. She is the direct owner of 86 Bremer Class A shares and owns an additional 8,362 Class A shares through Bremer's ESOP and 401(k) plan.

20. Plaintiff Dawn C. Bremer is a Customer Support CSR Supervisor at Bremer and works at Bremer's Lake Elmo Service Center. She has worked for Bremer for 34 years. She is the direct owner of 50 Bremer Class A shares and owns an additional 1,604 Class A shares through Bremer's ESOP and 401(k) plan.

21. Plaintiff Carol O. Downhour is a Senior Business Analytics Analyst at Bremer and works at Bremer's Lake Elmo Service Center. She has worked for Bremer for 43 years. She is the direct owner of 5 Bremer Class A shares and owns an additional 12,154 Class A shares through Bremer's ESOP and 401(k) plan.

22. Plaintiff Sherri M. Matuke is Senior Vice President, Operations Director at Bremer and works at Bremer's Lake Elmo Service Center. Matuke has worked at Bremer for 28 years. Through Bremer's ESOP and 401(k) plan, she owns 12,947 Bremer Class A shares.

23. Both direct shareholders and shareholders who own their shares through the ESOP and 401(k) plans are registered on Bremer's books and records as owners of Bremer shares and have the right to vote those shares individually in any vote of Bremer shareholders. In connection with shareholder votes, Bremer sends proxy materials directly to both groups of shareholders, and both groups cast their votes directly with Bremer. Approximately 72 percent

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of Bremer's Class A voting shares are held by ESOP and 401(k) plan participants, and Bremer's ESOP plan invests primarily in Bremer stock.

24. All plaintiffs likewise possess full economic rights of Class A shareholder ownership. Shares owned through Bremer's ESOP and 401(k) plans are allocated to individual accounts assigned to each participating employee and are held for the benefit of the individual employees. Dividends paid on the shares are credited to the individual participants' accounts. Accordingly, plaintiffs possess all voting powers and other rights of Class A shareholder ownership.[1]

C. Otto Bremer Trust and the Defendant Trustees

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

26. 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.

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

[1] For avoidance of doubt, the Bremer ESOP and 401(k) plan trustee is not a party to this action.

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28. 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.

29. 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. Lipschultz's service on Bremer's board ended in April 2021, when, 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.

30. 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.

31. 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

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2020, after she decided she did not wish to be included on the list of nominees for reelection to the board at Bremer Financial's 2020 Annual Meeting of Shareholders.

32. On April 29, 2022, as part of the long-running probate court proceeding related to the Trust, the Honorable Robert A. Awsumb issued an order that resolved a petition brought by the Attorney General of the State of Minnesota and removed defendant Lipschultz as a trustee. Neither Bremer Financial nor plaintiffs were parties to that removal proceeding, and were not permitted to participate in any way.

33. On March 8, 2023, as part of the long-running probate court proceeding related to the Trust, the Honorable 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 defendant 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 current trustees are parties to this action, which seeks, *inter alia*, prospective injunctive relief related to the Trust.

JURISDICTION AND VENUE

34. This Court has subject-matter jurisdiction under Minn. Stat. § 484.01, subdiv. 1.

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

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

FACTUAL ALLEGATIONS

I. Otto Bremer, Bremer Financial, and the Trust

A. Otto Bremer Spends His Life Supporting Community Banks

37. Otto Bremer emigrated to Minnesota in 1886 and lived his entire adult life in Saint Paul. 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. 2 at -711-12.

38. 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.* at -712. 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. 3 at -346.

39. 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. 4 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.*

40. Otto did not pressure his banks to seek a higher, short-term return on his capital at the expense of long-term stability. Rather, he believed that banks should "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. 2 at -728. Consequently, he encouraged his community banks to pursue a conservative business

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strategy designed to ensure each 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. 5 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. 6 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. 4 at -839; Ex. 2 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, 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. 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.

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

44. The Trust is governed by the Otto Bremer Foundation Trust Instrument, dated May 22, 1944, attached hereto as Exhibit 7.

45. 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.

46. 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 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").

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C. Bremer Financial's Employee-Shareholders Acquire Voting Control of Bremer from the Trustees Pursuant to the 1989 Plan of Reorganization

1. The 1989 Plan of Reorganization

47. 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.

48. 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. Ex. 8; Ex. 9.

49. The Plan of Reorganization preserved the Trust's economic ownership of Bremer Financial while placing the majority of Bremer Financial's voting stock in the hands of its employees. As a result, for over three decades, Bremer employees—and not the Trust—have possessed the power to elect the directors that guide Bremer Financial's strategic focus and shape the bank's corporate philosophy.

50. To implement this new employee-oriented 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. 8 ¶ 3; Ex. 9 ¶¶ 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 it sold 80 percent of its Class A shares to Bremer employees and directors. Ex. 8 ¶ 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.

51. The Plan of Reorganization was specifically intended to ensure that Bremer remained a community-oriented institution even though the Trust could no longer own all of its shares. Employee-shareholders own their Class A shares either directly or through Bremer's ESOP and 401(k) plans, and the Plan of Reorganization gives Bremer the right to buy back Class A shares when a shareholder dies, retires, or proposes to transfer their shares. Ex. 8 ¶ 7(a). This and other provisions of the Plan of Reorganization were designed to ensure that ownership of Bremer would remain within the "Bremer family."

52. 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. 8 ¶ 4(b); Ex. 9 ¶ 6(b).

53. There is no other provision in the Plan of Reorganization that permits the Trust to take back voting control of Bremer Financial from its employee-shareholders and relegate those 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

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determine the election of directors simply because the Trust disagrees with the collective business judgment of the directors whom the employees elected.

2. The Trust Instrument Remains Intact

54. 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.

55. 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. 6 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*

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have community leadership, and *that* is the legacy [Otto Bremer] left behind."[2]

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.*, Ex. 10 at -724; Ex. 11 at -697; Ex. 12 at -744.

56. 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 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."

57. 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 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.

58. 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

[2] *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).

a sale was 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.

59. 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.

60. 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 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

61. 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's employee-elected

board and management team have achieved tremendous success, allowing Bremer to serve as an even more powerful financial engine for the Trust's charitable work.

62. 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).

63. 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 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.

64. 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."

65. 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.

66. 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 13.

67. Throughout all this time, Bremer and its employees have continued to follow Bremer's 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. 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.[3] Indeed, in September 2022, Bremer was recognized by the U.S. Small Business Administration's Minnesota District Office for its small businesses lending program.[4]

68. Consistent with Otto Bremer's vision, Bremer has maintained a strong commitment to underserved small towns and rural areas. 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 the State, Bremer Bank is one of only two Minnesota community banks with local branches.

[3] *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.

[4] *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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69. 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.

70. 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.

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

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

A. The Trustees' Financial Incentive to Sell the Bank

72. 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.

73. 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.

74. 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, Lipschultz paid himself $543,317 in charitable money; Reardon paid himself $549,785; and 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.

75. 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 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.

76. 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, 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

77. 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 the Bremer Action started: "Maybe the trustees are motivated by money. But isn't this a free society where the individual can make their own choices?" Ex. 14 at -940. (Notably, Lipschultz allowed months' worth of his text messages to be deleted, even after the Bremer Action started, and then dropped his cell phone in a lake. This message was recovered from a recipient's device.)

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

79. 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

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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

80. 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. 15 at -052.

81. 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. 16 at -940. 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."

82. 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.

83. 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. 17 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."

84. 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. 18 at -634. KBW is the very same investment bank that worked alongside the trustees throughout 2019 as they tried to orchestrate a sale of Bremer Financial.

85. 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. 19 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.

86. 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.

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

87. In April 2019, 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.

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88. Bremer's discussions with Company A never proceeded far enough to yield actionable valuation discussions or any kind of actionable proposal. The trustees nevertheless 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.

89. 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."

90. 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.

91. 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

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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.

92. Throughout this time, the trustees understood that 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 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.

93. 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*.

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94. 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

95. 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 "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."

96. 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.

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97. 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."

98. 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.

99. 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."

100. When the disinterested directors on Bremer's board refused to rush into a sales process and insisted on retaining independent advisors to consider whether a sale was in Bremer's best interests, the trustees showed no tolerance for the board's deliberative process. The trustees and KBW continued to solicit bids from potential acquirers, even after one of the trustees promised not to.

101. 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 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.

102. 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. 1.

103. 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, 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."

104. 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. Without citing any basis for urgent action, the trustees demanded that the board hold a meeting as soon as possible and again threatened to sell the Trust's shares unilaterally if the board did not move quickly enough.

3. Bremer's Employee-Elected Independent Directors Determine That a Sale Is Not in Bremer's Best Interests

105. Bremer's disinterested directors protected the bank, its employee-shareholders, and its other constituents from the trustees' efforts. At a meeting on August 29, 2019, they determined that a sale of Bremer was not in the best interests of the bank, its shareholders, its employees, or its other constituents. This decision was made in consultation with independent financial and legal advisors and was based on a number of factors, including Bremer's financial strength and prospects for future success, the relatively weak M&A environment for banks, the small number of potential acquirers for Bremer, and the fact that a potential acquirer would likely seek to eliminate jobs held by Bremer's employee-shareholders and take other steps that would adversely affect the communities that Bremer serves.

106. 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.

107. 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 the Bremer Action began, Lipschultz confided in KBW that the Company B offer "was a keystone to this whole story"—

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that is, the 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 Authority of Bremer's Employee-Elected Board

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

A. Project Raptor

109. 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."

110. 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.

111. *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.

112. 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.

113. 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 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 Assert Voting Control and Sell Bremer

114. 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. 20 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."

115. 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.

116. 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. 21. 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. 22. Nearly simultaneously, all of the purported purchasers separately wrote to Bremer seeking to convert their Class B shares into Class A shares.

117. 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.

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118. 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. 21. 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. 23.

119. 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

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.

120. 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 controlled 50.1 percent of Bremer's voting power.

121. 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.

122. 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*."

123. 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

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.

124. After Bremer Financial and its non-trustee directors filed the Bremer Action, 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. 24. 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. 25 -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 Disparage Bremer and Its Employees to Advance Their Agenda

125. To further the false narrative that selling Bremer is in the bank's interests, the trustees disparaged Bremer's and its employee-shareholders' business prospects. On October 28, 2019, 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." The press release quoted Lipschultz as saying that "it can be daunting for a stand-alone regional bank to succeed," and that a sale would allow Bremer to "be part of a stronger banking organization that better serves its customers and successfully competes for new ones." In a subsequent statement on the Trust's website, the trustees also claimed that Bremer employees' jobs were at risk if the bank was not sold.

126. The trustees' statements were false, destructive to Bremer Financial, and disrespectful of the efforts of Bremer's employee-shareholders. Those employee-shareholders and their elected representatives have turned Bremer into a thriving regional bank without sacrificing its independence or the deep community ties that define Otto Bremer's legacy. Bremer's unique focus on underserved customers, and its forward-looking investments in technology and long-term customer relationships, have resulted in outstanding recent financial performance and positioned the bank well for future success. Bremer paid a record dividend in 2019 (after paying a record dividend the year before), and its strong performance year in and year out has been indispensable to the Trust's charitable mission.

127. Selling Bremer, by contrast, would result in lost jobs and harm the communities Bremer serves, since any acquirer will undoubtedly seek to realize "synergies" by cutting jobs and closing branches. The trustees know this. As recounted above, Lipschultz told KBW that he would favor a potential acquirer "eliminating as much as possible" so long as it increased the amount of money that the trustees received.

128. The trustees have also claimed that a sale would benefit Bremer's employee-shareholders by maximizing the value of their shares. Bremer's employee-shareholders are committed to Bremer's continued independence and do not want to sacrifice the institution they have built—putting their own jobs at risk and harming the communities that they serve—so that the trustees can pursue a speculative transaction designed to yield short-term gain and personal benefit.

129. Regardless, a sale would not maximize the value of Bremer's stock. The board's independent financial advisor advised that the current M&A environment was difficult for banks, that Bremer had few potential acquirers, and that Bremer's stand-alone value is almost exactly

the same as what the bank might fetch in an acquisition. But in a sale scenario, Bremer would certainly lose its brand and culture, and would also lose the opportunity for future upside. Moreover, through their actions, the trustees have not just publicly announced that Bremer is for sale, but have signaled that they must immediately effectuate a sale to comply with the Trust's purported legal obligations under federal tax law. Under these circumstances, any sale of Bremer would be a value-destroying fire sale. The trustees' reckless actions show that giving them voting control of Bremer would be disastrous.

130. The trustees care nothing for the interests of Bremer's employee-shareholders, and they know that a sale would not be in their best interests. Their claims to the contrary are merely an effort to disguise their own, selfish motivations for their actions.

IV. Bremer and Its Disinterested Directors Challenge the Trust's Purported Transfers

131. On November 19, 2019, Bremer Financial and the seven non-trustee directors brought the Bremer Action against the trustees. Bremer and the non-trustee directors seek a declaration that the Trust's purported share transfers are invalid under the Trust Instrument and, as a result, Bremer should not give effect to them. Bremer and the non-trustee directors also seek, among other remedies, an injunction against further unlawful action by the trustees.

132. As detailed in the Bremer Action, the purported share transfers are invalid under Bremer's bylaws and the Trust Instrument. Section 4.5 of Bremer's bylaws provides that Bremer must confirm that any 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." The Trust Instrument is one of the "plans and agreements" described in Section 4.5.

133. 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

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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.

134. The trustees' purported share transfers are invalid under Bremer's bylaws because they are in violation of the Trust Instrument, which provides that the Trust may transfer its Bremer shares only if "in the opinion of the Trustee[s]" a sale of the shares is "necessary or proper" due to "unforeseen circumstances."

135. No "unforeseen circumstances" have occurred to support the trustees' position. In 2017, the trustees testified in 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."

136. No new circumstances have arisen since 2017 that could make it necessary or proper for the Trust to sell its shares now. 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 has successfully executed its commercial and agriculture strategy and adapted to the digital banking environment, as its record performance demonstrates.

137. 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 awarded only $56.8 million in grants and program-related investments.

138. The trustees told Bremer Financial's 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. As the trustees tell it, the Company A discussions caused them to realize—for the first time ever—that the fair market value of the Trust's Bremer shares was higher than the trustees had previously understood. Not so.

139. 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. 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.

140. 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.

141. 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 2013, 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.

142. 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.

143. 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.

144. 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 or 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.

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145. 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 "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.

146. In fact, the trustees know that no "unforeseen circumstance" has occurred. They are pursuing the purported sales not because the Trust Instrument permits or requires it, but as the culmination of their fifteen-year effort to extract substantial personal wealth from their Bremer-related positions. A sale will allow the trustees to justify further extraordinary increases in their personal compensation from Trust assets and enhance their personal prestige as so-called "investment advisors" for over $1 billion in assets. Lipschultz confessed to the trustees' selfish motivation the day after the Bremer Action was filed. On November 20, 2019, in response to Bremer's and its disinterested directors' allegations that the trustees were acting to increase their own compensation, Lipschultz sent the following text message to his fellow trustees: "Maybe the trustees are motivated by money. But isn't this a free society where the individual can make their own choices?" Ex. 14.

147. This message survives only because Johnson was a recipient. Both Lipschultz and Reardon allowed their text messages to be systematically deleted, including after the Bremer

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Action began. When plaintiffs sought to obtain their phones to see if any messages could be retrieved, Lipschultz said he had dropped his phone in a lake after the Bremer Action was filed.

CLASS ACTION ALLEGATIONS

148. Plaintiffs bring this action pursuant to Rule 23 of the Minnesota Rules of Civil Procedure, individually and on behalf of all other owners of Bremer Class A stock (the "Class"). Excluded from the Class are defendants and any persons, firms, trusts, corporations, or other entities related to or affiliated with defendants, and their successors in interest. Also excluded from the Class are the 19 hedge funds that purportedly acquired Bremer Class B stock from the Trust and attempted to convert it into Class A stock.

149. The Class is so numerous and geographically dispersed that joinder of all members is impracticable. There are over 1,000 Class A shareholders, including owners of shares through Bremer's ESOP and 401(k) plans.

150. There are questions of law and fact common to the Class including, *inter alia*, whether defendants breached their fiduciary duties to Bremer and the Class, whether defendants violated applicable Minnesota statutes as a result of the conduct alleged in the complaint, and whether the Trust's purported share transfers are valid.

151. Plaintiffs are committed to prosecuting this action and have retained competent and experienced counsel. Plaintiffs' claims are typical of the other members of the Class, and plaintiffs have the same interests as the other members of the Class.

152. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class. Such inconsistent adjudications would, as a practical matter, be dispositive of the interests of the members of the Class not party to this action or would substantially impair or impede their ability to protect their interests.

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153. Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief and/or corresponding declaratory relief with respect to the Class as a whole.

COUNT ONE

Declaratory Judgment

154. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 153 of this complaint as if fully set forth herein.

155. Plaintiffs have standing to enforce the provisions of the Trust Instrument under the Minnesota Trust Code. Minn. Stat. § 501C.0201(a)-(b). Among other reasons, plaintiffs have a special interest in the enforcement of the Trust Instrument and/or are interested persons because plaintiffs 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 plaintiffs and Bremer's other employee-shareholders collectively own 80 percent of Bremer's Class A voting shares, giving the employees control over the election of the directors. The purported share transfers at issue in this lawsuit would, if deemed valid and enforceable, strip Bremer's employee-shareholders of the voting control they have enjoyed since 1989, relegating Bremer's them to the status of minority shareholders and significantly reducing the value of their investment in Bremer Financial.

156. Paragraph 16 of the Trust Instrument prohibits defendants from transferring the Trust's Bremer shares unless "it is necessary or proper to do so owing to unfor[e]seen circumstances."

157. There have been no "unforeseen circumstances" that make it "necessary or proper" for the Trust to transfer the Trust's Bremer shares. The trustees' purported

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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 the bank's other shareholders (plaintiffs in this action) and constituencies.

158. The existing controversy regarding the effectiveness of defendants' purported share transfers 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.

159. Plaintiffs have no adequate remedy at law.

COUNT TWO

Breach of Fiduciary Duty

160. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 159 of this complaint as if fully set forth herein.

161. 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.

162. 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

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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, subdiv. 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.

163. Defendants Lipschultz, Johnson, and Reardon abused their positions as directors and controlling shareholders and breached their fiduciary duties in an effort to advance their agenda to force a sale of the bank.

164. These trustees' 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.

165. 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.

166. 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.

167. 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.

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168. In undertaking this improper course of action, these defendants have threatened to dilute the voting interest represented by plaintiffs' Class A shares and to expropriate voting control of Bremer from plaintiffs for themselves and their accomplices. Plaintiffs have suffered harm as a result of the threats of having their voting interests diluted and of losing their ability to elect directors and otherwise exercise their rights as shareholders with majority voting power, which are direct injuries to plaintiffs in their capacities as shareholders.

169. Bremer's incumbent employee-elected board of directors has concluded that a sale of the bank is not in the best interest 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 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.

170. The threat of such action by defendants is inequitable. Relief from such a threat is necessary to protect plaintiffs from the trustees' improper scheme to seize voting control of Bremer and pursue a potential sale transaction that will offer less than full value for plaintiffs' Bremer shares while putting plaintiffs' jobs at risk and destroying the relationship between Bremer and the Trust that has benefited the communities of the Upper Midwest for the last eight decades. If not enjoined, the trustees have made clear that they intend to seize voting control, complete a hostile takeover of Bremer's board, and unilaterally force through a sale of Bremer under circumstances that would not maximize shareholder value and would be contrary to plaintiffs' best interests as Bremer shareholders and employees.

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COUNT THREE

Minn. Stat. § 302A.751, subdiv. 1(b)(3): Shareholder Oppression

171. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 170 of this complaint as if fully set forth herein.

172. Plaintiffs are shareholders of Bremer.

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

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

175. Defendants have acted in an unfairly prejudicial manner toward plaintiffs in their capacities as controlling shareholders and/or directors of Bremer. Based on the Plan of Reorganization, 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 directives from the employee-elected board 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, 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 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 plaintiffs reasonably expect the 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.

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176. 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 interest of its shareholders and other constituencies. If not enjoined, the current trustees have made clear that they nonetheless intend to seize voting control—completing the hostile takeover that defendants Lipschultz, Reardon, and Johnson started in 2019—and unilaterally force through such a 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

177. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 176 of this complaint as if fully set forth herein.

178. Bremer Financial 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, subdiv. 39; Minn. Stat. § 302A.671, subdiv. 1. Bremer has 1,440 shareholders registered on its books and records as owners of Bremer shares, including each of the named plaintiffs. 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 plaintiffs and 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 plaintiffs and 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.

179. 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 were and 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, subdiv. 37.

180. 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, subdivs. 41(a), (c).

181. Defendants' purported transfers of the Trust's 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, subdiv. 38; 302A.671, subdiv. 2(d).

182. Despite its attempted control share acquisition, the Trust has not submitted an information statement to Bremer, as required by Minn. Stat. § 302A.671, subdiv. 2, and has not

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afforded plaintiffs, as employee-shareholders, their right to determine the Trust's voting power under Minn. Stat. § 302A.671, subdiv. 3.

183. As shareholders, 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 defendants have violated the Minnesota Control Share Acquisition Act. Plaintiffs are also entitled to a permanent injunction, under Minn. Stat. § 302A.671, subdiv. 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. Awarding plaintiffs their attorneys' fees and costs from prosecuting this action; and

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

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Dated: April 28, 2023

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ACKNOWLEDGMENT

The undersigned hereby acknowledges that, pursuant to Minn. Stat. § 549.211, subdiv. 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/ Richard B. Allyn
Richard B. Allyn, #0001338