



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

JAMES E. PARKER, Individually and)
On Behalf of All Others Similarly)
Situating,)
)
Plaintiffs,)

v.)

MATTHEW E. AVRIL, BRIAN R.)
KAHN, KENNETH YOUNG,)
VINTAGE CAPITAL)
MANAGEMENT, LLC, and B. RILEY)
FINANCIAL, INC.,)
)
Defendants,)

C.A. No. 2020-0280-PAF

and)
)
BABCOCK & WILCOX)
ENTERPRISES, INC.,)
)
Nominal Defendant.)

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (the “Stipulation”) is entered into this 15th day of February, 2023 (the “Execution Date”), by and among Plaintiff James E. Parker (“Plaintiff”); Defendants Vintage Capital Management, LLC (“Vintage”), B. Riley Financial, Inc. (“B. Riley”), Matthew E. Avril, Brian R. Kahn, and Kenneth Young (the “Individual Defendants”); dismissed directors Cynthia S. Dubin, Anne R. Pramaggiore, Kenneth Siegel, Thomas A. Christopher, and Henry E. Bartoli (the “Dismissed Defendants,” and together with B. Riley, Vintage, and the Individual

Defendants, “Defendants”); and nominal defendant Babcock & Wilcox Enterprises, Inc. (“B&W” or the “Company” and collectively with Plaintiff and Defendants, the “Settling Parties”), who are or were parties to the derivative and class action captioned *Parker v. Avril, et al.*, C.A. No. 2020-0280-PAF (the “Action”), pending in the Court of Chancery of the State of Delaware (the “Court”). The Settling Parties intend this Stipulation to fully, finally and forever resolve, discharge and settle the claims among the Settling Parties and any and all Released Claims as against the Released Parties upon and subject to the terms and conditions herein (the “Settlement”) and subject to the approval of the Court.

WHEREAS:

I. Background

A. Vintage is a private equity firm. It first acquired stock in B&W in the summer of 2017. At the time of the 2019 Transactions (defined herein), it held approximately 14.9% of the Company’s stock.

B. B. Riley and its affiliates and subsidiaries provide investment banking, corporate restructuring, lending, and consulting advisory services. B. Riley acquired an ownership interest in the Company when it backstopped B&W’s 2018 Rights Offering (defined herein). At the time of the 2019 Transactions (defined herein), it held approximately 6.5% of the Company’s stock.

C. Avril, Kahn, Dubin, Pramaggiore, Siegel, Christopher and Bartoli are current or former directors of B&W. Young is B&W's Chief Executive Officer ("CEO"), and also served in that role at the time of the 2019 Transactions.

D. B&W is a leader in energy and environmental technologies and services for the power and industrial markets. It specializes in advanced steam production from fossil and renewable sources for power generation and other industrial and municipal applications, as well as related equipment and aftermarket parts and services. At the time of the 2019 Transactions, B&W's second largest business segment was its "Volund & Other Renewable" segment, of which its subsidiary Babcock & Wilcox Volund A/S ("Volund") was a part.

E. From 2012 through 2015, Volund entered into various contracts related to the construction of waste-to-energy and biomass plants (the "Volund Contracts") which ultimately generated significant losses and created liquidity concerns for the Company. The Company implemented an array of initiatives to close out and optimize the Volund Contracts, which included trying to reach settlements with customers. However, these settlement discussions with counterparties to close out the Volund Contracts were difficult and slow-moving.

F. Given an immediate need for liquidity in the first quarter of 2018, the Company decided to raise cash through a rights offering (the "2018 Rights Offering"). Vintage agreed to backstop the 2018 Rights Offering.

G. The 2018 Rights Offering was completed on May 1, 2018, with an 81.2% participation rate. Specifically, 100.9 million shares were subscribed out of a total 124.3 million. Of the remaining 23.4 million shares, 9.4 million were purchased by Vintage pursuant to the backstop agreement and 14 million were purchased by B. Riley pursuant to an agreement between B. Riley and Vintage.

H. On November 19, 2018, Young was hired to serve as B&W's CEO pursuant to a Consulting Agreement between B&W and a B. Riley affiliate. Young also served as President of B. Riley and CEO of a B. Riley subsidiary.

I. The 2018 Rights Offering did not cure B&W's liquidity concerns, and its bank group pushed for a bankruptcy filing unless capital was raised immediately. In early 2019, the Company's investment bankers, Ducera Partners LLP ("Ducera") and B. Riley, conducted a formal financing search process. Ducera and B. Riley contacted thirty-two parties in connection with the process. Twenty-two parties executed non-disclosure agreements, but no party was willing to loan the amount of money needed to resolve the Company's immediate liquidity concerns.

J. On March 15, 2019, B. Riley proposed to issue \$90 million in last-out debt and to backstop a rights offering to all stockholders for \$50 million at \$0.30 per share for a total of \$140 million in financing. Further, on March 19, 2019, B. Riley provided \$10 million in bridge financing. When B. Riley made its proposal, B. Riley's role as co-investment banker ceased, and Ducera became the Company's

sole remaining investment banker. Ducera and the Company continued to search for additional sources of funding, and B. Riley attempted to syndicate its loan. Both efforts were unsuccessful; no other third party financing source emerged, nor did any party agree to participate in the B. Riley loan.

K. On April 2, 2019, the Company filed a 10-K announcing that it had settled the final Volund Contract. The 10-K also included a going concern opinion.

L. On April 3, 2019, the Board approved B. Riley's financing proposal, subject to stockholder approval of the rights offering and certain other components of the transaction. On April 5, 2019, B. Riley and the Company agreed that B. Riley would loan \$150 million to the Company and provide the Company with a \$15 million credit facility. On the same day, the Company entered into a Letter Agreement with Vintage and B. Riley providing for: (1) B. Riley's \$150 million Tranche A-3 Last Out Term Loan and \$15 million credit facility to B&W; (2) the issuance to B. Riley of 16,666,667 warrants at an exercise price of \$0.01 per share; (3) B&W's \$50 million rights offering which allowed all stockholders to subscribe and purchase shares of B&W common stock at \$0.30 per share (the "2019 Rights Offering"); (4) a backstop exchange agreement pursuant to which B. Riley agreed to purchase from B&W all shares of common stock in the 2019 Rights Offering that were not subscribed to by other B&W stockholders or exchange an

equal amount of the outstanding principal amount of the Tranche A-2 or A-3 Last Out Term Loans; and (5) an exchange of Vintage's existing Tranche A-1 Last Out Term Loan for shares of common stock at a price of \$0.30 per share (together, the "2019 Transactions").

M. On July 11, 2019, B&W's Board approved a one-for-ten reverse stock split of the outstanding and treasury shares of the Company's common stock. The reverse stock split was previously approved by a majority of the Company's stockholders at the Company's annual meeting of stockholders held on June 14, 2019. The reverse stock split became effective at 12:01 a.m. on July 24, 2019.

N. The 2019 Rights Offering expired in accordance with its terms on July 18, 2019. Existing stockholders purchased 125.9 million shares totaling 75.5% of the 166.7 million shares available. Pursuant to a backstop exchange agreement, B. Riley purchased the rest. Following the 2019 Transactions, Vintage held approximately 33.9% and B. Riley held approximately 17.9% of the Company's stock.

O. In January 2020, the Company's bank lenders again declared the Company in default of the Credit Agreement (defined below). Thus, on January 31, 2020, B. Riley issued the Company another \$30 million in Tranche A-4 last-out financing as well as the availability, if needed, of a new Tranche A-5.

P. After the 2019 Rights Offering, Vintage reduced its stake in B&W by sales in the open market and on February 8, 2021, Vintage entered into a stock purchase agreement with B. Riley pursuant to which, B. Riley agreed to purchase Vintage's remaining shares of B&W common stock. Vintage no longer holds any B&W common stock.

Q. On February 12, 2021, B&W closed an underwritten public offering of 29,487,180 shares of common stock, which included 3,846,154 shares issued in connection with the underwriter's option to purchase additional shares, at a price to the public of \$5.85 per share, for gross proceeds of approximately \$172.5 million. Also on February 12, 2021, the Company closed an underwritten public offering of \$125 million aggregate principal amount of 8.125% senior notes due 2026, which included \$5 million aggregate principal amount of senior notes issued in connection with the underwriters' option to purchase senior notes.

II. Summary of the Action

R. On September 11, 2019, Plaintiff sent a demand pursuant to 8 *Del. C.* § 220 seeking to inspect certain of B&W's books and records related to the 2019 Transactions (the "Demand"). In response to the Demand, while reserving all rights, B&W produced approximately 4,183 pages of documents.

S. On April 14, 2020, Plaintiff filed the Verified Stockholder Derivative and Class Action Complaint (the "Original Complaint"), purporting to

assert class and derivative claims for breach of fiduciary duty against Defendants primarily relating to the 2019 Transactions.

T. The Original Complaint asserted that the 2019 Transactions were effectuated pursuant to a flawed process at an unfair price, that the Company's directors and Mr. Young breached their fiduciary duties in approving the 2019 Transactions, and that Vintage and B. Riley breached their fiduciary duties as alleged controlling stockholders. The Original Complaint also alleged that Mr. Young's compensation package and B. Riley's service payments were excessive.¹

U. Specifically, the Original Complaint alleged that the 2019 Transactions benefitted B&W's alleged controlling stockholders (Vintage and B. Riley) and diluted B&W's other stockholders and also resulted in a change of control giving rise to direct claims on the part of a class of affected stockholders under *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173 (Del. 1986).

V. The Original Complaint sought, *inter alia*, entry of an order “[d]eclar[ing] invalid and rescind[ing] the [2019] Transactions and/or award[ing]

¹ Counts I (Breach of Fiduciary Duty Against Director Defendants), III (Breach of Fiduciary Duty Claim Against Young), VI (Breach of Fiduciary Duty Against B. Riley and Vintage), and VII (Unjust Enrichment Claim Against B. Riley and Vintage) are asserted derivatively. Counts II (Breach of Fiduciary Duty Against Director Defendants), IV (Breach of Fiduciary Duty Claim Against Young), and V (Breach of Fiduciary Duty Against B. Riley and Vintage) are asserted as direct class claims.

compensatory damages”; directing Defendants to account to Plaintiff for all damages suffered; reimbursement of costs and attorneys’ and experts’ fees; and any other relief the Court deemed just, equitable, and proper.

W. On August 14, 2020, Vintage, B. Riley, Avril, Kahn, Young, Bartoli, and the Company answered the Original Complaint.

X. On August 17, 2020 Defendants Christopher, Dubin, Pramaggiore, and Siegel moved pursuant to Court of Chancery Rule 12(b)(6) to dismiss the Complaint on the grounds that it failed to state a non-exculpated claim against them under the Company’s certificate of incorporation exculpation provision pursuant to 8 *Del. C.* § 102(b)(7).

Y. On August 31, 2020, pursuant to a Stipulated Order Dismissing the Independent Director Defendants, Defendants Christopher, Dubin, Pramaggiore, and Siegel were dismissed from the Action without prejudice.

Z. On March 2, 2021, Plaintiff Parker and former plaintiff Willard R. Schwinn filed a First Amended Verified Stockholder Derivative and Class Action Complaint (the “Amended Complaint”) adding Schwinn as a plaintiff and accounting for the dismissal of Defendants Christopher, Dubin, Pramaggiore, and Siegel. The Amended Complaint alleged the same causes of action as the Original Complaint and continued to seek both direct and derivative recoveries.

AA. On April 1, 2021, B. Riley, Vintage, Kahn, Avril, Young, and the Company answered the Amended Complaint, and Bartoli moved pursuant to Court of Chancery Rule 12(b)(6) to dismiss Counts I and II of the Amended Complaint against him on the grounds that it failed to state non-exculpated claims under the Company's certificate of incorporation exculpation provision pursuant to 8 *Del. C.* § 102(b)(7).

BB. On April 29, 2021, pursuant to a Stipulation and Order, former plaintiff Willard R. Schwinn was dismissed as a plaintiff in this Action.

CC. On May 24, 2021, pursuant to a Stipulation and Order, Defendant Bartoli was dismissed from this Action without prejudice.

DD. In July 2020, B. Riley served a demand for indemnification on the Company for all losses, claims, damages, liabilities, fees and expenses incurred by it in connection with this Action pursuant to, among other things, a Backstop Exchange Agreement between B&W and B. Riley, dated April 30, 2019 and an Amended and Restated Credit Agreement by and among B&W, Bank of America, N.A., and certain other lenders, including B. Riley and Vintage, dated May 14, 2020 (the "Credit Agreement").

EE. On January 25, 2022, Vintage served a demand for indemnification on the Company for all losses, claims, damages, liabilities, and

expenses incurred by it in connection with this Action pursuant to the Credit Agreement.

FF. Thereafter, B&W acknowledged the Company's indemnification obligations to B. Riley and Vintage.

GG. On January 31, 2022 the Court of Chancery issued its decision in *KZ Capital General Trading LLC v. Petrossov*, 2022 WL 293011 (Del. Ch. Jan. 31, 2022) which held that although dilution claims "absent more, are exclusively derivative . . . [dilution] claims may become direct . . . when a plaintiff also alleges that the transaction resulted in a change of control from a 'diversified group of public equity holders to a controlling interest,' *i.e.*, a *Revlon* claim." *Id.* at *6.

HH. Plaintiff continued to pursue both the direct and derivative theories of recovery asserted in the Complaint.

II. Subsequent to filing the Action, Plaintiff (through his counsel) engaged in extensive discovery concerning his claims ("Discovery"). In May 2020, Plaintiff served (1) Plaintiff's First Request For Production of Documents Directed To All Defendants (the "First RFP"), (2) Plaintiff's First Set of Interrogatories Directed to the Individual Defendants (the "First Interrogatories"); and (3) Plaintiff's Second Request For Production of Documents Directed to the Individual Defendants (the "Second RFP"). On August 14, 2020, Bartoli, Young, Avril, and Kahn served their responses and objections to the First RFP, First Interrogatories, and Second

RFP. On August 14, 2020, Vintage and B. Riley served their responses and objections to the First RFP. On August 17, 2020, Christopher, Dubin, Pramaggiore, and Siegel served their responses and objections to the First RFP. On August 19, 2020, the Company served its responses and objections to the First RFP.² Over the following several months, Defendants engaged in rolling document productions.

JJ. Plaintiff served subpoenas *duces tecum* on Alvarez & Marsal Holdings, LLC and Ducera Partners LLC in November 2020, and served subpoenas *duces tecum* on Kayne Anderson Capital Advisors, L.P., Steel Partners Holdings L.P., Blue Torch Capital, L.P., Guggenheim Partners, LLC, and Cerberus Capital Management, L.P in June 2021.

KK. Plaintiff obtained and reviewed over 230,900 pages of documents from the Company and the Defendants and over 98,300 pages of documents produced by third parties in response to subpoenas directed to them.

III. Settlement Efforts

LL. After substantial completion of document discovery, the parties began discussing the potential for mediation including with the assistance of Bob Meyer, Esq. of JAMS.

² Plaintiff also served Plaintiff's Second Set of Interrogatories on Young, Kahn, Avril, Vintage and B. Riley on June 23, 2021 (the "Second Interrogatories"). However, by agreement of the remaining parties to the Action, they were not required to respond to the Second Interrogatories.

MM. The parties engaged in extensive arms'-length settlement negotiations. On March 23, 2022, the parties engaged in a full-day mediation with Mr. Meyer. The parties did not reach a resolution, but negotiations continued through Mr. Meyer.

NN. On April 8, 2022, the parties conducted a second full-day mediation. The parties did not reach a resolution after the second day of mediation, but continued to work towards a resolution.

OO. On August 9, 2022, after numerous rounds of post-mediation offers and counter-offers, including supplemental mediation briefing on a number of issues, and with Mr. Meyer's assistance, the parties, as well as the former defendants who had been dismissed without prejudice, entered into a binding memorandum of understanding ("MOU") providing for the settlement of Plaintiff's claims against Defendants.

PP. On August 23, 2022, as part of confirmatory discovery under the MOU, Plaintiff conducted a half-day remote interview of Young.

QQ. On September 20, 2022, as part of confirmatory discovery under the MOU, Plaintiff conducted a half-day remote interview of Kahn.

RR. Defendants have denied, and continue to deny, that any of them has committed or threatened to commit any violations of law, breaches of duty, or other wrongdoing toward the Company or its stockholders (as defined herein), or

anyone else concerning any of the claims or requests for relief set forth in the Complaint or Amended Complaint. Defendants believe that the Complaint and Amended Complaint did not have merit when filed and do not have merit now. Defendants are entering into the Settlement solely because it will eliminate the distraction, burden, expense, risks, and potential delay of further litigation.

SS. Plaintiff believes that the Complaint and Amended Complaint had merit when filed and continue to have merit. In negotiating and evaluating the terms of this Settlement, Plaintiff and Plaintiff's Counsel considered, among other things: (i) the attendant risks of continued litigation and the uncertainty of the outcome of the Action; (ii) the probability of success on the merits; (iii) the inherent problems of proof associated with, and possible defenses to, the claims asserted in the Action; (iv) the challenges associated with establishing damages in the Action, and the quantum of such damages; (v) the benefits of an immediate and substantial cash recovery for the Company and the Class (as defined *infra*), and the corresponding desirability of permitting the Settlement to be consummated according to its terms; and (vi) the expense and length of continued proceedings necessary to prosecute the Action against Defendants through trial and appeals. Based upon their evaluation, Plaintiff and Plaintiff's Counsel have determined that the Settlement is fair, reasonable and adequate to Plaintiff, the Company, and the Class and that it confers substantial benefits upon the Company and the Class,

particularly when compared to the risk, delays, and uncertainties of continued litigation.

TT. The Company and its Board have determined that a settlement pursuant to the terms set forth in this Stipulation is fair and reasonable, and is advisable and in the best interests of the Company and its stockholders.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the adequacy of which is acknowledged and agreed to by the undersigned counsel on behalf of the Settling Parties, the Settling Parties agree as follows:

SETTLEMENT CONSIDERATION

1. In consideration for the full settlement and release of the Defendant Released Claims, and subject to the terms and conditions set forth herein, the total settlement consideration to resolve both derivative and direct claims is \$9,500,000 (the “Settlement Amount”) plus the governance reform described below.

(a) Derivative Claims.

(i) Cash payment. Defendants shall pay, or cause to be paid, \$4.75 million (the “Derivative Settlement Payment”) to, and for the benefit of, B&W, to resolve the derivative claims asserted by Plaintiff. No part of this payment shall be paid or indemnified by the Company.

(ii) Governance Reform. Within sixty (60) calendar days after the Effective Date, B&W shall create and/or otherwise empower a standing “Related Party Transactions Committee” that will consist of all of its independent directors and will be charged with the task of reviewing and approving (or determining not to approve) all proposed related party transactions consistent with the Company’s related party transaction policy. The Settling Parties agree that this governance reform was solely caused as a result of Plaintiff’s prosecution of the Action, and provides material benefits to B&W and its stockholders and forms part of the consideration for the mutual releases and other provisions of the Settlement.

(b) Direct Claims.

(i) Cash Payment. A payment of \$4.75 million (the “Class Settlement Payment”) shall be paid by B&W, on account of its indemnification obligations to B. Riley and Vintage, to resolve the direct claims asserted by the Plaintiff.

2. Settlement Payment. The Derivative Settlement Payment and the Class Settlement Payment (collectively, “Settlement Amount”) shall be deposited into an escrow account (the “Account”) within twenty (20) calendar days of the Effective Date (the “Funding Date”). Plaintiff’s Counsel shall serve as the escrow agent. The Account is to be maintained by a settlement administrator chosen by Plaintiff’s Counsel (the “Settlement Administrator”). The Settlement Amount held in the

Account shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds shall be distributed or returned pursuant to the terms of this Stipulation and/or further order of the Court. The funds deposited into the Account shall be invested in instruments backed by the full faith and credit of the United States Government or an agency thereof, or if the yield on such instruments is negative, in an account fully insured by the United States Government or an agency thereof. The funds in the Account (consisting of the Settlement Amount plus any interest or other income or investment return earned thereon) shall constitute the “Settlement Fund.”

3. “All-in” Payment. It is expressly agreed and understood that the Settlement Amount is an “all-in” payment and that neither the Defendants nor their insurers shall be required to make any further payments to Plaintiff, the Company, or the Class, or contributions to the Settlement Fund with respect to the Settlement. It is the intent of the Settling Parties that all Administrative Costs (as defined herein), any applicable taxes incurred in connection with the Settlement Fund and any potential award of attorneys’ fees and expenses to Plaintiff or Plaintiff’s Counsel, any potential incentive award to Plaintiff shall be paid from the Settlement Fund, and that neither Defendants nor their insurers shall have any financial obligation with respect to the Settlement beyond the amount of the Settlement Amount.

4. The Company shall pay any and all costs and expenses related to providing the Notice (as defined herein) regardless of whether the Court declines to approve the Settlement or the Effective Date otherwise fails to occur. In no event shall Plaintiff, any other B&W stockholder, Defendants (other than the Company), any insurer, or any of their attorneys (including Plaintiff's Counsel) be responsible for any notice costs.

ADMINISTRATION OF THE SETTLEMENT FUND

5. The Settlement Fund shall be used to pay reasonable and necessary costs and expenses associated with administering the Settlement Fund and distributing the Settlement Fund in accordance with the terms of the Settlement and in accordance with the procedures set forth in this Stipulation, including fees and expenses of the Settlement Administrator (such fees and expenses, the "Administrative Costs"). For the avoidance of doubt, Administrative Costs do not include any costs and expenses related to providing the Notice.

6. In addition to the Administrative Costs, the Settlement Fund shall also be used by Plaintiff's Counsel or its designees to pay: (i) any award by the Court of attorneys' fees and expenses to Plaintiff's Counsel pursuant to Paragraph 36 of this Stipulation, (ii) any incentive award granted by the Court to Plaintiff, and (iii) any taxes owed with respect to the Account. In no event shall the Company or any of the Defendants or their insurers bear any liability for paying such taxes.

7. The Settling Parties agree that the Settlement Fund is intended to be a “qualified settlement fund” within the meaning of Treasury Regulation § 1.468B-1, and the Settlement Administrator, as administrator of the Account within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be responsible for filing tax returns for the Account (including, without limitation, the tax returns described in Treas. Reg. § 1.468B-2(k), and to the extent applicable, Treas. Reg. § 1.468B-2(l)).

8. Within twenty (20) business days after the Execution Date or as soon as reasonably practicable thereafter: (a) the Company shall provide to the Settlement Administrator (i) a list or report of the holders of record of B&W common stock registered with Computershare (the Company’s transfer agent) as of July 22, 2019 (such date the “Class Distribution Record Date”), which list or report shall contain each such holder’s name, address, and the number of B&W shares owned, as well as any other information requested by the Settlement Administrator to identify Class Members to the extent such other information is reasonably available to the Company; (ii) a list or report of the holders of record of B&W common stock registered with Computershare on each day of the time period April 3, 2019 through July 22, 2019, which identifies each such record holder by name and address; and (iii) a list or report of the holders of record of B&W common stock registered with Computershare as of the Execution Date, which identifies each

such record holder by name and address; and (b) each Defendant shall provide to the Company and to the Settlement Administrator reasonably available information identifying, as of the Class Distribution Record Date, accounts and number of B&W shares held solely on behalf of, or for the benefit of, such Defendant, and/or any of his, her, or its respective affiliated Excluded Holders, as well as any other information, to the extent reasonably available or accessible to each such Defendant, requested by the Settlement Administrator to identify shares held solely on behalf of, or for the benefit of, each such Defendant and/or any of his, her, or its respective affiliated Excluded Holders. The Company agrees to provide to the Defendants any information reasonably available to the Company requested by the Defendants as described in subpart (b) of the first sentence of this Paragraph 8. In addition, the Company agrees to authorize Depository Trust Company (“DTC”) to provide the Settlement Administrator with two Security Position Reports (“SPR”), which will show the closing position for each DTC participant having B&W common stock credited to its DTC account on (i) July 22, 2019; and (ii) the Execution Date. The information described in the first sentence of this Paragraph 8 shall be provided in an electronic form suitable to the Settlement Administrator, to the extent such information is reasonably available to the Company and each such Defendant in electronic form, to be used solely for the purpose of providing notice to Class Members and administering and distributing the Settlement Fund. In addition to the

specifically enumerated foregoing obligations, the Settling Parties shall cooperate with Plaintiff's Counsel and the Settlement Administrator in order to ensure that no portion of the Net Settlement Amount is distributed to any Excluded Holder (as defined herein). All lists, reports, and information provided by the Company or any Defendant pursuant to this Paragraph 8 shall be subject to the terms of the Stipulation and Order Governing the Production and Exchange of Confidential and Highly Confidential Information entered by the Court on January 21, 2021.

DISTRIBUTION OF THE SETTLEMENT FUND

9. The "Net Settlement Amount" shall be the Settlement Fund minus: (i) Administrative Costs; (ii) the amount of any award by the Court of attorneys' fees and expenses to Plaintiff's Counsel pursuant to Paragraph 36 of this Stipulation; (iii) any incentive award to Plaintiff; and (iv) any taxes owed with respect to the Account. Fifty percent (50%) of the Net Settlement Amount shall constitute the "Class Amount" (representing the Net Settlement Amount net of the Company Amount), and fifty percent (50%) of the Net Settlement Amount shall constitute the "Company Amount" (representing the Net Settlement Amount net of the Class Amount).

10. The Settlement Administrator shall pay the Company Amount to the Company within ten (10) calendar days (i) after the Funding Date or (ii) after all conditions of Paragraph 13 have been satisfied, whichever occurs later. The

Company will provide W-9s and any other information and instructions for payment by check or wire transfer to the Settlement Administrator.

11. Plan of Allocation for the Class Amount. The Plan of Allocation for the Class Amount is as follows:

(a) “Authorized Claimants” means all Class Members who beneficially held shares as of the Class Distribution Record Date.

(b) The Settlement Administrator shall pay the Class Amount to the Authorized Claimants³ within thirty (30) calendar days after (i) the Funding Date or (ii) after all conditions of Paragraph 13 have been satisfied, whichever occurs later.

The Settlement Administrator shall distribute the Class Amount to the Authorized Claimants in the following manner and subject to the following conditions: (i) Each Authorized Claimant shall receive a distribution from the Class Amount equal to the product of the Class Amount and a fraction, the numerator of which is the number of shares of B&W common stock held by such Authorized Claimant as of the Class Distribution Record Date, and the denominator of which is the total number of shares of B&W common stock held by all Authorized Claimants as of the Class Distribution Record Date (the “Class Payment”); (ii) with respect to Authorized Claimants whose B&W common stock is held of record by Cede & Co. (“Cede”),

³ For the avoidance of doubt, Class Members who are not Authorized Claimants shall receive no distribution.

as nominee for DTC, the Class Payment will be paid to the DTC participants (*e.g.*, brokerage firms) identified on the SPR (“DTC Participants”) and it shall be the responsibility of each such DTC Participant to distribute to any beneficial owners who are Authorized Claimants and whose shares of B&W common stock were held of record by Cede through such DTC Participant as of the Class Distribution Record Date the amount such Authorized Claimant is entitled to receive pursuant to this Paragraph 11; (iii) with respect to Authorized Claimants whose B&W common stock is not held of record by Cede, as nominee for DTC, (A) the Class Payment shall be paid directly to the record holder of such shares as of the Class Distribution Record Date, and (B) it shall be the responsibility of each such record holder to distribute to any beneficial holders who are Authorized Claimants and whose shares of B&W common stock were held of record by such record holder as of the Class Distribution Record Date the amount such beneficial holder is entitled to receive pursuant to this Paragraph 11.

(c) The Defendants hereby relinquish any right to receive, and each of them acknowledges that any and all of the Excluded Holders (defined in Paragraph 16 herein) affiliated with him, her, or it, respectively, shall have no right to receive, any part of the Class Amount, or any additional amount based on any claim relating to the fact that the Class Amount is being received by any other

stockholder(s) of B&W, in each case under any theory, including but not limited to contract, application of statutory or judicial law, or equity.

(d) Any failure by the Court to approve this Plan of Allocation of the Class Amount among Class Members shall not affect the validity of the Settlement, affect or delay the enforceability of the Settlement, or provide any of the Settling Parties with the right to terminate the Settlement.

12. All proceedings with respect to the administration, processing, and determination of claims and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of claims, shall be subject to the jurisdiction of the Court.

13. The Class Amount shall be distributed to Authorized Claimants, and the Company Amount shall be paid to the Company, only after Final Court Approval (as defined herein) and after: (i) all matters with respect to costs and disbursements have been resolved by the Court, and all appeals therefrom have been resolved or the time therefor has expired; and (ii) the amount of (A) any award by the Court of attorneys' fees and expenses to Plaintiff's Counsel pursuant to Paragraph 36 of this Stipulation, (B) any incentive award to Plaintiff, and (C) any taxes owed with respect to the Account, have, in each case, been paid or reserved.

14. If there is any balance in the Settlement Fund attributable to the Class Amount after six (6) months have passed following the date of the initial payment

of the Class Amount, such amounts, if feasible, shall be distributed in an equitable and economic fashion among the Authorized Claimants in the same manner as provided for in Paragraph 11. If such further distribution is not economical or feasible, Plaintiff's Counsel may distribute any balance which still remains in the Account, after provision for all anticipated expenses, in accordance with Delaware's unclaimed property law. Neither Defendants nor their insurers shall have any reversionary interest in the Account.

15. Other than as expressly provided herein, the Company, the Defendants, each of their respective insurers, and the Defendants' Released Parties (defined herein) shall have no involvement in, responsibility for, or liability relating to the administration of the Settlement Fund or the distribution of the Class Amount to the Authorized Claimants. In addition, other than as expressly provided herein, none of the Company, the Defendants, the Defendants' Released Parties, or their respective counsel or insurers shall have any responsibility or liability for the acts or omissions of Plaintiff's Counsel, any of their agents, or the Settlement Administrator in connection with the administration of the Settlement Fund, the distribution of the Class Amount to the Authorized Claimants, or otherwise. Other than as expressly provided herein, the Defendants, each of their respective insurers, and the Defendants' Released Parties shall have no involvement in, responsibility for, or liability relating to the payment of the Company Amount to the Company, nor shall

the Defendants, the Defendants' Released Parties, or their respective counsel or insurers have any responsibility or liability for the acts or omissions of Plaintiff's Counsel, any of their agents, or the Settlement Administrator in connection with the payment of the Company Amount to the Company. No Class Member shall have any claim against Plaintiff, the Company, any of the Defendants, any of the Defendants' Released Parties, or any of their respective counsel or insurers, based on the distributions made substantially in accordance with the Settlement and/or orders of the Court.

CERTIFICATION OF THE CLASS

16. Solely for purposes of the Settlement and for no other purpose, the Settling Parties agree to certification of a non-opt-out "Class" (to be composed of "Class Members"), pursuant to Court of Chancery Rules 23(a), 23(b)(1), and/or 23(b)(2), consisting of (i) all record and beneficial holders of B&W common stock at any time during the period April 3, 2019 through July 22, 2019, inclusive (the "Class Shares") and (ii) all persons or entities who acquired Class Shares after July 22, 2019, in each case in their capacities as holders of Class Shares, together with their heirs, assigns, transferees, and successors-in-interest, regardless of whether such persons or entities later sold or otherwise disposed of their shares. Excluded from the Class are Defendants, immediate family members of the Individual Defendants and affiliates of Vintage and B. Riley (the "Excluded Holders").

17. In the event that this Settlement is cancelled or terminated in accordance with the terms hereof, Defendants reserve the right to oppose certification.

RELEASE OF CLAIMS

18. Upon the Effective Date, Plaintiff, Defendants, the Company, any stockholder of the Company in his, her, or its capacity as a stockholder, any member of the Class in his, her, or its capacity as a stockholder or former stockholder, and all of their respective successors, successors-in-interest, predecessors, representatives, trustees, executors, administrators, heirs, assigns or transferees, immediate and remote, and any person or entity acting by or on behalf of, or claiming under, any of them, and each of them (collectively, the “Releasing Parties”), shall be deemed to have, and by operation of the Order and Final Judgment approving this Settlement shall have, completely discharged, dismissed with prejudice on the merits, released and settled, to the fullest extent permitted by law, the Released Claims (defined herein) against the Released Parties (defined herein) and shall be forever barred and enjoined from commencing, instituting, prosecuting, or continuing to prosecute any of the Released Claims (defined herein) against any of the Released Parties (defined herein).

19. “Plaintiff Released Claims” means all claims, demands, rights, liabilities, losses, obligations, duties, damages, costs, debts, expenses, interest,

penalties, sanctions, fees, attorneys' fees, actions, potential actions, causes of action, suits, agreements, judgments, decrees, matters, issues and controversies of any kind, nature, or description whatsoever, whether known or unknown, disclosed or undisclosed, accrued or unaccrued, apparent or not apparent, foreseen or unforeseen, matured or not matured, suspected or unsuspected, liquidated or not liquidated, fixed or contingent, including unknown claims, whether based on state, local, foreign, federal, statutory, regulatory, common, or other law or rule (including claims within the exclusive jurisdiction of the federal courts, such as, but not limited to, federal securities claims), that are, have been, could have been, could now be, or in the future could, can, or might be asserted in this Action, or in any other court, tribunal, or proceeding by Plaintiff, any other B&W stockholder, or any member of the Class (in their capacities as current or former B&W stockholders), whether individually, derivatively on behalf of B&W, or as a member of the Class directly (in their capacities as current or former B&W stockholders), or otherwise, or by B&W directly, against the Defendants (and, with respect to the direct claims only, as against B&W too) and all other current and former B&W officers, directors and employees and their insurers, attorneys, financial advisors, agents and other standard and customarily released related parties (the "Defendant Released Parties"), which are based upon, arise out of, relate in any way to, or involve, directly or indirectly, any of the actions, transactions, occurrences, statements, representations,

misrepresentations, omissions, allegations, facts, practices, events, claims or any other matters, things or causes whatsoever, or any series thereof, that arise out of or relate in any way to this litigation, and the matters raised in the Complaint and Amended Complaint, the 2019 Transactions (including, without limitation, the 2019 Rights Offering, the debt exchange, backstop agreement, warrants, loans and attempts to syndicate such loans, share authorizations and issuances, reverse stock split, amendments and changes to the composition of the B&W board of directors and executive officers), compensation paid to or payments on account of services rendered by Kenneth Young to B&W, the Tranche A-1, A-2 and A-3 term loans, amendments to B&W's credit agreement, the hiring of advisors, the timing of any such transactions and the financial state of B&W at the time of the consideration and implementation of the 2019 Transactions (including any disclosures related thereto), except for (i) any claims relating to the enforcement of the Settlement and (ii) any claims between B&W and/or the Defendants and their respective insurers or any right to indemnification or advancement belonging to any present or former officer or director of B&W or to B. Riley or Vintage.

20. "Defendant Released Claims" means all claims, liabilities, sanctions, complaints, or other assertions of wrongdoing, known or unknown, arising out of or relating to this litigation through the date of the Settlement, including, without limitation, all actions taken by Plaintiff and Plaintiff's Counsel in connection with

the initiation, prosecution, litigation, or settlement of this Action through the date of the Settlement.

21. “Plaintiff’s Counsel” means Levi & Korsinsky, LLP and Ashby & Geddes, P.A., collectively or individually.

22. “Plaintiff Released Parties” means Plaintiff and Plaintiff’s Counsel, their past, present, or future family members, spouses, heirs, trusts, trustees, executors, estates, administrators, beneficiaries, distributees, foundations, agents, employees, fiduciaries, partners, partnerships, general or limited partners or partnerships, joint ventures, limited liability companies, corporations, affiliates, associated entities, predecessors, predecessors-in-interest, successors, successors-in-interest, assigns, financial or investment advisors, advisors, consultants, investment bankers, brokers, dealers, experts, lenders, commercial bankers, attorneys (including, but not limited to, Plaintiff’s Counsel), personal or legal representatives, accountants, insurers, co-insurers, reinsurers, and associates.

23. “Released Claims” means Defendant Released Claims and Plaintiff Released Claims, collectively or individually.

24. “Released Parties” means Defendant Released Parties and Plaintiff Released Parties, collectively or individually.

25. The contemplated releases given by the Releasing Parties in this Stipulation of Settlement extend to Released Claims that the Releasing Parties did

not know or suspect to exist at the time of the release, which if known, might have affected the decision to enter into this Stipulation or Settlement. With respect to the Released Claims, the Releasing Parties shall be deemed to have waived any and all provisions, rights, and benefits conferred by any law of the United States, any law of any state, or principle of common law which governs or limits a person's release of unknown claims to the fullest extent permitted by law, and to have relinquished, to the full extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

26. With respect to the Released Claims, the Releasing Parties shall also be deemed to have waived any and all provisions, rights, and benefits conferred by any law of any state of the United States or principle of common law, which is similar, comparable, or equivalent to California Civil Code Section 1542. The Settling Parties acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the Released Claims, but that it is their intention to fully, finally, and forever settle and release any and all Released Claims, known or unknown, suspected or unsuspected, which now exist or heretofore existed, from the beginning of time to the Effective Date,

without regard to the subsequent discovery or existence of such additional or different facts, to the fullest extent permitted by law.

27. The obligations incurred pursuant to the Stipulation shall be in full and final disposition of the Action and each of the Released Claims. It is the intention of the Settling Parties that the Settlement eliminate all further risk and liability relating to the Released Claims, and that the Settlement shall be a final and complete resolution of all disputes asserted or which could be or could have been asserted with respect to the Released Claims, including without limitation any claims for contribution in accordance with 10 *Del. C.* § 6304 and any similar laws or statutes.

28. Except as expressly provided herein, the contemplated releases are not intended to release and shall not be deemed to release any rights or obligations of the Settling Parties under the terms of this Stipulation.

CONDITIONS OF THE SETTLEMENT

29. This Stipulation shall be null and void and of no force and effect, unless otherwise agreed to by the Settling Parties hereto pursuant to the terms hereof, if (i) the Settlement is terminated pursuant to the terms of the Stipulation; or (ii) the Settlement does not obtain Final Court Approval (as defined herein). If any of the foregoing conditions arise and are not waived by each of the Settling Parties hereto in writing within ten (10) business days following the receipt of such ruling or event, this Stipulation shall not be deemed to prejudice in any way the respective positions

of any of the Settling Parties in the Action, and all Settling Parties shall be deemed to have reverted to their respective litigation status immediately prior to the execution of the Stipulation, and the Settling Parties shall proceed in all respects as if the Stipulation had not been executed and the related orders had not been entered, and in that event all of their respective claims and defenses as to any issue shall be preserved without prejudice in any way, and the Settlement Fund shall revert back proportionately to the contributor(s) of such funds within fifteen (15) calendar days of this Stipulation becoming null and void. In such event, and consistent with the applicable evidentiary rules, none of this Stipulation or the Stipulation's existence shall be admissible in evidence, nor shall any of the Stipulation or the Stipulation's existence be referred to for any purpose in the Action or in any other proceeding, except in connection with any claim for breach of this Stipulation or as otherwise specifically provided herein.

30. In the event that any final injunction, decision, order, judgment, determination or decree is entered or issued by any court or governmental entity prior to Final Court Approval (as defined herein) of the Stipulation and the Settlement embodied therein that would make consummation of the Settlement in accordance with the terms of this Stipulation unlawful or that would restrain, prevent, enjoin, or otherwise prohibit consummation of the Settlement, the Settling Parties hereto each reserve the right to withdraw from the Settlement. In addition,

in the event that any preliminary or temporary injunction, decision, order, determination, or decree (an “Interim Order”) is entered or issued by any court or governmental entity prior to Final Court Approval of the Stipulation and the Settlement that would restrain, prevent, enjoin, or otherwise prohibit consummation of the Settlement, then, notwithstanding anything herein to the contrary, the Settling Parties shall have no obligation to consummate the Settlement unless and until such Interim Order expires or is terminated or modified in a manner such that consummation of the Settlement in accordance with the terms of this Stipulation would no longer be restrained, prevented, enjoined, or otherwise prohibited.

SUBMISSION AND APPLICATION TO THE COURT

31. As soon as practicable upon execution of this Stipulation, Plaintiff’s Counsel shall submit the Stipulation together with its Exhibits to the Court, and the Settling Parties shall apply jointly for entry of an order (the “Scheduling Order”), substantially in the form attached hereto as Exhibit A, providing for, among other things: (i) the Action proceeding, for purposes of this Settlement only, as a non-opt-out class action on behalf of the Class; (ii) approval of the form and content of the proposed notice of the Settlement; and (iii) a date for the final settlement hearing (the “Settlement Hearing”). At the Settlement Hearing, the Settling Parties shall jointly request that the Order and Final Judgment be entered by the Court.

32. Upon the entry of the Order and Final Judgment, the Action shall be dismissed with prejudice on the merits and without costs (except as expressly provided herein).

NOTICE

33. The Settlement Administrator shall be responsible for providing notice of the Settlement to (i) all current record holders as of the Execution Date (“Current Stockholders”) and (ii) all record holders who held shares of B&W common stock at any time during the period from April 3, 2019 through and including July 22, 2019 in the form and manner directed by the Court (when approved by the Court, the “Notice”), substantially in the form attached hereto as Exhibit C. The Company shall further cooperate with the Settlement Administrator by providing information within the Company’s possession that is reasonably necessary to facilitate the Settlement Administrator’s dissemination of the Notice, including any information that would identify all record holders as described in subparts (i) and (ii) above.

FINAL COURT APPROVAL

34. The Settling Parties will present the Settlement to the Court for hearing and approval in accordance with the Scheduling Order, and will use their best efforts to obtain Final Court Approval of the Settlement and the dismissal of the Released Claims with prejudice. As used herein, “Final Court Approval” of the Settlement means that the Court has approved the Settlement in accordance with the Stipulation

and entered the Order and Final Judgment substantially in the form attached as Exhibit B hereto (or as substantially modified by the Court with the written consent of the Settling Parties), and such order is finally affirmed on appeal or is no longer subject to appeal, and the time for any petition for re-argument, appeal or review has expired. The first date by which Final Court Approval has been obtained shall be the “Effective Date.”

INTERIM INJUNCTION

35. Subject to an Order of the Court, until the earlier of the Effective Date or an order of the Court substantially denying or declining to approve the Settlement in accordance with the Stipulation, the Action will be stayed, and the Releasing Parties, or any individuals, will be barred and enjoined to the maximum extent permitted under law from commencing, prosecuting, instigating, or in any way participating in the commencement or prosecution of any action or proceeding asserting any of the Released Claims, either directly, representatively, derivatively or in any other capacity, against any of the Released Parties.

ATTORNEYS’ FEES AND EXPENSES

36. Plaintiff’s Counsel intends to petition the Court for an award of attorneys’ fees in an aggregate amount of up to \$2,375,000, plus an award of reasonable expenses incurred in connection with the Action not to exceed \$150,000 (the “Fee & Expense Award”). Plaintiff further intends to seek an incentive award

to be paid to Plaintiff to compensate him for his time, effort and expenditures in furtherance of this litigation, to be paid exclusively from the Fee & Expense Award (the “Incentive Award”).

(a) Defendants shall take no position as to Plaintiff’s petition for a Fee & Expense Award consistent with this Paragraph 36 and/or the request for an Incentive Award. Any Fee & Expense Award and any Incentive Award shall be determined by the Court. Subject to the terms and conditions of this Stipulation, and subject to final approval of the Settlement and any Fee & Expense Award and any Incentive Award by the Court, such Fee & Expense Award and/or Incentive Award shall be paid by the Settlement Administrator from the Settlement Fund to Plaintiff’s Counsel as provided herein within fifteen (15) calendar days after the Settlement Amount is deposited by Defendants and/or their insurer(s) into the Account, subject to Plaintiff’s Counsel’s joint and several obligation to refund any amounts by which the Fee & Expense Award and/or Incentive Award may be subsequently reduced upon appeal or by collateral attack.

(b) Any failure by the Court to approve a Fee & Expense Award or Incentive Award in any particular amount, or at all, shall not affect the validity of the Settlement, affect or delay the enforceability of the Settlement, or provide any of the Settling Parties with the right to terminate the Settlement.

(c) None of the Defendant Released Parties or their insurer(s) shall have an obligation to pay any Fee & Expense Award and/or Incentive Award awarded by the Court to Plaintiff's Counsel or Plaintiff, and, except for the Settlement Amount as provided in this Stipulation to be paid by or on behalf of the Defendants, none of the Defendant Released Parties or their insurer(s) shall bear any expenses, costs, damages, or fees alleged or incurred by Plaintiff, by any member of the Class, by any stockholder of B&W, or by any of their attorneys, experts, advisors, agents, or representatives in connection with the Released Claims or the Settlement; provided, however, that nothing herein shall be deemed to affect the availability of insurance coverage for the fees and expenses incurred by or on behalf of any Defendant or the Company in connection with the Released Claims or the Settlement.

(d) Neither a modification nor a reversal on appeal of the amount of fees, costs, and expenses awarded by the Court to Plaintiff's Counsel shall be deemed a material modification of the Settlement or this Stipulation.

(e) Without admitting any wrongdoing, the Defendants acknowledge that the filing and prosecution of the Action and discussions with Plaintiff's Counsel were the sole causes of the terms of the Settlement.

(f) Plaintiff's Counsel warrants that no portion of any award of fees or expenses shall be paid to Plaintiff or any Class Member, except as approved by

the Court. Plaintiff's Counsel shall be solely responsible for allocating any award of fees and expenses amongst Plaintiff's Counsel.

NOTICE TO THE PARTIES

37. If any Party is required to give notice to any other Party under this Stipulation, such notice shall be in writing and shall be deemed to have been duly given upon receipt of hand delivery or facsimile transmission with confirmation of receipt or by email. Notice shall be provided as follows:

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Richard D. Heins (#3000)
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HEYMAN ENERIO GATTUSO &
HIRZEL LLP
Samuel T. Hirzel (#4415)
300 Delaware Avenue, Suite 200
Wilmington, DE 19801

ENTIRE AGREEMENT

38. This Stipulation and the Exhibits constitute the entire agreement among the Settling Parties with respect to the subject matter hereof and supersede all written or oral communications, agreements or understandings that may have existed prior to the execution of this Stipulation. No representations, warranties or statements of any nature whatsoever, whether written or oral, have been made to or relied upon by any Party concerning this Stipulation or its Exhibits, other than the representations, warranties and covenants expressly set forth in such documents.

39. This Stipulation may be modified or amended only by a writing, signed by all the Settling Parties (or their duly authorized counsel), including in counterparts, that refers specifically to this Stipulation.

CONSTRUCTION

40. This Stipulation shall be construed in all respects as jointly drafted and shall not be construed, in any way, against any Party on the ground that the Party or its counsel drafted this Stipulation.

41. Headings have been inserted for convenience only and will not be used in determining the terms of this Stipulation.

GOVERNING LAW; CONTINUING JURISDICTION

42. This Stipulation and the Settlement contemplated herein shall be governed by and construed in accordance with the laws of the State of Delaware without regard to Delaware's principles governing choice of law. The Settling Parties irrevocably and unconditionally (i) consent to submit to the sole and exclusive jurisdiction of the Delaware Court of Chancery (or, if the Delaware Court of Chancery lacks jurisdiction, a court located in Delaware having jurisdiction) for any litigation arising out of or relating in any way to the Stipulation or the Settlement; (ii) agree that any dispute arising out of or relating in any way to the Stipulation or the Settlement shall not be litigated or otherwise pursued in any forum or venue other than any such court; (iii) waive any objection to the laying of venue of any such litigation in any such court; (iv) agree not to plead or claim in any such court that such litigation brought therein has been brought in any inconvenient forum; (v) expressly waive any right to demand a jury trial as to any such dispute; (vi) consent to personal jurisdiction in any such action (but in no other action) brought in any such court; and (vii) consent to service of process by registered mail upon such Party and/or such Party's agent.

SETTLEMENT NOT AN ADMISSION

43. The provisions contained in the Settlement or this Stipulation shall not be deemed a presumption, concession, or admission by any Settling Party of any

fault, liability, wrongdoing, or any infirmity or weakness of any claim or defense, as to any facts or claims (including the Released Claims) that have been or might be alleged or asserted in the Action, or any other action or proceeding that has been, will be, or could be brought, and shall not be interpreted, construed, deemed, invoked, offered, or received in evidence or otherwise used by any person in the Action, or in any other action or proceeding, whether civil, criminal, or administrative, for any purpose other than as permitted by applicable court rules and rules of evidence.

44. Each Settling Party denies any and all allegations that he, she, or it committed wrongdoing, that the Settling Party has any fault or liability, or that the Settling Party caused damage in the Action. This Stipulation is not a finding or evidence of the validity or invalidity of any claims or defenses in the Action or any wrongdoing by any of the Released Parties. Neither this Stipulation, nor any of the terms and provisions of this Stipulation, nor any of the negotiations or proceedings in connection therewith, nor any of the documents or statements referred to herein, nor the Settlement, nor the Settlement proceedings, nor any statements in connection therewith, (a) shall: (i) be argued to be, used, or construed as, offered, or received in evidence as, or otherwise constitute an admission, concession, presumption, proof, evidence, or a finding of any liability, fault, wrongdoing, injury, or damages, or of any wrongful conduct, acts, or omissions on the part of any of the Defendant

Released Parties, or of any infirmity of any defense, or of any damage to Plaintiff or to any other person, entity or stockholder; (ii) constitute a concession or evidence in any way that Plaintiff's claims suffered from any infirmity or lacked merit in any regard whatsoever; or (iii) otherwise be used to create or give rise to any inference or presumption against any of the Released Parties concerning any fact or any purported liability, fault, or wrongdoing of the Released Parties or any injury or damages to any person or entity; or (b) shall otherwise be admissible in any proceeding of any nature, for any purpose whatsoever; provided, however, that the Stipulation may be introduced in any proceeding, whether in the Court or otherwise, as may be necessary to argue and establish that the Stipulation has *res judicata*, collateral estoppel, or other issue or claim preclusion effect or to otherwise consummate or enforce the Settlement or to secure any insurance rights or proceeds of any of the Defendant Released Parties as described herein.

BINDING EFFECT

45. This Stipulation shall be binding upon and inure to the benefit of the Settling Parties hereto and the Released Parties and their respective agents, executors, heirs, successors, and assigns, subject to Court approval.

NO THIRD-PARTY BENEFICIARIES

46. The terms and provisions of this Stipulation are intended solely for the benefit of the Parties, and their respective successors and permitted assigns, and it is

not the intention of the Parties to confer third-party beneficiary rights or remedies upon any other Person, except with respect to (a) any attorneys' fees and expenses to be paid to Plaintiff's Counsel pursuant to the terms of this Stipulation; and (b) the Released Parties who are not signatories hereto, and who shall be third-party beneficiaries under this Stipulation and entitled to enforce it in accordance with its terms.

COUNTERPARTS

47. This Stipulation (and any amendment thereto) may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed to be an original but all of which together shall constitute one and the same instrument.

AUTHORITY

48. The Settling Parties represent and agree that the terms of the Settlement were negotiated at arm's-length and in good faith by the Settling Parties, and reflect a settlement that was reached voluntarily based upon adequate information and sufficient discovery and after consultation with experienced legal counsel.

49. This Stipulation will be executed by counsel for each of the Settling Parties, each of whom represents and warrants that he or she has the authority from his or her respective client(s) to enter into this Stipulation and bind the client(s) hereto.

NON-ASSIGNMENT OF CLAIMS

50. Plaintiff represents that he acquired shares (the “Shares”) of B&W in December 2018 and held the Shares continuously from that date to the present and shall continue to hold such stock in B&W through the Effective Date.

NO WAIVER

51. Any failure by any Party to insist upon the strict performance by any other Party of any of the provisions of this Stipulation shall not be deemed a waiver of any of the provisions hereof, and such Party, notwithstanding such failure, shall have the right thereafter to insist on the strict performance of any and all of the provisions of this Stipulation to be performed by such other Party. No waiver, express or implied, by any Party of any breach or default in the performance by the other Party of its obligations under this Stipulation shall be deemed or construed to be a waiver of any other breach, whether prior, subsequent, or contemporaneous, under this Stipulation.

CONFIDENTIALITY

52. To the extent permitted by law, the terms of the Stipulation and Order Governing the Production and Exchange of Confidential and Highly Confidential Information so-ordered by the Court on January 21, 2021 and any amendments and joinders thereto, shall continue in full force and effect and all settlement communications shall be treated as confidential communications thereunder.

IN WITNESS WHEREOF, the undersigned Settling Parties, by and through their respective counsel, have executed this Stipulation effective as of the date set forth above.

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Dated: February 16, 2023