

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

\_\_\_\_\_, Individually and On Behalf  
of All Others Similarly Situated,

Plaintiff,

v.

B. RILEY FINANCIAL, INC.  
BRYANT RILEY, TOM KELLEHER  
and PHILLIP J. AHN,

Defendants.

Case No.

**CLASS ACTION COMPLAINT  
FOR VIOLATIONS OF THE  
FEDERAL SECURITIES LAWS**

1 Plaintiff \_\_\_\_\_ (“Plaintiff”), individually and on behalf of all others similarly  
2 situated, by and through his attorneys, alleges the following upon information and  
3 belief, except as to those allegations concerning Plaintiff, which are alleged upon  
4 personal knowledge. Plaintiff’s information and belief is based upon, among other  
5 things, his counsel’s investigation, which includes without limitation: (a) review and  
6 analysis of regulatory filings made by B. Riley Financial, Inc. (“B. Riley” or the  
7 “Company”) with the United States (“U.S.”) Securities and Exchange Commission  
8 (“SEC”); (b) review and analysis of press releases and media reports issued by and  
9 disseminated by B. Riley; and (c) review of other publicly available information  
10 concerning B. Riley.

11 **NATURE OF THE ACTION AND OVERVIEW**

12 1. This is a class action on behalf of persons and entities that purchased or  
13 otherwise acquired B. Riley common stock between May 10, 2023, and November 9,  
14 2023, inclusive (the “Class Period”). Plaintiff pursues claims against the Defendants  
15 under the Securities Exchange Act of 1934 (the “Exchange Act”).

16 2. B. Riley is a financial services platform. The Company, through its  
17 subsidiaries, provides services including: investment banking, brokerage, wealth  
18 management, asset management, direct lending, business advisory, valuation, and  
19 asset disposition. B. Riley’s clients include public and private companies, financial  
20 sponsors, investors, financial institutions, and individuals.

21 3. Brian Kahn (“Kahn”) is a client of B. Riley. Kahn is the Chief Executive  
22 Officer (“CEO”) of Franchise Group, Inc. (“FRG”). FRG is a holding company which  
23 acquires and manages companies, primarily franchises. FRG’s businesses include  
24 Vitamin Shoppe, Pet Supplies Plus, and Buddy's Newco LLC (d/b/a Buddy's Home  
25 Furnishings), among others.

26 4. Starting in May 2023, B. Riley entered into an agreement to assist Kahn  
27 in leading a management buyout of FRG. B. Riley had also previously invested in  
28 FRG under FRG’s prior name, Liberty Tax, Inc. in and around August, 2018, in

1 addition to numerous prior business dealings with Kahn. The \$2.8 billion deal to take  
2 FRG private was executed on August 21, 2023. The transaction was partially financed  
3 by Nomura Holdings Inc. (“Nomura”) via B. Riley, who secured the financing. The  
4 transaction was structured such that B. Riley provided “certain equity funding and  
5 other support” including \$216.5 million of capital, to Freedom VCM, Inc., who would  
6 then acquire FRG via a merger subsidiary. Kahn, whose stake in FRG was owned  
7 through Freedom VCM Holdings LLC., along with other members of senior  
8 management of FRG, acted as a buyer group, “in financial partnership with a  
9 consortium that includes B. Riley” as well as a private credit fund named Irradiant  
10 Capital, to acquire the approximately 64% of the Company’s issued and outstanding  
11 common stock that the Management Group did not already own or control.

12       5. On November 2, 2023, the Department of Justice announced that  
13 Prophecy Asset Management (“Prophecy”) president John Hughes (“Hughes”), had  
14 pled guilty to conspiring to defraud investors out of \$294 million in funds in concert  
15 with two unnamed co-defendants. On the same day, the SEC filed a complaint against  
16 Hughes which outlined the admitted fraud in more detail and provided additional  
17 details the role of the unnamed co-conspirators. The SEC’s complaint identifies the  
18 second unnamed co-conspirator as the controller of the asset management company  
19 Vintage Capital Management LLC.<sup>1</sup> The SEC’s complaint also alleges that, to  
20 facilitate the admitted fraud, Hughes and an unnamed individual (stylized as  
21 “Individual 2”) *inter alia*, fabricated sham documents which purported to represent a  
22 grant of \$150 million worth of preferred shares for “Buddy’s Newco LLC Series A  
23 Preferred Stock Agreement,” shares which “never existed.” The SEC complaint states  
24 Buddy’s Newco LLC is “a company controlled by Individual 2.”<sup>2</sup> *Bloomberg* reported  
25

26 <sup>1</sup> At all relevant times, Kahn has been the Managing Partner and founder of Vintage  
27 Capital Management.

28 <sup>2</sup> At all relevant times, Kahn has been the director of Buddy’s Newco LLC.

1 on that same day that Kahn had been identified “a person familiar with the matter” as  
2 one of the yet unnamed conspirators in the Prophecy fraud.

3 6. On November 3, 2023, after the markets closed on a Friday, The Friendly  
4 Bear, a short research reporting group, posted on Twitter an excerpt of the *Bloomberg*  
5 report, and asked:

6 Did Kahn disclose this to B Riley? Hard to believe that this was withheld  
7 or unknown. *The parallel civil litigation was known and available for*  
8 *years. Did B Riley disclose it to Nomura when they upsized the facility*  
9 *to buy \$FRG ?*

10 7. The Friendly Bear also commented on the Indictment Document and  
11 stated:

12 Brian Kahn is co-conspirator 2 here. This charging document clearly  
13 implicates him in Hughes' crime. There is a high chance of indictment  
14 here. \$FRG is extremely overlevered [SIC], a "bet on Kahn", and could  
15 lose access to critical funding upon indictment

16 8. On this news, the Company’s stock price dropped \$9.02, or 22%, to close  
17 at \$32.54 per share on the next available trading day, November 6, 2023, on unusually  
18 heavy trading volume.

19 9. In the following days, B. Riley offered its unmitigated support for Kahn,  
20 including stating, during an earnings call on November 8, 2023, “a statement came  
21 out from Brian denying any involvement and what happened with Prophecy, and that's  
22 good enough for me”; “our confidence in these businesses [FRG] has not waned at  
23 all.... As CEO, Brian Kahn was the architect to help put these businesses together to  
24 form FRG as it is known today. I've known Brian for many years and have had no  
25 direct experience with what has been alleged.”

26 10. On November 9, 2023, after the market closed, the Company filed its  
27 quarterly financial report on Form 10-Q for the fiscal period ending September 30,  
28 2023, which revealed significant details concerning the FRG transaction and the  
years-long series of complex financial transactions between B. Riley, Kahn, and the  
Company’s respective subsidiaries, culminating in the August 21, 2023. The filing  
details a series of complex transactions wherein B. Riley, via wholly owned

1 subsidiary BR Financial Holdings, LLC, entered into a credit agreement with Nomura  
2 Corporate Funding Americans, LLC. B. Riley then used those funds in order to *inter*  
3 *alia* fund an equity investment in Freedom VCM Holdings LLC (an indirect parent  
4 entity for FRG) in exchange for \$281.1 million. B. Riley then assumed a 31% voting  
5 interest in Freedom VCM Holdings LLC. On that date, B. Riley also sold all equity  
6 interest of B. Riley Receivables II, LLC (a subsidiary of B. Riley), to Freedom VCM  
7 Receivables, Inc. for \$58.9 million. B. Riley Receivables II, LLC previously entered  
8 into a series of loan receivable transactions with “W.S. Badcock”, an indirect wholly  
9 owned subsidiary of FRG which on this date became a related party loan receivable  
10 with a fair value of \$33.60 million. Finally, in exchange, Freedom VCM Receivables  
11 then assumed a significant obligation of B. Riley Receivables II, LLC (the “Pathlight  
12 Credit Agreement”) and entered into a note receivable with B. Riley Receivables II,  
13 for \$58.87 million.

14 11. In a series of tweets on that day, The Friendly Bear analyzed this  
15 disclosure and stated:

16 In original \$FRG deal, \$RILY estimated the equity account at around  
17 560MM in total (with 1.035B total market cap acquired and 475mm of  
18 that funded by Irradiant). ***B Riley ended up funding 281MM of what***  
19 ***was around a 560MM equity check. That's over 50% ownership. Yet***  
***they claim to have only 31% voting rights. It looks like B Riley engaged***  
***in some funny business to avoid consolidation and placed control of***  
***FRG in the hands of the star of "Prophecy" - Brian Kahn.***

20 12. On this news, the Company’s stock price fell \$4.47, or 15%, to close at  
21 \$25.60 per share on November 10, 2023, on unusually heavy trading volume. The  
22 Company’s stock price continued to fall after hours and in the next trading day, falling  
23 another, \$4.59, or 14%, to close at \$22.01 per share on November 13, 2023, on  
24 unusually heavy trading volume.

25 13. Finally, on January 21, 2024, after the markets closed, *Bloomberg*  
26 reported the SEC is engaged in an ongoing probe of B. Riley’s relationship with Kahn,  
27 including the use of Kahn’s assets to help B. Riley obtain a \$240 million loan  
28 commitment from Nomura. *Bloomberg* reported the SEC has “carried out interviews

1 in recent months about B. Riley and its relationship with Brian Kahn.” Subsequent  
2 reports were published by *Reuters* which stated “SEC officials have been scrutinizing  
3 how Kahn led a buyout of Vitamin Shoppe owner Franchise Group last year in a deal  
4 arranged by B. Riley.”

5 14. On this news, the Company’s stock price fell \$0.50, or 2.5%, to close at  
6 \$19.68 per share on January 22, 2024, on unusually heavy trading volume.

7 15. Throughout the Class Period, Defendants made materially false and/or  
8 misleading statements, as well as failed to disclose material adverse facts about the  
9 Company’s business, operations, and prospects. Specifically, Defendants failed to  
10 disclose to investors: (1) that Brian Kahn had been credibly implicated in fraud; (2)  
11 B. Riley failed to perform due diligence in connection the FRG financing transactions  
12 which occurred up to and including August 31, 2023; (3) that, as a result, there was a  
13 substantial likelihood federal securities investigations would arise concerning the  
14 August 31, 2023 transactions and/or B. Riley’s dealings with Kahn; and (4) that, as a  
15 result of the foregoing, Defendants’ positive statements about the Company’s  
16 business, operations, and prospects were materially misleading and/or lacked a  
17 reasonable basis.

18 16. As a result of Defendants’ wrongful acts and omissions, and the  
19 precipitous decline in the market value of the Company’s securities, Plaintiff and  
20 other Class members have suffered significant losses and damages.

21 **JURISDICTION AND VENUE**

22 17. The claims asserted herein arise under Sections 10(b) and 20(a) of the  
23 Exchange Act (15 U.S.C. §§ 78j(b) and 78t(a)) and Rule 10b-5 promulgated  
24 thereunder by the SEC (17 C.F.R. § 240.10b-5).

25 18. This Court has jurisdiction over the subject matter of this action pursuant  
26 to 28 U.S.C. § 1331 and Section 27 of the Exchange Act (15 U.S.C. § 78aa).

27 19. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b)  
28 and Section 27 of the Exchange Act (15 U.S.C. § 78aa(c)). Substantial acts in

1 furtherance of the alleged fraud or the effects of the fraud have occurred in this  
2 Judicial District. Many of the acts charged herein, including the dissemination of  
3 materially false and/or misleading information, occurred in substantial part in this  
4 Judicial District. In addition, the Company’s principal executive offices are located in  
5 this District.

6 20. In connection with the acts, transactions, and conduct alleged herein,  
7 Defendants directly and indirectly used the means and instrumentalities of interstate  
8 commerce, including the United States mail, interstate telephone communications,  
9 and the facilities of a national securities exchange.

10 **PARTIES**

11 21. Plaintiff \_\_\_\_\_, as set forth in the accompanying certification,  
12 incorporated by reference herein, purchased B. Riley securities during the Class  
13 Period, and suffered damages as a result of the federal securities law violations and  
14 false and/or misleading statements and/or material omissions alleged herein.

15 22. Defendant B. Riley is incorporated under the laws of Delaware with its  
16 principal executive offices located in Los Angeles, California. B. Riley’s common  
17 stock trades on the NASDAQ exchange under the symbol “RILY.”

18 23. Defendant Bryant Riley (“Bryant Riley”) was the Company’s Co-  
19 Founder, Chairman, & Co-Chief Executive Officer (“Co-CEO”) at all relevant times.

20 24. Defendant Tom Kelleher (“Kelleher”) was the Company’s Co-Founder  
21 and Co-CEO at all relevant times.

22 25. Defendant Phillip J. Ahn was the Company’s Chief Financial Officer  
23 (“CFO”) and Chief Operating Officer (“COO”) at all relevant times.

24 26. Defendants Bryant Riley, Kelleher and Ahn (together, the “Individual  
25 Defendants”), because of their positions with the Company, possessed the power and  
26 authority to control the contents of the Company’s reports to the SEC, press releases  
27 and presentations to securities analysts, money and portfolio managers and  
28 institutional investors, i.e., the market. The Individual Defendants were provided with

1 copies of the Company’s reports and press releases alleged herein to be misleading  
2 prior to, or shortly after, their issuance and had the ability and opportunity to prevent  
3 their issuance or cause them to be corrected. Because of their positions and access to  
4 material non-public information available to them, the Individual Defendants knew  
5 that the adverse facts specified herein had not been disclosed to, and were being  
6 concealed from, the public, and that the positive representations which were being  
7 made were then materially false and/or misleading. The Individual Defendants are  
8 liable for the false statements pleaded herein.

## 9 **SUBSTANTIVE ALLEGATIONS**

### 10 **Background**

11 27. B. Riley is a financial services platform. The Company, through its  
12 subsidiaries, provides services including: investment banking, brokerage, wealth  
13 management, asset management, direct lending, business advisory, valuation, and  
14 asset disposition. B. Riley’s clients include public and private companies, financial  
15 sponsors, investors, financial institutions, and individuals.

16 28. Kahn is a client of B. Riley, and the CEO of FRG. FRG is a holding  
17 company which acquires and manages companies, primarily franchises. FRG’s  
18 businesses include Vitamin Shoppe, Pet Supplies Plus, and Buddy's Newco LLC  
19 (d/b/a Buddy's Home Furnishings), among others.

### 20 **Materially False and Misleading**

#### 21 **Statements Issued During the Class Period**

22 29. The Class Period begins on May 10, 2023. On that date B. Riley  
23 announced it had entered into a merger agreement regarding FRG, in a press release  
24 which stated in relevant part<sup>3</sup>:

25 Franchise Group, Inc. (NASDAQ: FRG) (“Franchise Group” or the  
26 “Company”), today announced that it has entered into a definitive  
agreement and plan of merger (the “Merger Agreement”) *pursuant to*

27 <sup>3</sup> Unless otherwise stated, all emphasis in bold and italics hereinafter is added, and all  
28 footnotes are omitted.

1 *which members of the senior management team of Franchise Group*  
2 *led by Brian Kahn, the Company's Chief Executive Officer,*  
3 *(collectively with affiliates and related parties of the senior*  
4 *management team, the "Management Group"), in financial partnership*  
5 *with a consortium that includes B. Riley Financial, Inc. and Irradiant*  
6 *Partners, will acquire the approximately 64% of the Company's issued*  
7 *and outstanding common stock that the Management Group does not*  
8 *presently own or control. The transaction has an enterprise value of*  
9 *approximately \$2.6 billion, including the Company's net debt and*  
10 *outstanding preferred stock.*

11 \* \* \*

12 Brian Kahn, CEO of Franchise Group stated, "We are excited to have  
13 this opportunity to continue our business strategy of partnering with high  
14 quality franchisees, operators and financial institutions, while also  
15 delivering certain value to our public stockholders despite a challenging  
16 business environment."

17 30. On May 10, 2023, in connection with the above described press release,  
18 the Company filed its Form 8-K which reported, in relevant part:

19 On May 10, 2023, *B. Riley Financial, Inc., a Delaware corporation (the*  
20 *"Company" or "B. Riley"), entered into certain agreements pursuant*  
21 *to which B. Riley has, among other things, agreed to provide certain*  
22 *equity funding and other support in connection with the acquisition*  
23 *(the "Acquisition") by Freedom VCM, Inc., a Delaware corporation*  
24 *(the "Parent"), of Franchise Group, Inc., a Delaware corporation*  
25 *("FRG"). Parent has agreed to acquire FRG pursuant to an Agreement*  
26 *and Plan of Merger, dated as of May 10, 2023, by and among the Parent,*  
27 *Freedom VCM Subco, Inc., a Delaware corporation and a wholly-owned*  
28 *subsidiary of the Parent (the "Merger Sub"), and FRG (the "Merger*  
*Agreement"), pursuant to which, upon the terms and subject to the*  
*conditions set forth therein, at the closing, Merger Sub will merge with*  
*and into FRG, with FRG surviving the merger as a wholly owned*  
*subsidiary of Parent. The buyer group includes members of the senior*  
*management team of FRG, led by Brian Kahn, FRG's Chief Executive*  
*Officer, in financial partnership with a consortium that includes B.*  
*Riley. B. Riley is not a party to the Merger Agreement. Pursuant to a*  
*commitment letter, B. Riley has agreed to fund upon the closing of the*  
*merger up to \$560 million in equity financing, though expects the*  
*actual amount to be funded to be substantially less. A copy of the press*  
*release issued by FRG is furnished as Exhibit 99.1 to this Current Report*  
*on Form 8-K.*

31. On May 11, 2023, the Company announced its entry into an Equity  
Commitment Letter and Limited Guarantee, in a press release also filed with the SEC  
on its Form 8-K, which stated in relevant part:

The buyer group includes members of the senior management team of  
FRG, led by Brian Kahn, FRG's Chief Executive Officer, in financial

1 partnership with a consortium that includes B. Riley. B. Riley is not a  
2 party to the Merger Agreement.

3 \* \* \*

4 B. Riley entered into the Equity Commitment Letter and the Limited  
5 Guarantee, each as defined below in connection with the  
6 Acquisition.[SIC]

7 *Equity Commitment Letter*

8 B. Riley entered into an Equity Commitment Letter, dated as of May 10,  
9 2023 (the “Equity Commitment Letter”), with Freedom VCM Holdings,  
10 LLC (“TopCo”) and Parent, pursuant to which ***B. Riley, subject to the  
11 terms and conditions of the Equity Commitment Letter, has agreed to  
12 contribute to TopCo, at or prior to the closing of the Merger, an  
13 amount equal to \$560 million in equity financing (the “B. Riley Equity  
14 Commitment”). The B. Riley Equity Commitment will then be used by  
15 TopCo to fund part of the Acquisition. FRG is a third party beneficiary  
16 of the Equity Commitment Letter, and FRG is entitled to specifically  
17 enforce the Equity Commitment Letter; provided, however, that B.  
18 Riley’s obligations under the Equity Commitment Letter will terminate  
19 in the event that any claim is brought by FRG with respect to the Limited  
20 Guarantee, as defined below. Subject to certain conditions set forth in  
21 the Equity Commitment Letter, B. Riley has the right to assign all or a  
22 portion of such commitments to its affiliates, financing sources or other  
23 investors, and B. Riley expects the actual amount to be funded by it at  
24 Closing to be substantially less than the \$560 million.***

25 *Limited Guarantee*

26 B. Riley and FRG entered into a Limited Guarantee dated as of May 10,  
27 2023 (the “Limited Guarantee”) in favor of FRG, pursuant to which ***B.  
28 Riley agreed to guarantee to FRG the due and punctual payment,  
performance and discharge when required by Parent or Merger Sub to  
FRG of certain liabilities and obligations of Parent or Merger Sub  
under the Merger Agreement pursuant to and in accordance therewith,  
including (i) a termination fee due to FRG in the amount of \$55,000,000  
if the Merger Agreement is terminated under certain specified  
circumstances provided for in the Merger Agreement; (ii) certain  
reimbursement obligations of Parent when required to be paid by  
Parent pursuant to the Merger Agreement; and (iii) liabilities or  
damages resulting from any actual fraud or Willful and Material  
Breach (as defined in the Merger Agreement) by Parent or Merger Sub  
required to be paid by Parent or Merger Sub pursuant to the Merger  
Agreement; provided, that, except in the case of actual fraud or Willful  
and Material Breach by Parent or Merger Sub, the aggregate liability  
of B. Riley under the Limited Guarantee will not exceed \$57,000,000.***  
B. Riley also waived certain defenses arising out of certain events set  
forth in the Limited Guarantee.

1           32. On July 27, 2023, the Company filed with the SEC a Form 424B5  
2 Prospectus supplement which contained the following description of the proposed  
3 FRG Transaction:

4           *Proposed FRG Transaction*

5           On May 10, 2023, Franchise Group, Inc. (“FRG”) announced that it had  
6 entered into a definitive merger agreement pursuant to which members  
7 of the senior management team of FRG and related entities would  
8 acquire the approximately 64% of FRG’s common stock not owned by  
9 them. *At the same time, the Company entered into an equity  
10 commitment letter with the acquisition vehicle formed by FRG senior  
11 management pursuant to which, among other things, the Company  
12 agreed to provide certain equity funding and other support in  
13 connection with the transaction.* Specifically, the equity commitment  
14 letter provides, subject to its terms and conditions, that *the Company will  
15 contribute an amount equal to up to \$560 million in equity financing  
16 for the transaction (the Company currently expects to invest  
17 approximately \$250 million pursuant to the equity commitment, with  
18 the remainder to be funded by co-investments).* FRG has scheduled a  
19 special meeting of stockholders for August 17, 2023 to vote on the  
20 transaction and related matters. The proposed transaction is anticipated  
21 to close in the second half of 2023, subject to satisfaction or waiver of  
22 the closing conditions contained in the definitive documentation.

23           *Credit Facility*

24           The Company is in discussions with certain of its lenders in respect of a  
25 new secured credit facility that, if fully drawn, would increase the  
26 Company’s aggregate consolidated indebtedness by up to *an additional  
27 \$300 million, a portion of the proceeds of which would be used to  
28 finance the Company’s equity investment in FRG. If entered into, the  
new secured credit facility is expected to be secured by a first priority  
lien on, among others, all assets secured by the Company’s existing  
secured credit facility.*

29           33. On August 9, 2023, the Company filed its quarterly financial report for  
30 the fiscal period ended June 30, 2023, on Form 10-Q with the SEC, which stated in  
31 relevant part:

32           *Badcock Loan Receivable*

33           On December 20, 2021, the Company entered into a Master Receivables  
34 Purchase Agreement with W.S. Badcock Corporation, a Florida  
35 corporation (“WSBC”), *an indirect wholly owned subsidiary of  
36 Franchise Group, Inc., a Delaware corporation (“FRG”). The Company  
37 paid \$400,000 in cash to WSBC for the purchase of certain consumer  
38 credit receivables of WSBC. On September 23, 2022, the Company's  
subsidiary, B Riley Receivables II, LLC (“BRRII”), a Delaware limited  
liability company, entered into a Master Receivables Purchase  
Agreement (“2022 Badcock Receivable”) with WSBC. This purchase*

1 *of \$168,363 consumer credit receivables of WSBC was partially*  
2 *financed by a \$148,200 term loan* discussed in Note 11. *During the six*  
3 *months ended June 30, 2023, BRRII entered into Amendment Nos. 2*  
4 *and No. 3 to the 2022 Badcock Receivable with WSBC for a total of*  
5 *\$145,278 in additional consumer credit receivables.* The accounting for  
6 these transactions resulted in the Company recording a loan receivable  
from WSBC with the recognition of interest income at an imputed rate  
based on the cash flows expected to be received from the collection of  
the consumer receivables that serve as collateral for the loan. The loan  
receivable was measured at fair value on the condensed consolidated  
balance sheets.

7 In connection with these loans, the Company entered into a Servicing  
8 Agreement with WSBC pursuant to which WSBC provides to the  
9 Company certain customary servicing and account management services  
10 in respect of the receivables purchased by the Company under the  
11 Receivables Purchase Agreement. In addition, subject to certain terms  
and conditions, FRG has agreed to guarantee the performance by WSBC  
of its obligations under the Master Receivables Purchase Agreements  
and the Servicing Agreement.

12 \* \* \*

#### 13 *FRG Commitments and Guarantees*

14 *On May 10, 2023, we entered into certain agreements pursuant to*  
15 *which we have, among other things, agreed to provide certain equity*  
16 *funding and other support in connection with the acquisition* (the  
17 “Acquisition”) by Freedom VCM, Inc., a Delaware corporation  
18 (“Parent”), of Franchise Group, Inc., a Delaware corporation (“FRG”).  
Parent has agreed to acquire FRG pursuant to an Agreement and Plan of  
19 Merger, dated as of May 10, 2023, by and among Parent, Freedom VCM  
20 Subco, Inc., a Delaware corporation and a wholly-owned subsidiary of  
21 Parent (the “Merger Sub”), and FRG (the “Merger Agreement”),  
22 pursuant to which, upon the terms and subject to the conditions set forth  
23 therein, at the closing, Merger Sub will merge with and into FRG, with  
24 FRG surviving the merger as a wholly owned subsidiary of Parent. *The*  
25 *buyer group includes members of the senior management team of*  
26 *FRG, led by FRG’s Chief Executive Officer. We are not a party to the*  
27 *Merger Agreement.*

28 \* \* \*

#### 29 *Equity Commitment Letter*

30 We entered into an Equity Commitment Letter, dated as of May 10, 2023  
31 (the “Equity Commitment Letter”), with Freedom VCM Holdings, LLC  
32 (“TopCo”) and Parent, pursuant to which we, subject to the terms and  
33 conditions of the Equity Commitment Letter, *have agreed to contribute*  
34 *to TopCo, at or prior to the closing of the Merger, an amount equal to*  
35 *up to \$560.0 million in equity financing* (the “B. Riley Equity  
36 Commitment”). *The B. Riley Equity Commitment will then be used by*  
37 *TopCo to fund part of the Acquisition. FRG is a third party beneficiary*  
38 *of the Equity Commitment Letter,* and FRG is entitled to specifically  
enforce the Equity Commitment Letter; provided, however, that our

1 obligations under the Equity Commitment Letter will terminate in the  
2 event that any claim is brought by FRG with respect to the Limited  
3 Guarantee, as defined below. Subject to certain conditions set forth in  
4 the Equity Commitment Letter, we have the right to assign all or a  
portion of such commitments to its affiliates, financing sources or other  
investors, and we expect the actual amount to be funded by it at Closing  
to be less than the \$560.0 million.

5 *Limited Guarantee*

6 We entered into a Limited Guarantee with FRG dated as of May 10, 2023  
7 (the “Limited Guarantee”) in favor of FRG, pursuant to which we agreed  
8 to guarantee to FRG the due and punctual payment, performance and  
9 discharge when required by Parent or Merger Sub to FRG of certain  
10 liabilities and obligations of Parent or Merger Sub under the Merger  
11 Agreement pursuant to and in accordance therewith, including (i) a  
12 termination fee due to FRG in the amount of \$55.0 million if the Merger  
13 Agreement is terminated under certain specified circumstances provided  
14 for in the Merger Agreement; (ii) certain reimbursement obligations of  
15 Parent when required to be paid by Parent pursuant to the Merger  
16 Agreement; and (iii) ***liabilities or damages resulting from any actual  
17 fraud or Willful and Material Breach (as defined in the Merger  
18 Agreement) by Parent or Merger Sub required to be paid by Parent or  
19 Merger Sub pursuant to the Merger Agreement;*** provided, that, except  
20 in the case of actual fraud or Willful and Material Breach by Parent or  
21 Merger Sub, our aggregate liability under the Limited Guarantee will not  
22 exceed \$57.0 million. We also waived certain defenses arising out of  
23 certain events set forth in the Limited Guarantee.

24 34. On August 25, 2023, the Company filed with the SEC the “Credit  
25 Agreement, dated August 21, 2023, among B. Riley Financial, Inc., BR Financial  
26 Holdings, LLC, each of the lenders from time to time parties thereto, Nomura  
27 Corporate Funding Americas, LLC, and Computershare Trust Company, N.A.,” as  
28 Exhibit 10.1 to a Form 8-K. In the Company’s 8-K filing, the Company announced  
the completion of equity financing in connection with the acquisition of FRG and  
stated:

On August 21, 2023, B. Riley Financial, Inc. (the “Company” or “B.  
Riley”) completed a previously announced equity financing (the “Equity  
Investment”) in connection with the acquisition (the “Acquisition”) of  
Franchise Group, Inc., a Delaware corporation (“FRG”), ***by a buyer  
group that included members of senior management of FRG, led by  
Brian Kahn, FRG’s Chief Executive Officer, in a financial partnership  
with a consortium that includes certain of Brian Kahn’s affiliate  
entities,*** the Company and certain other investors. The Acquisition was  
completed pursuant to the terms of that certain Agreement and Plan of  
Merger, dated as of May 10, 2023 (the “Merger Agreement”), by and  
among FRG, Freedom VCM, Inc., a Delaware corporation (“Parent”) and  
Freedom VCM Subco, Inc., a Delaware corporation and wholly-

1 owned subsidiary of Parent (“Merger Sub”). Pursuant to the Merger  
2 Agreement, Merger Sub merged with and into FRG (the “Merger”), with  
3 FRG surviving the Merger as a subsidiary of Parent. The Company was  
4 not a party to the Merger Agreement. In connection with the Acquisition,  
5 a subsidiary of the Company made a new cash Equity Investment of  
6 **\$216.5 million in FRG’s new parent entity, bringing the Company’s**  
7 ***entire equity investment in the parent entity to approximately \$280***  
8 ***million.***

9 35. On August 28, 2023, the Company issued a press release entitled “B.  
10 Riley Leads Financing for Management Buyout of Franchise Group” which stated in  
11 relevant part that the Company:

12 led the equity financing to facilitate the \$2.8 billion management-led  
13 acquisition of Franchise Group, Inc. (“FRG”) which was completed on  
14 August 21, 2023.

15 ***B. Riley invested \$216.5 million of new capital in the transaction.***  
16 ***Other institutional, financial and strategic investors invested***  
17 ***approximately \$280 million of additional equity capital in the new***  
18 ***FRG alongside significant rollover equity contributions from FRG***  
19 ***management.*** As result of the completed transaction, the management-  
20 led consortium has acquired all the outstanding and issued common and  
21 preferred stock of FRG.

22 36. The above statements identified in ¶¶ 29-35 were materially false and/or  
23 misleading, and failed to disclose material adverse facts about the Company’s  
24 business, operations, and prospects. Specifically, Defendants failed to disclose to  
25 investors: (1) that Brian Kahn had been credibly implicated in fraud; (2) B. Riley  
26 failed to perform due diligence in connection the FRG financing transactions which  
27 occurred up to and including August 31, 2023; (3) that, as a result, there was a  
28 substantial likelihood federal securities investigations would arise concerning the  
August 31, 2023 transactions and/or B. Riley’s dealings with Kahn; and (4) that, as a  
result of the foregoing, Defendants’ positive statements about the Company’s  
business, operations, and prospects were materially misleading and/or lacked a  
reasonable basis.

37. The truth began to emerge on November 2, 2023, when the Department  
of Justice announced Hughes pled guilty to conspiring to defraud investors out of

1 \$294 million in connection Prophecy (the “DOJ Charging Papers”). The DOJ  
2 Charging Papers state, in relevant part:

3 From in or around January 2015 to in or around March 2020, **defendant**  
4 **John Hughes (“HUGHES”) conspired with Co-conspirator-1 and Co-**  
5 **conspirator-2 to defraud dozens of investors (“Victims”)** who had  
6 invested approximately \$360 million in investment funds managed by  
7 Prophecy Asset Management LP (“Prophecy”), through lies, deception,  
8 misleading statements, and material omissions relating to, among other  
9 things: (a) the purported low-risk, transparent, and diversified nature of  
10 Prophecy’s funds; (b) the manner and purpose in which HUGHES, Co-  
11 conspirator- 1, and Co-conspirator-2 used money from those funds; and,  
12 (c) the financial position of Prophecy’s funds leading up to its collapse  
13 in or around March 2020

14 38. The DOJ Charging Papers describes the fraud perpetrated in conjunction  
15 with “Co-conspirator-2” who is described as “an investment manager (called a “sub-  
16 advisor”) for Prophecy”. The DOJ Indictment states:

17 Since in or around 2019, Co-conspirator-2 **was also the CEO and**  
18 **President of a multi-billion dollar company that owned and managed**  
19 **large and diversified retail franchises.**

20 39. On the same day, the SEC filed a civil complaint against Hughes in  
21 connection with these allegations, *Securities and Exchange Commission v. John*  
22 *Hughes*, No. 3:23-cv-21816 (D.N.J. filed November 2, 2023) (the “SEC Complaint”).  
23 The SEC Complaint alleges Hughes, in conjunction with “Individual 2” committed  
24 fraud as detailed in the DOJ Indictment and further details how Individual 2 was at  
25 the heart of the admitted fraud, by *inter alia*:

26 ...entering into sham transactions to provide Individual 2 with cash to  
27 cover his trading losses and falsifying documentation designed to create  
28 the appearance that Individual 2’s trading losses remained secured by  
non-cash collateral

\* \* \*

29 To purportedly secure the receivable with collateral, Prophecy and  
30 Individual 2 entered into at least six agreements consisting of, among  
31 other things, personal guaranties, promissory notes, and other pledged  
32 “assets,” which did not exist or had questionable value.

33 40. The SEC Complaint detailed numerous sham transactions entered into  
34 by Individual 2 including:

1 ***Hughes and Individual 2 fabricated certain documents*** concerning a  
2 purported agreement between Prophecy and **Buddy's Newco LLC**  
3 **(“Buddy's”), a company controlled by Individual 2.** Specifically,  
4 Individual 2 created an agreement titled, **“Buddy's Newco LLC Series A**  
5 **Preferred Stock Agreement” (“Buddy's Preferred Stock Agreement”).**  
6 On April 10, 2019, Individual 2 emailed Hughes a draft of the Buddy's  
7 Preferred Stock Agreement that purported to show Prophecy's  
8 ownership of \$125 million worth of preferred shares of Buddy's stock,  
9 ***backdated*** to January 1, 2018. By June 3, 2019, Individual 2 delivered  
10 to Hughes two Buddy's Convertible Stock Certificates (“Buddy's  
11 Certificates”) backdated to January 3, 2018. ***One of the certificates was***  
12 ***for 75 shares with a purported valuation of \$75 million. The second***  
13 ***certificate was for 150 shares with a purported valuation of \$150***  
14 ***million.*** Subsequently, Hughes provided Prophecy's auditor with the  
15 Buddy's Preferred Stock Agreement and the Buddy's Certificate  
16 purportedly valued at \$75 million. In response to a series of questions  
17 from Prophecy's auditor to Individual 2, which he forwarded to Hughes,  
18 Individual 2 falsely confirmed that Individual 2 had authority to issue the  
19 preferred stock to Prophecy and that the preferred stock was collateral  
20 used to secure Individual 2's 2018 trading losses, was issued and  
21 outstanding as of December 31, 2018, and was issued in Prophecy's  
22 name. In reality, **Buddy's Newco LLC Series A Preferred Shares were**  
23 ***never issued to Prophecy or anybody else because the shares never***  
24 ***existed. The entire agreement and transaction was a sham created by***  
25 ***Hughes and Individual 2.***

26 41. The SEC Complaint further set out:

27 Although Individual 2 had a cash collateral deficit in excess of \$50  
28 million during the fall of 2018, ***Prophecy provided a \$36 million***  
***unsecured loan to Vintage Capital Management LLC (“Vintage”), an***  
***asset management company controlled by Individual 2.***

***Hughes and Individual 1 understood that Individual 2 was going to use***  
***the loan proceeds to provide rescue financing to a company in which***  
***Vintage was heavily invested.***

Hughes and Individual 2 again entered into a series of complex sham  
transactions to conceal the failed loan. This time, Prophecy “invested”  
\$36 million into two other entities controlled by Individual 2, which then  
routed the money to Vintage so it could repay the loan owed to Prophecy.

42. On the same day, after the market closed, *Bloomberg* reported Kahn had  
been named as one of two co-conspirators by “a person familiar with the matter.”

43. Then, on November 3, 2023, after the markets had closed on a Friday,  
The Friendly Bear, a short research reporting group, posted on Twitter an excerpt of  
the *Bloomberg* report, and asked:

Did Kahn disclose this to B Riley? Hard to believe that this was withheld  
or unknown. ***The parallel civil litigation was known and available for***

1            ***years. Did B Riley disclose it to Nomura when they upsized the facility***  
2            ***to buy \$FRG ?***

3            44. The civil litigation herein referred is a 2020 civil lawsuit filed in New  
4 York by a group of Prophecy investors who named Kahn (among others) as  
5 defendants. That litigation alleged Kahn fraudulently extracted tens of millions of  
6 dollars and used more than \$100 million to amass a controlling stake for himself in  
7 FRG. The case, filed in federal court in New York, was referred to arbitration and  
8 dismissed in 2022. It remains unclear whether there was a settlement or whether Kahn  
9 paid any money.

10           45. On that date, the Friendly Bear also commented on the DOJ Charging  
11 Papers and stated:

12           ***Brian Kahn is co-conspirator 2 here. This charging document clearly***  
13           ***implicates him in Hughes' crime. There is a high chance of indictment***  
14           ***here. \$FRG is extremely overlevered, a "bet on Kahn", and could lose***  
15           ***access to critical funding upon indictment***

16           46. On this news, the Company's stock price dropped \$9.02, or 22%, to close  
17 at \$32.54 per share on the next available trading day, November 6, 2023, on unusually  
18 heavy trading volume.

19           47. In the following days, B. Riley, and Bryant Riley specifically offered  
20 unmitigated support for Kahn, including stating, during an earnings call on November  
21 8, 2023, "a statement came out from Brian denying any involvement and what  
22 happened with Prophecy, and that's good enough for me"; "our confidence in these  
23 businesses [FRG] has not waned at all.... As CEO, Brian Kahn was the architect to  
24 help put these businesses together to form FRG as it is known today. I've known Brian  
25 for many years and have had no direct experience with what has been alleged."

26           48. The above statements identified in ¶¶ 37-47 were materially false and/or  
27 misleading, and failed to disclose material adverse facts about the Company's  
28 business, operations, and prospects. Specifically, Defendants failed to disclose to  
investors: (1) there was a substantial likelihood federal securities investigations would  
arise concerning the August 31, 2023 transactions and/or B. Riley's dealings with

1 Kahn; and (2) that, as a result of the foregoing, Defendants’ positive statements about  
2 the Company’s business, operations, and prospects were materially misleading and/or  
3 lacked a reasonable basis.

4 **Disclosures at the End of the Class Period**

5 49. On November 9, 2023, after the market closed, the Company filed its  
6 quarterly fiscal report on Form 10-Q for the period ending September 30, 2023 (the  
7 “3Q23 10-Q”). The 3Q23 10-Q revealed significant details concerning the FRG  
8 transaction and the years long series of complex financial transactions between B.  
9 Riley, Kahn, and their Company’s respective subsidiaries, culminating in the August  
10 21, 2023 transaction. The 3Q23 10-Q details the manner in which B. Riley and FRG  
11 executed a series of complex financial transaction to effectuate the August 21, 2023  
12 deal. First B. Riley, via wholly owned subsidiary BR Financial Holdings, LLC,  
13 entered into a credit agreement with Nomura Corporate Funding Americans, LLC.  
14 Second, B. Riley then used those funds in order to *inter alia* fund an equity investment  
15 in Freedom VCM Holdings LLC, an indirect parent entity for FRG, in exchange for  
16 \$281.1 million. Third, in return, B. Riley then assumed a 31% voting interest in  
17 Freedom VCM Holdings LLC. Then, on the same day, immediately B. Riley also  
18 sold all equity interest of B Riley Receivables II, LLC (a subsidiary of B. Riley), to  
19 Freedom VCM Receivables, Inc. for \$58.9 million. B. Riley Receivables II, LLC had  
20 previously, over a series of transactions spanning 2021-2022 entered into a series of  
21 loan receivable transactions with “W.S. Badcock”, an indirect wholly owned  
22 subsidiary of FRG. After August 21, 2023, those receivables became a related party  
23 loan receivable with a fair value of \$33.60 million. In exchange, Freedom VCM  
24 Receivables then assumed a significant obligation of B. Riley Receivables II, LLC  
25 (the “Pathlight Credit Agreement”) and entered into a note receivable with B. Riley  
26 Receivables II, for \$58.87 million. Badcock Receivable I (a subsidiary of FRG)  
27 became a related party loan receivable with a fair value of \$33.60 million.



1 representatives, heirs, successors, or assigns, and any entity in which Defendants have  
2 or had a controlling interest.

3 55. The members of the Class are so numerous that joinder of all members  
4 is impracticable. Throughout the Class Period, B. Riley's shares actively traded on  
5 the NASDAQ. While the exact number of Class members is unknown to Plaintiff at  
6 this time and can only be ascertained through appropriate discovery, Plaintiff believes  
7 that there are at least hundreds or thousands of members in the proposed Class.  
8 Millions of B. Riley shares were traded publicly during the Class Period on the  
9 NASDAQ. Record owners and other members of the Class may be identified from  
10 records maintained by B. Riley or its transfer agent and may be notified of the  
11 pendency of this action by mail, using the form of notice similar to that customarily  
12 used in securities class actions.

13 56. Plaintiff's claims are typical of the claims of the members of the Class  
14 as all members of the Class are similarly affected by Defendants' wrongful conduct  
15 in violation of federal law that is complained of herein.

16 57. Plaintiff will fairly and adequately protect the interests of the members  
17 of the Class and has retained counsel competent and experienced in class and  
18 securities litigation.

19 58. Common questions of law and fact exist as to all members of the Class  
20 and predominate over any questions solely affecting individual members of the Class.  
21 Among the questions of law and fact common to the Class are:

22 (a) whether the federal securities laws were violated by Defendants'  
23 acts as alleged herein;

24 (b) whether statements made by Defendants to the investing public  
25 during the Class Period omitted and/or misrepresented material facts about the  
26 business, operations, and prospects of B. Riley; and

27 (c) to what extent the members of the Class have sustained damages  
28 and the proper measure of damages.



1 assessment of the Company and its financial well-being and prospects, thus causing  
2 the Company's securities to be overvalued and artificially inflated at all relevant  
3 times. Defendants' materially false and/or misleading statements during the Class  
4 Period resulted in Plaintiff and other members of the Class purchasing the Company's  
5 securities at artificially inflated prices, thus causing the damages complained of herein  
6 when the truth was revealed.

7 **LOSS CAUSATION**

8 63. Defendants' wrongful conduct, as alleged herein, directly and  
9 proximately caused the economic loss suffered by Plaintiff and the Class.

10 64. During the Class Period, Plaintiff and the Class purchased B. Riley's  
11 securities at artificially inflated prices and were damaged thereby. The price of the  
12 Company's securities significantly declined when the misrepresentations made to the  
13 market, and/or the information alleged herein to have been concealed from the market,  
14 and/or the effects thereof, were revealed, causing investors' losses.

15 **SCIENTER ALLEGATIONS**

16 65. As alleged herein, Defendants acted with scienter since Defendants knew  
17 that the public documents and statements issued or disseminated in the name of the  
18 Company were materially false and/or misleading; knew that such statements or  
19 documents would be issued or disseminated to the investing public; and knowingly  
20 and substantially participated or acquiesced in the issuance or dissemination of such  
21 statements or documents as primary violations of the federal securities laws. As set  
22 forth elsewhere herein in detail, the Individual Defendants, by virtue of their receipt  
23 of information reflecting the true facts regarding B. Riley, their control over, and/or  
24 receipt and/or modification of B. Riley's allegedly materially misleading  
25 misstatements and/or their associations with the Company which made them privy to  
26 confidential proprietary information concerning B. Riley, participated in the  
27 fraudulent scheme alleged herein.

1                                   **APPLICABILITY OF PRESUMPTION OF RELIANCE**  
2                                   **(FRAUD-ON-THE-MARKET DOCTRINE)**

3           66.   The market for B. Riley’s securities was open, well-developed and  
4 efficient at all relevant times. As a result of the materially false and/or misleading  
5 statements and/or failures to disclose, B. Riley’s securities traded at artificially  
6 inflated prices during the Class Period. On July 26, 2023, the Company’s share price  
7 closed at a Class Period high of \$59.13 per share. Plaintiff and other members of the  
8 Class purchased or otherwise acquired the Company’s securities relying upon the  
9 integrity of the market price of B. Riley’s securities and market information relating  
10 to B. Riley, and have been damaged thereby.

11           67.   During the Class Period, the artificial inflation of B. Riley’s shares was  
12 caused by the material misrepresentations and/or omissions particularized in this  
13 Complaint causing the damages sustained by Plaintiff and other members of the Class.  
14 As described herein, during the Class Period, Defendants made or caused to be made  
15 a series of materially false and/or misleading statements about B. Riley’s business,  
16 prospects, and operations. These material misstatements and/or omissions created an  
17 unrealistically positive assessment of B. Riley and its business, operations, and  
18 prospects, thus causing the price of the Company’s securities to be artificially inflated  
19 at all relevant times, and when disclosed, negatively affected the value of the  
20 Company shares. Defendants’ materially false and/or misleading statements during  
21 the Class Period resulted in Plaintiff and other members of the Class purchasing the  
22 Company’s securities at such artificially inflated prices, and each of them has been  
23 damaged as a result.

24           68.   At all relevant times, the market for B. Riley’s securities was an efficient  
25 market for the following reasons, among others:

26                   (a)   B. Riley shares met the requirements for listing, and was listed and  
27 actively traded on the NASDAQ, a highly efficient and automated market;

1 (b) As a regulated issuer, B. Riley filed periodic public reports with  
2 the SEC and/or the NASDAQ;

3 (c) B. Riley regularly communicated with public investors via  
4 established market communication mechanisms, including through regular  
5 dissemination of press releases on the national circuits of major newswire services  
6 and through other wide-ranging public disclosures, such as communications with the  
7 financial press and other similar reporting services; and/or

8 (d) B. Riley was followed by securities analysts employed by  
9 brokerage firms who wrote reports about the Company, and these reports were  
10 distributed to the sales force and certain customers of their respective brokerage firms.  
11 Each of these reports was publicly available and entered the public marketplace.

12 69. As a result of the foregoing, the market for B. Riley's securities promptly  
13 digested current information regarding B. Riley from all publicly available sources  
14 and reflected such information in B. Riley's share price. Under these circumstances,  
15 all purchasers of B. Riley's securities during the Class Period suffered similar injury  
16 through their purchase of B. Riley's securities at artificially inflated prices and a  
17 presumption of reliance applies.

18 70. A Class-wide presumption of reliance is also appropriate in this action  
19 under the Supreme Court's holding in *Affiliated Ute Citizens of Utah v. United States*,  
20 406 U.S. 128 (1972), because the Class's claims are, in large part, grounded on  
21 Defendants' material misstatements and/or omissions. Because this action involves  
22 Defendants' failure to disclose material adverse information regarding the Company's  
23 business operations and financial prospects—information that Defendants were  
24 obligated to disclose—positive proof of reliance is not a prerequisite to recovery. All  
25 that is necessary is that the facts withheld be material in the sense that a reasonable  
26 investor might have considered them important in making investment decisions.  
27 Given the importance of the Class Period material misstatements and omissions set  
28 forth above, that requirement is satisfied here.

1 **NO SAFE HARBOR**

2 71. The statutory safe harbor provided for forward-looking statements under  
3 certain circumstances does not apply to any of the allegedly false statements pleaded  
4 in this Complaint. The statements alleged to be false and misleading herein all relate  
5 to then-existing facts and conditions. In addition, to the extent certain of the  
6 statements alleged to be false may be characterized as forward looking, they were not  
7 identified as “forward-looking statements” when made and there were no meaningful  
8 cautionary statements identifying important factors that could cause actual results to  
9 differ materially from those in the purportedly forward-looking statements. In the  
10 alternative, to the extent that the statutory safe harbor is determined to apply to any  
11 forward-looking statements pleaded herein, Defendants are liable for those false  
12 forward-looking statements because at the time each of those forward-looking  
13 statements was made, the speaker had actual knowledge that the forward-looking  
14 statement was materially false or misleading, and/or the forward-looking statement  
15 was authorized or approved by an executive officer of B. Riley who knew that the  
16 statement was false when made.

17 **FIRST CLAIM**

18 **Violation of Section 10(b) of The Exchange Act and**  
19 **Rule 10b-5 Promulgated Thereunder**  
20 **Against All Defendants**

21 72. Plaintiff repeats and re-alleges each and every allegation contained  
22 above as if fully set forth herein.

23 73. During the Class Period, Defendants carried out a plan, scheme and  
24 course of conduct which was intended to and, throughout the Class Period, did: (i)  
25 deceive the investing public, including Plaintiff and other Class members, as alleged  
26 herein; and (ii) cause Plaintiff and other members of the Class to purchase B. Riley’s  
27 securities at artificially inflated prices. In furtherance of this unlawful scheme, plan  
28

1 and course of conduct, Defendants, and each defendant, took the actions set forth  
2 herein.

3 74. Defendants (i) employed devices, schemes, and artifices to defraud; (ii)  
4 made untrue statements of material fact and/or omitted to state material facts  
5 necessary to make the statements not misleading; and (iii) engaged in acts, practices,  
6 and a course of business which operated as a fraud and deceit upon the purchasers of  
7 the Company's securities in an effort to maintain artificially high market prices for B.  
8 Riley's securities in violation of Section 10(b) of the Exchange Act and Rule 10b-5.  
9 All Defendants are sued either as primary participants in the wrongful and illegal  
10 conduct charged herein or as controlling persons as alleged below.

11 75. Defendants, individually and in concert, directly and indirectly, by the  
12 use, means or instrumentalities of interstate commerce and/or of the mails, engaged  
13 and participated in a continuous course of conduct to conceal adverse material  
14 information about B. Riley's financial well-being and prospects, as specified herein.

15 76. Defendants employed devices, schemes and artifices to defraud, while in  
16 possession of material adverse non-public information and engaged in acts, practices,  
17 and a course of conduct as alleged herein in an effort to assure investors of B. Riley's  
18 value and performance and continued substantial growth, which included the making  
19 of, or the participation in the making of, untrue statements of material facts and/or  
20 omitting to state material facts necessary in order to make the statements made about  
21 B. Riley and its business operations and future prospects in light of the circumstances  
22 under which they were made, not misleading, as set forth more particularly herein,  
23 and engaged in transactions, practices and a course of business which operated as a  
24 fraud and deceit upon the purchasers of the Company's securities during the Class  
25 Period.

26 77. Each of the Individual Defendants' primary liability and controlling  
27 person liability arises from the following facts: (i) the Individual Defendants were  
28 high-level executives and/or directors at the Company during the Class Period and

1 members of the Company's management team or had control thereof; (ii) each of  
2 these defendants, by virtue of their responsibilities and activities as a senior officer  
3 and/or director of the Company, was privy to and participated in the creation,  
4 development and reporting of the Company's internal budgets, plans, projections  
5 and/or reports; (iii) each of these defendants enjoyed significant personal contact and  
6 familiarity with the other defendants and was advised of, and had access to, other  
7 members of the Company's management team, internal reports and other data and  
8 information about the Company's finances, operations, and sales at all relevant times;  
9 and (iv) each of these defendants was aware of the Company's dissemination of  
10 information to the investing public which they knew and/or recklessly disregarded  
11 was materially false and misleading.

12         78. Defendants had actual knowledge of the misrepresentations and/or  
13 omissions of material facts set forth herein, or acted with reckless disregard for the  
14 truth in that they failed to ascertain and to disclose such facts, even though such facts  
15 were available to them. Such defendants' material misrepresentations and/or  
16 omissions were done knowingly or recklessly and for the purpose and effect of  
17 concealing B. Riley's financial well-being and prospects from the investing public  
18 and supporting the artificially inflated price of its securities. As demonstrated by  
19 Defendants' overstatements and/or misstatements of the Company's business,  
20 operations, financial well-being, and prospects throughout the Class Period,  
21 Defendants, if they did not have actual knowledge of the misrepresentations and/or  
22 omissions alleged, were reckless in failing to obtain such knowledge by deliberately  
23 refraining from taking those steps necessary to discover whether those statements  
24 were false or misleading.

25         79. As a result of the dissemination of the materially false and/or misleading  
26 information and/or failure to disclose material facts, as set forth above, the market  
27 price of B. Riley's securities was artificially inflated during the Class Period. In  
28 ignorance of the fact that market prices of the Company's securities were artificially



1 high-level positions and their ownership and contractual rights, participation in,  
2 and/or awareness of the Company's operations and intimate knowledge of the false  
3 financial statements filed by the Company with the SEC and disseminated to the  
4 investing public, Individual Defendants had the power to influence and control and  
5 did influence and control, directly or indirectly, the decision-making of the Company,  
6 including the content and dissemination of the various statements which Plaintiff  
7 contends are false and misleading. Individual Defendants were provided with or had  
8 unlimited access to copies of the Company's reports, press releases, public filings,  
9 and other statements alleged by Plaintiff to be misleading prior to and/or shortly after  
10 these statements were issued and had the ability to prevent the issuance of the  
11 statements or cause the statements to be corrected.

12 85. In particular, Individual Defendants had direct and supervisory  
13 involvement in the day-to-day operations of the Company and, therefore, had the  
14 power to control or influence the particular transactions giving rise to the securities  
15 violations as alleged herein, and exercised the same.

16 86. As set forth above, B. Riley and Individual Defendants each violated  
17 Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint.  
18 By virtue of their position as controlling persons, Individual Defendants are liable  
19 pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of  
20 Defendants' wrongful conduct, Plaintiff and other members of the Class suffered  
21 damages in connection with their purchases of the Company's securities during the  
22 Class Period.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff prays for relief and judgment, as follows:

25 (a) Determining that this action is a proper class action under Rule 23 of the  
26 Federal Rules of Civil Procedure;

27 (b) Awarding compensatory damages in favor of Plaintiff and the other  
28 Class members against all defendants, jointly and severally, for all damages sustained

1 as a result of Defendants' wrongdoing, in an amount to be proven at trial, including  
2 interest thereon;

3 (c) Awarding Plaintiff and the Class their reasonable costs and expenses  
4 incurred in this action, including counsel fees and expert fees; and

5 (d) Such other and further relief as the Court may deem just and proper.

6 **JURY TRIAL DEMANDED**

7 Plaintiff hereby demands a trial by jury.

8

9 DATED:

**LAW OFFICES OF HOWARD G. SMITH**

10

By: \_\_\_\_\_

11

Howard G. Smith

12

3070 Bristol Pike, Suite 112

13

Bensalem PA 19020

14

Telephone: (215) 638-4847

15

Facsimile: (215) 638-4867

16

**GLANCY PRONGAY & MURRAY LLP**

17

Robert V. Prongay

18

Charles Linehan

19

Pavithra Rajesh

20

1925 Century Park East, Suite 2100

21

Los Angeles, California 90067

22

Telephone: (310) 201-9150

23

Facsimile: (310) 201-9160

24

Email: info@glancylaw.com

25

*Counsel for Plaintiff* \_\_\_\_\_

26

27

28