



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

PAUL CAPITAL ADVISORS, L.L.C., a )  
Delaware limited liability company, )  
PAUL CAPITAL PARTNERS VIII-A, )  
L.P., a Delaware limited partnership, )  
PAUL CAPITAL PARTNERS VIII-B, )  
L.P., a Delaware limited partnership, )  
PAUL CAPITAL PARTNERS VIII-C, )  
L.P., a Delaware limited partnership, )  
PAUL CAPITAL PARTNERS VIII )  
HOLDINGS, a California general )  
partnership, PAUL CAPITAL )  
PARTNERS IX, L.P., a Delaware limited )  
partnership, and PAUL CAPITAL TOWN )  
STREET PARTNERS, L.P., a Delaware )  
limited partnership, )

Plaintiffs, )

v. )

MURRAY T. HOLLAND and JAMES E. )  
TURVEY, as Trust Advisors of the LT-1 )  
to LT-9 Exchange Trusts, MHT )  
FINANCIAL LLC, and THE )  
BENEFICIENT COMPANY GROUP, )  
L.P., )

Defendants. )

**PUBLIC VERSION FILED:**  
March 4, 2022

C.A. No. 2022-0167-SG

**VERIFIED COMPLAINT**

Plaintiffs Paul Capital Advisors, L.L.C. (“PCA”), Paul Capital Partners VIII-A, L.P., Paul Capital Partners VIII-B, L.P., Paul Capital Partners VIII-C, L.P., Paul Capital Partners VIII Holdings, Paul Capital Partners IX, L.P., and Paul Capital Town Street Partners, L.P. (collectively, the “PCA Seller Funds” and, with PCA, the “PCA Parties”), by and through their attorneys, hereby allege upon knowledge as to themselves and their own acts, and upon information and belief as to all other matters, as follows:

### **NATURE OF THE COMPLAINT**

1. This case arises out of a set of transactions that were entered into in 2017 but have never been completed. As a result, PCA, a private equity firm, and the PCA Seller Funds, which are several of PCA’s affiliated private equity funds, have not received the full benefit of their bargain, and have been forced to file this action to enforce their legal rights and protect their interests.

2. Critically, the consideration still owed to the PCA Seller Funds from the transactions currently exists in the form of illiquid securities. These securities currently reside in trusts that are managed and controlled by Defendants Murray T. Holland and James E. Turvey, who are the Trust Advisors to the trusts. Under the parties’ agreements, Holland and Turvey, along with others, were supposed to monetize the securities in the trusts and then distribute resulting cash to the PCA Seller Funds. To date, they have not done so. Instead, for over three years, they

have put their own interests and the interests of other parties to the transactions ahead of the interests of the trusts, and thereby breached their fiduciary duties to the trusts and their intended beneficiaries, the PCA Seller Funds.

3. Worse, Holland and Turvey have become hopelessly conflicted, so much so that they cannot be expected to act in the best interests of the trusts and, in turn, the PCA Seller Funds. The securities in the trusts that are supposed to be monetized so that cash can be distributed to the PCA Seller Funds consist of GWG Holdings, Inc. (“GWGH”) “L-Bonds” in the principal amount of \$250 million, and thinly-traded GWGH common stock that was valued at \$150 million when it was contributed to the trusts (but is now worth less than \$60 million based on the current market price). Since the formation and funding of the trusts in 2017 and 2018, however, Holland has become the Chairman, President, and CEO of GWGH, which in turn has become the majority owner of The Beneficient Company Group, L.P. (“BEN”), where Turvey is an executive. Thus, Holland’s and Turvey’s fiduciary duties to the trusts are now at odds with their duties to GWGH and BEN.

4. Worse yet, from all public accounts, GWGH sits on the edge of bankruptcy, threatening to massively impair the value of the trusts’ sole assets. On January 15, 2022, GWGH failed make principal and interest payments on its outstanding bonds, including the bonds in the trusts. And, GWGH has recently hired financial and legal restructuring advisors to help it explore its liquidity and

restructuring options. On January 27, 2022, the Wall Street Journal reported that GWGH was seeking “rescue financing” in order to avoid a bankruptcy.

5. Under the indenture that governs GWGH’s bonds, GWGH had a 30-day grace period to make the interest and principal payments that were due on January 15, 2022. On February 14, 2022, however, GWGH announced that its ongoing review of liquidity and restructuring alternatives will take at least another three to four weeks, and that it will not make interest and maturity payments on the bonds while that review is pending. As a result, there has been an event of default under the bond indenture, and the indenture trustee or noteholders holding at least 25% of the outstanding principal amount of the L-Bonds may elect to accelerate the L-Bonds, making them immediately due and payable. And, if GWGH files for bankruptcy, under the bond indenture, that would automatically trigger an acceleration of the principal and interest due on the bonds.

6. Given GWGH’s severe financial distress, Holland and Turvey are hopelessly conflicted and can no longer serve as Trust Advisors to the trusts. As Trust Advisors, Holland and Turvey owe fiduciary duties to the trusts, and must act in the best interests of the trusts and their intended beneficiaries. Here, that means maximizing the value of the trust assets—the GWGH bonds and GWGH common stock—and monetizing those assets so that cash can be distributed to the PCA Seller Funds. As Chairman, President, and CEO of GWGH, however, Holland owes duties

to GWGH, its owners, and other stakeholders whose interests are, or may be, at odds with the interests of the trusts and the PCA Seller Funds. For example, it may be in the best interests of the trusts and the PCA Seller Funds to seek to accelerate the L-Bonds and/or seek a bankruptcy and a liquidation and distribution of GWGH's assets, including its ownership interests in BEN, and perhaps even to seek a bankruptcy trustee. But those courses of action may not be in the best interests of GWGH and its other stakeholders.

7. As an executive of BEN, Turvey is subject to similar conflicting interests. For example, GWGH owns a majority of the BEN's common equity interests and, under the bond indenture, GWGH has the ability to pay off the bonds in the trusts at maturity (or upon acceleration) with BEN common stock. That form of payout may be in the best interests of the trusts, but it may be at odds with the best interests of BEN, Turvey's employer. Similarly, BEN is expected to seek capital from sources other than GWGH and, in doing so, it may issue equity securities that will dilute GWGH's ownership interest. Doing so may be good for BEN, but it may not be good for the trusts, which hold GWGH common stock.

8. As a result of these events, instead of getting the cash to which they are entitled and for which they bargained, the PCA Seller Funds have been and remain, in effect, long-term creditors and shareholders of GWGH. But the PCA Seller Funds lack the ability to invoke, or even protect, their rights as GWGH creditors and

shareholders, since Holland and Turvey, as Trust Advisors, control the trusts that still hold the GWGH bonds and common stock.

9. Accordingly, by this lawsuit, the PCA Parties seek an order from the Court directing the removal of Holland and Turvey as Trust Advisors and their replacement with new Trust Advisors designated solely by the PCA Parties. These successor trust advisors will be free of conflicts and therefore, in the exercise of their fiduciary duties, be able to defend, protect, and liquidate the trust property for the benefit of the trusts and, in turn, the PCA Seller Funds, the intended beneficiaries of the trusts. Time is of the essence, and equity demands that this relief be granted.

### **PARTIES**

10. Plaintiff Paul Capital Advisors, L.L.C. operates as a private equity firm. It is a Delaware limited liability company with its principal place of business located in San Francisco, California.

11. Plaintiff Paul Capital Partners VIII-A, L.P. is a private equity fund. It is a Delaware limited partnership with its principal place of business located in San Francisco, California.

12. Plaintiff Paul Capital Partners VIII-B, L.P. is a private equity fund. It is a Delaware limited partnership with its principal place of business located in San Francisco, California.

13. Plaintiff Paul Capital Partners VIII-C, L.P. is a private equity fund. It is a Delaware limited partnership with its principal place of business located in San Francisco, California.

14. Plaintiff Paul Capital Partners IX, L.P. is a private equity fund. It is a Delaware limited partnership with its principal place of business located in San Francisco, California.

15. Plaintiff Paul Capital Partners VIII Holdings is an investment holding company owned by Paul Capital Partners VIII-A, L.P., Paul Capital Partners VIII-B, L.P., and Paul Capital Partners VIII-C, L.P. It is a California general partnership with its principal place of business located in San Francisco, California.

16. Plaintiff Paul Capital Town Street Partners, L.P. is a private equity fund. It is a Delaware limited partnership with its principal place of business located in San Francisco, California.

17. Defendant Murray T. Holland is a Trust Advisor to the LT-1 to LT-9 Exchange Trusts described herein and, on information and belief, a resident of Texas. Holland is also the Chairman, President, and CEO of GWGH, and he is a principal and owner of MHT.

18. Defendant James E. Turvey is a Trust Advisor to the LT-1 to LT-9 Exchange Trusts described herein and, on information and belief, a resident of Texas. Turvey is also a senior executive of BEN.

19. Defendant MHT Financial, L.L.C. (“MHT”) is an affiliate of MHT Partners, an investment bank. MHT is a Delaware limited liability company with its principal place of business located in Dallas, Texas.

20. Defendant The Beneficient Company Group, L.P. (“BEN”) is a holding company of capital and financial services companies. It is a Delaware limited partnership with its principal place of business located in Dallas, Texas.

### **JURISDICTION**

21. This Court has subject matter jurisdiction under 8 *Del. C.* § 111(a) and 10 *Del. C.* § 341, which provide this Court with jurisdiction “to hear and determine all matters and causes in equity.”

22. This Court has personal jurisdiction over Defendants Holland and Turvey pursuant to 12 *Del. C.* § 3313(g) and based on the “Exchange Trust Agreements,” described herein, that established the PCA Seller Fund Exchange Trusts, described herein, as well as the express terms of an “undertakings letter” that the Trust Advisors executed in favor of the PCA Parties on January 10, 2018. Holland has been a Trust Advisor of the PCA Seller Fund Exchange Trusts since their creation. On information and belief, Turvey became the other Trust Advisor in or around mid-2019.

23. The Exchange Trust Agreements, described herein, created Delaware common law trusts. The Exchange Trust Agreements provide that Delaware law



shall govern all disputes at issue. Specifically, the Exchange Trust Agreements “shall be governed by and construed in accordance with the laws of the State of Delaware, without reference to its conflict of law provisions, and the obligations, rights and remedies of the parties hereunder shall be determined in accordance with such laws.”

24. A court of competent jurisdiction is entitled to hear disputes under the Exchange Trust Agreements. In the aforementioned undertakings letter, the Trust Advisors acknowledged that Delaware courts have jurisdiction over them with respect to matters arising out of or relating to their role as Trust Advisors:

In furtherance thereof, each of us consents to the non-exclusive jurisdiction of the state and federal courts located in the State of Delaware (and the appellate courts thereof) in any action or proceeding against either of us arising out of or relating to this letter agreement and we agree that any such claims may be heard and determined in any such court.

25. Further, the undertakings letter referenced above and described herein states that the undertakings set forth in the letter “shall be governed by and construed in accordance with the laws of the State of Delaware without regard to conflict of laws principles.”

### **FACTUAL BACKGROUND**

#### **Paul Capital Advisors**

26. PCA is a private investment firm. Founded in 1991, PCA raised capital from investors, pooled that capital into successive private equity (“PE”) funds, and

then invested the funds' capital with the goal of making a positive return on the investments. PCA's funds invested primarily in limited partnership ("LP") interests of other PE funds sponsored by other PE firms. Such interests are often referred to as "secondary market" PE interests or just "secondaries." Generally, LP interests in PE funds are illiquid and cannot easily be monetized into cash. PCA's strategy was to offer liquidity to institutional holders of illiquid PE interests who needed or wanted cash for their PE fund LP interests and were willing to sell at a discount (and to forego any future upside on the investments) in order to get it.

27. By 2017, PCA had decided to exit the PE business and to sell the secondaries (the "PCA Fund Secondaries") held by certain of its remaining active PE funds (the "PCA Seller Funds"). These PCA Fund Secondaries had a net asset value, or "NAV," of approximately \$500 million. PCA's plan was to sell the PCA Fund Secondaries for cash. PCA would then distribute that cash to the PCA Seller Funds' LPs before closing down the PCA Seller Funds.

#### **The Beneficient Company Group, L.P.**

28. PCA found a buyer for the PCA Fund Secondaries in BEN.

29. BEN was founded in Dallas in 2013 by Brad Heppner, its chairman and CEO, but its business plan was still only a concept in 2017. Heppner's plan was for BEN to invest in secondaries, but to do so as a non-depository bank rather than as a PE firm.

30. To attract investors and ultimately, to obtain a non-depository bank charter, BEN needed to demonstrate, among other things, that it had substantial assets under management and a strong track record. For these reasons, BEN was interested in purchasing the PCA Fund Secondaries from the PCA Seller Funds. By acquiring the PCA Fund Secondaries (and, potentially, other secondaries from other PE funds) in one large transaction, BEN could achieve immediate scale—\$500 million in assets under management as measured by NAV—and begin building a track record.

31. There were hurdles to reaching a deal, however. PCA wanted cash for the PCA Fund Secondaries so that it could distribute that cash to the PCA Seller Funds' investors, close the Funds, and then exit the PE business. PCA did *not* want to be a long-term, let alone permanent, creditor of, or source of capital funding for, BEN. The problem was that BEN did not have \$500 million in available cash to buy the PCA Fund Secondaries.

### **MHT Financial LLC**

32. At Heppner's suggestion, PCA and BEN ultimately agreed to complete a series of transactions with the assistance of MHT, an affiliate of a Dallas-based middle-market investment bank led by Holland, who was a business acquaintance and friend of Heppner's. The parties agreed that MHT would serve as a middleman in a set of transactions designed to provide BEN with the PCA Fund Secondaries

and the PCA Seller Funds with cash they could distribute to their investors before closing down.

### **The Transactions**

33. Pursuant to this plan, the PCA Parties, BEN, and MHT entered into the following set of transactions (the “Transactions”) as of September 1, 2017:

34. The PCA Seller Funds transferred to MHT the economic rights associated with the PCA Fund Secondaries. (Certain other third-party seller funds (the “Co-Participants”) also transferred their own additional secondaries to MHT in connection with the Transactions.)

35. MHT contributed the rights associated with the PCA Fund Secondaries to nine newly formed Delaware exchange trusts (the “PCA Seller Fund Exchange Trusts”), for which Holland was one of two “Trust Advisors.” (MHT also contributed the Co-Participants’ secondaries to other, separate exchange trusts.) Jeffrey Hinkle, then a BEN executive, was the other Trust Advisor. Turvey has since replaced Hinkle as the second Trust Advisor.

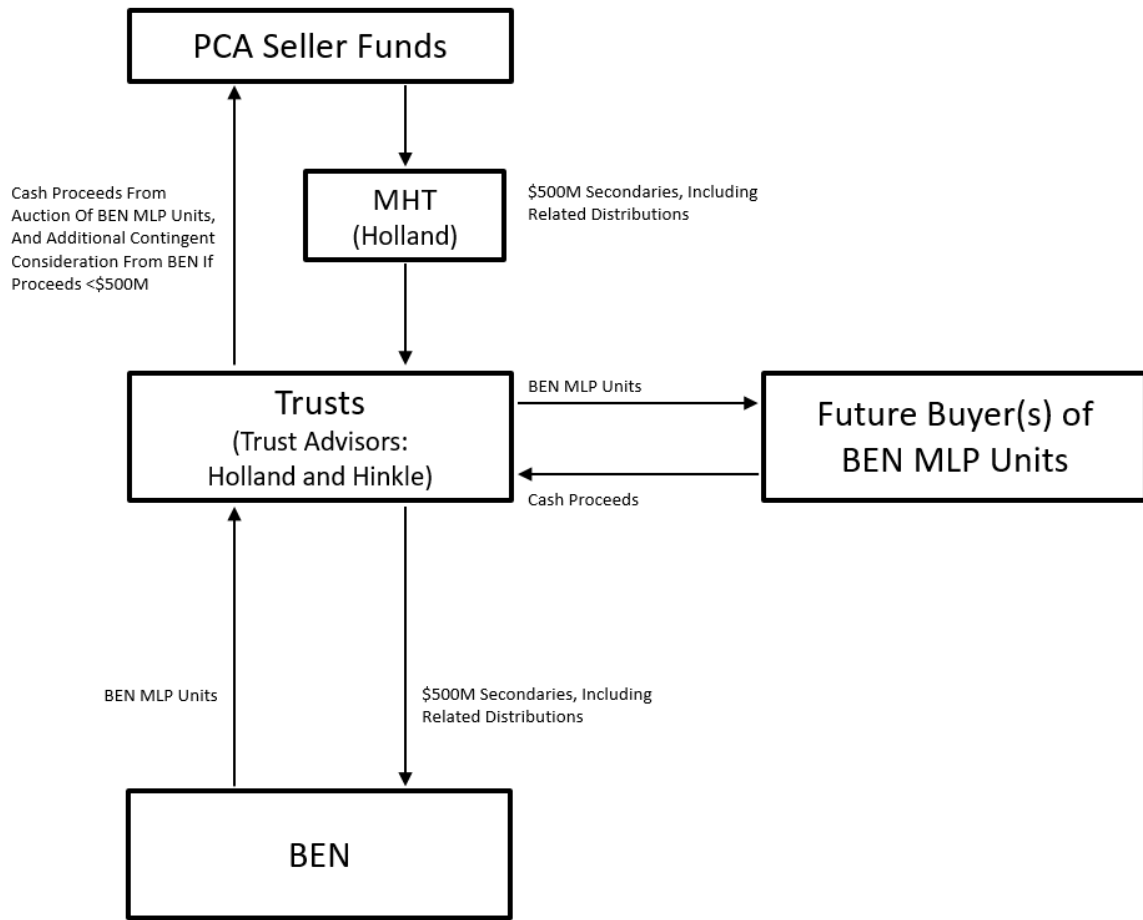
36. At the direction of the Trust Advisors, the PCA Seller Fund Exchange Trusts exchanged the rights associated with the PCA Fund Secondaries for common equity units of BEN (the “BEN MLP Units”) that BEN committed to list on a U.S. exchange. (The Co-Participants’ seller exchange trusts also exchanged the rights to their secondaries for BEN MLP Units.)

37. MHT and BEN, with the assistance of Credit Suisse, a major investment bank, agreed to conduct a “prelisting auction” of the BEN LP Units (the “Auction”), with the intention of selling them to one or more buyers in exchange for cash.

38. MHT and BEN agreed that, upon the completion and closing of the Auction, (1) MHT would pay up to \$550 million in net Auction proceeds to the PCA Seller Funds, and (2) BEN would pay additional contingent consideration to the PCA Seller Funds—what the parties referred to as “contingent value rights” or “CVRs”—if the Auction failed to generate net cash proceeds of at least \$500 million. (Similarly, MHT and BEN agreed that, upon completion of the Auction, MHT would pay appropriate Auction consideration and, if necessary, contingent consideration to the Co-Participants.)

39. The Transactions agreed to in September 2017 can be summarized as follows:

The Transactions as of September 2017



**The Transaction Documents**

40. PCA, BEN, and MHT completed, or agreed to complete, these Transactions pursuant to the following set of agreements dated as of September 1, 2017.

### *The Transaction Agreement*

41. The overall set of Transactions was agreed to and summarized in a September 1, 2017 Transaction Agreement (the “Transaction Agreement”) between PCA and the PCA Seller Funds,<sup>1</sup> BEN and several BEN affiliates,<sup>2</sup> and MHT.

42. For example, in Section 5.5.1 of the Transaction Agreement, MHT and BEN agreed to conduct the Auction of the BEN MLP Units for the benefit of the PCA Seller Funds, and to take “any reasonable actions necessary” to complete the Auction by April 30, 2018.

43. Similarly, in Section 5.2 of the Transaction Agreement, MHT and BEN promised to “use commercially reasonable efforts” and to cooperate with each other “to do, or cause to be done, all things necessary, proper or advisable, consistent with applicable law to consummate and make effective the transactions contemplated by this Agreement . . . .”

---

<sup>1</sup> The PCA-managed seller funds that signed the Transaction Agreement on September 1, 2017 were Paul Capital Partners VIII-A, L.P., Paul Capital Partners VIII-B, L.P., Paul Capital Partners VIII-C, L.P., Paul Capital Partners VIII Holdings, and Paul Capital Partners IX, L.P. On December 21, 2017, the parties added Paul Capital Town Street Partners, L.P. as an additional PCA-managed seller fund pursuant to an addendum to the Transaction Agreement.

<sup>2</sup> The BEN affiliates were Highland Consolidated Business Holdings GP, L.L.C. (“BEN GP”), Beneficient Management, L.L.C. (“Successor BEN GP”), BCH, Highland Consolidated, L.P. (“HCLP”), Highland Real Assets, L.L.C. (“Highland”), Beneficient Holdings, Inc. (“Holdings”), and Beneficient Management Counselors, L.L.C. (“Counselors”).

### *The Purchase and Sale Agreement*

44. As noted above, in connection with the Transactions, the PCA Seller Funds transferred to MHT the economic rights associated with the PCA Fund Secondaries with an aggregate NAV of approximately \$500 million.

45. The PCA Seller Funds did so pursuant to a September 1, 2017 Purchase and Sale Agreement (“PSA”) between and among PCA, the PCA Seller Funds, and MHT, as well as a September 1, 2017 Economic Direction Agreement (“EDA”) between and among PCA, the PCA Seller Funds, the PCA Seller Fund Exchange Trusts, MHT, and BEN.

46. In Section 2 of the PSA, PCA and the PCA Seller Funds agreed to sell the PCA Fund Secondaries to MHT in exchange for the right to receive up to \$550 million of the net cash proceeds generated by MHT’s and BEN’s Auction of the BEN MLP Units.

47. In Section 5(a) of the PSA, MHT agreed to commence the Auction of the BEN LP Units within 60 days, and to use “good faith efforts” to complete the Auction by April 30, 2018.

48. In Section 5(d) of the PSA, MHT agreed to use its “best commercial efforts” to complete the Auction for net cash proceeds of at least \$500 million, and to invoke and enforce the PCA Seller Funds’ “contingent value rights” (CVRs) if the Auction failed to generate net cash proceeds of \$500 million.



### *The Economic Direction Agreement*

49. As noted above, in the PSA, the PCA Seller Funds agreed ultimately to transfer the PCA Fund Secondaries themselves to MHT. To do that, the PCA Seller Funds required the consent of the underlying PE funds that had issued the PCA Fund Secondaries. The parties knew that it would take time for PCA to obtain those consents. Accordingly, PCA, the PCA Seller Funds, the PCA Seller Fund Exchange Trusts, MHT, and BEN, among others, entered into the EDA to make clear who had the right to the dividends, distributions, or other payments or proceeds generated by the PCA Fund Secondaries pending their actual transfer to MHT, the PCA Seller Fund Exchange Trusts and, ultimately, BEN. In a nutshell, the EDA gave those rights to MHT and, in turn, BEN.

### *The Exchange Trust Agreements*

50. As noted above, as part of the Transactions, once it received them from the PCA Seller Funds pursuant to the PSA, MHT contributed the rights associated with the PCA Fund Secondaries to the PCA Seller Fund Exchange Trusts.

51. MHT established the PCA Seller Fund Exchange Trusts pursuant to a series of “Exchange Trust Agreements” dated as of September 1, 2017, wherein MHT was the Settlor, the Delaware Trust Company functioned as a purely administrative trustee, and Defendant Holland and Jeffrey S. Hinkle, who was then

a BEN executive, were designated as the “Trust Advisors.” Defendant Turvey, another BEN executive, later replaced Hinkle as a Trust Advisor.

52. Under the Exchange Trust Agreements, the Trust Advisors possess the authority and responsibility to manage and direct the activities of the PCA Seller Fund Exchange Trusts.

53. In doing so, the Trust Advisors owe fiduciary duties to the PCA Seller Fund Exchange Trusts and their respective beneficiaries. Under Title 12, Section 3313 of the Delaware Code, trust advisors owe fiduciary duties to their trust and its beneficiaries unless the trust agreement specifically provides otherwise. The Exchange Trust Agreements do not include a provision setting aside fiduciary duties. Accordingly, Defendants Holland and Turvey, as Trust Advisors, owe fiduciary duties to both the PCA Seller Fund Exchange Trusts and, as the intended beneficiaries, the PCA Seller Funds themselves.

54. Once established, MHT contributed to the PCA Seller Fund Exchange Trusts the rights to the PCA Fund Secondaries that it purchased from the PCA Seller Funds. The economic rights associated with the PCA Fund Secondaries were then exchanged for the BEN MLP Units that MHT and BEN had agreed to sell for cash in the Auction.

55. Notably, under the Exchange Trust Agreements, the Trust Advisors and the PCA Seller Fund Exchange Trusts themselves were required to “take all steps

necessary and advisable to commence and consummate the Auction [of the BEN MLP Units] as contemplated by the Transaction Agreement.”

*The MHT-BEN Letter Agreement*

56. As noted above, as part of the Transactions, upon receipt, the PCA Seller Fund Exchange Trusts exchanged the rights to the PCA Fund Secondaries (after receiving them from MHT, which had received them from the PCA Seller Funds) for the BEN MLP Units, which BEN promised to list for public trading on a U.S. exchange.

57. On information and belief, the PCA Seller Fund Exchange Trusts, acting at the direction of the Trust Advisors, accomplished this exchange pursuant to a September 1, 2017 letter agreement between and among the PCA Seller Fund Exchange Trusts, MHT, and BEN (the “MHT-BEN Letter Agreement”).

58. As a result of this exchange, BEN held the economic rights associated with the PCA Fund Secondaries (pending the actual transfers of the PCA Fund Secondaries themselves), while the PCA Seller Fund Exchange Trusts held the BEN MLP Units that BEN had committed to list on a U.S. exchange, and that MHT and BEN had agreed to sell for cash in the Auction.

*The CVR Contract*

59. As noted above, the parties agreed that, pursuant to the Transactions and following the completion of the Auction of the BEN MLP Units held by the

PCA Seller Fund Exchange Trusts, (1) MHT would pay up to \$550 million in net Auction proceeds to the PCA Seller Funds (and keep any Auction proceeds in excess of \$550 million, giving it potential upside in connection with the Transactions); and (2) BEN would pay additional contingent consideration to the PCA Seller Funds—what the parties referred to as “contingent value rights” or “CVRs”—if the Auction failed to generate net cash proceeds of at least \$500 million.

60. Thus, in Section 5(d) of the PSA, MHT agreed to use its “best commercial efforts” to complete the Auction for net cash proceeds of at least \$550 million, and to invoke and enforce the PCA Seller Funds’ CVRs if the Auction failed to generate net cash proceeds of at least \$500 million.

61. Those CVRs in favor of the PCA Seller Funds were embodied in a September 1, 2017 “CVR Contract” executed by MHT and BEN for the express benefit of the PCA Seller Funds. Indeed, Section 4.9 of the CVR Contract states that the PCA Seller Fund Exchange Trusts are “an intended third party beneficiary of this Agreement.”

62. The purpose of the CVR Contract was, and is, to protect the PCA Seller Funds if the Auction of the BEN MLP Units failed to occur or to generate at least \$500 million in net cash proceeds. In either event, BEN would be required to make up any shortfall in the consideration by contributing additional BEN MLP Units and/or cash to the PCA Seller Fund Exchange Trusts. In addition, in certain

circumstances, BEN would be subject to reporting requirements and operating restrictions until any shortfall in the auction proceeds was eliminated.

63. Defendant Holland signed the CVR Contract on behalf of MHT, which, under the PSA, has a duty to enforce the CVR Contract if the net cash proceeds of the Auction fall short of \$500 million. Holland is also a Trust Advisor to the PCA Seller Fund Exchange Trusts, which are the express beneficiaries of the CVR Contract. As a Trust Advisor, it is likewise Holland's responsibility to protect the interests of the PCA Seller Fund Exchange Trusts and their beneficiaries in the event the Auction of the BEN MLP Units generated less than \$500 million in cash for the PCA Seller Funds. As the second Trust Advisor, Turvey has the same responsibilities.

#### **The Auction, And The Parties' Assurances That The PCA Seller Funds Would Receive Cash In The Near Term**

64. On December 23, 2017, Holland, on behalf of MHT, informed PCA that the Auction of the BEN MLP Units had generated a winning bid.

65. Although the winning bid was not an all-cash proposal, Holland represented to PCA that the bid would generate cash quickly pursuant to a "liquidity program" to be run by Credit Suisse.

66. In a December 23, 2017 email to PCA, Holland stated that "[y]ou will quickly notice that [the PCA Seller Funds] will be receiving \$110% of NAV [*i.e.*, \$550 million] on their assets [*i.e.*, the PCA Fund Secondaries], including 30% cash

on the close and another 50% during 2018 under the liquidity program run by Credit Suisse.”

67. Holland attached to his December 23, 2017 email to PCA a formal “Winning Bid Notice,” which MHT was required to provide under the PSA. The Winning Bid Notice included a Credit Suisse presentation (the “Credit Suisse Deck”) describing both the terms of the winning bid and the so-called “liquidity program” to which Holland referred in his December 23, 2017 email.

68. Finally, Holland represented in his December 23, 2017 email that “[w]e expect to move to a close [on] the Winning Bid under the time frame set forth in the [PSA],” which contemplated the completion of the auction on or before April 30, 2018.

69. MHT’s December 23, 2017 Winning Bid Notice stated that Credit Suisse, the “Auction Banker,” had solicited bids from several potential buyers of the BEN MLP Units, and that MHT had determined the “Winning Bid.”

70. The “Winning Bidder” was GWGH, which was then a Minneapolis-based financial services holding company whose common stock traded—thinly—on the NASDAQ exchange. (GWGH has since moved its headquarters to Dallas.)

71. The Credit Suisse Deck attached to the Winning Bid Notice called GWGH a “leader in the emerging secondary life insurance market” and described GWGH’s business model as follows: GWGH bought life insurance policies from

insureds who were 65 or older and whose life expectancies were less than 10 years. GWGH continued to pay the premiums on the life insurance policies until the insureds died and GWGH collected the death benefits. GWGH earned a net profit when the death benefits generated by the life insurance policies exceeded the costs incurred to purchase them and to pay the remaining premiums. As of December 2017, GWGH owned a portfolio of life insurance policies with an aggregate face value of \$1.62 billion.

72. According to MHT's Winning Bid Notice, the components of GWGH's Winning Bid were (1) an up-front cash payment of \$150 million; (2) GWGH "L-Bonds"—*i.e.*, GWGH-issued bonds secured by GWGH's assets, including its portfolio of life insurance policies—in the principal amount of \$250 million; and (3) GWGH common stock worth \$150 million. According to the Notice, the GWGH L-Bonds would pay 7.5% interest and would be redeemable for cash at the end of their five-year term.

73. Thus, Holland and MHT represented in the Winning Bid Notice that GWGH had committed to pay \$550 million in total consideration for the BEN MLP Units held by the PCA Seller Fund Exchange Trusts, which amounted to 110% of the \$500 million NAV of the PCA Fund Secondaries, the economic rights to which had already been promised to BEN pursuant to the MHT-BEN Letter Agreement.

74. Because MHT knew that the PCA Parties were interested in receiving cash, not securities, in exchange for the PCA Fund Secondaries, MHT's Winning Bid Notice emphasized that the GWGH securities in the GWGH Winning Bid would be quickly refinanced and/or sold in exchange for cash.

75. With respect to the L-Bonds, for example, MHT's Winning Bid Notice emphasized that "GWG[H] is *obligated* to seek to refinance its debt with a more favorable credit facility and/or institutional note within 12 months following issuance." (Emphasis added.)

76. Similarly, with respect to the GWGH common stock, MHT's Winning Bid Notice assured the PCA Parties that "[a] nationally recognized bank, such as Credit Suisse, *will be engaged* to sell the stock in an orderly manner through one or a series of transactions in 2018, delivering cash proceeds for distribution to the Sellers." (Emphasis added.)

77. The Credit Suisse Deck echoed and reinforced these representations made by MHT in the Winning Bid Notice. For example, the Credit Suisse Deck stated that GWGH had submitted a "*fully binding* and attractive bid to MHT" (emphasis added); that the bid was accompanied by a fully negotiated purchase agreement that either was, or would be, fully executed, depending on which slide one was looking at; that the GWGH purchase price for the BEN MLP Units was \$550 million, that is, 110% of the NAV of the PCA Seller Fund Secondaries, which



was “estimated to be \$500 million”; and that GWGH was expected to close on its purchase of the BEN MLP Units no later than April 30, 2018.

78. The Credit Suisse Deck referred to the \$250 million in GWGH L-Bonds as “near-term cash” and stated repeatedly that GWGH was obligated under the terms of its winning bid to refinance the L-Bonds within 12 months of the closing of its purchase of the BEN MLP Units.

79. Similarly, the Credit Suisse Deck represented repeatedly that, after receiving the GWGH common stock from GWGH, the PCA Seller Fund Exchange Trusts, acting at the direction of the Trust Advisors, would engage Credit Suisse to liquidate the stock for cash proceeds that would then be distributed by the Trusts to the PCA Seller Funds.

#### **The Counterparties’ Assurances That GWGH’s Winning Bid Would Generate Near-Term Cash For The PCA Seller Funds**

80. After receiving MHT’s Winning Bid Notice, PCA sent MHT and BEN a set of due diligence questions regarding GWGH’s winning bid. PCA made clear that it was interested in receiving cash, not GWGH securities, and it repeatedly sought assurances from both MHT and BEN that GWGH was obligated under the terms of its Winning Bid to promptly refinance or resell the GWGH L-Bonds, and to market and sell the GWGH common stock, for cash that the PCA Seller Fund Exchange Trusts would then distribute to the PCA Seller Funds.

81. On January 5, 2018, Heppner, on behalf of BEN, sent PCA a due diligence package of materials (the “BEN Due Diligence Package”) that responded to PCA’s questions.

82. In the BEN Due Diligence Package, Heppner assured PCA that GWGH was *obligated* under the terms of its winning bid to refinance the GWGH L-Bonds within 12 months of the closing of GWGH’s purchase of the BEN MLP Units, and that the refinancing was expected to occur no later than October 2018.

83. Heppner also represented in the BEN Due Diligence Package that the PCA Seller Fund Exchange Trust Advisors (then Holland and Hinkle, now Holland and Turvey) were similarly obligated to reduce the L-Bonds to cash and to distribute the proceeds as soon as practicable.

84. Finally, with respect to the GWGH common stock, Heppner represented in the BEN Due Diligence Package that “[t]he goal will be to create and maintain a market for the GWGH shares in a manner similar to that of an IPO,” and that “[w]e anticipate executing the orderly resale [of the GWGH common stock] between 6-12 months following the Closing.”

85. Heppner stated further that “Attachment G” to the BEN Due Diligence Package set forth “the obligations” of the Trust Advisors, GWGH, the PCA Seller Fund Exchange Trusts, and BEN regarding the sale of the GWGH common shares.

86. Attachment G, in turn, stated that the Trust Advisors and GWGH, for the benefit of the PCA Seller Fund Exchange Trusts, would agree to negotiate in good faith the terms of an “Orderly Marketing Agreement” with a major investment bank for the orderly marketing and resale of the GWGH common stock.

### **GWGH’s Comfort Letter Regarding The Cash Payment**

87. On January 10, 2018, GWGH provided a letter to BEN, MHT, and the PCA Seller Fund Exchange Trusts (the “GWGH Comfort Letter”) regarding the cash consideration component of what GWGH referred to as its “[i]rrevocable Bid, dated December 23, 2017,” which would later be memorialized in a “Master Exchange Agreement” between GWGH, MHT, BEN, and the PCA Seller Fund Exchange Trusts (as managed by the Trust Advisors).

88. MHT and BEN then forwarded a copy of the GWGH Comfort Letter to PCA to assure PCA that GWGH had the ability to pay the cash component of the GWGH Winning Bid.

89. In the GWGH Comfort Letter forwarded to PCA by MHT and BEN, Jon Sabes, who was then GWGH’s CEO, “confirmed,” among other things, that GWGH had on hand the \$150 million cash component of the GWGH Winning Bid, and that the \$150 million cash component was “financed via a fully committed and contractual purchase of GWG[H] securities.”

## **GWGH's Undertakings Letter Committing To Expeditiously Liquidate The L-Bonds**

90. On January 10, 2018, GWGH also provided a letter to BEN, MHT, and the PCA Seller Fund Exchange Trusts (the "GWGH Undertakings Letter") regarding the L-Bond component of GWGH's "irrevocable bid."

91. MHT and BEN then forwarded a copy of the GWGH Undertakings Letter to PCA to assure PCA that GWGH was committed to refinancing or reselling the L-Bond portion of GWGH's Winning Bid.

92. In the GWGH Undertakings Letter, GWGH confirmed that it would use "commercially reasonable efforts to effect expeditiously, following the Closing" of a "Master Exchange Agreement" among the PCA Seller Fund Exchange Trusts, GWGH, MHT, and BEN, "the refinancing in full of the aggregate principal amount outstanding of the GWG[H] L-Bonds issued to each of the Seller Trusts" and/or to otherwise cooperate with a resale of those L-Bonds.

## **The Trust Advisors' And MHT's Promise To Promptly Monetize The L-Bonds And GWGH Common Stock**

93. To further induce PCA and the PCA Seller Funds to accept the GWGH Winning Bid, Defendant Holland, along with Hinkle, as Trust Advisors to the PCA Seller Fund Exchange Trusts, provided PCA and the PCA Seller Funds with an "undertakings letter" regarding GWGH's winning bid that was also "acknowledged and agreed to" by MHT (the "Trust Advisors-MHT Undertakings Letter"). Indeed,

Defendant Holland signed the Trust Advisors-MHT Undertakings Letter both as a Trust Advisor to the PCA Seller Fund Exchange Trusts *and* as the Managing Member of MHT.

94. In the Trust Advisors-MHT Undertakings Letter, Holland and Hinkle acknowledged that, in its “irrevocable bid,” GWGH had committed to use “commercially reasonable efforts to refinance outstanding debt with a more favorable credit facility and/or institutional note within 12 months following the Closing.” They further acknowledged that the GWGH Winning Bid contemplated an orderly resale of the GWGH common stock pursuant to an Orderly Marketing Agreement with one or more investment banks.

95. After acknowledging these key components of the GWGH Winning Bid, the Trust Advisors acknowledged and agreed to “cooperate with MHT to the full extent of the authority granted to each of us” to facilitate a refinancing or resale of the L-Bonds “such that the debt securities are reduced to cash for distribution to the Sellers as [of] the earliest practicable date during 2018.”

96. The Trust Advisors also promised to do the same with respect to the sale of the GWGH common stock “in order to reduce such securities to cash at the earliest practicable date following the consummation of the transactions contemplated by the GWG[H] Bid.”

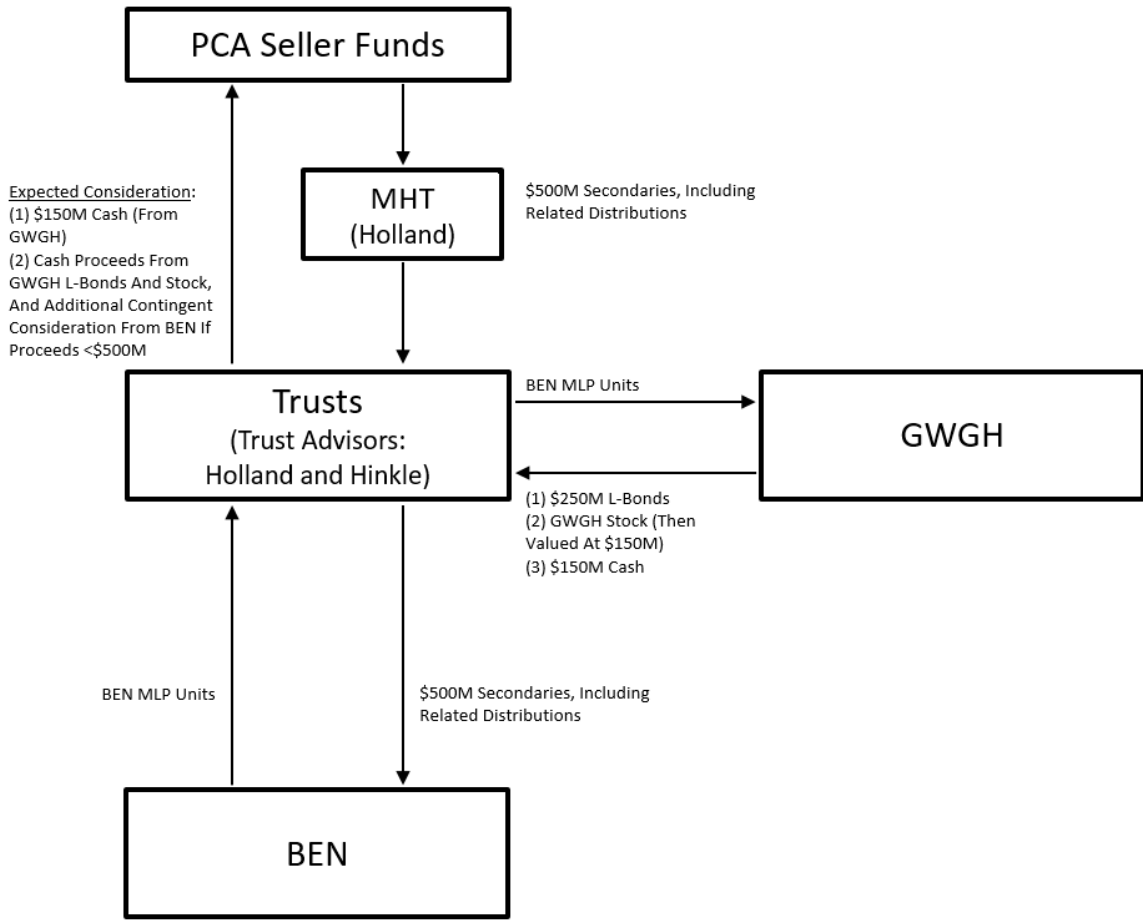
97. Finally, the Trust Advisors expressly acknowledged in the Trust Advisors-MHT Undertakings Letter that *each of the PCA Seller Funds was “a designated third party beneficiary of the agreements, covenants, and undertakings set forth herein and, accordingly, entitled to rely upon and enforce such agreements, covenants, and undertakings.”* (Emphasis added.)

### **The PCA Parties’ Reliance On The Counterparties’ Assurances Regarding Cash Consideration**

98. On January 11, 2018, PCA and the PCA Seller Funds agreed to go forward with, and not opt out of, the Transactions. The PCA Parties did so in reliance on the numerous promises to expeditiously refinance or resell the L-Bonds, and to quickly sell the GWGH common stock, that were made in the Trust Advisors-MHT Undertakings Letter, MHT’s Winning Bid Notice, the BEN Due Diligence Package, the GWGH Comfort Letter, and the GWGH Undertakings Letter. PCA and the PCA Seller Funds were not interested in being long-term creditors or owners of GWGH. They were interested in receiving cash, and that is what they were promised.

99. The Transactions as of the time of the PCA Parties’ agreement to proceed with the GWGH Winning Bid can be summarized as follows:

The Transactions as of GWGH Winning Bid



**The January 12, 2018 Master Exchange Agreement, Which Did Not Include The PCA Parties, And Which Was Inconsistent With The Terms Of The GWGH Winning Bid**

100. The next day, on January 12, 2018, the PCA Seller Fund Exchange Trusts (acting at the direction of the Trust Advisors), MHT, BEN, and GWGH entered into the Master Exchange Agreement (the “MEA”) that was supposed to capture the terms of the GWGH Winning Bid. (They did so without the participation of PCA and the PCA Seller Funds.)

101. Notably, Defendant Holland signed the MEA on behalf of both MHT and the PCA Seller Fund Exchange Trusts to which he owed fiduciary duties as Trust Advisor.

102. In the MEA, GWGH agreed, among other things, to buy the BEN MLP Units held by the PCA Seller Fund Exchange Trusts for \$150 million in cash, \$250 million in five-year GWGH L-Bonds redeemable in cash at maturity, and \$150 million in GWGH common stock.

103. In Section 8.6 of the MEA, the PCA Seller Fund Exchange Trusts (again, acting at the direction of the Trust Advisors) and GWGH agreed to “negotiate in good faith” an Orderly Marketing Agreement with a major investment bank at the Closing in order to resell the GWGH common stock component of the GWGH winning bid. In addition, both GWGH and BEN agreed to use “commercially reasonable” efforts to support the resale of the stock by, for example, assisting in marketing efforts and participating in road shows.

104. In Section 8.1 of the MEA, the parties thereto agreed to use “commercially reasonable best efforts” to complete the transactions contemplated by the MEA.

105. Finally, in Exhibit A to the MEA, GWGH agreed to undertake commercially reasonable efforts to refinance or resell for cash the GWGH L-Bond component of the GWGH Winning Bid.



106. On January 18, 2018—a week *after* PCA and the PCA Seller Funds agreed to go forward on the basis of the GWGH Winning Bid—GWGH disclosed in a public filing that it would finance its obligations under the MEA to the PCA Seller Fund Exchange Trusts (as well as to the Co-Participant seller fund exchange trusts) with (1) the issuance of \$400 million worth of GWGH common stock valued at \$10 per share; (2) the issuance of \$400 million worth of five-year GWGH L-Bonds; and (3) \$150 million in cash from an “affiliated unitholder of BEN” that would purchase a portion of the total common stock and L-Bonds being issued in connection with the transaction.

107. On information and belief, this unidentified “affiliated unitholder of BEN” was MHT Financial SPV, LLC (“MHT SPV”), an affiliate of MHT that was also, apparently, a unitholder of BEN. In its January 18, 2018 SEC Form 8-K, GWGH stated that, “[u]nder the MEA, MHT Financial SPV, LLC has subscribed for GWG[H] common stock and L-Bonds in exchange for an aggregate cash payment of \$150 million, which subscription may be accepted by GWG Holdings solely at its option.”

108. No one—not Defendant Holland (who owed a fiduciary obligation to the PCA Seller Fund Exchange Trusts and, in turn, the PCA Seller Funds who were the intended and ultimate beneficiaries of those trusts), not MHT, not BEN, not GWGH, and not Heppner—had disclosed to PCA that MHT SPV, a special purpose

vehicle formed by MHT, of which Holland was a principal and an owner, was the source of the \$150 million cash component of GWGH's Winning Bid that PCA agreed to accept on January 11, 2018.

109. Had PCA known that MHT SPV was the source of the \$150 million cash component of GWGH's Winning Bid, it would have demanded, at a minimum, assurances that MHT SPV had the resources to invest \$150 million in GWGH L-Bonds and common stock. It also would have sought assurances that MHT SPV's participation in the MEA—which, in effect, was supposed to represent the GWGH Winning Bid in the form of a contract—would not conflict with Holland's and MHT's obligations under the various other Transaction Documents, including the CVR Contract and the Trust Advisors' obligations under the PCA Seller Fund Exchange Trusts. MHT SPV's participation in the transactions suggests that the GWGH Winning Bid was not really a GWGH bid at all. Rather, it was a GWGH-plus-MHT bid, with the all-important up-front cash component coming from MHT SPV. That was not the Winning Bid that was described to PCA and the PCA Seller Funds in MHT's Winning Bid Notice or in BEN's, GWGH's, MHT's, and the Trust Advisors' subsequent assurances regarding the GWGH Winning Bid.

110. Blind to this behind-the-scenes arrangement, PCA and the PCA Seller Funds began satisfying their obligations under the EDA, which became operative when the PCA Parties agreed to proceed with the overall deal on January 11, 2018.

111. Thus, on January 19 and 23, 2018, PCA and the PCA Seller Funds paid MHT (or, more precisely, the PCA Seller Fund Exchange Trust bank accounts controlled by Holland and MHT) and, in turn, BEN, \$114 million in investment realizations on PCA Fund Secondaries that were still pending transfer to MHT because PCA was seeking consents from the underlying funds that had issued them.

112. Thereafter, PCA and the PCA Seller Funds continued to satisfy their obligations under the EDA. Indeed, by the time PCA and the PCA Seller Funds had obtained consents and transferred substantially all of the PCA Fund Secondaries to MHT in late 2018, PCA and the PCA Seller Funds had paid approximately \$250 million to MHT and, in turn, BEN, pursuant to the EDA. To date, PCA and the PCA Seller Funds have paid MHT and, in turn, BEN approximately \$281 million pursuant to the EDA.

### **The Counterparties Default On The April 30, 2018 Deadline For Closing The Auction**

113. Under both the Transaction documents and MHT's Winning Bid Notice, GWGH's Winning Bid payment obligations—*i.e.*, GWGH's payment of the \$150 million cash, \$250 million L-Bonds, and \$150 million stock components to the PCA Seller Fund Exchange Trusts in exchange for the latter's BEN MLP Units—were supposed to be completed by April 30, 2018.

114. That did not happen. Instead, GWGH's Winning Bid failed to close because, until at least early April 2018, Heppner was still seeking to add Co-

Participants to the overall transaction, and thereby increase the size of the overall deal. The GWGH Winning Bid also failed to close because BEN was having trouble completing an audited set of financial statements, which, according to BEN and GWGH, had to be completed before GWGH could acquire the BEN MLP Units (and, as a result, a majority and controlling interest in BEN).

### **MHT And BEN Propose To Close The GWGH Bid In Two Stages**

115. By June 2018, the PCA Seller Fund Exchange Trusts, MHT, BEN, and GWGH still had not closed on the GWGH Winning Bid. Among other things, BEN was still having trouble generating a set of audited financial statements and, as a result, GWGH had received a de-listing notice, or the threat of such a notice, from NASDAQ.

116. Because of this delay, as well as the absence of any assurances from the Trust Advisors, BEN, MHT, and GWGH regarding when the GWGH Winning Bid would actually close, PCA determined to suspend, and suspended, the process of signing and providing MHT and BEN with the assignment and transfer agreements pursuant to which the PCA Seller Funds were transferring the PCA Fund Secondaries to the PCA Seller Fund Exchange Trusts. As noted above, as of June 2018, the PCA Seller Funds had already transferred to MHT and, in turn, BEN, substantial economic benefits associated with the PCA Fund Secondaries, as well as

many of the PCA Fund Secondaries themselves. In exchange, the PCA Seller Funds still had received nothing.

117. To salvage the overall set of transactions, Heppner proposed in late June 2018 that the parties agree to allow the GWGH Winning Bid to close in two stages. In an initial closing, the PCA Seller Fund Exchange Trusts would receive the \$150 million cash and \$250 million L-Bond components of the GWGH Winning Bid. Later, in a second closing, the PCA Seller Fund Exchange Trusts would receive the third component—the \$150 million in GWGH common stock.

#### **Holland Emails PCA On August 8, 2018 Regarding Closing Delays**

118. On August 8, 2018, Defendant Holland sent PCA an email regarding the intention of the PCA Seller Fund Exchange Trusts (again, as directed by Holland and Hinkle as Trust Advisors), MHT, BEN, and GWGH to proceed with a two-stage closing of the GWGH Winning Bid.

119. In his August 8, 2018 email, Holland stated that GWGH would not be in a position to close on the \$150 million GWGH common stock component of the GWGH Winning Bid until the last quarter of 2018. According to Holland, the SEC was insisting that GWGH include two years of audited financial statements for BEN in GWGH's registration statement for the issuance of the common stock, but BEN still did not have such audited financial statements.

## **Holland Emails PCA On August 9, 2018 With Additional Assurances**

120. On August 9, 2018, Holland sent PCA another email providing assurances regarding the L-Bond component of the GWGH Winning Bid. Holland assured PCA that, “[b]etween redemption, repurchase, repayment, refinancing and resale, the Seller Trusts will have at least five different ways to exit their position in the L-Bonds, which are now backed by two different balance sheets”—a reference to the balance sheets of both BEN and GWGH.

121. In his August 9, 2018 email, Holland also warned that, if PCA did not promptly agree to proceed with the two-stage closing, GWGH might walk away from the overall deal: “All the deal documents are now complete, and GWG[H] is pushing the parties to close. If we have to delay the closing another day, the deal will be in jeopardy.”

122. Because the PCA Seller Funds still had not received any consideration for the PCA Fund Secondaries, PCA agreed to the bifurcated closings.

## **The “Initial Closing” Of The GWGH Winning Bid In August 2018**

123. The initial closing of what was supposed to be the GWGH Winning Bid (the “Initial Closing”) occurred on August 10, 2018, when the PCA Seller Fund Exchange Trusts, acting at the direction of the Trust Advisors, transferred approximately 70% of their BEN MLP Units to GWG. In exchange, the PCA Seller

Fund Exchange Trusts received \$100 million in cash and GWGH L-Bonds with an aggregate face amount of \$250 million.

*The Cash Short Payment*

124. The PCA Seller Fund Exchange Trusts were supposed to receive \$150 million in cash in the Initial Closing. They received only \$100 million. To address this \$50 million short payment, the parties executed an August 10, 2018 “Acknowledgment and Agreement Regarding Auction Consideration.” In that acknowledgment, which was also signed by Holland on behalf of MHT and Heppner on behalf of BEN, PCA agreed to resume transferring PCA Fund Secondaries to the PCA Seller Fund Exchange Trusts. In exchange, BEN agreed to pay the remaining \$50 million cash balance on or before December 14, 2018.

*The Altered GWGH L-Bond Payment Terms*

125. The payment terms of the GWGH L-Bonds that were distributed to the PCA Seller Fund Exchange Trusts in the Initial Closing differed in a material way from the terms that were promised in MHT’s December 23, 2018 Winning Bid Notice.

126. MHT’s Winning Bid Notice provided that the GWGH L-Bonds would be paid in cash at maturity. However, the GWGH L-Bonds that were distributed to the PCA Seller Fund Exchange Trusts in the Initial Closing gave GWGH the option to redeem them with any combination of cash, BEN MLP Units, and/or BEN debt.

127. PCA and the PCA Seller Funds nevertheless went forward with the Initial Closing for two primary reasons. First, MHT and BEN represented that GWGH would not go forward with a cash-only redemption provision and that the altered L-Bond payment terms were “non-negotiable.” Second, in theory, the altered redemption provision was beside the point, since GWGH was obligated under the terms of its Winning Bid to refinance or resell the L-Bonds for cash within 12 months of their issuance. As Holland represented in one of his August 8, 2018 emails to PCA, “the ultimate effect to the [PCA] Parties” of the changed L-Bond payment terms “is that they receive cash payment on the L-Bonds.”

**The Counterparties Make An Undisclosed, Unilateral Change To The GWGH Winning Bid**

128. Unbeknownst to the PCA Parties, on August 10, 2018, the same day as the Initial Closing, the PCA Seller Fund Exchange Trusts (at the direction of the Trust Advisors), MHT, BEN, and GWGH amended their MEA (which, again, was supposed to embody the terms of the GWGH Winning Bid).

129. In this August 10, 2018 amendment to the MEA, the PCA Seller Fund Exchange Trusts (again, at the direction of the Trust Advisors), MHT, BEN, and GWGH relieved MHT SPV (the affiliate of MHT) from its commitment to pay \$150 million to GWGH in exchange for GWGH L-Bonds and GWGH common stock. Indeed, the parties to the MEA, including the PCA Seller Fund Exchange Trusts, at the direction of the Trust Advisors, agreed to *delete* MHT SPV as a party to the MEA



completely, thereby eliminating MHT SPV as the source of the \$150 million cash payment component of the GWGH Winning Bid.

130. The parties to the MEA did not stop there. By this third amendment to their MEA, the Trust Advisors, MHT, BEN, and GWGH also agreed to relieve **GWGH** from its obligation to make the \$150 million cash payment to the PCA Seller Fund Exchange Trusts, which was a core component of the GWGH Winning Bid, and a material alteration of its terms.

131. On information and belief, the parties to the third amended MEA agreed that **BEN** would assume GWGH's obligation to make the \$150 million cash payment.

132. None of the parties to the MEA disclosed to PCA and the PCA Seller Funds the terms of this third amendment to the MEA before or at the Initial Closing—not the Trust Advisors (at the time, Holland and Hinkle, who owed fiduciary duties to the PCA Seller Fund Exchange Trusts and, in turn, the PCA Seller Fund), and not MHT, BEN, or GWGH.

133. Had they known that the GWGH Winning Bid had been unilaterally altered to shift the \$150 million cash payment obligation from GWGH to BEN, PCA and the PCA Seller Funds would have halted the transaction.

134. On the one hand, the GWGH Winning Bid was no longer the GWGH Winning Bid at all, since that bid no longer had a cash component, just GWGH L-

Bonds and GWGH stock. If that cashless bid been the “GWGH Winning Bid” back in December 2017, the PCA Parties never would have accepted it. Again, the PCA Parties were interested in receiving cash, not securities, and they had no interest in being a long-term funding source for BEN, or a long-term owner or creditor of GWGH.

135. On the other hand, there was also no assurance as of August 10, 2018 that *BEN* had the ability to make the remaining \$50 million outstanding cash payment to the PCA Seller Fund Exchange Trusts in a timely fashion. The Trust Advisors certainly knew as much. At that point, BEN was still more of a business plan than a real business (it had yet to receive a non-depository bank charter) and, on information and belief, its principal source of capital funding was the money it was receiving from the PCA Seller Funds pursuant to the EDA. Thus, the source of any payment made by BEN to the PCA Seller Fund Exchange Trusts was likely the economic benefits associated with the PCA Fund Secondaries themselves. The PCA Parties would never have agreed to such a circular arrangement if that had been the “winning bid” proposal in the first instance.

### **BEN Fails To Timely Pay The Outstanding \$50 Million Cash Balance**

136. As of December 4, 2018, BEN had paid the PCA Seller Fund Exchange Trusts only \$15 million of the \$50 million in cash they were still owed, leaving an unpaid balance of \$35 million.

137. That day, BEN informed PCA that BEN would not pay the remaining \$35 million by December 15, 2018, as promised.

138. Eight days later, on December 12, 2018, a senior secured lender to BEN told PCA that it would foreclose on its loan to BEN, thereby rendering BEN insolvent, unless PCA and the PCA Seller Funds agreed to accept just \$10 million from BEN, with the remaining \$25 million to be paid from “available cash” at some unspecified date in the future.

139. On December 14, 2018, in order to prevent BEN’s senior secured lender from foreclosing on BEN’s assets (which included, of course, the PCA Fund Secondaries), PCA and the PCA Seller Funds agreed with the PCA Seller Fund Exchange Trusts (again, as directed by the Trust Advisors), MHT, and BEN to amend the August 10, 2018 “Acknowledgment and Agreement Regarding Auction Consideration” that was signed at the Initial Closing (the “Amended Acknowledgment”).

140. In this Amended Acknowledgment, BEN agreed to pay an additional \$10 million in cash to the PCA Seller Fund Exchange Trusts by December 28, 2018, and to pay the remaining \$25 million (plus interest) from several potential sources, including (1) cash received from realizations on the PCA Fund Secondaries and GWGH preferred stock; (2) cash generated by any BEN offerings of equity interests; and (3) any cash received from GWGH.

141. The Amended Acknowledgment was signed by Holland on behalf of MHT, Holland and Hinkle as Trust Advisors on behalf of the PCA Seller Fund Exchange Trusts, and Heppner on behalf of BEN.

142. On December 21, 2018, BEN paid the PCA Seller Fund Exchange Trusts \$10 million of the \$35 million outstanding cash payment balance, leaving \$25 million still to be paid.

### **The Counterparties Effectuate The Second Closing In December 2018**

143. On December 31, 2018, GWGH finally transferred \$150 million in GWGH common stock to the PCA Seller Fund Exchange Trusts in exchange for the latter's remaining BEN MLP Units (the "Second Closing").

144. As of the end of 2018, then, the PCA Seller Fund Exchange Trusts no longer held any BEN MLP Units—those had all been transferred to GWGH, which, as a result, now owned more than 80% of BEN. Instead, the PCA Seller Fund Exchange Trusts held, for the ultimate benefit of the PCA Seller Funds, GWGH L-Bonds with an aggregate face amount of \$250 million, and GWGH common stock valued at \$150 million.

145. None of these GWGH securities had been refinanced or sold for cash in 2018 consistent with MHT's December 23, 2017 Winning Bid Notice and the early January 2018 assurances of the Trust Advisors, BEN, and GWGH.

## **GWGH And The Trust Advisors Execute An Empty Orderly Marketing Agreement**

146. Meanwhile, four days before the Second Closing, on December 31, 2018, the Trust Advisors, purportedly acting on behalf of the PCA Seller Fund Exchange Trusts, and GWGH entered into a so-called “Orderly Marketing Agreement.”

147. This December 27, 2018 Orderly Marketing Agreement between the Trust Advisors and GWGH was *not* the Orderly Marketing Agreement that was promised in MHT’s Winning Bid Notice, however.

148. As noted above, MHT and BEN promised in connection with the GWGH Winning Bid that the Trust Advisors and GWGH, for the benefit of the PCA Seller Fund Exchange Trusts, would enter into an Orderly Marketing Agreement *with a major investment bank* in order to sell the GWGH common stock component of the GWGH Winning Bid within 12 months of the Closing.

149. In addition, the Trust Advisors, MHT, BEN, and GWGH committed in their MEA to enter into an Orderly Marketing Agreement *with a major investment bank* in order to sell the GWGH common stock.

150. The December 27, 2018 Orderly Marketing Agreement between the Trust Advisors and GWGH did *not* engage a major investment bank to resell the GWGH common stock. Rather, in Section 1.4 of the December 27, 2018 Orderly Marketing Agreement, the Trust Advisors and GWGH agreed merely to “retain one

or more nationally recognized bulge bracket investment banks (the ‘Bank’) for the orderly marketing and resale of [GWGH] Shares.” Supposedly, that major investment bank would then “assist[] in the drafting and preparation of one or more prospectus supplements describing GWG[H], the Shares and the terms of the Offerings”; “advis[e] the Seller Trusts on a marketing and distribution strategy for each Tranche of [GWGH] Shares”; and “assist[] GWG[H] in preparing marketing materials and conducting one or more ‘roadshows’ and meetings with potential purchasers of the [GWGH] Shares.”

151. Thus, in the December 27, 2018 Orderly Marketing Agreement, the Trust Advisors and GWGH simply agreed, again, to do what they were already required to do—namely, engage a major investment bank to sell the GWGH common stock.

152. The Orderly Marketing Agreement was thus an empty gesture, and the Trust Advisors, including Defendant Holland, certainly knew as much. Worse yet, on information and belief, the Trust Advisors and GWGH never actually retained an investment bank to resell the GWGH common stock held by the PCA Seller Fund Exchange Trusts, and there were never any “‘roadshows’ [or] meetings with potential purchasers” of the GWGH shares. Instead, the Orderly Marketing Agreement simply expired by its own terms on December 27, 2019, one year after the Trust Advisors and GWGH signed it.

## **BEN Assumes Control Of GWGH**

153. Meanwhile, in April 2019, BEN effectively took control of GWGH pursuant to an April 15, 2019 “Purchase and Contribution Agreement” with Jon and Steven Sabes, GWGH’s CEO and Executive Vice President, respectively.

154. According to GWGH’s public filings, the following transactions and events occurred in connection with the April 29, 2019 closing of that April 15, 2019

Purchase and Contribution Agreement:

- Jon and Steven Sabes cashed out of GWGH by selling 2,500,000 shares of their GWGH common stock to a BEN affiliate for \$25 million and then contributed their remaining 1,452,155 shares to Altiverse Capital Markets LLC—an entity related to Heppner and another BEN principal—in exchange for equity in Altiverse.
- The Sabes brothers resigned from all of their officer positions at GWGH and all but two of its subsidiaries (Life Epigenetics and youSurance), and forfeited any and all additional severance and equity awards.
- GWGH’s entire board resigned and was replaced by 11 individuals appointed by BEN.
- Heppner became Chairman of GWGH.
- Holland was named President and CEO of GWGH (while he still remained a Trust Advisor to the PCA Seller Fund Exchange Trusts and a principal and owner of MHT).

## **BEN Fails To Timely Pay The \$25 Million Cash Payment Balance**

155. On June 6, 2019, GWGH disclosed in an SEC filing that GWG Life, LLC (“GWG Life”), a wholly-owned subsidiary of GWGH, had entered into a Promissory Note with affiliates of BEN to fund a term loan in the aggregate principal

amount of \$65 million. GWGH stated further that, on June 3, 2019, GWG Life advanced \$50 million to the affiliates of BEN pursuant to the Note.

156. Under the terms of the December 14, 2018 Amended Acknowledgment referenced above, BEN was supposed to pay the PCA Seller Funds the remaining \$25 million cash payment balance within five days of receipt of this \$50 million from GWG Life.

157. BEN failed to pay the \$25 million as required. Accordingly, on July 31, 2019, counsel for the PCA Parties sent a letter to counsel for BEN demanding payment of the \$25 million.

158. BEN finally made the \$25 million cash payment several months later, on November 13, 2019. That day, the parties signed a “Mutual Confirmation of Payment.” Notably, Holland signed this “Mutual Confirmation of Payment” in three different capacities: as a Trust Advisor to the PCA Seller Fund Exchange Trusts, as CEO of GWGH, and as an “Authorized Signatory of MHT.”

### **The Distribution Trigger Event Under The CVR Contract**

159. As noted above, one of the Transaction Documents was the CVR Contract, the purpose of which is to protect the PCA Seller Funds if the Auction of the BEN MLP Units failed to occur or to generate at least \$500 million in net cash proceeds. In essence, the parties agreed that, if the Auction generated less than \$500



million in cash, BEN would be required to make up the shortfall by contributing additional BEN MLP Units and/or cash to the PCA Seller Fund Exchange Trusts.

160. To date, the Auction of the BEN MLP Units has plainly failed to generate \$500 million in net cash proceeds for the PCA Seller Funds. It has generated only \$150 million in cash (and even that cash was received on a delayed basis).

161. In the meantime, under the CVR Contract, BEN was required, among other things, to file a Registration Statement for an initial public listing of the BEN MLP Units within 24 months of the “Auction Closing Date.”

162. In connection with the Initial Closing, the parties to the Transaction Documents agreed in an August 10, 2018 “Acknowledgment Regarding Auction Closing Date and Consideration” (the “Auction Closing Date Acknowledgment”) that the Auction Closing Date “shall for all purposes be as of December 23, 2017.”

163. Accordingly, BEN was required under the terms of the CVR Contract to file a Registration Statement for the initial listing of the BEN MLP Units by December 23, 2019.

164. BEN failed to file a Registration Statement for the initial listing of the BEN MLP Units by December 23, 2019.

165. BEN’s failure to timely file its Registration Statement by December 23, 2019 was a “Distribution Trigger Event” under Section 2.3 of the CVR Contract.

166. Because there was a Distribution Trigger Event under Section 2.3 of the CVR Contract, BEN is required by that same provision to use “Available Cash” to, among other things, make quarterly distributions to the PCA Seller Fund Exchange Trusts until what the CVR Contract refers to as the “Shortfall ET Amounts” are eliminated. Under the CVR Contract, this is called the “Mandatory Distribution Period.”

167. Under the CVR Contract, the Shortfall ET Amount for each PCA Seller Fund Exchange Trust is the amount by which the “Net Auction Consideration” paid to that exchange trust is less than the “Adjusted Final NAV” for such exchange trust. Thus, the aggregate Shortfall ET Amount for all the PCA Seller Fund Exchange Trusts is the amount by which the Net Auction Consideration paid to all of the PCA Seller Fund Exchange Trusts is less than their Adjusted Final NAV of \$500 million.

168. In the August 10, 2018 Auction Closing Date Acknowledgment, the parties to the Transaction Document “acknowledged and agreed” that “Net Auction Consideration” shall for all purposes be deemed to include all “Auction Consideration” received by the PCA Seller Fund Exchange Trusts.

169. The term “Auction Consideration” is not defined in the Auction Closing Date Acknowledgment. According to that Acknowledgment, capitalized terms not defined therein have the meaning prescribed to them in the Transaction Agreement, which defines “Auction Consideration” as “the aggregate total *cash* consideration

paid by the Auction Buyers for the Auction of BEN Common Units pursuant to an Auction Purchase Agreement.” (Emphasis added.)

170. Accordingly, the aggregate Shortfall ET Amount for all of the PCA Seller Fund Exchange Trusts is \$350 million—the difference between the \$150 million in cash that the PCA Seller Fund Exchange Trusts ultimately received from GWGH and BEN and their Adjusted Final NAV of \$500 million.

171. In addition, because there has been a Distribution Trigger Event, BEN is obligated under the CVR Contract to promptly provide on a quarterly basis “a summary report setting out the calculation of Available Cash for such quarter to MHT, which shall promptly provide a copy of such report to all of the beneficiaries of the Exchange Trusts.”

172. Notwithstanding its obligations under the CVR Contract, BEN has failed to make any Available Cash distributions to the PCA Seller Fund Exchange Trusts in order to reduce the aggregate Shortfall ET Amount. On information and belief, BEN also has failed to provide MHT with any quarterly Available Cash reports. As a result, MHT has failed to provide copies of any such reports to the intended beneficiaries of the PCA Seller Fund Exchange Trusts—namely, the PCA Seller Funds.

173. In addition to the requirements set forth above, the CVR Contract imposes business limitations on BEN during a Mandatory Distribution Period.

Specifically, Section 2.2 provides that, during a Mandatory Distribution Period, BEN and its subsidiaries shall (1) cease to finance or otherwise acquire future private equity or other alternative asset loans unless such loan was agreed upon in writing prior to the commencement of the Mandatory Distribution Period; and (2) use all commercially reasonable efforts to satisfy Section 2.3's requirement that it use Available Cash to, among other things, eliminate the Shortfall ET amounts.

174. Finally, the last sentence of Section 2.1 of the CVR Contract provides that, until BEN has satisfied its obligations under Articles I, II, and III of the CVR Contract, BEN's general partner agrees not to authorize distributions by BEN to its partners except in certain limited circumstances.

175. On information and belief, BEN violated one or more of these CVR Contract Mandatory Distribution Period business restrictions, and continues to do so.

### **MHT Fails To Enforce The CVR Contract**

176. As noted above, in Section 5(d) of the PSA, MHT agreed to invoke and enforce the CVR Contract in favor of the PCA Seller Funds if the Auction failed to generate net cash proceeds of \$500 million.

177. Holland signed the CVR Contract on behalf of MHT.

178. MHT has failed to enforce the CVR Contract against BEN, or even to try to do so. And, on information and belief, Holland has done nothing to cause

MHT to do so, even though he remains both a principal of MHT and a Trust Advisor to the PCA Seller Fund Exchange Trusts, to which he owes fiduciary duties.

### **BEN And MHT Attempt To Extinguish The PCA Parties' Rights Under The CVR Contract**

179. Instead of MHT enforcing the PCA Parties' rights under the CVR Contract, MHT and BEN attempted to extinguish them.

180. In early March 2020, the PCA Parties' representative on BEN's board discussed the CVR Contract with other BEN directors and a BEN lawyer, including the PCA Parties' position that a Distribution Trigger event had occurred because BEN had failed to file a Registration Statement for the listing of the BEN MLP Units within two years of the parties' agreed upon Auction Closing Date.

181. On May 8, 2020, the PCA Parties' counsel sent letters regarding the CVR Contract to MHT (specifically, to the attention of Holland) and BEN (to the attention of Heppner). In addition, the PCA Parties' counsel sent a copy of the BEN letter to the BEN lawyer who had participated in the above-mentioned March 2019 discussions regarding the CVR contract. In each letter, the PCA Parties' counsel formally notified MHT (via Holland) and BEN (via Heppner) that a Distribution Trigger Event had occurred under the CVR Contract, since BEN had failed to file a Registration Statement for an initial public listing of the BEN MLP Units within 24 months of the Auction Closing Date. Further, the PCA Parties' counsel inquired of

both MHT and BEN regarding whether, and to what extent, BEN was complying with its resulting obligations under the CVR Contract.

182. On May 12, 2020, another BEN lawyer sent a letter to counsel for the PCA Parties indicating that BEN was reviewing the latter's May 8, 2020 letter regarding the CVR Contract and BEN would be in touch soon. Notably, the BEN lawyer who wrote this letter copied both Heppner and the BEN lawyer who was involved in the March 2019 discussions regarding the CVR contract.

183. Just three days later, on May 15, 2020, the BEN lawyer who participated in the March 2019 discussions regarding the CVR contract, and who was copied on the legal correspondence regarding the CVR contract in early May 2020, asked the PCA Parties' BEN board representative to sign a purported "Second Amendment to the CVR Contract." The lawyer for BEN told the PCA Parties' representative that he was trying to "clean up" matters from 2019, that "everyone else" had signed the purported amendment, and that he needed the PCA Parties' board representative to sign it too. The BEN lawyer gave the PCA Parties' representative the impression that the representative's signature on the amendment had somehow been overlooked in 2019.

184. Notably, the BEN lawyer sent the PCA Parties' board representative a copy of the Second Amendment to the CVR Contract, but he did not send a copy of the CVR Contract itself, or copies of any of the parties' relevant prior amendments

or acknowledgments. Nor did the lawyer for BEN notify or copy the PCA Parties' counsel regarding his request that the PCA Parties' representative sign the purported amendment to the CVR Contract, even though he knew from the prior correspondence that the PCA Parties were represented by counsel, who had just put MHT and BEN on formal notice that a Distribution Trigger Event had occurred under the terms of the CVR Contract.

185. The Second Amendment to the CVR Contract that the lawyer for BEN sent to the PCA Parties' representative on May 15, 2020 was dated "effective as of December 28, 2019." It was already signed by both the BEN parties (by Heppner, among others) and by MHT (by Holland as an "Authorized Signatory"), although the document did not disclose when these parties signed it. The only missing signature was the PCA Parties representative's, who was being asked to sign "in his capacity as Designated Elected Director for purposes of Independent Approval."

186. A Recital in this "Second Amendment to the CVR Contract" stated that MHT, BEN, Defendant Holland (as Trust Advisor to the PCA Seller Fund Exchange Trusts), and PCA (on behalf of itself and the PCA Parties) had each "entered into certain acknowledgments, each effective as of August 10, 2018 (collectively, the "Acknowledgements"), that supplement[ed] and modif[ied] certain terms of the Transaction Agreement and related documents," but the Recital did not describe *how* the Acknowledgements had done so.

187. Another Recital in this purported Second Amendment to the CVR Contract stated that MHT and BEN desired to amend the CVR Contract between them, purportedly to “reflect the supplements and modifications set forth in the Acknowledgments and to conform the [CVR] Agreement to the terms in the Transaction Agreement as supplemented and modified by such Acknowledgements.”

188. In fact, the Second Amendment to the CVR Contract did no such thing. To the contrary, it sought to substantially alter and effectively extinguish the PCA Parties rights under the Transaction Documents, particularly the CVR Contract.

189. Specifically, the Second Amendment to the CVR Contract changed the CVR Contract’s definition of “Net Auction Consideration” by, among other things, removing from the definition a clause stating that, “for purposes of the ‘Shortfall ET Amount’ under Article I and Article II, ‘Net Auction Consideration’ shall only include, as of any determination date, Auction Consideration received by MHT (or the Exchange Trusts) in the form of cash and cash equivalents on or prior to such determination date.”

190. Before this change, the Shortfall ET Amount under the relevant agreements was at least \$350 million, since the aggregate NAV of the PCA Seller Fund Exchange Trusts was \$500 million and the Exchange Trusts still had only received \$150 million in cash or cash equivalents. As noted above, in this scenario,



BEN is required to use “Available Cash” to reduce and, ultimately, eliminate the shortfall, and is subject to reporting obligations and business activity restrictions until it does so. In addition, MHT is required, for the benefit of the PCA Seller Fund Exchange Trusts and, in turn, the PCA Parties, to make sure BEN honors these obligations.

191. Based on MHT’s and BEN’s unilateral change to the CVR Contract’s definition of “Net Auction Consideration,” however, they both now claim that the Shortfall ET Amount for is zero on the ground that, because there is no longer a “cash or cash equivalent requirement,” the Net Auction Consideration includes the \$350 million worth of GWGH common stock and GWGH L-Bonds that remain in the PCA Seller Fund Exchange Trusts. In this scenario, MHT and BEN claim that BEN no longer has any obligations under the CVR Contract to reduce and ultimately eliminate the shortfall, and that MHT therefore has nothing to enforce.

192. In short, by the so-called Second Amendment to the CVR Contract, BEN and MHT sought to extinguish the PCA Parties’ rights as express third-party beneficiaries of the CVR Contract. MHT did this notwithstanding its own obligation to enforce the CVR Contract for the benefit of the PCA Seller Funds, and Defendant Holland signed the purported amendment for MHT even though, as Trust Advisor, he owes fiduciary duties to the PCA Seller Fund Exchange Trusts.

193. At the request of the BEN lawyer, and based on the scant information provided by him, the PCA Parties' board representative signed the Second Amendment to the CVR Contract on May 15, 2020. When he did so, he had no idea that the amendment effectively eliminated the PCA Parties' rights with respect to the CVR Contract. Accordingly, to the extent MHT and BEN claim that the PCA Parties' representative's signature on the document reflects the PCA Parties' "consent" to the amendment, that consent was uninformed. The PCA Parties never intended to waive their rights under the CVR Contract, and the so-called "Second Amendment to the CVR Contract" does not, and cannot, extinguish them.

**BEN And GWGH Have Now Received The Full Benefit Of The Bargain; PCA And The PCA Seller Funds Have Not**

194. More than four years have now passed since the parties signed the Transaction Documents on September 1, 2017.

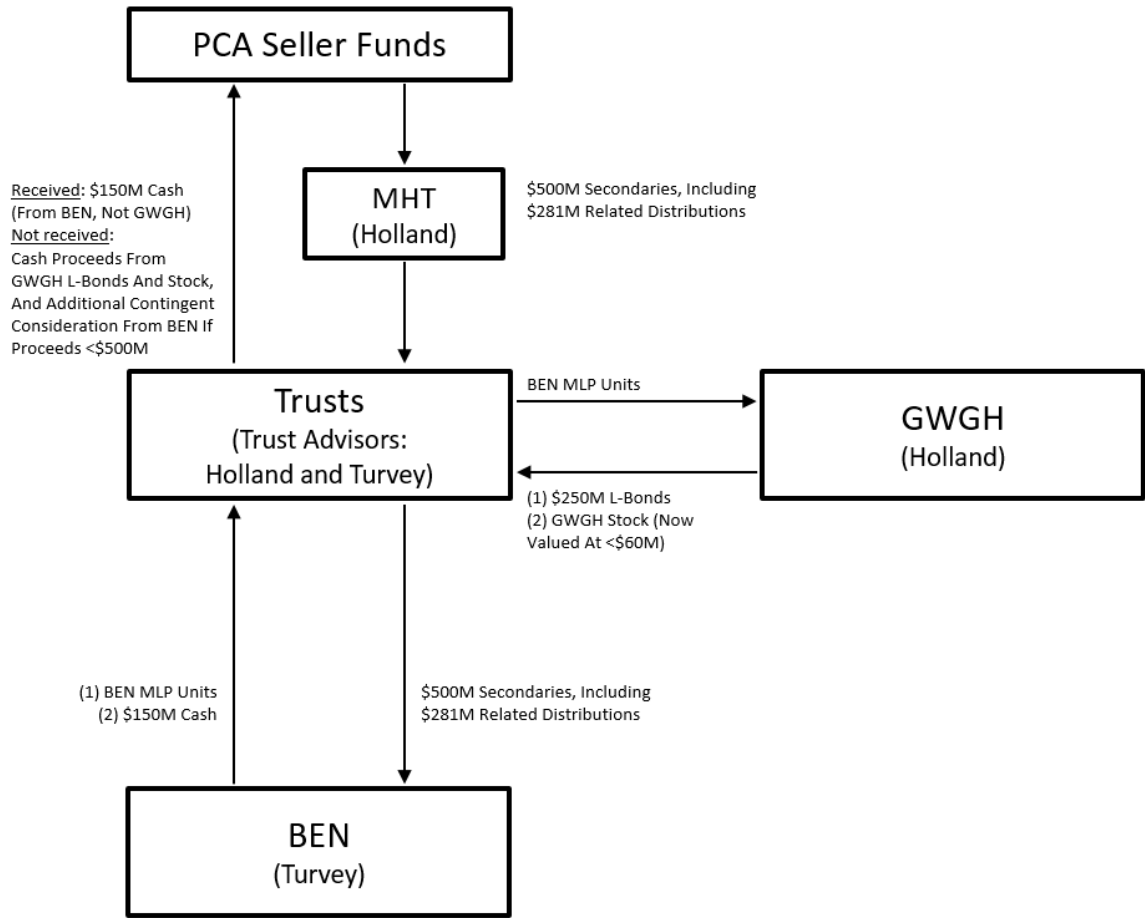
195. Since then, BEN has received the full benefit of the bargain, namely, the PCA Fund Secondaries, and it has benefited immensely from the hundreds of millions in capital they have generated.

196. GWGH also received the full benefit of its bargain, namely, the BEN MLP Units and a controlling majority ownership stake in BEN. (And, along the way, the Trust Advisors, MHT, and BEN relieved GWGH of its obligation to make the \$150 million cash payment component of its so-called "winning bid" in the Auction of the BEN MLP Units.)

197. On the other hand, the PCA Parties have not received the full benefit of their bargain. Far from it, after more than three years, they still have not received any cash for the GWGH L-Bond and GWGH common stock components of the GWGH Winning Bid, they have not received any contingent consideration under the CVR Contract from BEN, and they have received no discernible help at all from the Trust Advisors and MHT, notwithstanding the former's legal obligations to protect the interests of the PCA Seller Funds under the Exchange Trust Agreements and the latter's obligation to enforce the CVR Contract.

198. Thus, the current status of the Transactions can be summarized as follows:

The Transactions as of February 18, 2022



**GWGH’s Financial Distress And Potential Bankruptcy**

199. Meanwhile, recently, GWGH’s financial condition has steadily deteriorated and has now become precarious.

200. In October 2020, GWGH learned that it was the subject of a SEC investigation. According to the company, the SEC’s investigation is still ongoing.

201. Several months later, GWGH missed the March 31, 2021 deadline for filing its Annual Report on Form 10-K for the year ended December 31, 2020 (the

“2020 10-K”) because the company was working with its independent auditors and the SEC’s Office of the Chief Accountant to resolve two accounting issues relating to its acquisition of a controlling interest in BEN.

202. GWGH’s inability to timely file its 2020 10-K prompted a liquidity crunch that has grown more severe over time. GWGH relies heavily on L-Bond sales to generate the liquidity necessary to meet its financial obligations. Because of its inability to timely file its 2020 10-K, in April 2021, GWGH suspended sales of L-Bonds and, as a result, was forced to use liquidity reserves and to finance or refinance assets in order to meet its liquidity needs and satisfy its financial obligations.

203. GWGH did not file its 2020 10-K until November 5, 2021, and in that 10-K, the company disclosed both a “going concern” qualification and material weaknesses in its internal controls over financial reporting and in its disclosure controls. GWGH’s going concern disclosure indicated that, in the view of the company’s independent auditing firm, there is substantial doubt about the GWGH’s ability to meet its financial obligations, due to the company’s inability to raise capital through L-Bond sales, recurring losses from operations, and potential negative implications from the ongoing SEC investigation. GWGH’s internal controls disclosures indicated that, in management’s view, GWGH’s internal controls were insufficient to ensure that amounts recorded and disclosed were fairly stated in

accordance with GAAP, and that its disclosure controls and procedures were ineffective for the year ended December 31, 2020.

204. On November 29, 2021, GWGH completed a series of transactions that resulted in BEN becoming an independent company and, in GWGH's view, no longer a subsidiary of GWGH. According to GWGH, this "return of control" to BEN was a necessary step for BEN to obtain a non-depository bank charter.

205. As part of this "decoupling," GWGH allowed BEN to pay off a \$202 million commercial loan with illiquid common equity units of BEN. GWGH did so even though it was starved for cash and operating under a "going concern" qualification because of its liquidity crunch and the ongoing SEC investigation.

206. In addition to accepting additional illiquid BEN units in lieu of cash, GWGH gave up its right to appoint a majority of BEN's board of directors. As result, GWGH now owns a majority equity interest in BEN, but no longer has a controlling interest.

207. Although GWGH has suggested that its deconsolidation of BEN will ultimately increase the value of its investments in BEN, there is no guarantee that will happen. Moreover, GWGH expects that, as an independent company, BEN will reduce its reliance on GWGH to fund its operations and will seek to raise capital from other sources. In doing so, BEN could issue new equity that would be dilutive of GWGH's ownership interest in BEN.

208. With its SEC filings finally current, GWGH resumed L-Bond sales on December 1, 2021, but its sales were only a small fraction of what they had been previously, which only worsened the company's liquidity crunch.

209. On January 6, 2022, GWGH announced that, on December 31, 2021, its independent auditing firm notified the company that the firm would not stand for reappointment. GWGH has not yet retained a new independent auditing firm.

210. On January 15, 2022, GWGH made several announcements. First, the company announced that it had failed to pay approximately \$13.6 million in L-Bond principal and interest payments that were due that day. Second, the company stated that, because its independent auditing firm had declined to stand for reappointment, it would likely miss its March 31, 2022 deadline for filing its Annual Report on Form 10-K for the year ended December 31, 2021 (the "2021 10-K"), and that its failure to meet this deadline for its 2021 10-K would likely require another suspension of its sale of L-Bonds. Third, GWGH disclosed that its board of directors had authorized management to hire financial and legal restructuring advisors to help evaluate the company's liquidity and capital structure alternatives. Finally, GWGH announced that it had voluntarily suspended L-Bond sales effective as of January 10, 2022.

211. In a January 24, 2022 communication to investors, Holland provided more information on GWGH's liquidity crisis. First, he stated that the company was

working with its financial and legal restructuring advisors to evaluate its options, and that the company was unable to estimate when its L-Bond sales could return to a level that would allow the company to meet its financial obligations. Second, Holland stated that, while assets sales might provide near-term liquidity, such sales would likely be at a significant discount to the fair market value of those assets. Because of this, and because the company had no reliable expectation of when it could again raise capital through L-Bond sales, the company believed it was not in the best interests of GWGH's investors to pursue asset sales "at this time." Finally, Holland stated that GWGH had contacted potential replacement independent auditing firms who said generally that it was unlikely that they could complete an audit and issue an audit report on the company's 2021 year-end financial statements prior to the March 31, 2022 deadline for the filing of the company's 2021 10-K. According to Holland, GWGH likely will continue its suspension of L-Bond sales if that March 31, 2022 deadline is missed.

212. On January 27, 2022, the Wall Street Journal reported that GWGH was seeking "rescue financing" in order to avoid a bankruptcy.

213. As noted above, under the indenture that governs GWGH's bonds, GWGH had a 30-day grace period to make the interest and principal payments that were due on January 15, 2022. On February 14, 2022, however, GWGH announced that its ongoing review of liquidity and restructuring alternatives would take at least



three to four more weeks, and that it would not make interest or maturity payments on its L-Bonds pending the outcome of the review. As a result, under the indenture governing the L-Bonds, an event of default has occurred and either the indenture trustee or noteholders holding at least 25% of the outstanding principal amount of the L-Bonds may now elect to accelerate the L-Bonds, making them immediately due and payable subject to the GWGH's senior debt obligations. And if GWGH files for bankruptcy, under the indenture, that would automatically trigger an acceleration of the principal and interest due on the bonds.

214. At the same time, GWGH's stock price has fallen. As a result, the GWGH common stock that was supposed to have been monetized at \$150 million for the benefit of the PCA Seller Funds is now valued at less than \$60 million based on current market trading prices.

### **FIRST CAUSE OF ACTION**

#### **(Breach of Fiduciary Duties Against Holland and Turvey)**

215. Plaintiffs repeat, re-allege, and incorporate by reference the above allegations as if fully set forth herein.

216. Plaintiffs are third-party beneficiaries of the PCA Seller Fund Exchange Trusts and the Exchange Trust Agreements. In the Trust Advisors-MHT Undertakings Letter, the Trust Advisors expressly acknowledged that each of the PCA Seller Funds was "a designated third party beneficiary of the agreements,

covenants, and undertakings set forth herein and, accordingly, entitled to rely upon and enforce such agreements, covenants, and undertakings.”

217. Holland and Turvey are, or were, parties to the Exchange Trust Agreements and/or Trust Advisors of the PCA Seller Fund Exchange Trusts.

218. Under the Exchange Trust Agreements, the Trust Advisors possess the responsibility and authority to manage and direct the activities of the PCA Seller Fund Exchange Trusts.

219. Under the Exchange Trust Agreements, the Trust Advisors and the PCA Seller Fund Exchange Trusts were required to “take all steps necessary and advisable to commence and consummate the Auction [of the BEN MLP Units] as contemplated by the Transaction Agreement.”

220. In addition, in the Trust Advisors-MHT Undertakings Letter, the Trust Advisors acknowledged and agreed that, in its irrevocable Winning Bid, GWGH had committed to using “commercially reasonable efforts to refinance [the GWGH L-Bonds] with a more favorable credit facility and/or institutional note within 12 months following the Closing.” The Trust Advisors further acknowledged that the GWGH Winning Bid called for the orderly resale of the GWGH common stock pursuant to an Orderly Marketing Agreement with one or more investment banks.

221. In the Trust Advisors-MHT Undertakings Letter, the Trust Advisors also promised Plaintiffs that they would “cooperate with MHT to the full extent of

the authority granted to each of us” to facilitate a refinancing or resale of the L-Bonds “such that the debt securities are reduced to cash for distribution to the Sellers as [of] the earliest practicable date during 2018.” The Trust Advisors also promised to do the same with respect to the sale of the GWGH common stock “in order to reduce such securities to cash at the earliest practicable date following the consummation of the transactions contemplated by the GWG[H] Bid.”

222. As Trust Advisors, Holland and Turvey owe fiduciary duties to the PCA Seller Fund Exchange Trusts and their intended beneficiaries, namely, the PCA Seller Funds.

223. Pursuant to their fiduciary duties, the Trust Advisors were, and are, required to act in the best interests of the PCA Seller Fund Exchange Trusts and the PCA Seller Funds (and not in the best interests of MHT, BEN, and/or GWGH).

224. Pursuant to their fiduciary duties, the Trust Advisors had, and have, among other things, an obligation to protect and enforce the rights of the PCA Seller Fund Exchange Trusts for the benefit of the PCA Seller Funds.

225. Finally, pursuant to their fiduciary duties, the Trust Advisors had a duty to inform the PCA Seller Funds of events that could, or did, harm the rights and interests of the PCA Seller Fund Exchange Trusts and, in turn, the PCA Parties.

226. Holland and/or Turvey have breached their fiduciary duties to the PCA Seller Fund Exchange Trusts and, in turn, the PCA Seller Funds, by, among other things:

- failing to disclose MHT SPV's participation in the MEA, and that MHT SPV was the source of GWGH's irrevocable commitment to pay \$150 million in cash, up front, to the PCA Seller Funds;
- agreeing, on behalf of the PCA Seller Fund Exchange Trusts, to delete MHT SPV as a party to the MEA and relieve GWGH from its obligation to make the \$150 million up-front cash payment, without telling PCA or the PCA Seller Funds that they had done so;
- failing to enforce, or even attempt to enforce, the PCA Seller Fund Exchange Trusts' rights to the payment of \$25 million when BEN received a \$50 million advance from GWGH in June 2019;
- failing to enforce, or even attempt to enforce—against MHT, BEN, and/or GWGH—the PCA Seller Fund Exchange Trusts' rights under the MEA to a refinancing and/or resale of the L-Bonds and a resale of the GWGH common stock sitting dormant in the trusts;
- failing to protect the interests of the PCA Seller Fund Exchange Trusts when the GWGH winning bid failed to close by April 30, 2018, as contemplated by the Transaction Documents and as promised by MHT, BEN, and GWGH;
- failing, along with GWGH, to enter into a proper Orderly Marketing Agreement with a major investment bank to sell the GWGH common stock, as required by the terms of the GWGH Winning Bid and the MEA;
- failing to enforce, or even attempting to enforce, the CVR Contract against BEN for the benefit of the PCA Seller Fund Exchange Trusts, which are express third-party beneficiaries of the CVR Contract; and
- in the case of Defendant Holland, signing the so-called Second Amendment to the CVR Contract on behalf of MHT (rather than seeking to enforce it) that purported to extinguish BEN's and MHT's obligations under and with respect to that Contract.

227. Moreover, Holland cannot possibly be expected to fulfill his fiduciary duties to the PCA Seller Fund Exchange Trusts because he is hopelessly conflicted. He cannot be trusted to assert the PCA Seller Fund Exchange Trusts' rights against GWGH because he is now the Chairman, President, and CEO of GWGH and, as such, owes duties to GWGH and its shareholders, who plainly have no interest in liquidating the L-Bonds and common stock in the PCA Seller Fund Exchange Trusts for the benefit of the PCA Seller Funds.

228. Similarly, Holland cannot be relied upon to protect the PCA Seller Fund Exchange Trusts' interests against BEN—for example, by seeking to enforce the CVR Contract against BEN—because, among other things, BEN is now majority owned by GWGH.

229. Finally, Holland cannot be trusted to assert the PCA Seller Fund Exchange Trusts' rights with respect to MHT because he is still a principal of MHT.

230. Turvey is similarly conflicted. On information and belief, he is a senior executive at BEN, so he cannot possibly be relied upon to protect the interests of the PCA Seller Fund Exchange Trusts or, in turn, the PCA Seller Funds, versus either BEN or its majority owner, GWGH. Plainly, Turvey will not invoke the MEA against GWGH or BEN. Just as plainly, he will not enforce the CVR Contract against BEN.

231. Now that GWGH is in severe financial distress and on the verge of bankruptcy, Holland and Turvey cannot be trusted to act in the best interests of the PCA Seller Fund Exchange Trusts, and to maximize the value of the GWGH securities held by the PCA Seller Fund Exchange Trusts, and then to liquidate those securities so that cash can be distributed to the PCA Seller Funds. Holland's and Turvey's conflicting loyalties to GWGH, MHT and/or BEN wipe out any such trust.

232. As a direct and proximate result of the Trust Advisors' numerous breaches of their fiduciary duties, as well as their ongoing conflicts, the PCA Seller Fund Exchange Trusts and, in turn, the PCA Seller Funds, have suffered and will continue to suffer substantial damages. The Trust Advisors' clear conflicts of interest cannot be remedied other than by their removal and replacement with designees of PCA and the PCA Seller Funds.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that the Court enter judgement in their favor and against Defendants and:

1. Remove Murray T. Holland as Trust Advisor;
2. Remove James E. Turvey as Trust Advisor;
3. Enter an Order that, in view of the circumstances, equity requires that the Plaintiffs be authorized to remove and appoint, within their sole

discretion, the successor trust advisors for each exchange trust, and any and all future trust advisors thereto;

4. Award costs and expenses incurred by Plaintiffs in connection with this action; and
5. Award Plaintiffs such other relief as this Court deems just and equitable under the circumstances.

ROSS ARONSTAM & MORITZ LLP

/s/ David E. Ross

*Of Counsel:*

John F. Hartmann, P.C.  
Ravi Subramanian Shankar  
KIRKLAND & ELLIS LLP  
300 North LaSalle Street  
Chicago, Illinois 60654  
(312) 862-2000

David E. Ross (Bar No. 5228)  
Eric D. Selden (Bar No. 4911)  
A. Gage Whirley (Bar No. 6707)  
100 S. West Street, Suite 400  
Wilmington, Delaware 19801  
(302) 576-1600

*Attorneys for Plaintiffs Paul Capital Advisors,  
L.L.C., Paul Capital Partners VIII-A, L.P.,  
Paul Capital Partners VIII-B, L.P., Paul  
Capital Partners VIII-C, L.P., Paul Capital  
Partners VIII Holdings, Paul Capital Partners  
IX, L.P., and Paul Capital Town Street  
Partners, L.P.*

February 18, 2022

**PUBLIC VERSION FILED:**  
March 4, 2022

**CERTIFICATE OF SERVICE**

I, Eric D. Selden, hereby certify that on March 4, 2022, I caused a true and correct copy of the *PUBLIC VERSION of Verified Complaint* to be served on the following counsel of record via File & Serve*Xpress*:

Norman M. Powell  
Emily V. Burton  
Lauren Dunkle Fortunato  
Michael E. Neminski  
YOUNG CONAWAY STARGATT  
& TAYLOR, LLP  
Rodney Square  
1000 North King Street  
Wilmington, Delaware 19801

Stephen C. Norman  
Ellis H. Huff  
POTTER ANDERSON  
& CORROON LLP  
1313 North Market Street  
Hercules Plaza, 6th Floor  
Wilmington, Delaware 19801

*/s/ Eric D. Selden*  
Eric D. Selden (Bar No. 4911)