

NATURE AND SUMMARY OF THE ACTION

1. This case arises from a successful scheme by Tilman J. Fertitta (“Fertitta”), Landry’s Chairman and CEO, to exploit a publicly announced going-private transaction to steal control of Landry’s from its public shareholders. In June 2008, Fertitta, who owned 39% of the Company’s stock, agreed to pay \$21 per share to acquire from Landry’s public shareholders the approximately 61% of the Company’s shares he did not already own (the “Buyout”). While bound by the terms of the merger agreement for the Buyout (the “Merger Agreement”), Fertitta repeatedly breached his fiduciary duties in order to wrest control of the Company without actually closing the Buyout by:

- using Hurricane Ike, which caused temporary closure of and damage to a limited number of the Company’s restaurants and properties, as a pretext to force the Company to renegotiate the Buyout price materially lower;
- illicitly obtaining majority control of the Company by buying additional shares on the open market at substantial discount to the amended deal price while the Buyout remained pending; and
- orchestrating the termination of the Buyout on the flimsiest of pretexts once he had succeeded in obtaining majority control of the Company.

2. The total consideration to be paid by Fertitta to the public shareholders in the Buyout was approximately \$220 million, with the Merger Agreement providing for a reverse-termination fee of \$24 million (the “Reverse Termination Fee”) in the event Fertitta did not conclude the transaction. While the Merger Agreement excused payment of the Reverse Termination Fee in the case of events having a “Material Adverse Effect”

on Landry's financial condition (the "Merger Agreement MAE Clause"), the Merger Agreement unambiguously defined the Merger Agreement MAE Clause to exclude any "Act of God" or industry or economy-wide downturn. Significantly, a debt commitment letter (the "Debt Commitment Letter") provided by the banks financing the Buyout (the "Lending Banks") contained a material adverse effect clause with virtually identical exclusions.

3. In September 2008, three months after Fertitta agreed to the terms of the Buyout, Hurricane Ike struck Texas and damaged certain of the Company's restaurants and properties. On September 17, 2008, the Company issued a press release announcing that the Company had only suffered temporary damage – that 14 Houston area restaurants would be closed until power was restored, that unspecified operations in Kemah and Galveston, Texas would be rebuilt and reopened, that after rebuilding the Company would have "even newer and better facilities than before," and that the Company's losses would, in any event, largely be covered by insurance.

4. Fertitta, however, seized upon Hurricane Ike to serve his personal interests at the direct expense of Landry's shareholders. Notwithstanding (a) that Hurricane Ike was an "Act of God" that plainly could not trigger the MAE clause in the Merger Agreement or the Debt Commitment Letter, (b) that the Company's press release (which quoted Fertitta) described the hurricane damage as temporary, and (c) that the global credit crisis was not unique to Landry's and therefore could also not trigger the MAE clause in either the Merger Agreement or in the Debt Commitment Letter, Fertitta exerted

pressure on the Board by saying that he and the Lending Banks might abandon the Buyout.

5. Following conversations that *he initiated* with the Lending Banks, Fertitta informed the Landry's Board that the Lending Banks *might* assert that the hurricane and credit crisis constituted an MAE under the Merger Agreement and the Debt Commitment Letter. Fertitta further advised the Board that the Lending Banks *might* be unwilling to refinance Landry's existing long-term debt, which was coming due in February 2009, unless the Company agreed to slash the takeover price. Fertitta then recommended that the Company reduce the Buyout price to \$17.00 which was, of course, to his enormous personal benefit.

6. Fertitta's power play worked. On October 18, 2008 (by which time the 14 Houston area restaurants closed as a result of Hurricane Ike had already re-opened), the Board acceded to Fertitta's demands, lowering the takeover price even further to \$13.50 per share, and reducing the Reverse Termination Fee to \$15 million. As part of the renegotiated transaction, the Lending Banks also entered into an Amended Debt Commitment Letter.

7. The Company's stock price plummeted on news of the lowered deal terms, setting in motion the next step in Fertitta's scheme. Fertitta exploited the lower share price to acquire enough shares in the open market so that, by December 2, 2008, he owned over 50% of Landry's outstanding common stock. The Board, which admits that it knew of Fertitta's stock purchases and understood the danger of Fertitta obtaining absolute control over Landry's without ever paying the required control premium,

inexplicably took no steps to stop Fertitta from obtaining control while the Buyout was pending.

8. Having thus obtained his objective of majority control of the Company, Fertitta had a strong incentive to completely undermine the Fertitta Buyout. As is not uncommon, the Securities and Exchange Commission (“SEC”) had requested that the Lending Banks disclose certain terms of the Amended Debt Commitment Letter. There was nothing unusual about this request and, indeed, the original Debt Commitment Letter had already been made public. Atypically, however, the Lending Banks now asserted, with the support of Fertitta, that disclosing the Amended Debt Commitment Letter to the SEC would somehow give the banks a right to refuse to fund the deal. This flimsy pretext served Fertitta’s purposes well, as he had already obtained majority control of the Company and had no reason – other than complying with fiduciary duties he had already treated with contempt – to pay a premium for Landry’s remaining publicly-held stock.

9. Rather than challenge the transparent motives of Fertitta and the Lending Banks, the purportedly independent Landry’s directors not only stood idly by, but actually agreed, on January 11, 2009, to terminate the Merger Agreement so that Fertitta did not have to pay even the reduced \$15 million Reverse Termination Fee.

10. Considering the central role Hurricane Ike played in Fertitta’s acquiring control of the Company, it is rather ironic that merely two weeks later, on January 26, 2009, the Company disclosed that “[s]ubstantially all of the Company’s operations in Galveston and Kemah are reopened with the final businesses expected to be opened before Valentine's Day.”

11. In sum, Fertitta seized majority control of Landry's at a cost to himself far below the original \$21 Buyout price, without so much as giving the shareholders a vote on a control transaction or an opportunity to seek appraisal for their shares. The Board's failures to protect the public shareholders from real and obvious threats to corporate welfare, and their complicity in Fertitta's improper actions caused the value of Landry's now-minority shareholders' investments to fall below \$6 per share.

12. Plaintiff seeks to hold Fertitta liable for his gross disloyalty and bad-faith actions, which were permitted by the Board in breach of its duties, and seeks an Order requiring Fertitta to either consummate the Buyout at the \$21 per share price agreed to in June 2008 or pay monetary damages making shareholders whole for the damages they have suffered. In the alternative, and only to the extent enforcement of the Merger Agreement is not ordered, Plaintiff seeks to require Fertitta to pay (as a derivative claim) the original Reverse Termination Fee of \$24 million to the Company

JURISDICTION

13. This Court has jurisdiction over this action pursuant to 10 Del. C. § 341.

PARTIES

14. Plaintiff LMPERS is a retirement system created for the purpose of providing retirement allowances and other benefits for full-time municipal police officers and employees in the state of Louisiana, secretaries to chiefs of police and employees of this retirement system. LMPERS is a stockholder of Landry's, has been a stockholder of Landry's at all material times alleged in this Complaint and will continue to be a stockholder of Landry's through the conclusion of this litigation.

15. Fertitta has been Landry's President and Chief Executive Officer since 1987. In 2006, Landry's paid Fertitta over \$15 million (representing almost 20% of the Company's total operating income for that year), and in 2007 Landry's paid Fertitta over \$7 million.

16. Steven L. Scheinthal has served as Landry's Executive Vice President or Vice President of Administration, General Counsel and Secretary since September 1992, and has been a member of the Landry's Board of Directors since 1993. Landry's paid Scheinthal over \$1.6 million in 2006, and over \$850,000 in 2007.

17. Kenneth Brimmer has been a member of Landry's Board since 2004. He is a member of the Special Committee of Independent Directors formed to evaluate Fertitta's offer to acquire the Company in a going-private transaction (the "Special Committee"), and is to receive \$50,000 for his service on the Special Committee. Landry's paid Brimmer over \$110,000 for his role as a Landry's director in 2007.

18. Michael S. Chadwick has been a member of Landry's Board of Directors since 2001. He is Chairman of the Special Committee and is to receive \$60,000 for his service on the Special Committee. Landry's paid Chadwick over \$115,000 for his role as a Landry's director in 2007.

19. Michael Richmond has been a member of Landry's Board of Directors since 2003. He is a member of the Special Committee and is to receive \$50,000 for his service. Landry's paid Richmond over \$115,000 for his role as a Landry's director in 2007.

20. Joe Max Taylor has been a member of Landry's Board of Directors since 1993. Landry's paid Taylor over \$130,000 for his role as a Landry's director in 2007.

21. The individual defendants named above in paragraphs 15 through 20 are collectively referred to as the "Landry's Directors" or the "Director Defendants."

22. By reason of their positions, the Landry's Directors owed fiduciary duties to Landry's and its shareholders, including the obligations of loyalty, good faith, fair dealing, and due care. They were required to discharge their duties in a manner they reasonably believed to be in the best interests of Landry's and all its shareholders, and not in furtherance of other interests. Specifically, they could not further the interests of Fertitta at the expense of shareholders.

23. Fertitta Holdings, Inc. ("FHI") is a newly formed Delaware corporation and is wholly owned by Fertitta. Fertitta Acquisition Co. ("FAC") is a Delaware corporation and a wholly owned subsidiary of FHI (together with FHI, the "Fertitta Entities"), and was formed to be the acquiring entity in the Buyout. The Fertitta Entities and the Director Defendants are collectively referred to herein as "Defendants."

NOMINAL DEFENDANT

24. Landry's is a Delaware corporation headquartered at 1510 West Loop South, Houston Texas, 77027. Landry's is a national, diversified restaurant, hospitality and entertainment company principally engaged in the ownership and operation of full-service, casual dining restaurants. As of December 31, 2007, Landry's owned and operated over 179 restaurants in 28 states. Landry's portfolio of restaurants includes Rainforest Cafe, Saltgrass Steak House, Landry's Seafood House, The Crab House,

Charley's Crab, and The Chart House. Landry's is also engaged in the ownership and operation of select hospitality businesses including the Golden Nugget Hotels and Casinos in downtown Las Vegas and Laughlin, Nevada.

FACTUAL ALLEGATIONS

A. The Fertitta Buyout Offer

25. On January 27, 2008, Fertitta, Landry's Chairman, CEO and 39% shareholder, made an offer to acquire all of the shares of common stock of the Company for \$23.50 per share, a 41% premium over the price of Landry's stock on the last trading day before the offer. The Company described the offer in a press release as follows:

Landry's Restaurants, Inc. (NYSE: LNY – News; the “Company”), stated today that its Board of Directors has received a letter from Tilman J. Fertitta, Chairman, President and CEO, proposing to acquire all of the Company's outstanding common stock for \$23.50 per share in cash, representing a 41% premium over the closing price of the Company's common stock on January 25, 2008. According to the proposal letter, Mr. Fertitta is confident that he can obtain all the required financing to fund the transaction given that he will be contributing all of his approximately 39% equity ownership of the Company, as well as additional substantial cash equity. The total value of the transaction is approximately \$1.3 billion.

26. In response to the offer, the Landry's Board formed a Special Committee of Independent Directors (the “Special Committee”) comprised of Messrs. Brimmer, Richmond and Chadwick, to assess the offer and consider any alternate proposals. Nearly three months after Fertitta's January offer, the Special Committee retained Cowen & Company LLC as its financial and M&A advisors on April 2, 2008.

27. Rather than accepting Fertitta's \$23.50 per share offer, or negotiating an increase, on June 16, 2008, the Landry's Board entered into an agreement to sell the

company to Fertitta Acquisition Co. (“FAC”) for \$21 a share. This represented a 37% premium over the Landry’s share price on the last trading day before the disclosure of Fertitta’s revised offer to buy the Company. The total consideration to be paid Landry’s public shareholders was approximately \$220 million.

28. The Merger Agreement, which was filed with the SEC, contained a two-way termination fee under which:

(a) the Company would be required to pay FAC \$3 million if Landry’s terminated the transaction during a 45 day “Go-Shop” period, and \$24 million upon termination after the end of the Go-Shop Period; and

(b) FAC would be required to pay the Company a \$24 million reverse termination fee (the “Reverse Termination Fee”) if it failed to close the deal. Fertitta personally guaranteed the payment of the Reverse Termination Fee and expense reimbursement obligations of FAC.

29. The Merger Agreement excused FAC (and, thereby, Fertitta) from any obligation to pay the Reverse Termination Fee if “since December 31, 2007” a “material adverse effect” had occurred. The Merger Agreement defined a material adverse effect, in relevant part, as:

“Material Adverse Effect” means any event, development, change or circumstance (any such item, an “Effect”) that, either individually or in the aggregate, has caused or would reasonably be expected to cause a material adverse effect on the condition (financial or otherwise), results of operations, assets, liabilities (contingent or otherwise), properties, solvency, business, management or material agreements of the Company and its subsidiaries taken as a whole, ***except in each case for any Effect resulting from, arising out of or relating to any of the following, either alone or in combination: ... (B) any change in interest rates or general economic conditions (i) in the industries or markets in which the***

Company or any of its subsidiaries operates, (ii) affecting the United States or foreign economies in general or (iii) in the United States or foreign financial, banking or securities markets, in each case which changes do not affect the Company and its subsidiaries to a materially disproportionate degree; (C) any natural disaster or act of God;.... (emphasis added).

30. Similarly, the Debt Commitment Letter between the Lending Banks (three entities affiliated with Jefferies & Company, Inc. and Wells Fargo Foothill) and Fertitta included a material adverse effect clause which excused the Lending Banks from funding the Fertitta Buyout under certain conditions. The material adverse effect clause in the Debt Commitment Letter contained an identical exception for a “natural disaster or act of God” and a virtually identical exception for “*any change in interest rates_or general economic conditions in the industries or markets in which the Company or any of its subsidiaries operates* or affecting the United States or foreign economies in general or in the United States or foreign financial, banking or securities markets (which changes do not affect the Company and its subsidiaries to a materially disproportionate degree)....” (emphasis added).

B. Fertitta Uses Hurricane Ike To Force a Reduction in the Buyout Price

31. On September 13, 2008, Hurricane Ike made landfall at Galveston, Texas, causing closure of and damage to certain of the Company’s restaurants and other properties.

32. On September 17 the Company issued a press release announcing its interim financial results and addressing the impact of Hurricane Ike on the Company. The press release effectively portrayed the damage from Hurricane Ike as being limited to three cities, temporary in nature, and of minimal, if any, negative long term effect as the

damaged properties would be rebuilt, and the Company's losses would be largely covered by insurance. The release stated in pertinent part:

Landry's Restaurants, Inc., announced that 14 Houston area restaurants remain closed as a result of Hurricane Ike and will reopen as soon as power is restored to each of the units. Moreover, all of the Company's Kemah and Galveston restaurants are closed. Only one restaurant in Galveston sustained significant damage, as did two restaurants at the Kemah Boardwalk. In addition, the amusement rides, the boardwalk itself and some infrastructure at the Kemah boardwalk incurred significant damage. Once power and water are restored in Galveston, the Company anticipates that the majority of its Galveston restaurants will re-open, and that some of the restaurants at the Kemah Boardwalk may reopen within the next 45 to 60 days, with additional restaurants and some amusement rides opening monthly thereafter.

* * *

Tilman J. Fertitta, Chairman of the Board, President and CEO stated, "I am committed to reopening our operations in both Kemah and Galveston as soon as possible. After our rebuilding, we will have even newer and better facilities than before...."

According to Rick Liem, Executive Vice President and CFO, "While the final effect of the property damage and earnings impact resulting from the storm has not yet been finally determined, we are comfortable that the majority of our property losses and cash flow are expected to be covered by property and business interruption insurance."

33. Though the interim results and news of the closures caused Landry's stock price to fall that day, the stock recovered in a matter of days and returned to levels above the pre-announcement price. Nonetheless, Fertitta sought to use the damage caused by Hurricane Ike and the deteriorating state of the US economy as an excuse to renegotiate the \$21 per share Buyout price.

34. According to the Company's January 5, 2009 revised Preliminary Proxy Statement (the "Revised Proxy"), Fertitta initiated contact with the Lending Banks promptly following Hurricane Ike.

35. Thereafter, on September 18, 2008, prior to any investigation by the Lending Banks as to the damage caused to the Company by Hurricane Ike (the Lending Banks would not even tour the properties until five days later), Fertitta sent a letter, to the Special Committee, which has never been made public but was described in the Revised Proxy asserting that:

. . . due to (a) the damage to our properties in Galveston, Kemah and Houston arising out of Hurricane Ike, (b) the turmoil in the credit markets and (c) continued worsening of general economic conditions, [Fertitta] believed that [the Lending Banks] would likely determine that a material adverse effect, as defined in [the] debt commitment letter issued to Mr. Fertitta, had occurred, which would result in [the Lending Banks] withdrawing the debt commitment letter for the acquisition financing for the merger.

Fertitta further claimed in the letter that if the Lending Banks "withdrew their debt commitment letter because of a material adverse effect, Fertitta may have no choice but to exercise his right to terminate the original merger agreement." Finally, Fertitta closed the letter by expressing his "concern about the willingness of [the Lending Banks] to provide any financing absent a reduction in leverage in the debt financing," as well as his belief that he could "persuade the Lending Banks to move forward with debt financing if [he] revised his offer to reflect [Landry's] reduced value, which he believed at such time was \$17.00 per share."

36. Notably, Fertitta's letter, as described in the Revised Proxy, does not state that the Lending Banks had actually determined or were even taking the position that a

material adverse effect had occurred as contemplated by the Debt Commitment Letter, only that he believed they might do so.

37. Moreover, at the same time, Fertitta had purchased 400,000 shares of Landry's stock on September 17, 18 and 19, 2008 on the open market at prices ranging from \$11.83 to \$14.11.

38. On September 19, the Special Committee held a telephonic meeting and discussed (a) whether damage to the Company's properties from Hurricane Ike or potential difficulties in the credit markets constituted a "material adverse effect," (b) Fertitta's "best efforts" obligation to close the going private financing under the Debt Commitment Letter; and (c) Fertitta's purchase of shares on the open market.

39. On September 24, 2008, the Special Committee's independent counsel, King & Spalding LLP, sent a letter to Fertitta's counsel requesting information regarding Fertitta's financing efforts.

40. Fertitta responded the next day, September 25, by letter to the Special Committee, asserting that he had spoken to a number of financial institutions and that "no financial institution [outside of the Lending Banks] that he approached expressed any significant interest" in financing the proposed acquisition. Fertitta also attached a letter from Jefferies, in which Jefferies advised Fertitta that in view of the "affects of Hurricane Ike" the Lending Banks believed that the Fertitta Entities may not be able to satisfy the conditions precedent in the Debt Commitment Letter.

41. On September 25, 2008, King & Spalding responded to Fertitta's letter of the same day, by letter to Fertitta and his counsel, stating (a) the Special Committee did

not view the correspondence between Jefferies and Fertitta as a termination of the Debt Commitment Letter, (b) that Fertitta had not disclosed whether he agreed with Jefferies' assertion; and (c) that the Special Committee must receive this information in order to evaluate the situation fully.

42. Later, on September 25, Fertitta's counsel informed the Special Committee that Fertitta "had spoken with a number of prominent financial institutions . . . [and] these banks had no interest in providing the necessary debt financing for the merger[.]" The letter then demanded the Merger Agreement be revised to reflect a per-share price of \$17.00 instead of \$21.00. Following Fertitta's letter, the Special Committee did not independently contact any financial institutions directly to verify Fertitta's claims.

43. Beginning to back down in the face of Fertitta's self-interested demands, on October 1, 2008, the Special Committee proposed, "for negotiation purposes," a \$19.00 per share merger. While the Special Committee's advisors had limited contact with the Lending Banks regarding Fertitta's characterization of their position, it does not appear that the Lending Banks ever indicated that if actually forced to do so, they would assert a right to terminate their financing obligations.

44. On October 6, 2008, Fertitta responded to the Special Committee that *he believed* the Lending Banks would declare a "material adverse effect" had occurred. The Special Committee took no steps to confirm Fertitta's claims.

45. The next day, October 7, 2008, the Company publicly announced for the first time that the Buyout might be in “jeopardy,” issuing a press release, which stated in relevant part:

Landry’s Restaurants, Inc. (NYSE: LNY – the “Company”), reported today on the current status of the Merger Agreement with Tilman J. Fertitta, Chairman, President and CEO, to acquire the Company. The Special Committee of the Board of Directors, which was formed to evaluate Mr. Fertitta’s offer, has been informed by Mr. Fertitta that in view of the closure of the Company’s Kemah and Galveston properties, the instability in the credit markets, and the deterioration in the casual dining and gaming industries, the debt financing required to complete the pending transaction is in jeopardy at the current \$21.00 per share price. Mr. Fertitta has further advised the Committee that he is in negotiations with Jefferies and Company about the financing for a transaction at a substantially reduced price. The Committee and Mr. Fertitta have not yet agreed upon terms of a new transaction, and there is no assurance that a transaction at a reduced price will even be reached.

46. In the same press release, the Company announced that all of its Houston area restaurants affected by Hurricane Ike had reopened, that one restaurant on the Kemah Boardwalk was expected to reopen within a few weeks, and that the entire Kemah site would be fully reopened by spring 2009. In short, the damage from Hurricane Ike was being repaired at a rapid pace.

47. Following this announcement regarding the possible renegotiation of the Buyout, the price of Landry’s stock unsurprisingly fell 35% in the following three days of trading to \$8.44 per share.

48. During the following weeks, Fertitta continued to press the Board to agree to a lower takeover price, of which he would be the prime beneficiary. In particular, he used the prospect of Landry’s inability to refinance its long-term debt as a key leverage

point with the Board, notwithstanding that his fiduciary duties required Fertitta to help, not hurt, the Company.

49. On October 10, 2008, Fertitta revised his offer downward once again, from \$17.00 to \$13.00 per share. Later that day, the Special Committee along with Fertitta and his advisors discussed, among other things, the willingness of the Lending Banks to refinance the Company's indebtedness and possible revisions to the terms of the Merger Agreement.

50. On October 17, the Special Committee agreed to a revised deal which was publicly announced the next day. On October 18, 2008, Landry's issued a press release announcing that it had entered into an amended merger agreement (the "Amended Agreement") with Fertitta, with a reduced purchase price of \$13.50 per share. The Amended Agreement also altered the terms of the Reverse Termination Fee, reducing the \$24 million fee to \$15 million.

51. The press release justified the Amended Agreement on the grounds that Fertitta had advised the Company that financing of the deal could be in jeopardy. Nowhere, however, did the Company assert that Fertitta or the Lending Banks had indicated any belief that they could legally refuse to fund the deal at \$21 per share. The Company's October 18 press release stated in relevant part:

Landry's Restaurants, Inc. . . . today announced that it has entered into an amendment to the merger agreement previously entered into with Fertitta Holdings, Inc... Fertitta will acquire the outstanding shares of the Company's common stock for \$13.50 per share, a premium of 49% over the closing price of the Company's common stock on October 17, 2008.

The Company had previously announced *it had been advised by Mr. Fertitta* that in view of the unprecedented collapse of the credit markets,

the closure of the Company's Kemah and Galveston properties and the slow down in the casual dining and gaming industries, the financing to complete the merger at the previously agreed upon price was in jeopardy. As part of a compromise that was reached among the Company, Fertitta and Jefferies Funding, LLC, Jefferies & Company, Inc., Jefferies Finance, LLC and Wells Fargo Foothill, LLC (the "Lenders"), the Lenders agreed under their amended debt financing commitment and Fertitta agreed under the amended merger agreement that they would not claim that a material adverse effect had occurred as a result of the occurrence of any event known to them through the date of execution of the amended financing commitment and the amended merger agreement, respectively. (emphasis added).

52. The only consideration to shareholders through the Amended Agreement was the Lending Banks and Fertitta agreeing to refrain from asserting a material adverse effect. This consideration, of course, was illusory, as neither Fertitta nor the Lending Banks had any legitimate claim that an MAE had occurred under the Merger Agreement or the Debt Commitment Letter. First, a hurricane is a natural disaster and/or an act of God and could not constitute an MAE under either agreement. Second, the deteriorating credit markets and the general downturn in the casual dining and gaming industries – specifically noted in the press release as a reason for the amendment – fall squarely within exceptions to the MAE clause in the Merger Agreement and the Debt Commitment Letter, which contained identical language excluding “any change in interest rates or general economic conditions (i) in the industries or markets in which the Company or any of its subsidiaries operates, (ii) affecting the United States or foreign economies in general or (iii) in the United States or foreign financial, banking or securities markets, *in each case which changes do not affect the Company and its subsidiaries to a materially disproportionate degree*” (emphasis added). While restaurants and gaming were undoubtedly affected by the economic downturn, there is no

evidence that the changes affected the “Company and its subsidiaries to a materially disproportionate degree,” nor had any such evidence been submitted to the Special Committee or Board by Fertitta or otherwise received by the Special Committee or Board.

53. Rather, the Revised Proxy states that “the special committee had not received any information that would lead it to believe that a material adverse effect under the original merger agreement had occurred” and suggests that the only reason the Board agreed to amend the terms of the Buyout was the unpalatable prospect of litigation by the Company against its CEO and the Lending Banks – a position the Board had been forced into by Fertitta’s self-serving conduct.

C. Fertitta Acquires Control of the Company on the Open Market

54. As noted above, even prior to agreeing to amend the terms of the Buyout, the Special Committee and the Board were aware that Fertitta was purchasing Landry’s shares in the open market, and thus were aware of the distinct possibility that unless they took action to stop him, he could continue his purchases until he gained majority control of the Company. Inexplicably, the Board refused to take any steps to protect shareholders from this obvious risk.

55. With the Amended Agreement in hand, Fertitta immediately began to take advantage of Landry’s reeling stock price by purchasing even more shares in the open market. Between October 20, 2008, and December 2, 2008, Fertitta made 22 purchases of Landry’s stock, never paying more than \$11.72 a share. Many of these purchases were made at under \$11 a share, a steep discount to the Amended Agreement price of \$13.50

56. By December 2, 2008, entities affiliated with Fertitta owned 9.66 million Landry's shares (including restricted stock and options) or 56.7% of all outstanding shares. By comparison, as of June 16, 2008, at the time the original Buyout was approved by the Board, entities affiliated with Fertitta owned approximately 6.63 million Landry's shares, (including restricted stock and options), or 39% of all outstanding shares.

57. In acquiring control in this fashion while the Buyout was pending, Fertitta served his own interests in breach of his fiduciary duty to shareholders. As Chairman and CEO of the Company, Fertitta was obligated to refrain from circumventing the terms of the Buyout agreement by illicitly purchasing Landry's shares to obtain control of the Company.

58. Further, as Chairman and CEO, Fertitta was undoubtedly acting on information not immediately available to public shareholders as he purchased shares during the transaction process. Among other things, he unquestionably possessed material inside information about his own intentions, the Board's deliberations, conversations with the Lending Banks, and about Landry's progress in dealing with the effects of Hurricane Ike.

59. By this point, the Board had become culpably complicit in Fertitta's conduct. When engaged in a going-private transaction with the CEO of the Company, a corporate Board must of course take steps to mitigate any threat to shareholder value. Indeed, corporate boards have insisted for decades that they are entitled, and often required, to take defensive measures to prevent a control acquisition on terms detrimental

to shareholders. If ever there was a case where a Board was required to implement defensive measures in the face of a serious threat to corporate and shareholder welfare, this is it. As Fertitta was not only the Company's largest shareholder, but also its CEO and Chairman, there was the acute risk that he might use his position of power and knowledge to benefit himself at the expense of the other shareholders. Moreover, the Special Committee had actual knowledge that Fertitta was purchasing shares on the open market. Despite this, the Board did nothing to restrict Fertitta's purchase of Landry's stock, to impose a standstill or to implement a poison pill or to otherwise prevent Fertitta's from seizing control of the Company on the cheap while shareholders understood that the Buyout was pending.

60. As a result of the Board's dereliction of their duty, shareholders who did not sell their shares in anticipation of voting on the Fertitta Buyout are left with a devalued minority interest in a company controlled by Fertitta.

D. Landry's Board Allows Fertitta to Escape His Obligations Under the Merger Agreement

61. Having thus secured majority ownership of the Company, Fertitta no longer needed to pay the control premium contemplated by the Fertitta Buyout, and accordingly sought to manufacture a means to kill the deal, rob shareholders of a change-of-control premium and saddle them with unreimbursed substantial transaction expenses.

62. At some point following the announcement of the Amended Agreement, the SEC made a routine request to Landry's "to disclose certain information" from the Amended Debt Commitment Letter.

63. There was nothing unusual about this request and, indeed, the original Debt Commitment Letter had already been made fully available to the public. This time, however, the Lending Banks and Fertitta balked at providing information to the SEC regarding the amended Debt Commitment Letter.

64. On January 11, 2009, Landry's shocked the market by announcing that it had terminated the previously announced Buyout, and had agreed to release Fertitta from his obligations under the merger agreement under the guise that the SEC requested that the Company make "certain information" available from the financing commitment letter and that the Lending Banks were not willing to make such information available. Notably, even where debt commitment letters include a confidentiality provision, they routinely allow for disclosure required by law, including SEC requests. The idea that the Lending Banks, which had only recently renegotiated their debt commitment and re-affirmed their willingness to provide financing when Fertitta forced the buyout price significantly below the original \$21 per share deal, independently refused to provide funding just because of a simple SEC disclosure request is simply beyond credulity.

65. The announcement of the Buyout's termination caused Landry's share price to tumble an additional 37.65%, or \$4.65, to open at \$7.70 in trading the following morning.

66. In a press release issued on January 12, 2009, the Company sought to justify its decision to terminate the going private transaction by claiming that the Lending Banks' "refusal" to disclose the secret terms of the financing left it with "no choice" but to terminate the acquisition in order to preserve the Company's alternative financing.

67. In an attempt to defend the Board's actions, Michael Chadwick, Chairman of the Special Committee stated, "We felt it was in the best interests of our stockholders to terminate the merger agreement in order to maintain the alternative financing. While this must be extremely disappointing to our shareholders, the special committee recognizes that the financial markets are in crisis and respects the position of our lenders. Given our need to refinance approximately \$400 million in senior notes, and the existing world-wide credit crisis, we felt it was in the best interests of our stockholders to terminate the Merger Agreement in order to maintain the alternative financing." In reality, the alternative financing was primarily in the best interest of the new controlling shareholder, Mr. Fertitta.

68. Conveniently for Fertitta, Landry's announced on January 26, 2009 –just two weeks later – that "[s]ubstantially all of the Company's operations in Galveston and Kemah are reopened with the final businesses expected to be opened before Valentine's Day." This disclosure revealed that reconstruction stemming from Hurricane Ike was well ahead of schedule, a fact Fertitta was surely apprised of while acquiring control of Landry's on the open market. To this day, Landry's has not been forthcoming as to what information the SEC was seeking to be disclosed in the proxy, leaving shareholders and analysts in the dark.

69. Plaintiff is unaware of any instance where such a routine information request from the SEC has been seized as a pretext to avoid an acquirer's obligations under a merger agreement prior to a shareholder vote. Indeed, the original Debt Commitment Letter was filed publicly, without issue.

70. Moreover, at the very minimum, failure of acquisition financing is the acquiror's problem and would have required Fertitta to pay the Reverse Termination Fee. Inexplicably, the Board acted to free Fertitta of even that obligation by agreeing to have the Company "terminate" the transaction.

71. By their collective actions and inactions, Fertitta and the Board have demonstrated a blatant disregard for their respective obligations to the Landry's shareholders and the Company. In an astounding campaign of breaches of fiduciary duty since agreeing to the Buyout, Fertitta (with the Board's assent and/or complicity) devalued the Company; stripped public shareholders of their controlling interest therein; conveyed control to Fertitta at a discounted price; and abandoned a termination fee for no purpose other than to further enrich Fertitta.

CLASS ACTION ALLEGATIONS

72. Plaintiff brings this action pursuant to Rule 23 of the Rules of the Court of Chancery, individually and on behalf of all holders of Landry's common stock (except Defendants herein and any persons, firm, trust, corporation or other entity related to or affiliated with them and their successors in interest) during the period from on or about September 17, 2008 through and including January 11, 2009, who have been damaged by Defendants' wrongful actions, as more fully described herein (the "Class").

73. This action is properly maintainable as a class action for the following reasons:

a. The Class is so numerous that joinder of all members is impractical. As of August 4, 2008, and at all relevant times herein, Landry's had

outstanding over 16 million shares of its common stock, of which roughly 50% was held by individuals and entities too numerous to bring separate actions. It is reasonable to assume that holders of the Landry's common stock are geographically dispersed throughout the United States.

b. There are questions of law and fact which are common to the Class and which predominate over questions affecting any individual class member. The common questions include, inter alia,

- whether Fertitta breached his fiduciary duties to the Company and its shareholders through his conduct described above;
- whether the Landry's Directors breached their fiduciary duties and other common law duties by failing to preserve and enforce the terms of the original merger agreement;
- whether the Landry's Directors breached their fiduciary duties by failing to protect Landry's public shareholders from the known, obvious and substantial threat to shareholder value posed by Fertitta's purchases of Landry's stock up to and beyond the point of acquiring control of the Company without paying any control premium and without paying fair value;
- whether the Landry's Directors breached their fiduciary duties by terminating the Amended Agreement rather than requiring Fertitta to pay the termination fee that would be owed if he was the terminating party.

74. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature. Plaintiff is a member of the Class, and Plaintiff's claims are typical of the claims of the other members of the Class. Accordingly, Plaintiff is an adequate representative and will adequately protect the interests of the Class.

75. Plaintiff anticipates that there will be no difficulty in the management of this litigation as a class action.

76. The Landry's Directors have acted on grounds generally applicable to the Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole.

77. Plaintiff has suffered damages and will continue to suffer additional damages as a result of the acts and conduct of Fertitta and the Landry's Directors alleged herein, including the massive decline in Landry's stock price to well below the \$21 per share price of the original Buyout as a result of the Defendants' conduct.

78. The prosecution of separate actions would create the risk of:

- inconsistent or varying adjudications which would establish incompatible standards of conduct for the Defendants, and/or
- adjudications which would as a practical matter be dispositive of the interests of other members of the Class.

CLAIMS FOR RELIEF

COUNT I

(Class Action Claim For Breach of Fiduciary Duty Against Defendant Fertitta)

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

80. Defendant Fertitta, as Landry's Chief Executive Officer and Chairman, owes the Class and the Company the utmost fiduciary duties of due care, good faith, and loyalty. Defendant Fertitta has failed to fulfill his fiduciary duties.

81. Defendant Fertitta breached his fiduciary duties by favoring his own interests over those of the Landry's' public shareholders, and abusing his position as Chief Executive Officer to:

- (a) use Hurricane Ike (and the credit crises) as pretexts to force the Board to renegotiate the Merger Agreement and agree to the Amended Agreement with no additional consideration for shareholders;
- (b) purchase shares on the open market at the expense of the Class, and use his knowledge as Chief Executive Officer (including the reconstruction progress and limited impact of Hurricane Ike) to trade on non-public information, for the purpose of circumventing the Amended Agreement and gaining control of the Company without paying shareholders a control premium;
- (c) force termination of the Amended Agreement once he had acquired control, to avoid paying now minority shareholders the agreed upon fair price for their shares; and

(d) cause the Board to agree to be the party “terminating” the Amended Agreement to avoid even his obligations to pay the Reverse Termination Fee.

82. Plaintiff and the Class have suffered damages as a result of the acts and conduct of Fertitta alleged herein, including the lost opportunity to receive the original \$21 per share Buyout price or in the alternative, damages suffered as a result of the massive decline in Landry’s stock price to well below the \$21 per share price of the original Buyout.

COUNT II

(Class Claim for Aiding and Abetting Breach of Fiduciary Duty Against the Fertitta Entities)

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

84. Defendant Fertitta, as Landry’s Chief Executive Officer and Chairman, owes Plaintiff and the Class the utmost fiduciary duties of due care, good faith, and loyalty. Defendant Fertitta has failed to fulfill his fiduciary duties. FAC and FHI are deemed to have knowledge of the fiduciary duties Fertitta owes the Class because Fertitta is a control person of FAC and FHI and in fact does control FAC and FHI.

85. FAC and FHI knowingly participated in the breaches of fiduciary duty by Fertitta and benefited from those breaches.

86. As a result of FAC’s and FHI’s actions, Plaintiff and the Class have suffered, and continue to suffer, damages.

COUNT III

(Class Claim For Breach of Fiduciary Duty Against the Director Defendants)

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

88. The Director Defendants have breached their fiduciary duties by allowing Fertitta to force a renegotiation of the Merger Agreement by mere pretext. The Director Defendants allowed Fertitta to renegotiate the Merger Agreement on terms highly favorable to Fertitta at the expense and to the significant detriment of Landry's shareholders.

89. The Director Defendants have breached their fiduciary duty to take reasonable action to protect against known threats to corporate and shareholder welfare. By failing to take any steps to limit the plain and inescapable risks to shareholders' interests posed by Fertitta's ability to gain a controlling interest in the Company on the open market, the Board has caused the Class to forfeit control of the Company and forego any control premium.

90. In light of Fertitta's open desire to renegotiate the previously agreed to Buyout, and his known continued accumulation of Landry's shares during the negotiation and pendency of the Buyout, the Board was obligated to take reasonable defensive measures to stop Fertitta from gaining control of the Company outside the terms of the Merger Agreement. There was the distinct threat that Fertitta would acquire control of the Company "on the cheap," and it would have been proportionate and lawful for the Board to adopt a "poison pill" to protect shareholders' majority interest in the Company

and the value of their shares. Alternatively, the Board could have incorporated a standstill provision in the Amended Agreement, or taken other measures, to prevent Fertitta from further acquiring shares of the Company outside the terms of the Amended Agreement.

91. Defendants also breached their fiduciary duties by allowing Fertitta to abandon the Amended Agreement by way of a mere pretext, thereby allowing Fertitta to escape the obligations of the Fertitta Entities to complete the Buyout and pay shareholders the Buyout price.

92. Plaintiff and the Class have suffered damages as a result of the acts and conduct of Landry's Directors alleged herein. Plaintiff and the Class will receive neither the benefits contemplated by the Amended Agreement, nor any control premium for their shares as a result of the Defendants' breaches of fiduciary duty. Further, the Class has suffered as a result of the massive decline in Landry's stock price to well below the \$21 per share price of the original Buyout as a result of the defendants' conduct.

COUNT IV

(In the Alternative, Derivative Claim Against the Board For Failure to Seek the Reverse Termination Fee)

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

94. Plaintiff alleges and believes all these claims to be direct, but in the alternative, and to the extent the Court declines to award damages for Fertitta's or the Board's breach of duty based on the \$21 share price and subsequent failure to protect shareholders' majority interest in the Company, Plaintiff alleges a derivative claim to enforce payment of the \$24 million Reverse Termination Fee.

95. Plaintiff has not made a demand on the Landry's Board to institute this action against Defendants in connection with the wrongs alleged herein. Such demand would be futile and useless, and is thereby excused, because the acts forming the basis of Plaintiff's derivative claim are so egregious on their face that the Board's conduct cannot meet the test of valid business judgment; thus, a substantial likelihood of director liability exists.

96. All six of the Company Directors are named herein as Director Defendants and include: Defendants Fertitta, Brimmer, Chadwick, Richmond, Scheinthal and Taylor. As alleged herein, in gross breach of their fiduciary duties as officers and/or directors of Landry's, these six Director Defendants have colluded with one another and/or have failed to take necessary actions against Fertitta and the Fertitta Entities, thus harming the Company by:

(a) de-valuing the Company in furtherance of Fertitta's plan to gain control of Landry's at minimal expense;

(b) refusing to take reasonable measures to protect the rights of shareholders and the Company in response to Fertitta's suggestion of a non-existent right to terminate the Merger Agreement;

(c) allowing Fertitta to escape his (and FAC's) obligations under the Merger Agreement, and failing to take reasonable steps to preserve the value of the Company including, but not limited to, enforcing the terms of the Merger Agreement and forcing Fertitta to pay a Reverse Termination Fee to terminate the Merger Agreement;

(d) improperly allowing Fertitta to escape his (and FAC's) obligations under the Amended Agreement, and failing to take reasonable steps to preserve the value of the Company including, but not limited to, enforcing the terms of the Amended Agreement and forcing Fertitta to pay a Reverse Termination Fee to terminate the Amended Agreement.

97. Accordingly, a demand upon these Director Defendants would be futile and useless because they have incentive to conceal, rather than expose, the truth regarding the facts and circumstances surrounding the renegotiation of the Fertitta Buyout, Fertitta's improper seizure of control of the Company and the refusal to make public the contents of the amended Debt Commitment Letter, and the Board's termination of the Amended Agreement.

98. In support of the wrongs alleged herein, Plaintiff's allegations include discreet exploration of the Merger Agreement and the amended Merger Agreement, Proxy Statements and Press Releases. The facts, as alleged herein, provide sufficient particularity to establish that making a demand upon Landry's Board to initiate this litigation would have been futile.

99. Each of the Director Defendants had a fiduciary duty to prevent Fertitta from unduly benefiting himself at the expense of the Company.

100. Demand on the Landry's Board is futile and therefore excused as the conduct of the Director Defendants as alleged herein was not, and could not have been, an exercise of good faith business judgment. Rather, it was intended to, and did, unduly benefit Fertitta at the expense of Landry's and its shareholders.

101. As a direct and proximate result of the Director Defendants' breaches of fiduciary duties, the Company has sustained, and will continue to sustain, substantial harm. The Director Defendants are liable to Landry's as a result of the acts and omissions alleged herein.

RELIEF REQUESTED

WHEREFORE, Plaintiff demands judgment as follows:

(a) Finding Fertitta liable for breaching his fiduciary duties to the Class in connection with the renegotiation of the Merger Agreement, Fertitta's assumption of control of the Company, and the termination of the Amended Merger Agreement;

(b) Finding the Fertitta Entities liable for aiding and abetting Fertitta's breaches of his fiduciary duties to the Class in connection with the renegotiation of the Merger Agreement, Fertitta's assumption of control of the Company, and the termination of the Amended Merger Agreement;

(c) Finding the Director Defendants liable for breaching their fiduciary duties to the Class in connection with, at the least, the renegotiation of the Merger Agreement, Fertitta's assumption of control of the Company, and the termination of the Amended Merger Agreement;

(d) Ordering Fertitta and the Fertitta Entities to consummate the Buyout at the agreed purchase price of \$21 a share or to pay to all Class members damages representing the difference between \$21 per share and the price at which Class

members sold their shares in the open market or the value of Landry's stock on the date of this Complaint;

(e) In the alternative, ordering Fertitta to pay the \$24 million Reverse Termination Fee set forth in the original Merger Agreement;

(f) Declaring this Action properly maintainable as a class action;

(g) Awarding the Class compensatory damages, together with pre- and post-judgment interest, for the devaluation of Landry's shares as a result of defendants' actions;

(h) Awarding Plaintiff the costs and disbursements of this action, including attorneys', accountants', and experts' fees; and

(i) Awarding such other and further relief as is just and equitable.

<p>Dated: February 5, 2009</p> <p>OF COUNSEL: Mark Lebovitch Jonathan Harris BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP 1285 Avenue of the Americas New York, New York 10019 (212) 554-1400</p> <p>Counsel for Plaintiff</p>	<p><u>/s/ John C. Kairis</u> Stuart M. Grant (Del. Bar ID No. 2526) John C. Kairis (Del. Bar ID No. 2752) Christian Keeney (Del. Bar ID No. 5197) GRANT & EISENHOFER P.A. 1201 N. Market St. Wilmington, DE 19801 (302) 622-7000 (302) 622-7100 (facsimile)</p> <p>Counsel for Plaintiff</p>
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