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Transaction ID 75308903
Case No. 2024-1314-MTZ

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

CHARLES BRYANT	:	
	:	
Plaintiff,	:	
	:	
v.	:	C.A. No.: 2024-1314-MTZ
	:	
THE COLUMN GROUP, LP,	:	
DAVID V. GOEDDEL, and	:	**Original Filed: Dec. 19, 2024**
DAVID J. WOODHOUSE,	:	**Public Version Filed: Dec. 26, 2024**
	:	
Defendants.	:	

VERIFIED CLASS ACTION COMPLAINT

Plaintiff Charles Bryant ("Plaintiff"), by and through his undersigned counsel, brings this Verified Class Action Complaint on behalf of himself and all other similarly situated former stockholders of NGM Biopharmaceuticals, Inc.[1] against Defendants The Column Group, LP,[2] David V. Goeddel, and David J. Woodhouse.[3]

I. NATURE OF THE ACTION

1. NGM was a promising biotech company that announced disappointing clinical results for its lead product candidate in October 2022. The market overreacted and the Company's share price dropped below the value of the cash on its balance sheet.

2. As early as June 2023, TCG (the Company's largest—and controlling stockholder) and its principal, David Goeddel, informed the Company's CEO, David Woodhouse, that TCG believed the Company would be "better positioned for success if it were to be privately held." Woodhouse said nothing to the Board. In November 2023, Guggenheim Securities made a presentation to the Board about strategic alternatives that said nothing about TCG taking the Company private. By the time of Guggenheim's presentation, the Company had $170 million in net cash,

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[1] "NGM" or the "Company."

[2] "TCG."

[3] Goeddel and Woodhouse are, collectively, the "Individual Defendants" and, with TCG, the "Defendants."

yet its market capitalization was just $71 million. In other words, the market was irrationally ascribing negative value to NGM's significant pipeline of other assets. TCG moved swiftly to take advantage.

3. On December 28, 2023—the week between Christmas and New Year's—TCG sent (and promptly publicly released) a letter informing the Board that it wished to take the Company private and would not agree to participate in an alternative transaction. The Board formed a three-member special committee. Its chair, Suzanne Sawochka Hooper, was the only member of the committee with previous M&A experience as a public company director. Specifically, Hooper had served as director of Eidos Therapeutics, which was acquired by its controlling stockholder, BridgeBio, in January 2021. Hooper served on the Eidos special committee that agreed to sell Eidos to BridgeBio for $73.26 per share in cash (or shares of BridgeBio with equivalent value) even though another acquirer, GlaxoSmithKline, had offered to pay up to $120 per share.

4. Hooper was even less effective this time. The special committee hired a law firm (Hogan Lovells) proposed by the Board's chair, William Rieflin, who was supposed to be recused (because of long-standing ties to Goeddel and TCG) and who would roll over his shares in the Transaction. The Special Committee retained Guggenheim as its financial advisor, even though Guggenheim had a concurrent conflict and was simultaneously working for a TCG portfolio company. It would

agree to an engagement letter with Guggenheim that distorted the advisor's incentives and strongly incentivized it to push for a sale rather than other financing or licensing options. The Special Committee allowed TCG to undermine its role as a bargaining agent by negotiating directly with significant minority stockholders. It delegated substantial responsibility to Woodhouse who was conflicted and would also roll over his shares alongside TCG.

5. By late January, the Hooper-led Special Committee had reached an agreement in principle with TCG that reflected an increase of just $0.10 per share from TCG's opening offer. The final Transaction price was less than the value of the cash on NGM's balance sheet and substantially less than its trading price immediately prior to the announcement of the Transaction.

6. The Transaction barely satisfied the minimum tender condition with just over half of the Company's minority stockholders agreeing to tender their shares. That decision was not fully informed. The Schedule 14D-9 solicitation statement[4] omitted material information about advisor conflicts, the special committee's fees, TCG's interactions with minority stockholders, and its negotiations with Woodhouse.

[4] The "14D-9."

7. Just a few months after the Transaction closed, NGM, as a private company, issued a press release announcing that it had raised $122 million in Series A financing led by TCG for additional clinical trials (of an asset to which the Transaction had implicitly ascribed negative value).

II. THE PARTIES

A. Plaintiff

8. Plaintiff Charles Bryant was a beneficial stockholder of NGM common stock at all relevant times and had his NGM shares exchanged for cash when the Transaction closed.

B. Defendants

9. Defendant The Column Group, LP[5] is a Delaware limited partnership that maintains its corporate headquarters in San Francisco, California. TCG is a venture capital firm that makes significant financial and operational commitments to build early-stage drug discovery companies. It was founded by Peter Svennilson in 2007.

[5] "TCG" or "Column" refers to defendant The Column Group, LP. Several TCG affiliates participated in the Transaction, including The Column Group GP, LP; The Column Group Management, LP; The Column Group II, LP; The Column Group III, LP; The Column Group III-A, LP; The Column Group IV, LP; The Column Group IV-A, LP; The Column Group Opportunity III, LP; Ponoi Capital, LP; and Ponoi Capital II, LP. (collectively, the "TCG Affiliates").

10. Defendant David V. Goeddel was a dual fiduciary, serving as both a member of NGM's Board of Directors since 2008 through the close of the Transaction and a Managing Partner of TCG since 2007. Goeddel co-founded Tularik, Inc., a biotechnology company focused on the discovery and development of product candidates based on the regulation of gene expression, in November 1991. There, he served as Vice President of Research until 1996 and CEO from 1996 through 2004, when Tularik was sold to Amgen Inc. for $1.3 billion. He then served as Amgen's first Senior Scientific Vice President until May 2006. As discussed below, Goeddel participated in the Rollover Agreement.

11. Defendant David J. Woodhouse was a member of NGM's Board of Directors and its CEO from September 2019 through the close of the Transaction. Before holding those roles, Woodhouse served as NGM's CFO starting in March 2015. Prior to that, Woodhouse was an investment banker at Goldman Sachs. Woodhouse serves as the Chair of the Board of Directors of Surrozen, a biotechnology company. TCG is Surrozen's largest investor, beneficially owning 33.9% of Surrozen's stock as of April 23, 2024. Woodhouse has served on the Surrozen Board of Directors since 2020 and as Chair since April 2023. Surrozen's CEO, Craig Parker, is a Venture Partner at TCG. As discussed below, Woodhouse participated in the Rollover Agreement.

III. SIGNIFICANT NON-PARTIES

12. **William J. Rieflin** was the Non-Executive Chair of the Board and served in that role from July 2022 through the close of the Transaction. He was a member of the Company Board from September 2010 and served as the Company's CEO from September 2010 to September 2018. Upon leaving the CEO role, Rieflin became Executive Chair of the Company starting in September 2018. Rieflin has also served on the Board of Directors of RAPT Therapeutics, a TCG portfolio company, since April 2016. According to RAPT's most recent annual proxy, TCG is RAPT's largest stockholder, owning over 12% of the company's outstanding common stock. At the time of RAPT's February 2020 IPO, Rieflin served as Chair of its board alongside Goeddel and TCG owned approximately 31% of the company's outstanding common stock. Rieflin has also served on the board of Kallyope, also a TCG portfolio company, since October 2016. Kallyope is a private company so information about TCG's degree of control is not available but Jeff Goater, a Venture Partner at TCG serves on its board alongside Rieflin and a press release issued in connection with the company's most recent, Series D financing round states that the financing was "co-led" by TCG. Rieflin has a longstanding relationship with Goeddel, TCG's principal. From 1996 to 2004, Rieflin held various positions with Goeddel's Tularik, most recently serving as Executive Vice President,

Administration, Chief Financial Officer, General Counsel, and Secretary.[6] As discussed below, Rieflin participated in the Rollover Agreement.

13. **Shelly D. Guyer** served as a member of the Board from December 2019 through the close of the Transaction. Although the Company reported that "Guyer … resigned as director[] of the Company as of the Effective Time" [*i.e.*, when the Transaction closed], a September 26, 2024 press release from California Governor Gavin Newsom announcing Guyer's appointment to the California Volunteers Commission states that Guyer remains on the Board of the Company. Guyer previously led sustainability and environmental, social, and governance efforts for Invitae Corporation, a medical genetics company, from June 2021 to September 2022, and served as Invitae's CFO from June 2017 to June 2021. Prior to that, she served as CFO at Veracyte, Inc., a genomic diagnostics company. Guyer served as a member of the Special Committee.

14. **Carole Ho** has served as a member of the Board since June 2020. Although the Company reported that "Ho … resigned as director[] of the Company as of the Effective Time" [*i.e.*, when the Transaction closed], Ho's LinkedIn profile continues to describe her as a member of the Company's Board. She also serves as

[6] In May 2022, TCG announced that it had hired Hui Tian whom it described as a "founding member of NGM" and who previously was a Scientific Director at Amgen and Tularik.

Chief Medical Officer and Head of Development at Denali Therapeutics Inc., a biotechnology company. Ho served as a member of the Special Committee.

15. **Suzanne Sawochka Hooper** served as a member of the Board from August 2018 until the Transaction closed. Hooper served as the Chair of the Special Committee. From March 2012 to March 2019, Hooper served as the Executive Vice President and General Counsel of Jazz Pharmaceuticals plc., a biopharmaceutical company. From 1999 until February 2012, Hooper was a partner in the law firm Cooley LLP, which served as the Company's outside counsel in connection with the Transaction. Hooper is a lawyer who had previously served as a director of one other public company, Eidos Therapeutics, which was acquired by its controlling stockholder, BridgeBio, in January 2021. Hooper served on the special committee that negotiated with BridgeBio and agreed to sell Eidos to BridgeBio for $73.26 per share in cash (or shares of BridgeBio with equivalent value) even though another acquirer, GlaxoSmithKline, had offered to pay up to $120 per share.[7]

16. **Roger M. Perlmutter** has served as a member of the Board since June 2021. Perlmutter also serves as the CEO of Eikon Therapeutics, a TCG portfolio company. He is also a Science Partner at TCG. Prior to these roles, Perlmutter spent twelve years as Executive Vice President and Head of Research & Development at

[7] *See generally Smart Local Unions & Councils Pension Fund v. BridgeBio Pharma, Inc.*, 2022 WL 17986515 (Del. Ch. Dec. 29, 2022), *aff'd*, 303 A.3d 51 (Del. 2023).

Amgen from January 2001 to February 2012. From 2013 through 2020, Perlmutter was an Executive Vice President at Merck & Co.[8]

17. **Peter Svennilson**[9] founded TCG in 2007 and currently serves as the Managing Partner of TCG. Prior to TCG, he was the Founder and Managing Partner of Three Crowns Capital, where he helped finance Goeddel's company Tularik. Svennilson served as a member of the NGM Board from January 2008 until 2020, when he did not stand for reelection.

18. Guyer, Ho, and Hooper are, collectively, the "Special Committee." At the time the Transaction was announced, NGM's seven-member Board consisted of Goeddel, Guyer, Ho, Hooper, Perlmutter, Rieflin, and Woodhouse.

19. **Merck** is a large, publicly traded pharmaceutical company with a current market capitalization of approximately $279 billion. In 2015, Merck and the Company entered into a multi-year strategic collaboration to develop and commercialize drug therapies, which ended in March 2024. As of the Company's most recent annual proxy, Merck owned approximately 16% of the Company's outstanding common stock.

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8 "Merck."

9 "Svennilson."

20. **Guggenheim Securities, LLC**[10] is a financial advisory firm that served as financial advisor to the Special Committee. Guggenheim was conflicted by virtue of its concurrent work for Surrozen, a public company in which TCG is the largest investor (owning over 33% of the company's outstanding stock at all times since it went public in April 2021). The February 2017 press release announcing Surrozen's Series A financing suggests that the Company was created by TCG:

> Surrozen Inc., a newly formed biopharmaceutical company focused on discovering and developing drugs that promote the repair and regeneration of human tissues, has closed a $33 million Series A financing led by The Column Group, a science-driven venture capital firm based in San Francisco.
> ...
> "Wnt proteins profoundly impact the formation of tissues and their repair after injury, representing an enormous opportunity for innovative drugs that can address organ degeneration and refractory healing conditions," said Tim Kutzkey, Ph.D., acting CEO of Surrozen and managing partner of The Column Group.
> ...
> Surrozen Inc. is a biopharmaceutical company focused on harnessing the Wnt pathway for applications in regenerative medicine. Founded on breakthrough science from Stanford University and backed by The Column Group, Surrozen is implementing a surrogate Wnt platform with the potential to unlock stem cell control in a wide array of human tissues.

21. From August 2021 to March 2023, Surrozen's Chair was Tim Kutzkey who has been a Managing Partner at TCG since 2007. Kutzkey served as Surrozen's

[10] "Guggenheim."

CEO from the time the company was formed through April 2018. Surrozen's current CEO, Craig Parker, is also a Venture Partner at TCG.

22. Guggenheim has repeatedly represented Surrozen in large, multi-million-dollar transactions, including during the time that the tender offer for this Transaction was pending. Specifically, Guggenheim acted as sole placement agent for a $192.5 million private placement by Surrozen, announced April 1, 2024. Guggenheim previously entered into an at-the-market sales agreement with Surrozen in December 2022 to issue and sell up to $23 million shares of its stock, where compensation payable to Guggenheim was equal to 3.0% of the gross sales price, and Guggenheim served as financial advisor and capital markets advisor to Surrozen in its April 2021 business combination with Consonance-HFW Acquisition Corp., valued at $212 million.

23. **Cooley LLP** is a law firm that served as legal counsel to the Company. The 14D-9 issued in connection with the Transaction described Cooley as "independent legal counsel to the Company." That statement was false and misleading. Cooley was conflicted and unable to provide independent advice to the Company because of its thick ties to TCG via Surrozen. Cooley's website states that it "handles patent prosecution and counseling for Surrozen." A search of patent filings with the United States Patent and Trademark Office shows that Cooley filed four separate patent application for Surrozen between September 5, 2023 and June

11, 2024. Cooley also acted as counsel to Surrozen in connection with its April 2021 merger with Consonance-HFW Acquisition Corp., which took Surrozen public through a de-SPAC Transaction. And it served as counsel to Surrozen in connection with a $192.5 million private placement announced on April 1, 2024.

24. **Hogan Lovells US LLP** is a law firm that served as legal counsel to the Special Committee.[11]

IV. FACTUAL ALLEGATIONS

A. NGM Is A Clinical-Stage Biopharmaceutical Company

25. NGM is a biopharmaceutical company "focused on discovering and developing novel, life-changing medicines for people whose health and lives have been disrupted by disease."[12] The Company was founded in December 2007 by Jin-Long Chen. Before starting NGM, Chen worked at Tularik, Inc., with Goeddel (Tularik's founder) and Rieflin (Tularik's General Counsel). In 2004, Tularik was sold to Amgen, where Chen continued to work alongside Goeddel and Perlmutter.

26. The Company officially commenced operations in 2008.[13] By this time, Goeddel was a Managing Partner at TCG. Because of Chen and Goeddel's professional history, in February 2008, TCG invested in NGM's first financing,

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11 "Hogan Lovells."

12 *About: Who We Are*, NGM Bio, https://www.ngmbio.com/about/.

13 *Investor Resources: FAQs*, NGM Bio, https://ir.ngmbio.com/investor-resources/faqs (last visited July 19, 2024).

helping to launch NGM and becoming its lead investor. With its investment, TCG was able to appoint Goeddel as Chairman and acting CEO of the Company, and Svennilson to the Board.

27. NGM took a broad approach to its drug research and had a pipeline covering solid tumors to retinal diseases, to liver and metabolic disorders. The Company quickly rose to prominence in the biopharmaceutical industry, advancing multiple candidates to clinical trials. Prior to going public in the spring of 2019, NGM raised a few hundred million dollars in private funding. Namely, in addition to TCG's early investments totaling nearly $100 million, in 2015, the Company announced a multi-year collaboration with Merck to research, discover, develop, and commercialize drug therapies across a wide range of areas.[14] Under the Collaboration Agreement, Merck provided the Company with $94 million up-front and purchased a 15% equity stake for $106 million. Merck also committed up to $250 million to fund NGM's efforts for five-year period, with the potential for an extension and additional funding.

28. By all accounts, NGM's future was bright. In March 2019, Merck exercised its option to extend the collaboration for two additional years, from March 2020 to March 2022. As part of that extension, Merck agreed to fund $75 million in

[14] The "Collaboration Agreement."

research and development efforts each year and, in lieu of a $20.0 million extension fee payable to the Company, Merck agreed to make additional payments totaling $20 million in support of the Company's research and development efforts. Throughout 2021, NGM advanced its drug pipeline to include six drug programs in the clinic. In January 2021, the Company raised $134.6 million in a follow-on public offering. In March 2021, the Company's stock price hit an all-time high of $31.93 per share. On June 30, 2021, the Company amended its collaboration agreement with Merck, which was modified to focus only on ophthalmology and cardiovascular or metabolic disease, and extended the research phase of the collaboration through March 21, 2024.[15]

29. On October 17, 2022, NGM announced that its then-lead product candidate, NGM621, an ophthalmology drug targeted at reducing the rate of disease progression in patients with geographic atrophy, or GA, did not meet its primary endpoint of a statistically significant reduction in the rate of change in GA lesion area growth. Immediately following the announcement, NGM experienced a sharp decline in share price, hitting an all-time low of $3.15 per share on October 17, 2022 having closed at $11.55 per share the previous trading day.

[15] The "Amended Collaboration Agreement."

30. Merck—a strategic investor that cared about developing drugs with NGM rather than maximizing the return on its equity investment—began to pull away from the Company. In December 2022, Merck notified the Company that it would not exercise its option to license NGM621, and would not exercise the related ophthalmology options. Further, Merck did not elect for the Company to continue to conduct research and development on ophthalmology during an extended period. As a result, in 2023, the funding received from Merck under the Amended Collaboration Agreement was significantly less compared to funding received in prior years. The Company also expected to receive minimal funding from Merck in the first half of 2024 and did not expect any funding at all from Merck thereafter. Merck eventually chose not to extend the research period beyond March 2024.

31. Following NGM621's failure, NGM pivoted to immuno-oncology, with Woodhouse noting that the Company "remain[ed] committed to advancing our portfolio of clinical-stage oncology programs in a capital efficient manner to generate proof-of-concept data and look[ing] forward to sharing initial clinical data from the Phase 1a NGM707 trial in the fourth quarter of [2022]."[16] The expectation was that NGM would sharpen its focus on its oncology pipeline and protein engineering platform following the recent failure of NGM621.

[16] NGM, Exhibit 99.1 to Form 8-K (Nov. 3, 2022).

32. According to the Company's Form 10-Q dated November 3, 2023, the Company's "execution efforts and resources recently have been focused on our four solid tumor oncology programs: NGM707,[17] NGM831,[18] NGM438,[19] and NGM120."[20] The Company also noted that it had "additional programs currently without significant resource allocation[,]" including NGM621, Aldafermin,[21] NGM313,[22] and NGM936.[23]

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[17] NGM707 is a dual antagonist monoclonal antibody designed to improve patient immune responses to solid tumors.

[18] NGM831 is an antagonist antibody that is designed to block the interaction of Immunoglobulin-like transcript 3, or ILT3 receptor, with fibronectin, as well as other cognate ligands, with the potential to mobilize a patient's own immune system to fight tumors by shifting myeloid cells from a suppressive state to a stimulatory state and promoting anti-tumor activity.

[19] NGM438 is an antagonist antibody that is designed to inhibit leukocyte-associated immunoglobulin-like receptor 1, or LAIR1, and thereby promote anti-tumor immune responses.

[20] NGM120 is an antagonist antibody for the potential treatment of Hyperemesis Gravidarum, a condition characterized by intractable nausea and vomiting during pregnancy.

[21] Aldafermin is an engineered analog of human hormone fibroblast growth factor 19, or FGF19, for the potential treatment of Primary Sclerosing Cholangitis, a rare liver disease that irreparably damages the bile ducts.

[22] NGM313 is an agonistic antibody that selectively activates fibroblast growth factor receptor 1c-beta-klotho, or FGFR1c/KLB, which regulates insulin sensitivity, blood glucose, and liver fat.

[23] NGM936 is a bispecific T cell engager therapeutic candidate for the treatment of hematologic malignancies that targets ILT3 and cluster of differentiation 3, or CD3. NGM936 is designed to direct T cell mediated killing of ILT3-positive cancer cells while sparing normal hematopoietic stem cells, or HSCs, and minimizing CD3-driven cytokine release.

33. As of the third quarter of 2022, NGM had cash, cash equivalents, and marketable securities of $166 million, which were expected to be sufficient to fund planned operations into mid-2025. Still, with the end of the Amended Collaboration Agreement with Merck on the horizon, the Company had a near-term need for cash to continue developing its biotherapeutics past mid-2025. And, as described below, Company management and the Special Committee knew that several investors expressed interest in providing such financing, with some parties contacting Woodhouse himself about financing options. But those options were not pursued in light of TCG's desire to take NGM private.

B. TCG's Control Over NGM

34. At all relevant times, TCG has wielded significant control over the Company. A November 2, 2023 presentation from Guggenheim describes TCG as the Company's "Founding Investor." From the Company's inception through its IPO, TCG established itself as NGM's lead investor, investing nearly $100 million over the years through TCG Affiliates:

- Between January 2008 and November 2009, TCG LP purchased 12 million shares of Series A Preferred Stock for $12 million.
- Between March 2010 and November 2011, TCG LP purchased 7.2 million shares of Series B Preferred Stock for $18 million.
- Between June 2015 and December 2016, TCG II LP purchased 1,208,933 Series B Shares for $7,243,998.

- Between April 2013 and April 2014, TCG LP purchased 2,340,000 shares of Series C Preferred for $7,020,000.

- In December 2016, TCG II LP purchased 37,334 Series C Shares for $224,004.

- Between October 2014 and February 2015, TCG LP purchased 666,666 shares of Series D Preferred for $3,333,330.

- Between October 2014 and December 2016, TCG II LP purchased 2,733,334 Series D Shares for $14,066,670.

- In May 2016, TCG II LP purchased 275,957 shares of common stock for $2,108,315.

- In January 2008, TCG GP received warrants to purchase up to 100,000 shares of common stock for $0.20 per share and exercised the warrants in full for $20,000.

- Ponoi LP purchased 937,500 shares of common stock in the Company's IPO for $15 million.

- Ponoi II LP purchased 937,500 shares of Common Stock in the Company's IPO for $15 million.[24]

35. Additionally, TCG's principals invested in the Company with personal funds. Between January 2008 and November 2009, Goeddel purchased 300,000 shares of Series A Shares for $300,000, and between March 2010 and November 2011, Goeddel purchased 80,000 shares of Series B Shares for $200,000. Svennilson purchased 20,000 shares of common stock in the Company's IPO for $320,000. Tim

[24] Upon the IPO closing, all of the Preferred Stock automatically converted into shares of Common Stock on a 2-for-1 basis.

Kutzkey, another of TCG's other Managing Partners, purchased 15,000 shares of common stock in the Company's IPO for $240,000.

36. TCG quickly became NGM's largest and controlling stockholder. TCG has, at all relevant times, owned or controlled more than 26% of NGM's outstanding common stock. As disclosed in the Company's Form 10-K dated March 11, 2024, TCG's stock ownership gives it "the ability to significantly influence all matters submitted to our stockholders for approval at a meeting of our stockholders, including the approval of any significant transaction."

37. A voting block of this size conferred significant power on TCG "because stockholders who oppose the blockholder's position can only prevail by polling votes at supermajority rates."[25] For example, to defeat TCG's favored director candidate in a contested election at which 80% of the shares eligible to vote were present, an opponent would need to secure the votes of over 75% of the unaffiliated shares.[26] In *Air Prods. & Chems., Inc. v. Airgas, Inc.*, the Court noted that no insurgent had ever achieved a 67% vote and that polling votes at this level was not realistically attainable.[27] Unsurprisingly, "[h]istorically, Delaware decisions supported a presumption of control when a stockholder could exercise 20-25% of

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25 *Voigt v. Metcalf*, 2020 WL 614999, at *18 (Del. Ch. Feb. 10, 2020).

26 *Id.*

27 16 A.3d 48, 117 (Del. Ch. 2011).

the voting power."[28] And Section 203 of the Delaware General Corporation Law establishes a presumption of control at the 20% level, which "represents a policy determination by the General Assembly" that this is the threshold at which concerns about tunnelling and expropriation "kick in."[29]

38. The market plainly recognized TCG's ironclad control over the Company, even though TCG owned less than 50% of the Company's outstanding common stock. The market knew that the Company was in play from the time that TCG filed a Schedule 13D in December 2023, disclosing its initial expression of interest. But no other potential acquirers ever sought to make a bid for the Company, even though TCG was ultimately able to acquire the Company for less than the value of its net cash and substantially less than the Company's trading price before the Transaction was announced.

39. NGM's then-operative certificate of incorporation (the "Charter") imposed supermajority requirements for a variety of corporate actions, which heightened TCG's control by giving it a near-unilateral veto over important corporate actions. These included requirements in the Charter to secure a two-thirds vote to:

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[28] J. Travis Laster, *The Distinctive Fiduciary Duties That Stockholder Controllers Owe*, 20 N.Y.U. J. OF LAW. AND BUS. 461, 509 (2024).

[29] *Id.* at 510.

a. Remove a director for cause (*See* § V(C)(2) of the Charter);

b. Amend the bylaws (*See* § V(E)(1) of the Charter); and

c. "Alter, amend, or repeal" certain provisions of the Charter (*See* § VII(B) of the Charter).

40. TCG also exercised transaction-specific control over a majority of NGM's Board in connection with this Transaction. Four of the seven Board members had disabling conflicts and could not give disinterested, independent consideration to the Transaction. Two of those directors—Goeddel and Woodhouse—were at the center of negotiations throughout.

41. **Goeddel** was a dual fiduciary. At all relevant times, he served as a Managing Partner of TCG. As described more fully below, Goeddel pressed Woodhouse to get the Special Committee to cave to TCG's proposals. Goeddel also used his position as an insider to personally benefit from the Transaction. Rather than receive $1.55 per share in cash consideration like NGM's other stockholders, Goeddel entered into a rollover agreement with TCG,[30] which was executed concurrently with the Merger Agreement. Pursuant to the Rollover Agreement, a number of Goeddel's shares would be rolled over and "contributed to [TCG] immediately prior to the closing of the [Transaction], and [] in consideration for such

[30] The "Rollover Agreement."

contribution, [TCG would] issue common shares of [TCG]."[31] Goeddel committed 324,180 of his shares to the Rollover Agreement.[32] Additionally, several of Goeddel's family members also participated in the Rollover Agreement: Tyler D. Goeddel Irrevocable Trust rolled over 50,000 shares, Heather Goeddel-Willis rolled over 50,000 shares, and Erik V. Goeddel rolled over 50,000 shares.

42. **Perlmutter** was also a dual fiduciary. He is the CEO of Eikon Therapeutics, a TCG portfolio company, and is a Science Partner at TCG.[33]

43. **Rieflin**, the Company's Chair and former CEO, was a party to the Rollover Agreement and exchanged 2,774,340 NGM shares for shares of TCG.[34] In addition, Rieflin has a near 30-year relationship with Goeddel, dating back to his

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31 *See* NGM Schedule 14D-9 at 2.

32 *In re Trados Inc. S'holder Litig*., 73 A.3d 17, 47 (Del. Ch. 2013) ("if the interests of the beneficiaries diverge, the fiduciary faces an inherent conflict of interest."); *In re Pattern Energy Grp. Inc. S'holders Litig*., 2021 WL 1812674, at *63 (Del. Ch. May 6, 2021) (stockholder was interested where it "bargained for the right to rollover its preferred stock at a premium into the post-closing company and keep its shares after a merger.").

33 *Sciabacucchi v. Liberty Broadband Corp*., 2022 WL 1301859, at *26 (Del. Ch. May 2, 2022) ("The facts regarding Nair's employment as CTO of Liberty Global are suggestive that Malone or Maffei could exert influence over him such that he might be beholden to their wishes, particularly because Nair testified that his primary source of income stemmed from Liberty Global, where, again, Malone maintained 'soft' control.").

34 Recognizing this conflict, Rieflin recused himself from the vote to approve the Transaction. He did not recuse himself entirely from the negotiations. *Compare with Klein v. H.I.G. Capital, L.L.C*., 2018 WL 6719717, at *15 (Del. Ch. Dec. 19, 2018) ("The inference that the HIG Share Sale had unique value to, and posed a conflict for, HIG is bolstered by the fact that HIG's representative on the Board at the time (Lozow) abstained from voting on the Transactions.").

employment at Goeddel's company Tularik in 1996. Rieflin also serves on the board of directors of two TCG portfolio companies: Rapt Therapeutics and Kallyope.

44. **Woodhouse**, the Company's CEO, could not act independently of its largest stockholder, TCG. Woodhouse was hired as the Company's CFO in 2015 and promoted to CEO in 2018 when TCG was a large investor and Goeddel, Svennilson, and Rieflin sat on the Board. Goeddel served as "Lead Independent Director" and Rieflin as "Executive Chairman" for nearly the entirety of Woodhouse's tenure as CEO, prior to Rieflin assuming the non-Executive Chairman role in 2022. Woodhouse was handsomely compensated as CEO. The table below shows his compensation for the three years prior to the Transaction:

Year	Total Compensation
2023	$5,052,616
2022	$5,933,500
2021	$9,911,980

45. Woodhouse knew that TCG is not an operating company and, as described below, it signaled that it intended to keep Woodhouse on. Thus, Woodhouse would have known that TCG would have any even greater degree of control over his employment and compensation after the Transaction was agreed upon and would have been highly incentivized to keep TCG happy.

46. Despite this conflict, and as described more fully below, Woodhouse frequently participated in the negotiations of the Transaction, attended nearly all

Special Committee meetings (except for the initial meeting immediately after the Special Committee was formed), and acted as an intermediatory for the Special Committee and TCG. After Woodhouse participated in the Transaction negotiations and voted to approve the Transaction, he entered into a joinder to the Rollover Agreement on March 6, 2024. Pursuant to the joinder, Woodhouse rolled over 97,654 NGM shares (approximately 80% of his total shares).[35] Throughout the Special Committee's tenure, both the Company's conflicted directors and TCG continually undermined and pressured its members. As described below, TCG repeatedly used Woodhouse to relay messages to and from the Special Committee and used the threat of its relationships with other significant NGM stockholders to pressure the Special Committee to yield to its demands.

47. All of these sophisticated insiders Goeddel, Perlmutter, Rieflin, and Woodhouse elected—and were permitted by TCG—to continue to invest in the Company's upside. Everyone understood and recognized that Goeddel, Perlmutter, Rieflin, and Woodhouse were conflicted. The 14D-9 states that "the Company Board determined that Dr. Goeddel, Mr. Rieflin and Dr. Perlmutter should not be appointed to the Special Committee because each had existing relationships with TCG and that

[35] *Sciabacucchi v. Liberty Broadband Corp*., 2018 WL 3599997, at *13 (Del. Ch. July 26, 2018) (CEO could not act independently of 26% stockholder with board representation).

Dr. Woodhouse should not be appointed to the Special Committee because of his position on the management team."

48. TCG's enhanced its transaction-specific control through its ability as the buyer to hand-select Company stockholders (comprising nearly 50% of the Company's outstanding stock) who would be afforded the option to roll over their shares. Other stockholders, such as Plaintiff, were not afforded the same option. Throughout the Transaction, TCG frequently contacted other Company stockholders to influence their approval of the Transaction. TCG's contacts with other NGM stockholders undermined the Special Committee's ability to act as an independent bargaining agent. As described below, no one at NGM, the Special Committee, the Board, nor their advisors told TCG to stop making these calls. Instead, they acquiesced to TCG's control and approved the Transaction at an unfair price.

C. TCG Plants The Seed That It Wants To Take The Company Private

49. Beginning in late June 2023, Svennilson began communicating with Woodhouse about NGM's future. On June 27, 2023, Svennilson emailed Woodhouse, suggesting that the Company "would be better positioned for success if it were to be privately held rather than publicly traded." This framing was a signal that TCG had no plans to change management. Woodhouse, in turn, forwarded Svennilson's email to the Company's then-President and CFO, recommending that the Board prepare to address Svennilson's suggestion at the August Board meeting.

Woodhouse also informed the Company's General Counsel of Svennilson's email. Woodhouse did not inform the outside directors of this development.

50. At a regularly scheduled meeting of the Board held on August 9, 2023, of which members of senior management and a representative of Cooley also attended, Woodhouse led the Board in a discussion about whether the Company should explore "strategic alternatives," as well as the merits of engaging a financial advisor to assist. Neither the Board minutes of the meeting nor the 14D-9 state that a potential transaction with TCG was discussed as such a strategic alternative. The 14D-9, as supplemented, states that at this meeting, "[s]enior management recommended, and the Board agreed, that the Company would work with a financial advisor to conduct a strategic review."

51. Months later, on October 5, 2023, in anticipation of the Board's upcoming November meeting, Woodhouse met with a number of TCG's representatives to discuss the Company's strategic direction, as well as the future of its relationship with TCG. The attendees discussed the possibility of TCG "acquiring or otherwise utilizing the Company's research and development resources or taking advantage of any in-licensing opportunities within TCG's portfolio."

52. Discussions progressed and later that month, on October 31, 2023, NGM and TCG entered into a non-disclosure agreement. Notably, despite

management entering into the NDA in October 2023, the Special Committee was not formed until months later.

53. In preparation for its November 8, 2023 Board meeting, Guggenheim was asked to present to the full Board on potential strategic alternatives and it prepared a presentation dated November 2, 2023. As Guggenheim's presentation demonstrated, the Company's market capitalization ($71 million) was substantially below the value of the net cash on its balance sheet ($170 million):

Public Market Overview	
Share Price (10/30/23)	$0.85
% of Closing 52W High	*15%*
Fully-Diluted Shares Outstanding	83.716
Equity Value, TSM	**$71**
Less: Cash	(170)
Plus: Debt	–
Enterprise Value	**($74)**

54. A non-controlled company in this scenario would have had a variety of options to close this irrational trading gap. In its November 2, 2023 presentation, Guggenheim discussed alternatives such as (i) staying the course, (ii) pursuing the sale of the Company, (iii) pursuing a merger, (iv) seeking a partnership, and (v) fundamentally restarting its business, highlighted the availability of potential financing options for the Company should it "Stay the Course." Nowhere in

Guggenheim's presentation was TCG's interest in acquiring the Company or the NDA mentioned.

55. The full Board held a meeting on November 8, 2023. Cooley began the meeting by reviewing the Board's role and fiduciary duties in connection with its assessment of the Company's strategic alternatives. Thereafter, both Guggenheim and Svennilson joined the meeting. While the 14D-9 is silent as to how or when Guggenheim got involved, Guggenheim already had enough background knowledge on the Company to conduct a presentation on its findings with respect to the Company's current state, strategic partnership markets, strategic alternatives, the benefits of transforming the Company by narrowing its focus on certain drugs, the benefits of selling the Company, or engaging in a merger. After its presentation, Guggenheim left the meeting, but Svennilson remained, leaving him privy to the Board's discussion of NGM's business and financial conditions, including its projected budget for 2024 and its forecasted cash runway. Once again, there is no evidence that TCG's interest in an acquisition or the NDA was discussed or even mentioned to the non-TCG directors at the meeting.

56. On December 6, 2023, Goeddel called Woodhouse and Rieflin, and asked whether Woodhouse and/or Rieflin believed that the Company "would be better positioned for success" if it were privately held. Again, this was a signal that TCG did not contemplate a change of management. Both Woodhouse and Rieflin

agreed that they could see the merits of being privately held but stated that it would depend on the circumstances. Woodhouse notified the Company's General Counsel of the call.

57. On December 19, 2023, Svennilson contacted Woodhouse seeking an updated list of the Company's current stockholders. Having already provided a similar list to Goeddel a month earlier, Woodhouse provided Svennilson with the list of the Company's current stockholders.

58. On December 22, 2023, Rieflin informed Woodhouse of a recent conversation he had had with Goeddel, who stated that TCG was considering making a proposal to the Company to take NGM private. Rieflin explained that Goeddel asked whether he (Rieflin) would be interested in rolling over his shares in NGM in exchange for equity in a privately held buyer. Rieflin also informed Woodhouse that TCG had engaged Paul, Weiss, Rifkind, Wharton & Garrison LLP ("Paul Weiss") as counsel to assist it in connection with the potential proposal. Woodhouse informed the General Counsel of his conversations with Rieflin.

59. On December 27, 2023, Rieflin again contacted Woodhouse, informing him that TCG would be sending the Company a letter before the end of the year regarding TCG's interest in taking the Company private. Woodhouse informed the Company's General Counsel of the forthcoming letter. At this point, Woodhouse began making individual calls to each Board member to inform them of TCG's

forthcoming proposal, making it the very first time that the non-TCG Board members were explicitly informed of TCG's interest.

D. The Column Group Submits Its First Offer

60. On December 28, 2023, TCG submitted an expression of interest letter to the Board,[36] affirming its interest in "exploring and evaluating a potential acquisition of all shares . . . [in the Company] . . . not already owned by [TCG] in a going-private transaction . . . ." While the letter did not propose any terms of such an acquisition, TCG indicated that it would not pursue a transaction that resulted in the sale of its holdings in the Company or resulted in an "alternative change of control." In other words, TCG was only a buyer. It would say no to any other potential transaction.

61. The following day, on December 29, 2023, TCG publicly filed an amendment to its Schedule 13D, disclosing its interest in acquiring all shares in the Company not already owned by TCG and its affiliates, and attaching a copy of its EOI Letter as an exhibit.

62. Between December 28 and December 30, 2023, Woodhouse called each of the Company's directors to discuss TCG's EOI Letter. With each Board member,

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[36] The "EOI Letter."

Woodhouse noted the upcoming Board meeting and discussed the formation of a special committee to explore TCG's interest.

63. On December 30, 2023, the Board held a special meeting to discuss TCG's EOI Letter and the formation of a special committee. All Board members were present, except Goeddel and Perlmutter. Woodhouse and Cooley were also present.

64. The Board considered the role and duties of the special committee, as well as the terms of its members' compensation. Leading the discussion, Rieflin and Woodhouse proposed one-time cash compensation of $50,000 and $30,000 for the chair and committee members, respectively. The minutes reflect that the Board signaled a willingness to "revisit such compensation if the scope and time commitment of service of the Special Committee changes in any material respect." The Board ultimately voted in favor of Rieflin and Woodhouse's proposal, and appointed Hooper, Guyer, and Ho to serve as the Special Committee. Hooper was named as Chair of the Special Committee. As noted above, the last time that Hooper served on a special committee (as a director of Eidos), she agreed to sell the company to its controlling stockholder for $73.26 per share when another bidder was willing to pay $120 per share. The Special Committee was given the power to evaluate and negotiate alternative transactions but its enabling resolutions did not give the Special

Committee the unilateral ability to enter into an alternative transaction. The full Board still retained the power to block any alternative.

65. After the Board voted to establish the Special Committee, a Hogan Lovells partner, Keith Flaum, joined the Board meeting. According to the minutes, "Mr. Rieflin thanked the Special Committee members for their willingness to serve on such committee, and noted that Mr. Flaum was being considered as potential independent counsel to the Special Committee." It is highly likely that Rieflin was responsible for the selection of Flaum with whom he had a pre-existing relationship. From 2004 to 2010, Rieflin was the President of Xenoport, a biotechnology company. After leaving Xenoport's CEO role in 2010 to join NGM, Rieflin continued to serve on the Board of Xenoport until 2016 when Xenoport was sold to Arbor Pharmaceuticals. Flaum (who was, at the time, a partner at Weil Gotshal) was the lead attorney representing Xenoport in its sale to Arbor. At the Board's December 30, 2023 meeting, Flaum suggested that he and the Special Committee convene a separate meeting immediately following the conclusion of the Board meeting to discuss next steps.

66. The 14D-9 does not disclose Rieflin's role in selecting the Special Committee's counsel. Nor does it disclose that Rieflin and Woodhouse proposed the fees that would be paid to the Special Committee members (or that any fees were paid at all).

67. Immediately following the Board meeting, the Special Committee held its initial meeting—attended by Flaum. This is the only Special Committee meeting that Woodhouse did not attend. Flaum began the meeting, discussed Hogan Lovells' qualifications, outlined his recommendations for the Special Committee's initial steps, explained the role and duties of the committee and the procedure for its consideration and deliberation with respect to the EOI Letter. After a brief discussion, Hooper was appointed Chairperson of the Special Committee. Discussion among the Special Committee and Flaum continued, turning to the engagement of a financial advisor, and talk centered around whether Guggenheim would be suitable in the role. No other financial advisor was mentioned or discussed. The Special Committee resolved to have Hooper follow up with Guggenheim at a later date. Once again, rather than engage an independent financial advisor, the one with a relationship with TCG was being considered and ultimately retained.

68. Flaum departed the meeting, and the Special Committee resolved to engage Hogan Lovells as its legal counsel. Hooper was authorized to negotiate and execute an engagement letter with Hogan Lovells.

69. Hogan Lovells' selection was thus clouded in conflict. Notably, as described above, Hogan Lovells was already present at a Special Meeting of the Company's Board on December 30, 2023, and at the first meeting of the Special Committee on December 30, 2023—well before the Special Committee could have

possibly had any time to consider any truly independent legal counsel. Flaum was introduced by Rieflin whom the Committee knew to be closely tied to TCG. The Court can infer that Hogan Lovells' appointment was not a product of careful, reasoned consideration by the Special Committee. Hogan Lovells was simply handpicked for the Committee by Rieflin and TCG.[37]

70. On January 2, 2023, NGM filed a Form 8-K with the SEC, confirming its receipt of TCG's EOI letter. The 8-K indicated that Cooley and Hogan Lovells would be acting as legal counsel to the Company and the Special Committee, respectively.

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[37] *In re Match Grp., Inc. Derivative Litig.*, 2022 WL 3970159, at *21 (Del. Ch. Sept. 1, 2022) ("Independence requires not being chosen by the controller[.]"); *see, e.g.*, *Berteau v. Glazek*, 2021 WL 2711678, at *22 (Del. Ch. June 30, 2021) ("The Complaint pleads facts creating a reasonable inference that TPB management selected the Special Committee's counsel. Plaintiff alleges that Lathrop was invited to the November 15, 2019 board meeting and 'advised the Board concerning the formation of a special committee, before that committee existed' and then began advising the Special Committee immediately after its formation. After the Special Committee process ended, Lathrop reverted to its former role and advised the Company as its 'transactional counsel in the SDI Buyout.' Based on these allegations, Plaintiff alleges that it is a reasonable inference that 'TPB management chose Lathrop as the Special Committee's counsel,' and that Lathrop's influence was a potential conflict of interest. I agree."); *In re Pilgrim's Pride Corp. Derivative Litig.*, 2019 WL 1224556, at *4 (Del. Ch. Mar. 15, 2019) ("The Committee retained Paul Weiss as its legal counsel. Recall that Paul Weiss had attended Lovette's meeting with the Equity Directors on July 28, 2017, six days before the formation of the Committee that ultimately became Paul Weiss's client. At the pleading stage, this sequence supports a reasonable inference that management had some degree of involvement in the selection of the Committee's counsel.").

71. The Special Committee met again on January 2, 2024, to continue its discussion surrounding the engagement of Guggenheim. Woodhouse was present and took an active role in the discussion. The Special Committee tasked Woodhouse with negotiating terms with Guggenheim including:

> (i) expanding the scope of services; (ii) reducing the Milestone Fee and the Just Say No Fee to $1 million; (iii) reducing the Transaction Fee to 2% and the minimum Transaction Fee to $3.5 million; (iv) reducing the "tail" to 12 months and adding an automatic termination provision; (v) eliminating the provision giving Guggenheim a right of first refusal over alternative transactions, including financial transactions; (vi) adding a cap on expenses; and (vii) seeking a "key man" provision for Jordan Bliss.

72. On January 3, 2024, Woodhouse called Svennilson to share details of the Company's response to the EOI Letter thus far. In addition to providing background on the formation of the Special Committee and its retention of Hogan Lovells and impending engagement of a financial advisor, Woodhouse also directed Svennilson to provide any forthcoming proposal to the Special Committee's financial advisor or to Hogan Lovells. Though he was, formally, not part of the Special Committee, Woodhouse told Svennilson that the Special Committee intended to move expeditiously in its consideration of the EOI Letter. The 14D-9 states that "Svennilson reported that he had had discussions with certain stockholders of the Company, with which TCG had long-standing relationships, about TCG's expression of interest, and that he believed that TCG, together with

certain of these stockholders, currently owned approximately 50% of the Company's outstanding common stock." As negotiations progressed, TCG would continue this pattern of direct negotiations with the Company's stockholders to limit the Special Committee's effectiveness as a bargaining agent.

73. Later that day, the Special Committee met with Company management, including Woodhouse, and representatives of Guggenheim and Hogan Lovells in attendance. According to the minutes, Woodhouse relayed to the Committee that "Svennilson stated that he had been having discussions with a number of stockholders of the Company about TCG's expression of interest and that Mr. Svennilson believed that TCG, together with investors with close connections to TCG, own approximately 50% of the Company." Woodhouse also reported that two other stockholders of the Company and one third party reached out to him after seeing the announcement of TCG's EOI Letter seeking an update on the Company's strategy. He also explained that one such party expressed its interest in a "reverse merger" (*i.e.*, NGM using its cash and public listing to acquire a privately held company). The Special Committee did not instruct Woodhouse (or anyone else) to

tell Svennilson to stop discussing a potential transaction with NGM's other stockholders.[38]

74. Discussion then turned to Guggenheim, centering on its credentials, conflicts, role, and next steps. Together, participants discussed Guggenheim, the upcoming J.P. Morgan Healthcare Conference, and whether the Company should put out a press release discussing its strategic priorities and/or responding to any future proposals by TCG.

75. Once Guggenheim departed, the Special Committee continued its discussion of the terms of Guggenheim's engagement. Woodhouse summarized his negotiations with Guggenheim, explaining that the biggest point of contention was the size of the Transaction Fee and the related minimum fee—relating Guggenheim's 2.5% and $4.5 million revised proposal. The Special Committee again directed Woodhouse to negotiate these terms with Guggenheim and see if it would accept 2.25% and $4 million. The Special Committee, however, expressed that it would accept Guggenheim's offer if Woodhouse could not get it to agree to the lower terms.

76. On January 4, 2024, TCG submitted a written proposal to the Board, offering to acquire the outstanding shares of NGM's common stock for $1.45 per

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[38] *In re Dell Techs. Inc. Class V Stockholders Litig.*, 2020 WL 3096748, at *17 (Del. Ch. June 11, 2020) ("The complaint also supports a reasonable pleading-stage inference that the Company failed to respect the twin-*MFW* conditions when it bypassed the Special Committee and negotiated directly with the Stockholder Volunteers.").

share in cash.[39] Echoing its EOI Letter, TCG's First Proposal was conditioned on the recommendation of the Special Committee and approval by a majority of the unaffiliated stockholders. The First Proposal was set to expire at 5:00PM PT on January 10, 2024.

77. On January 5, 2024, Guggenheim delivered a conflicts disclosure to the Company noting that Guggenheim was "currently engaged by certain entities in which TCG is a significant shareholder to provide investment banking and financial advisory services that are unrelated to the Transaction, and for which, if consummated, we would expect to receive an agreed upon fee." As detailed above and below, this is presumably a reference to Surrozen. As noted below, the 14D-9 provides a materially misleading account of this concurrent conflict. It states that "Guggenheim Securities is **as of the date of this Schedule 14D-9** engaged by certain entities in which one or more affiliates of TCG are significant shareholders to provide investment banking and financial advisory services in connection with various matters unrelated to the transactions contemplated by the Merger Agreement and for which matters, if consummated, Guggenheim Securities would expect to receive an agreed-upon fee." The 14D-9 fails to disclose that Guggenheim, in fact,

[39] The "First Proposal."

had been retained for this matter **while the Transaction was being negotiated**, not merely by the time of the 14D-9 being filed.

78. The 14D-9 asserts that the Special Committee held a brief meeting on January 6, 2024 to discuss the First Proposal. No minutes were taken for this meeting. The Special Committee agreed that the Company needed to continue working to finalize its engagement with Guggenheim so it could progress its financial analysis of the Proposal and formulate strategic and financial plans for responding to the Proposal. The Special Committee also discussed the upcoming J.P. Morgan Healthcare conference.

79. On January 9, 2024, Hooper, on behalf of the Special Committee, wrote to TCG, acknowledging receipt of the First Proposal. Hooper affirmed the Special Committee's commitment to a prompt evaluation of the First Proposal but explained that it could not do so by TCG's January 10 deadline. Hooper explained that any questions could be directed to Guggenheim, despite it not yet having been engaged by the Special Committee.

80. On January 9, 2024, ahead of the J.P. Morgan Healthcare conference, NGM issued a press release, announcing a number of Company updates. Namely, NGM highlighted "[e]ncouraging findings" coming out of its ongoing clinical trial of NGM707 in advanced solid tumors, as well as its strategic shift to Aldafermin and NGM120 for use in rare conditions with significant unmet need.

81. On January 10, 2024, Paul Weiss contacted Hogan Lovells to discuss the First Proposal. Despite Hooper's January 9 correspondence, and the lack of a formal response to TCG's Proposal, Paul Weiss asked for an anticipated transaction timeline, a plan for drafting the definitive documentation, and other next steps. Hogan Lovells explained that the Special Committee was still in the process of engaging a financial advisor but explained that the Special Committee remained committed to evaluating the First Proposal expeditiously once retained.

82. The Special Committee held another meeting on January 12, 2024. Woodhouse also attended the meeting. Hooper discussed the material terms of Guggenheim's engagement letter and the Special Committee formally approved Guggenheim's engagement as its financial advisor. The terms of Guggenheim's engagement letter dramatically distorted its incentives. Specifically, the engagement letter provided Guggenheim with a contractual entitlement to fees in four different scenarios:

(i) A "Milestone Fee" of $1 million payable upon the earlier of:

  (a) Guggenheim issuing an "Opinion" (defined as an opinion as to the fairness of a "Transaction"); or

  (b) The signing of a definitive agreement providing for the consummation of a "Transaction";

(ii) A "Transaction Fee" payable upon the consummation of a "Transaction," calculated as 2.2% of the "Transaction's" value but in no event less than $4.25 million (subject to crediting of any Milestone Fee);

(iii) A "Break-Up" fee in the amount of 15% of the amount of any break-up payment made to the Company in connection with a "Transaction" in excess of actual costs (subject to crediting of any Milestone Fee); and

(iv) A "Just-Say-No Fee" of $1 million in the event that the Company neither consummated nor entered into a definitive agreement for the consummation of a "Transaction" within a year of the date of TCG's initial proposal.

83. The engagement agreement defined "Transaction" to mean a sale of the Company or a majority of its assets:

> [T]he term 'Transaction' means any transaction or series of related transactions (regardless of the form, how effected or the nature of the transaction consideration) whereby, directly or indirectly and whether acting alone or with other parties, any Transaction Counterparty (a) acquires 50% or more of the capital stock of the Company or a majority economic interest in the Company's businesses, operations or assets, (b) merges or otherwise combines with the Company or a majority economic interest in its businesses, operations or assets or (c) effects any other extraordinary corporate transaction with or involving the Company or its businesses, operations or assets after giving effect to which, directly or indirectly and whether acting alone or with other parties, any Transaction Counterparty holds 50% or more of the capital stock of the Company or a majority economic interest in the Company's businesses, operations or assets; *provided, however,* the term 'Transaction' shall not include any licensing transaction that is entered into independent of any transaction or series of related transactions after giving effect to which, directly or indirectly and whether acting alone or with other parties, any Transaction Counterparty holds 50% or more of the capital stock of the Company or a majority economic interest in the Company's businesses, operations or assets.

84. Thus, under the terms of the engagement agreement, a sale would earn Guggenheim a fee that was at least 4.25 times greater than other alternatives, such as raising money through a PIPE, licensing transaction, sale of contingent value

rights ("CVRs") or warrants or simply returning cash to stockholders through a dividend and liquidating the Company. In short, Guggenheim "was contingently compensated using a fee arrangement that aligned its interests with [TCG's], and the [14D-9] failed to disclose that fact."[40] All that the 14D-9 disclosed is that "[p]ursuant to the terms of Guggenheim Securities' engagement letter, the Company has agreed to pay Guggenheim Securities a cash transaction fee upon consummation of the Transactions, which cash transaction fee is currently estimated to be approximately $4.3 million. The Company has previously paid Guggenheim Securities a cash opinion fee of $1.0 million that became payable upon the rendering of Guggenheim Securities' opinion with respect to the Transactions, which will be credited against the foregoing cash transaction fee."

85. On January 15, 2024, Paul Weiss again reached out to Hogan Lovells seeking an update on the status of the transaction. Hogan Lovells responded, reporting that the Special Committee had just engaged Guggenheim and could now begin its work evaluating the First Proposal. Hogan Lovells predicted that Paul Weiss could expect a response within the following week.

86. The Special Committee met on January 19, 2024. Woodhouse, who was also present, began the meeting by discussing a number of items contained in a

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[40] *Firefighters' Pension Sys. of City of Kansas City v. Found. Bldg. Materials, Inc.*, 318 A.3d 1105, 1158 (Del. Ch. 2024).

slide presentation prepared by Company management. Woodhouse focused on the Company's cash balance as of December 31, 2023, business development across its portfolio of assets, current research programs, recent meetings with investors, and employee sentiment in light of TCG's EOI Letter.

87. The Company's CFO also attended and discussed the financial forecasts that had been provided to the Special Committee prior to the meeting. Notably, NGM did not prepare financial forecasts in the ordinary course. Rather, these forecasts were prepared specifically for the Transaction. In doing so, Company management prepared two forecasts: one for non-probability-adjusted revenue, and one for probability-adjusted revenue.

88. Ho then departed the meeting, and the remaining members of the Special Committee asked whether Guggenheim could provide the Company's directors more information about other biotechnology companies, to which Guggenheim agreed. The remaining members of the Special Committee and Woodhouse ended the meeting by discussing a possible response to TCG's Proposal but deferred any decision on the matter until Ho could be present.

E. The Special Committee Rejects The First Proposal

89. On January 22, 2024, Svennilson emailed Hooper and asked for a status update regarding the Special Committee's evaluation of the First Proposal. Hooper responded by noting that the Special Committee, through Hogan Lovells, had

informed Paul Weiss that the Special Committee was continuing to do its work and expected to respond the following week.

90. On January 23, 2024, the Special Committee met with Woodhouse, Pierce, and representatives of Guggenheim and Hogan Lovells also in attendance. Among others, Guggenheim discussed the Company's valuation, including how it could be impacted by reducing the number of programs being pursued by the Company and the cost of the Company's research and development activities. Guggenheim called these reductions "a modified business model" and stated that it "worked with the Company to understand the impact on the Company's financial forecasts [based on the] modified business model[.]" Guggenheim's sum-of-the-parts analyses and comparable company analyses was discussed, and noted that other biotechnology companies were trading above their cash value. The Transaction was also discussed, and, according to board minutes, the Special Committee directed Guggenheim to inform TCG that the First Proposal was "inadequate" and "the Special Committee has rejected TCG's proposal, but is open to continuing discussions with TCG at a higher valuation."

91. The next day, on January 24, 2024, Guggenheim delivered the Special Committee's message to Svennilson. The 14D-9 filed by the Company and the Schedule TO (the "Offer to Purchase") filed by TCG describe this conversation in materially different ways. The 14D-9 claims that Guggenheim told TCG that "the

Special Committee had determined that the offer of $1.45 per share was inadequate." By contrast, TCG's Offer to Purchase reflects a much softer message, stating that "[t]he representatives of Guggenheim Securities, acting on behalf of the Special Committee, communicated that the offer price of $1.45 **may** be low and the Special Committee's **interest** in TCG raising the offer price." (emphasis added).

92. In response, Svennilson explained that TCG knew that the Company was in need of near-term financing, but TCG preferred to fund the Company as a private company and it was unwilling to pay an additional premium. Guggenheim then asked whether TCG would instead be interested in participating in a financing of the Company if certain programs were eliminated and overall expenses were reduced. TCG stated it was not interested. Svennilson claimed that it would depend on many factors, but that TCG was "currently focused on acquiring the Company on the terms previously articulated."

93. The 14D-9 disclosed only that "Svennilson reported that TCG had spoken to stockholders with which TCG has long-standing relationships." It did not disclose any additional substance. The minutes of the Special Committee's January 24, 2024 meeting go further. The minutes reflect that TCG expressed its "expectation based on recent conversations that approximately 55% of the existing stockholders of the Company (inclusive of TCG) would rollover their shares of the Company for shares of the buyer entity." That critical fact is not disclosed in the 14D-9. In

response to Plaintiff's books-and-records demand, however, counsel from Hogan Lovells affirmatively admitted that TCG had negotiated directly with other stockholders:

> *Fifth*, the Demand argues that TCG "undermined the Special Committee's ability to act as an independent bargaining agent by negotiating directly with other stockholders." Demand at 5.[41] This does not present a conflict because **it was not the Company, but TCG, that negotiated with the other stockholders.** *In re Dell Techs. Inc. Class V S'holders Litig.*, the case on which Stockholder relies, presents a situation where a company "bypassed" *its own* special committee by negotiating directly with stockholders. 2020 WL 3096748, at *1–2, 17 (Del. Ch. June 11, 2020). The equivalent here would be if NGM disregarded the Special Committee and instead reached out to speak with other stockholders on its own—which is neither the case nor what Stockholder alleges.

94. Hogan Lovells' response is dramatically wrong and demonstrates a fundamental misunderstanding of the Special Committee's role and the way that *MFW* is supposed to work. *Dell*'s references to the "Company" referred to Company management who could not act independently of the human controller, Michael Dell. The point is that the Special Committee is supposed to "act as the bargaining agent for the minority stockholders, with the minority stockholders rendering an up-or-down verdict on the committee's work. Those roles are complements, not substitutes. A set of motivated stockholder volunteers cannot take over for the committee and

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41 What the demand actually said was "Column **appears** to have undermined the Special Committee's ability to act as an independent bargaining agent by negotiating directly with other stockholders."

serve both roles."[42] Hogan Lovells' blithe argument to the contrary is "so off base" that it "reinforce[s] concerns ... about a Special Committee that never understood what it was supposed to do."[43]

95. Later that day, the Special Committee met with Woodhouse, Pierce, and representatives of Guggenheim and Hogan Lovells also in attendance. Ho did not attend (again). The meeting began with Guggenheim reporting the earlier conversation with Svennilson, including Svennilson's message that TCG wanted to fund the Company as a private entity and was focused on an acquisition. The group then discussed other potential financing options for the Company. The Special Committee asked Hogan Lovells to contact Paul Weiss and clarify some of Svennilson's comments and determined to discuss next steps when Ho was present.

96. Hogan Lovells contacted Paul Weiss on January 25, 2024 to discuss and clarify the conversation between Svennilson and Guggenheim that had occurred the previous day. The 14D-9 states that "the representative from Hogan Lovells relayed several of the points that he understood Mr. Svennilson had made during the call, including the desire to buy out stockholders who did not want to be owners of a

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42 *Dell*, 2020 WL 3096748, at *17.

43 *Firefighters' Pension Sys. of City of Kansas City v. Found. Bldg. Materials, Inc.*, 318 A.3d 1105, 1169 (Del. Ch. 2024) (dramatically off-base legal argument made in briefing by same firm that represented the special committee in transaction strengthened inference that committee did not comprehend its role).

private company and TCG's view about the premium that should be paid to such stockholders. The representative of Paul, Weiss then clarified a number of the points that were discussed between Mr. Svennilson and the representative from Guggenheim Securities, including that, under TCG's **contemplated plan**, some of the TCG entities with direct holdings in the Company, along with other stockholders with whom TCG had long-standing relationships, would contribute their shares to a newly-formed entity that would act as the buyer in the tender offer and receive equity in the buyer in exchange.[44] The arrangement would be memorialized in a separate rollover agreement among the buyer and such stockholders. The buyer would then conduct an all-cash tender offer for the remaining shares. The representative of Paul, Weiss also reiterated that TCG believed that the premium being offered by TCG was substantial as compared with the unaffected trading price of the Company's common stock prior to the disclosure of TCG's initial expression of interest."

97. On January 26, 2024, the Special Committee met with Woodhouse, Pierce, and representatives of Guggenheim and Hogan Lovells in attendance. Guggenheim again summarized the January 24 conversation with Svennilson, and Hogan Lovells summarized the January 25 conversation with Paul Weiss. Again, the minutes are far more detailed than the 14D-9. The minutes state that the Guggenheim

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44 Note the 14D-9 does not disclose that TCG had already had conversations and expected 55% of the Company's stock to roll over.

representative “began the meeting by summarizing his recent conversation with TCG, including: (a) his conveyance to TCG of the Special Committee's message to the effect that TCG's offer was inadequate; and (b) TCG's response, including with respect to TCG's unwillingness to pay a premium in excess of the substantial premium already implied by TCG's offer of $1.45 per share and TCGs' expectation based on recent conversations that approximately 55% of the existing stockholders of the Company (inclusive of TCG) would rollover their shares of the Company for shares of the buyer entity.” Again, this is not disclosed in the 14D-9.

98. Woodhouse then informed the Special Committee that Goeddel had contacted him and Rieflin to schedule a call. The attendees discussed what message Goeddel might deliver to Woodhouse and authorized Woodhouse to set up the call.

99. The Special Committee then discussed the future financing needs of the Company based on various scenarios and catalysts, the valuation analysis provided by Guggenheim based on such scenarios, including, in each case, certain financing, execution and other risks, the views of Company management and the members of the Special Committee about TCG’s offer and the possible value of the Company if it were to remain an independent public company, and any related messages that should be delivered to TCG. The participants in the meeting then discussed a possible message that Guggenheim might be instructed to provide back to TCG, including whether Guggenheim should be instructed to provide TCG with specific

price guidance and/or whether a contingent value right should be part of the discussion. The Special Committee determined that, assuming no new information was delivered by Goeddel during the telephone call, Guggenheim was directed to contact TCG and indicate that the Special Committee would be willing to recommend an offer from TCG that exceeded $2.00 per share. The Special Committee then temporarily adjourned the meeting so Woodhouse could call Goeddel.

100. While the Special Committee meeting was adjourned, Woodhouse spoked to Goeddel and Rieflin. Despite the fact that the Special Committee, through Guggenheim, had explicitly rejected TCG's offer two days earlier, Goeddel expressed concern about "the length of time it was taking the Special Committee to respond to TCG's proposal" and reiterated that TCG's offer remained at $1.45 per share. TCG would not take no for an answer. Woodhouse, in an apparent attempt to appease TCG, told Goeddel that the Special Committee had asked Guggenheim to reach out to Svennilson with another proposal.

101. The Special Committee then reconvened its meeting with the same participants, other than Ho who was (again) absent. Woodhouse summarized his call with Goeddel and Rieflin. The Special Committee confirmed that Guggenheim should inform TCG that the Special Committee was willing to recommend an offer that exceeded $2.00 per share.

102. On the morning of January 28, 2024, representatives of Guggenheim contacted Svennilson by telephone and relayed the Special Committee's position. Later that day, Svennilson told Guggenheim that TCG would not raise its offer from $1.45 per share.

103. According to the 14D-9, Goeddel sent an email to Woodhouse and Rieflin the same day, January 28, 2024, writing that they must have heard that the Special Committee had turned down TCG's offer and instead had proposed a price which TCG believed was "completely unreasonable." Goeddel further wrote that TCG had been very clear that it was not going to negotiate its initial offer and proposed that the Board hold a full meeting that week, so that "the Special Committee could explain its decision."

104. According to the 14D-9, the Special Committee, Guggenheim, and Woodhouse then discussed Goeddel's email, yet no minutes were taken to memorialize the meeting. According to the 14D-9, the Special Committee asked Guggenheim to contact Svennilson and ask TCG to increase its offer once again.

F. Negotiations Continue

105. Hooper called Rieflin directly on January 29, 2024 to discuss Goeddel's insistence that they hold a full Board meeting. Rieflin then notified Goeddel of his discussion with Hooper. While no further information regarding the substance of these conversations was included detailed in the 14D-9 or materials produced in

response to Plaintiff's books-and-records demand, TCG raised its offer slightly, and the Special Committee caved to the offer price that same day.

106. On January 29, Svennilson communicated to Guggenheim that, after a long discussion with TCG's partners, TCG had decided to raise its bid to $1.50 per share.[45] Guggenheim asked Svennilson for a further increase in the offer price and requested that TCG provide an updated offer in writing. Svennilson then delivered to Guggenheim a revised offer of $1.55 per share.[46] The Third Proposal stated that it represented a premium of 80% to the unaffected trading price of the Company's common shares prior to the disclosure of TCG's EOI letter and included the assumption that the Company had a balance of cash, cash equivalents and marketable securities of at least $135 million and such balance would be available as a funding source at the closing of the transaction. The proposal was contingent on a positive response by January 31.

107. On January 29, the Special Committee met with Woodhouse, Pierce, and representatives of Guggenheim and Hogan Lovells in attendance, to consider TCG's updated offer. Guggenheim summarized the discussions with Svennilson, including that TCG reiterated that it was "only a buyer and not a seller."

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45 The "Second Proposal."

46 The "Third Proposal."

108. After this discussion, the Special Committee discussed the Company's cash balance and its expected cash balance at the end of March. According to minutes of that meeting, Special Committee then discussed "whether Guggenheim should reach out to third parties (including large pharmaceutical companies, mid-market strategic companies and competing buyers that are similar to TCG) about their possible interest in acquiring or merging with the Company, including how TCG's position of being a buyer and not a seller might impact a third party's interest[.]" The Special Committee then once again directed Hogan Lovells to contact Paul Weiss to clarify certain aspects of TCG's offer and to confirm next steps with TCG, assuming that the Special Committee reached an agreement in principle with TCG to proceed with a transaction at $1.55 per share.

109. On January 30, 2024, Hogan Lovells contacted Paul Weiss via telephone to discuss the revised offer from TCG and certain questions that had been raised during the prior day's Special Committee meeting, including whether the Company's cash balance would be a condition to closing and whether TCG would vote in favor of any alternative transaction. Paul Weiss clarified that while the Company's cash position was an important diligence point for TCG, they believed (but would confirm) that the offer was not meant to include a "cash at close" condition, though the merger agreement would still contain operating covenants with a focus on preserving cash. Paul Weiss also reported that it believed (but would

confirm) that TCG understood that the Company's cash position would be closer to $110 million, assuming a March closing. Paul Weiss also clarified that TCG would not vote in favor of any alternative transaction, nor would TCG support a higher bid from a third party.

110. Without TCG's willingness to support a higher bid or vote in favor of an alternative transaction, all efforts to find another third-party buyer were effectively meaningless. Hooper instructed Hogan Lovells to begin working on drafting definitive documentation for the deal. The Special Committee then instructed Guggenheim to conduct outreach to other parties about a potential acquisition of the Company but did not instruct Guggenheim to contact the specific third party mentioned by Woodhouse to the Special Committee at its meeting of January 2, 2024. Still, this outreach was futile. TCG had repeatedly stated that it was unwilling to sell its shares, would not support a transaction resulting in change of control, and had the support of Company stockholders holding approximately 55% of the Company.

111. On February 2, 2024, Guggenheim reported the results of its outreach to three large pharmaceutical companies and one mid-size pharmaceutical company that had been contacted regarding a potential alternative transaction to acquire the Company. One party was not interested in moving forward, one remained in deliberations, one's clinical team was not interested but was intending to inquire

whether other parts of its organization might be interested, and one was interested in entering a confidentiality agreement so that it could have an initial due diligence discussion with Company management.

112. Later that day, a representative of Paul Weiss sent an itemized request for due diligence materials to a representative of Hogan Lovells. From February 2 to February 25, 2024, representatives of TCG and Paul Weiss conducted due diligence on the Company.

113. On February 3, 2024, representatives of Paul Weiss delivered an initial draft of the Merger Agreement to representatives of Hogan Lovells. The Merger Agreement provided for a "two step" cash tender offer structure and provided that certain stockholders of the Company would enter into a separate rollover agreement with TCG, by which they would agree to exchange their shares in the Company for shares in a buyer entity to be established to accomplish the merger. The draft Merger Agreement also contemplated that the buyer could use the Company's cash to pay for the shares acquired in the tender offer and merger. Consistent with TCG's position that it would not support an alternative transaction or higher bid, the draft also included a "no shop" provision.

114. On February 7, 2024, Woodhouse spoke with Goeddel and discussed the treatment of equity awards in the transaction.

115. On February 8, 2024, the Special Committee met with Woodhouse, Pierce, and representatives of Guggenheim and Hogan Lovells in attendance. Guggenheim gave an update on its outreach to third parties regarding an acquisition of the Company and reported that one party was close to signing a confidentiality agreement, but the others were uninterested. Woodhouse then reported on employee-related matters that he had discussed with TCG, including the treatment of the Company's equity awards. While this should have been a topic reserved for the Special Committee, TCG had asked Woodhouse to make a proposal to TCG, which Woodhouse agreed to do after discussing the topic with Rieflin and the Special Committee. Eventually, Woodhouse and TCG agreed that each outstanding Company RSU would be canceled, and the holder would be entitled to receive an amount in cash equal to $1.55, the deal price. Woodhouse received $147,870 for his Company RSUs.

116. According to the 14D-9, "Woodhouse then summarized several communications that he had received from third parties who were potentially interested in providing financing to the Company, and responded to related questions and comments from the Special Committee. A representative from Guggenheim Securities then summarized certain analyses about how different financing scenarios could potentially impact the value of the Company and the risks related thereto, and responded to related questions and comments from the Special Committee." The

materials that the Company produced in response to Plaintiff's books-and-records demand do not suggest that these alternatives were pursued or considered seriously. The minutes are as vague as the 14D-9:

> Dr. Woodhouse then summarized for the Special Committee several communications that he had received from a number of parties that could be interested in providing financing to the Company. Questions were asked and discussion ensued. Guggenheim then summarized certain analyses that it had previously provided to the Special Committee about how different financing scenarios could potentially impact the value of the Company and the risks related thereto. Questions were asked and discussion ensued. The Special Committee requested a further discussion with Guggenheim about potential financing options for the Company at the next meeting of the Special Committee.

117. Neither Guggenheim nor management prepared or presented slides or other formal materials to the Special Committee at this meeting.

118. Later on February 8, 2024, NGM entered into a confidentiality agreement with the interested third-party, and the following day, a due diligence meeting with the Company's management team was held. On February 10, 2024, the third-party notified Guggenheim that it was not interested in pursuing an acquisition of the Company.

119. On February 22, 2024, the Special Committee met with Woodhouse, Pierce, and representatives of Guggenheim and Hogan Lovells in attendance. The Special Committee discussed the increase in the Company's stock price, which had

increased since the First Proposal and was trading well above TCG's latest offer of $1.55 per share (closing at $1.92 per share on February 21, 2024).

G. The Board Agrees To A Take Under

120. On February 23, 2024, Woodhouse contacted each of Goeddel and Rieflin to inform them that, assuming that the Special Committee decided to recommend the Transaction, the full Board would meet on February 25 to consider the Transaction. Woodhouse asked Goeddel and Rieflin whether they planned to recuse themselves from the meeting because of their conflicts, and each of them confirmed they would. Woodhouse had the same conversation with Perlmutter the next day. During his call with Goeddel, Woodhouse also asked Goeddel whether he would attend an all-hands meeting with the Company on the following Monday, assuming that the Special Committee and the Board approved the Transaction on Sunday evening, and Goeddel confirmed that he would.

121. Later on February 23, 2024, after the close of trading, the Special Committee held a meeting, with Woodhouse, Pierce, Guggenheim, and Hogan Lovells also in attendance. Guyer did not attend. Guggenheim discussed the closing price of the Company's common stock that day, which was $1.91 per share. The Special Committee recognized that this meant that stockholders would be unhappy. The Committee asked Guggenheim to contact TCG to discuss its views on the recent

increase in the Company's stock price and the possible impact that such increase could have on the satisfaction of the minimum tender condition.

122. The next day, Guggenheim contacted Svennilson by phone to discuss the recent increase in the Company's stock price. Guggenheim asked whether TCG was willing to increase the offer price. Svennilson stated that "TCG was not interested in resetting the discussions about the transaction and was not willing to increase its offer price[.]" The Special Committee folded.

H. The Special Committee Approves The Transaction

123. On February 25, 2024, the Special Committee met with Woodhouse, Pierce, Guggenheim, and Hogan Lovells also in attendance. Hogan Lovells reviewed certain legal matters with the Special Committee, including the terms of the definitive agreements. Guggenheim reviewed its financial analysis of Transaction and rendered its oral fairness opinion, which was confirmed by a written opinion dated February 25, 2024. The Special Committee then unanimously determined to recommend that the Board approve the transaction.

124. Later on February 25, 2024, following the Special Committee's meeting, the Board held a meeting. Goeddel, Perlmutter, and Rieflin recused themselves from the meeting—meaning, the same four directors from the Special Committee meeting—Hooper, Guyer, Ho, and Woodhouse—were the same directors

at the full Board meeting. Those four Board members then unanimously voted to approve the Transaction.

125. Following the Board meeting, on the evening of February 25, 2024, the Merger Agreement and related documents were executed, and on February 26, 2024, prior to the opening of trading of the Company's shares on Nasdaq, the Company issued a press release announcing the Transaction.

126. Pursuant to the Rollover Agreement and the Joinder thereto, TCG and certain other Company stockholders, who in the aggregate held approximately 22% of the Company's shares, agreed to rollover their shares into the buyer of NGM, a newly formed entity owned by TCG. Rieflin and Goeddel entered into the Rollover Agreement on the date of the Merger Agreement; Woodhouse entered into a joinder to the Rollover Agreement on March 6, 2024. In total, 39,516,567 shares, owned by TCG and certain other stockholders were rolled over.

I. The Tender Offer Is Uninformed

127. The tender offer commenced on March 8, 2024. NGM's Board solicited stockholder support for the Transaction through the 14D-9, which was filed on March 8, 2024 and supplemented on March 22, 2024, and March 29, 2024. The 14D-9 failed to disclose a number of material facts.

1. The 14D-9 Failed To Disclose Material Facts Concerning Advisor Conflicts

128. As set forth above, the 14D-9 failed to disclose a variety of material facts concerning advisor conflicts.

129. *First*, the 14D-9 failed to disclose the terms of Guggenheim's engagement letter and, specifically, the fact that Guggenheim would earn a 4.25X greater fee by recommending a sale of the Company instead of a licensing transaction, PIPE investment, or other financing transaction.

130. *Second*, the 14D-9 described Cooley as "independent legal counsel to the Company" without disclosing Cooley's concurrent conflicts created by its work with TCG's portfolio company, Surrozen. Similarly, the 14D-9 disclosed that Guggenheim had a concurrent conflict with Surrozen, **as of the date of the 14D-9**: "Guggenheim Securities is as of the date of this Schedule 14D-9 engaged by certain entities in which one or more affiliates of TCG are significant shareholders to provide investment banking and financial advisory services in connection with various matters unrelated to the transactions contemplated by the Merger Agreement and for which matters, if consummated, Guggenheim Securities would expect to receive an agreed-upon fee." But the 14D-9 failed to disclose that this conflict existed **during the time that Guggenheim was negotiating the terms of the Transaction** with TCG.

131. *Third*, the 14D-9 failed to disclose that Hogan Lovells was proposed to the Special Committee (and presumably invited to its first meeting) by Rieflin who had a preexisting relationship with the lead Hogan Lovells lawyer, Flaum.

2. The 14D-9 Failed To Disclose Material Facts Concerning The Special Committee's Fees

132. The 14D-9 failed to disclose that the Special Committee members were paid fees for their work on the Committee, let alone that the Board signaled a willingness to "revisit such compensation if the scope and time commitment of service of the Special Committee changes in any material respect."

3. The 14D-9 Failed To Disclose Material Facts Concerning TCG's Negotiations With Other Stockholders

133. As noted above, Board minutes reflect that at critical moments in the negotiations in late January 2024, TCG expressed its "expectation based on recent conversations that approximately 55% of the existing stockholders of the Company (inclusive of TCG) would rollover their shares of the Company for shares of the buyer entity." The 14D-9 fails to disclose the substance of TCG's statements.

4. The 14D-9 Failed To Disclose How Woodhouse Came To Participate In The Rollover

134. The 14D-9 fails to disclose any information concerning how Woodhouse was able to participate in the Rollover Agreement. Somehow, Woodhouse was considered independent enough to attend Special Committee meetings and vote to approve the Transaction. He then signed a joinder to participate

in the Rollover Agreement the very next week. When, how, and under what additional terms, if any, Woodhouse was invited and allowed to participate in the Rollover is material to public stockholders because it would have allowed them to determine whether the Transaction was free from any undue influence on the part of Woodhouse while he served as a crucial piece of the negotiation process and cast his vote to approve the Transaction.

5. The 14D-9 Failed To Disclose Material Information About Alternate Financing Options

135. Finally, the 14D-9 omitted material information regarding alternative financing options for the Company. A Company management presentation to the Special Committee on January 19, 2024 shows that, since December 1, 2023, NGM had met with 12 potential investors, five with "high interest" and two with "medium interest" in providing financing to the Company. Another fund declared that it believed NGM was "undervalued and voluntarily declared it would participate in a financing." But the 14D-9 failed to disclose this material information.

136. The 14D-9 further states that at the February 8, 2024 Special Committee meeting, "Guggenheim … summarized certain analyses about how different financing scenarios could potentially impact the value of the Company and the risks related thereto[.]" Yet these different financing scenarios conducted by

Guggenheim and considered by the Special Committee were not disclosed to public stockholders.

137. This information was material because it would have allowed public stockholders to determine whether the Company was pursuing the best financial option, or simply the option most beneficial to TCG.

138. Due to these material omissions, public stockholders were not fully information regarding all material facts relating to the Transaction when tendering their shares.

J. The Tender Offer Closes

139. On April 4, 2024, one minute after 11:59 p.m. Eastern Time, the tender offer expired. Because TCG levered its personal and business relationships with 22% of the Company stockholders to participate in the Rollover, and itself controlled an additional 26%, approximately 27% of the Company's stockholders needed to tender to their shares to satisfy the minimum tender condition. According to the Company's 8-K reporting the outcome of the tender offer, the Company barely hit that mark. 22,323,295 shares of the Company's common stock were tendered, representing approximately 27% of the outstanding shares of common stock. Accordingly, each outstanding share of NGM, other than the shares owned TCG or those subject to the Rollover Agreement, was canceled and converted into the right to receive $1.55.

140. On July 17, 2024, NGM issued a press release announcing that it had raised $122 million in Series A financing that was "led by TCG with participation from a select group of investors." According to the release, NGM will use the proceeds from the Series A financing to initiate a planned registrational trial of aldafermin:

> "At the beginning of this year, we unveiled our strategy to advance clinical development efforts for two serious, rare conditions characterized by significant unmet patient need. This Series A capital strengthens our financial position, enabling us to progress our planned registrational trial of aldafermin in primary sclerosing cholangitis and to evaluate NGM120 in a proof-of-concept study for hyperemesis gravidarum," said David J. Woodhouse, PhD, Chief Executive Officer at NGM Bio. "Having just completed a take-private transaction in April to bolster our efficiency and flexibility as a company, we're grateful to TCG and our new investors for their support of these important programs, and we look forward to sharing more details on both trials in the coming months."
>
> "The Column Group has long championed NGM's mission to turn extraordinary scientific discoveries into meaningful therapeutics. NGM continues to show remarkable resilience and persistence in its pursuit of life-saving medicines while maintaining the highest level of scientific rigor. With this Series A investment, TCG is delighted to extend our investment in NGM and support the compelling opportunities presented by aldafermin and NGM120 as potential treatments for PSC and HG, respectively," said Peter Svennilson, Founder and Managing Partner of TCG. Concurrent with the Series A financing, Mr. Svennilson joined NGM Bio's Board of Directors.

141. In an interview published by BioPharma Dive on July 17, 2024, Woodhouse stated, "[Private] is a better place to be ... I think what the Series A proves is we have access to capital as a private company that is aligned with our

programs that we're taking forward." Woodhouse went on to say: "We looked at that [previous] collection of assets and said, 'Where's our biggest bang for the buck? Where are we going to get the most value for our resources? ... We came down to aldafermin in PSC and NGM120 in HG. Each has some really compelling aspects that we think really deserve to be funded."

142. Woodhouse made similar statements in an interview with Endpoints News published that same day, suggesting that he was a joint decisionmaker in the decision to go private:

> "When we looked at the requirements for reporting, when we looked at the availability of capital, when we looked at the various factors you look at, the pros started to outweigh the cons in terms of being private again," CEO David Woodhouse said in an interview. "We think we can be more effective [and] more efficient as a private company."
>
> NGM Bio continues to "evaluate what's best, public or private, over time," he said.

K. The Transaction Was Unfair

143. The Transaction was a result of an unfair process, resulting in an unfair price. The process began months before there was any indication that non-TCG directors knew about TCG's acquisition interest. Once finally formed, the Special Committee selected conflicted advisors, amplified those conflicts through the structuring of Guggenheim's compensation and was ultimately undermined by TCG and Woodhouse throughout of the entirety of negotiations. As a result, public

stockholders were left with a take under and received an underwhelming discount to the Company's value.

1. Process Rife With Conflicts

144. *First*, the process started on June 27, 2023, when Svennilson contacted Woodhouse and relayed that NGM should be a private company. While Woodhouse informed the Company's President and CFO of the email soon after, there is no evidence that Woodhouse ever informed the Board until December 2023. The Board held a regularly scheduled meeting on August 9, 2023, but the minutes and 14D-9 both only reference that Woodhouse discussed with the Board "potential strategic alternatives for the Company and the potential engagement of a financial advisor to assist with the exploration of such strategic alternatives."

145. Still, Woodhouse himself continued to discuss a take-private with TCG. On October 5, 2023, Woodhouse met with representatives of TCG and discussed "the possibility of TCG acquiring … the Company[]." By October 31, 2023, discussions had progressed enough for the Company and TCG to execute a nondisclosure agreement. On December 6, 2023, Woodhouse, Goeddel, and Rieflin held a telephone call to again discuss whether the Company should be taken private. On December 22, 2023, Rieflin informed Woodhouse that he had a conversation with Goeddel, during which Goeddel indicated that TCG was considering making a proposal to take NGM private and asked whether Rieflin would be interested in

rolling his Company shares over into the buyer of the Company. Rieflin said yes. Rieflin had also stated that TCG hired Paul Weiss as legal counsel to assist it in connection with the Transaction. On December 27, 2023, Rieflin contacted Woodhouse to inform him that TCG would be making and offer to acquire the Company before the end of the year. It is only then that the 14D-9 states that the non-TCG directors were briefed on the situation. And the Special Committee was not formed until December 30, 2023.

146. *Second*, the Special Committee hired conflicted advisors. It hired Hogan Lovells, which had a preexisting relationship with the Company and could not be expected to act independently of the Company's conflicted management team or its largest stockholder. The Company's other law firm, Cooley, and the Special Committee's financial advisor, Guggenheim, were conflicted because they had a tight and profitable business relationship with Surrozen, a TPG portfolio company.

147. Guggenheim was attending Board meetings as early as November 8, 2023—weeks before the Special Committee was formed. And Hogan Lovells was already present at the Special Committee's initial meeting and was proposed by Rieflin. No other advisors were even considered. As noted above, Guggenheim's engagement letter ensured that Guggenheim would be paid 4.25X more money if the Company was sold than if its raised money through a licensing deal, PIPE, or sale of warrants or a CVR.

148. *Third*, throughout the negotiation process, the Special Committee was repeatedly undermined by TCG and Woodhouse. From the beginning, TCG made clear that it was "a seller and not a buyer[,]" that it would not support a higher bid if the Company were to receive one, and it had the support of a majority of Company stockholders. Woodhouse served as an honorary fourth Special Committee member, attending all but one Special Committee meetings and frequently acting as the middleman between TCG and the Special Committee. And Woodhouse was rewarded for his advocacy on behalf of TCG by allowing him to participate in the Rollover just one week after the Merger Agreement was signed.

149. *Fourth*, the Special Committee utterly failed to pursue any alternative option to an acquisition—particularly any alternative methods of financing or raising money. Guggenheim only reached out to four potential buyers and only inquired whether they were interested in an *acquisition* of NGM. On February 8, 2024, Woodhouse "summarized several communications that he had received from third parties who were potentially interested in providing financing to the Company, and responded to related questions and comments from the Special Committee." But there is no indication that these financing alternatives with third parties were seriously considered.

150. In fact, the pipeline of potential investors contacted by NGM was "encouraging," and the Company had "high interest." From December 1, 2023,

NGM had met with twelve funds to discuss potential investment in the Company:

[redacted]

But because the Special Committee did not seek any alternative financing options, none of these funds were included in the four-entity outreach conducted by Guggenheim. And there is no indication that the Special Committee followed up on these conversations once TCG threatened that it already had agreement with majority of the Company stockholders to rollover their shares.

2. The Deal Price Was Unfair

151. As the Company's controlling stockholder, TCG was able to exploit its position to acquire NGM at too low a price.

152. On February 23, 2024, the last day of trading before the Transaction was announced, Company's shares closed at $1.91 per share. This meant that the deal price--$1.55 per share—was $0.36, or 18%, *less* than the price public stockholders could receive for their shares on the market. Indeed, in the final days leading up to announcement, the Special Committee recognized that the deal price was too low and explicitly instructed Guggenheim to request that TCG increase its offer, given that the Company's stock price had been trending upward. TCG refused, and the Special Committee gave zero pushback.

153. Guggenheim's final fairness presentation reflected that the final deal price reflected an implied equity value of $135 million. The Company had $144 million in net cash, meaning that the Transaction valued all of the Company's other assets at negative $9 million:

	Unaffec. Date	1st Offer	2nd Offer	3rd Offer
	12/29/23	01/04/24	01/29/24	01/29/24
Capitalization				
Price Per Share	$0.86	$1.45	$1.50	$1.55
Basic Shares Outstanding (M)[1]	83.5	83.5	83.5	83.5
Add: TSM Shares from RSUs & ITM Stock Options (M)[1]	0.7	3.6	3.7	3.8
Fully Diluted Shares Outstanding (M)[1]	84.1	87.0	87.2	87.3
Implied Equity Value ($M)	$72	$126	$131	$135
Less: Cash & Cash Equivalents (as of 12/31/23E)[2] ($M)	(144)	(144)	(144)	(144)
Plus: Debt (as of 12/31/23)[2] ($M)	–	–	–	–
Implied Enterprise Value ($M)	($72)	($18)	($13)	($9)

154. Guggenheim's DCF analysis was also unreliable. The projections provided by Company management and used by Guggenheim were made specifically for the transaction and not in the ordinary course of business.

155. Those projections only included revenue for three of the Company's drug programs—NGM707, Aldafermin, and NGM120—and failed to include any potential revenue for the drug programs NGM438, NGM831, NGM621, NGM936, and NGM313. These potential revenue-reducing drug programs were excluded despite the fact that just a few months prior, in November 2023, the Company was focused on developing NGM438 and NGM831, which were both in the clinical trial

phase, as was NGM313. NGM831 was also covered by one issued U.S. patent, while NGM621 was covered by two issued U.S. patents. And, at the time, there was no publicly disclosed program other than NGM936 that targeted the same protein using a bispecific T cell engager.

156. Additionally, despite determining to sell the company for less than cash value, Guggenheim never looked into the liquidation value of the Company. Instead, Guggenheim only considered the Company as a going concern with negative value.

157. At bottom, Guggenheim evaluated the Transaction relative to a price of $0.86, the Company's stock price on the day before the Company disclosed that TCG had an interest in acquiring it. In doing so, Guggenheim concluded that the relevant premium was 80%. Guggenheim further claimed that the price movement from $0.86 to $1.91 "appears to be speculation about a potential transaction" with TCG. Because there was no price guidance disclosed until the Transaction was announced on February 26, 2024, the market moved to what it considered a likely take-private price, $1.91 per share. But the deal price falls $0.36 short of the market's expectation. Moreover, in an amendment to the Schedule TO filed by TCG on March 22, 2024, TCG itself admitted that it "believed that NGM's assets were more valuable than the unaffected trading price of the Shares[.]"

158. Casting further doubt on the $0.86 unaffected price, after updating its model for 3Q 2023 (the last quarter reported before the Transaction), Raymond

James maintained an outperform rating for NGM with a price target of $6.[47] Raymond James continued to maintain an outperform rating for NGM through its January 9, 2024 update—after TCG's acquisition interest was made public, but before any deal price guidance was released.[48]

V. CLASS ACTION ALLEGATIONS

159. Plaintiff brings this action on behalf of himself and on behalf of a class of former public stockholders of NGM whose shares were exchanged for cash when the Transaction closed (the "Class"). Excluded from the Class are Defendants and any directors or officers of NGM, as well as the members of their immediate families, and any entity in which any of them has a controlling interest, and the legal representatives, heirs, successors, or assigns of any such excluded party.

160. This action is properly maintainable as a class action.

161. The members of the Class are so numerous that joinder of all members is impracticable. As of December 31, 2023, there were approximately 82,097,00 shares of common stock issued and outstanding. Upon information and belief, there were thousands of NGM stockholders throughout the United States.

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47 Steven Seedhouse, Ph.D., *et al.*, *NGM Biopharmaceuticals, Inc. (NGM-NASDAQ), 3Q23 Model Update*, RAYMOND JAMES (Nov. 2, 2023).

48 Steven Seedhouse, Ph.D., *et al.*, *NGM Biopharmaceuticals, Inc. (NGM-NASDAQ), Strategic Reboot: 1) NGM707 Signal in CRC, 2) Aldafermin in PSC, and 3) NGM120 New Indication*, RAYMOND JAMES (Jan. 9, 2024).

162. There are common questions of law and fact including, among others:

a. Whether TCG controlled NGM;

b. Whether TCG owed fiduciary duties to Plaintiff and the Class;

c. Whether entire fairness or enhanced scrutiny is the applicable standard of review;

d. Whether Plaintiff and the Class had received all material information when making their decision whether to tender;

e. Whether Defendants breached their fiduciary duties to Plaintiff and the Class; and

f. Whether Plaintiff and the other members of the Class were injured by the wrongful conduct alleged herein, and if so, the proper measure of damages.

163. Plaintiff has standing to pursue all claims brought on behalf of the Class. Plaintiff has standing because he held NGM common stock through the closing of the Transaction which was exchanged for cash.

164. Plaintiff's claims are typical of the claims of the members of the Class, and Plaintiff does not have any interests adverse to the Class.

165. Plaintiff is an adequate representative of the Class, has retained skilled counsel with extensive litigation in this nature, and will fairly and adequately protect the interests of the Class.

166. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual

members of the Class which would establish incompatible standards of conduct for the party opposing the Class.

167. Defendants 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.

VI. CAUSES OF ACTION

COUNT I
Claim for Breach of Fiduciary Duty Against The Column Group, LP

168. Plaintiff incorporates and realleges the foregoing allegations as though fully set forth herein.

169. TCG was the controlling stockholder of NGM. As such, TCG owed Plaintiff and the Class the utmost fiduciary duties of care, loyalty, good faith, and candor.

170. At all relevant times, TCG had the power to control, influence, and cause—and did in fact control, influence, and cause—NGM to enter into the Transaction.

171. The Transaction, which included an unfair process and unfair price, was unfair to Plaintiff and the Class.

172. Through the events and actions described herein, TCG breached its fiduciary duties to Plaintiff and the Class by agreeing to and entering into the

Transaction without ensuring that it was entirely fair to Plaintiff and the Class and failing to ensure that all material facts were disclosed to Plaintiff and the Class. As a result, Plaintiff and the Class were harmed by the failure to receive fair consideration for their NGM shares.

173. Plaintiff and the Class have no adequate remedy at law.

COUNT II
Claim for Breach of Fiduciary Duty Against
David V. Goeddel and David J. Woodhouse In Their Capacity As Directors

174. Plaintiff incorporates and realleges the foregoing allegations as though fully set forth herein.

175. As directors of NGM, Goeddel and Woodhouse owed Plaintiff and the Class the utmost fiduciary duties of loyalty and good faith. These duties required them to place the interests of NGM's stockholders above their personal interests and the interest of any controller and/or themselves.

176. Through the events and actions described herein, Goeddel and Woodhouse breached their fiduciary duties to Plaintiff and the Class by knowingly prioritizing their personal interests and the business, strategic, financial, or other interests of NGM above those of the minority NGM stockholders, and by facilitating the Transaction knowing that the process and price of the Transaction were not entirely fair to Plaintiff and the Class.

177. Goeddel and Woodhouse also breached their fiduciary duties by issuing the materially incomplete and misleading 14D-9.

178. As a result, Plaintiff and the Class were harmed by the failure to receive fair consideration for their NGM shares.

179. Plaintiff and the Class have no adequate remedy at law.

COUNT III
Claim for Breach of Fiduciary Duty Against David Woodhouse In His Capacity as An Officer

180. Plaintiff incorporates and realleges the foregoing allegations as though fully set forth herein.

181. As the most senior executive officer of NGM, Woodhouse owed Plaintiff and the Class the utmost fiduciary duties of care, loyalty, good faith, and candor. These duties required him to place the interests of NGM's stockholders above the interest of any controller, third party, Director Defendant, and/or himself.

182. Through the events and actions described herein, the Officer Defendant breached his fiduciary duties to Plaintiff and the Class by prioritizing his own personal interests and the business, strategic, financial, or other interests of the TCG above those of the minority NGM stockholders, and by participating in an unfair take-private process for his own benefit and the benefit of TCG and the Director Defendants, and that resulted in an unfair price.

183. The Officer Defendant also breached his duty of candor by issuing and/or contributing to a false and misleading 14D-9.

184. As a result, Plaintiff and the Class were harmed by the failure to receive fair consideration for their NGM shares.

185. Plaintiff and the Class have no adequate remedy at law.

VII. PRAYER FOR RELIEF

Plaintiff demands relief in Plaintiff's favor and against Defendants as follows:

a. Declaring that the Individual Defendants breached their fiduciary duties;

b. Declaring that The Column Group breached its fiduciary duties;

c. Awarding actual, nominal, rescissory, and/or quasi-appraisal damages together with pre- and post-judgment interest thereon;

d. Awarding appropriate equitable relief, including, without limitation, the appointment of new and independent directors and such other corporate governance reforms as may be appropriate;

e. Awarding Plaintiff the costs and expenses of the action, including reasonable attorneys' fees; and

f. Awarding such other relief as the Court deems just and proper.

HEYMAN ENERIO
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